Soil and building materials contain radium-226 and other radioactive materials. The radium-226 decays to radon gas and radon decay products which can concentrate in basements and other ground-level enclosed spaces. Residents who are directly exposed to radiation, inhale radioactive dust particles, or inadvertently ingest radioactive particles from the Site may suffer adverse health effects in the form of an increased risk of certain types of cancer. Workers and customers of commercial properties would be similarly affected.

Remedies for the Site were selected in two Records of Decision, signed in September 1993 and August 1995. The remedial action involves the excavation and off-site disposal of radium-contaminated material at the plant site and at affected Satellite properties. This is the final remedy for these properties. Ground water under these properties will be addressed by a separate operable unit and remains included in the NPL listing.

The long-term soil remedy has been divided into phases. Phase 6 of the remedy, which included the property known as 475 South Jefferson Street, began in September 2001 and was completed in September 2003.

All known radiological contamination has been removed from 475 South Jefferson Street. No radiological contamination is known to remain on this property or the properties surrounding it. All restoration and maintenance activities have been completed on this property and no further work is required as part of the cleanup of the U.S. Radium Corp. Site. Information about this work is contained in a Remedial Action Report dated September 2003.

Public participation activities for the U.S. Radium Corp. Site have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and section 117, 42 U.S.C. 9617. The RI/FS and the RODs were subject to a public review process. All other documents and information which EPA relied on or considered in recommending that no further activities are necessary at a portion of the U.S. Radium Corp. Site, and that this portion of the Site can be deleted from the NPL, are available for the public to review at the information repositories.

One of the three criteria for Site deletion specifies that EPA may delete a Site, or a portion of a Site, from the NPL if ''all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate.'' 40 CFR 300.425(e)(1)(ii). EPA, with the concurrence of the State of New Jersey, through the New Jersey Department of Environmental Protection, believes that this criterion for deletion has been met at 475 South Jefferson Street. Consequently, EPA is proposing deletion of this portion of the U.S. Radium Site from the NPL.

List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 10, 2004.

Anthony Cancro,

Acting Regional Administrator—Region 2.

■ For the reasons set out in the preamble, part 300, title 40 of Chapter I of the Code of Federal Regulations, is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended by adding a ''P'' in the Notes column in the entry for U.S. Radium Corp., Orange, New Jersey.

[FR Doc. 04–14218 Filed 6–23–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 96–262; FCC 04–110]

Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration and clarification.

SUMMARY: By this document, the Commission denies a number of petitions for reconsideration of the tariff rules governing the charges for interstate switched access services provided by competitive local exchange carriers (LECs). Although the Commission denies the petitions for reconsideration, it addresses a number of issues raised in petitions for clarification and amends the rules accordingly. The Commission also concludes that it is not necessary to immediately cap competitive LEC access rates for toll-free traffic at the rate of the competing incumbent LEC. With this decision, the Commission retains the benchmark regime governing interstate switched access services provided by competitive LECs and clarifies application of the regime in several respects.

DATES: Effective July 26, 2004.

ADDRESSES: All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, Room TW–A325, 445 Twelfth Street SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein must be submitted to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 Twelfth Street SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*, and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street NW., Washington, DC 20503, or via the Internet to *Kim_A._Johnson@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Victoria Schlesinger, Wireline Competition Bureau, Pricing Policy Division, (202) 418–7353.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Eighth Report and Order and Fifth Order on Reconsideration in CC Docket No. 96–262, adopted on May 13, 2004, and released on May 18, 2004. The complete text of this Order is available for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. The complete text is available also on the Commission's Internet site at *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365. The complete text of the decision may be purchased from the Commission's duplicating contractor, Best Copying and Printing, Inc., Room CY–B402, 445 Twelfth Street, SW., Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or e-mail at *http://www.bcpiweb.com*.

Synopsis of Order on Reconsideration and Report and Order

1. In 2001, the Commission adopted new rules governing the charges for

interstate switched access services provided by competitive LECs, *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96–262, Seventh Report and Order, 66 FR 27892, May 21, 2001, and Further Notice of Proposed Rulemaking, 66 FR 27927, May 21, 2001 (*CLEC Access Reform Order*). These rules established a regime whereby tariffed competitive LEC access rates cannot exceed a specified benchmark rate, 47 CFR 61.26(b). Under this regime, competitive LECs may not generally tariff interstate access charges above the competing incumbent LEC rate, 47 CFR 61.26(c).

2. In order to avoid too great a disruption for competitive carriers, however, the Commission established a three-year transition period. During the transition, competitive LECs are permitted to charge rates higher than those charged by the competing incumbent LEC, but their tariffed rates cannot exceed specific benchmark rates set by the Commission and contained in § 61.26(c) of the Commission's rules, 47 CFR 61.26(c). Under § 61.26(d) of the Commission's rules, 47 CFR 61.26(d), these transition rates are not available to competitive LECs in new markets where they began serving end-users after the effective date of the *CLEC Access Reform Order*. This three-year transition period ends on June 21, 2004, 47 CFR 61.26(c). The Commission also adopted a rural exemption, pursuant to which rural competitive LECs meeting certain criteria are permitted to tariff rates up to the highest rate band in the NECA tariff, 47 CFR 61.26(a) and (e).

3. With this decision, the Commission disposes of several petitions for reconsideration of the tariff rules adopted in the *CLEC Access Reform Order*. Although the Commission denies the petitions for reconsideration, it addresses several issues raised in petitions for clarification of the current rules. First, the Commission clarifies that a competitive LEC is entitled to charge the full benchmark rate if it provides an IXC with access to the competitive LEC's own end-users. It finds that the rate a competitive LEC charges for access components when it is not serving the end-user should be no higher than the rate charged by the competing incumbent LEC for the same functions. Second, the Commission provides guidance on the meaning of the appropriate switching rate used in determining the ''competing ILEC rate'' after the three-year transition period to the competing incumbent LEC rate ends. Third, the Commission clarifies that any pre-subscribed interexchange carrier charge (PICC) imposed by a competitive LEC qualifying for the rural exemption may be assessed in addition to the rural benchmark rate if and only to the extent that the competing incumbent LEC charges a PICC. Fourth, it identifies permissible ways in which competitive LECs may structure their rates if they serve a geographic area with more than one incumbent LEC. Fifth, the Commission clarifies the source of its authority to impose IXC interconnection obligations under section 201(a) and it denies a pending petition for waiver of the CLEC new markets rule. Finally, the Commission declines to set a separate access rate for originating toll-free (8YY) traffic and allows it to be governed by the same declining benchmark as other competitive LEC interstate access traffic.

Accounting for Services Still Provided by the Incumbent LEC

4. Section 61.26(b) of the Commission's rules, 47 CFR 61.26(b), provides that a competitive LEC's tariffed rate for ''its interstate switched exchange access services'' cannot exceed the benchmark. Under § 61.26(a)(3), 47 CFR 61.26(a)(3) the term interstate switched exchange access services ''shall include the functional equivalent of the ILEC interstate exchange access services typically associated with the following rate elements: Carrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport facility (per mile); tandem switching.'' The rate elements identified in § 61.26(a)(3), reflect those services needed to originate or terminate a call to a LEC's end-user. When a competitive LEC originates or terminates traffic to its own end-users, it is providing the functional equivalent of those services, even if the call is routed from the competitive LEC to the IXC through an incumbent LEC tandem.

5. The Commission is aware of a number of disputes regarding the appropriate compensation to be paid by IXCs when a competitive LEC handles interexchange traffic that is not originated or terminated by the competitive LEC's own end-users. Because neither the *CLEC Access Reform Order* nor other applicable precedent addressed the appropriate rate in this scenario, the Commission now clarifies that the benchmark rate established in the *CLEC Access Reform Order* is available only when a competitive LEC provides an IXC with access to the competitive LEC's own end-users. The Commission explains that a competitive LEC that provides access to its own end-users is providing the functional equivalent of the services associated with the rate elements listed in § 61.26(a)(3) and therefore is entitled to the full benchmark rate.

6. Because of the many disputes related to the rates charged by competitive LECs when they act as intermediate carriers, the Commission concludes that it is necessary to adopt a new rule to address these situations. The Commission amends § 61.26 of the Commission's rules, 47 CFR 61.26, on a prospective basis, to specify that the rate that a competitive LEC charges for access components when it is not serving the end-user should be no higher than the rate charged by the competing incumbent LEC for the same functions. The Commission explains that regulation of these rates is necessary because an IXC may have no choice but to accept traffic from an intermediate competitive LEC chosen by the originating or terminating carrier and that it is necessary to constrain the ability of competitive LECs to exercise this monopoly power.

7. Neither the *CLEC Access Reform Order* nor other applicable precedent addressed the appropriate rate a competitive LEC may charge when it is not serving the end-user. Further, the Commission established only a single rate for each year of the transition period and did not state that this rate was available only if a competitive LEC served the end-user on a particular call. Therefore, prior to this decision, the Commission finds that it would not have been unreasonable for a competitive LEC to charge the tariffed benchmark rate for traffic to or from end-users of other carriers, provided that the carrier serving the end-user did not also charge the IXC and provided that the competitive LEC's charges were otherwise in compliance with and supported by its tariff.

8. Under the existing rules, tariffed competitive LEC access rates must decrease over time until they reach the rate charged by the competing incumbent LEC, subject to some exceptions. In order to avoid litigation and uncertainty, the Commission clarifies the meaning of the competing incumbent LEC rate used to determine the benchmark. The Commission finds that the competing incumbent LEC switching rate is the end office switching rate when a competitive LEC originates or terminates calls to end-users and the tandem switching rate when a competitive LEC passes calls between two other carriers. Competitive LECs also have, and always had, the ability to charge for common transport when they provide it, including when

they subtend an incumbent LEC tandem switch. Competitive LECs that impose such charges should calculate the rate in a manner that reasonably approximates the competing incumbent LEC rate.

The CLEC New Markets Rule

9. Under § 61.26(d) of the Commission's rules (the CLEC new markets rule), 47 CFR 61.26(d), competitive LECs may not tariff a rate higher than the competing incumbent LEC rate in metropolitan statistical areas (MSAs) where the competitive LEC initiated service after the effective date of the *CLEC Access Reform Order*. The Commission declines to modify the rule as requested in petitions for reconsideration. In adopting the benchmark system for competitive LEC access charges, the Commission intended to limit the subsidy flowing from IXCs and the long distance market to competitive LECs and their end-users, and to do so with a bright line mechanism that is objective and easy to enforce. Modifying the rule as the competitive LECs suggest could substantially increase the amount by which IXCs subsidize competitors in the local-service market and would create ongoing incentives for economically inefficient entry in new markets.

10. The Commission also denies claims that it violated the Administrative Procedure Act because it did not provide notice that it was considering a different rule for new markets and did not provide any opportunity for parties to comment on it. The Commission specifically sought comment on the competing incumbent LEC rate as a benchmark in an earlier Further Notice of Proposed Rulemaking in CC Docket No. 96–262, *Access Charge Reform*, CC Docket No. 96–262, Further Notice of Proposed Rulemaking, 64 FR 51280 (1999). Thus, the Commission concludes that it should have been apparent to any interested party that the Commission was contemplating a benchmark at the competing incumbent LEC rate for at least some markets. That the Commission ultimately decided to adopt a transition mechanism for some parties does not in any way render the notice provided to parties defective.

11. Moreover, the Commission clarifies that the CLEC new markets rule does not apply if the competitive LEC would otherwise qualify for the rural exemption contained in § 61.26(e) of the Commission's rules. The rural exemption rate is a substitute for the incumbent LEC rate that would otherwise be used as the benchmark rate. The Commission agrees that this is the correct interpretation of the Commission's *CLEC Access Reform Order*, and amends § 61.26(e) accordingly to read ''Notwithstanding paragraphs (b) through (d) of this section * * *.''

The Rural Exemption

12. Under § 61.26(f) of the Commission's rules (the rural exemption), 47 CFR 61.26(f), qualifying competitive LECs competing with non-rural incumbent LECs may tariff rates up to the rate prescribed in the NECA access tariff, assuming the highest rate band for local switching and the transport interconnection charge minus the NECA tariff's carrier common line (CCL) charge if the competing incumbent LEC is subject to certain access rates. The Commission retains the rural exemption and declines requests to broaden its applicability based on the record. In adopting the rural exemption, the Commission intended to keep the exemption as narrow as possible to minimize the strain it placed on the interexchange market. The Commission also emphasized the need for administrative simplicity, and noted that it would apply only to a small number of carriers serving a small portion of the nation's access lines.

13. The Commission also declines to revise the rural exemption to allow competitive LECs to charge the CCL portion of the NECA rate. Excluding the NECA tariff's CCL charge when the competitive LEC competes with a CALLS incumbent LEC promotes parity between the competing carriers. Because both the CCL charge and transport interconnection charge have since been eliminated, the Commission revises § 61.26(e) of the rules to remove any references to the CCL and the transport interconnection charge.

14. The Commission further clarifies that a PICC may be imposed by a rural competitive LEC in addition to the rural exemption rate if and only to the extent that the competing incumbent LEC assesses a PICC, and revises § 61.26(e) of the Commission's rules accordingly. As the Commission found in the *CLEC Access Reform Order,* the ability of rural competitive LECs to assess a multi-line business PICC obviated, in part, the need for a CCL charge because the PICC provided a potential revenue source.

Structure of the Benchmark

15. The Commission also rejects a specific proposal to modify the benchmark scheme to allow competitive LECs to charge higher access rates in lower density markets. In creating exemptions to the general benchmark scheme, the Commission emphasized the need for administrative simplicity and narrow application. The proposal considered would not meet these goals. Moreover, the proposed proxies for density would be ill-suited to the job, and additional arguments made in support of this proposal rely on the assumption that there has been some regulated determination of competitive LEC costs, which is not the case.

Multiple Incumbent LECs in a Service Area

16. The Commission further specifies what access rate applies when more than one incumbent LEC operates within a competitive LEC's service area. It states that competitive LECs serving an area with multiple incumbent LECs can qualify for the safe harbor by charging different rates for access to particular end-users based on the access rate that would have been charged by the incumbent LEC in whose service area that particular end-user resides. The record suggests, however, that some competitive LECs may prefer to charge IXCs a blended access rate when more than one incumbent LEC operates within a competitive LEC's service area. The Commission confirms that one alternative for competitive LECs is to negotiate a blended access rate with the IXCs. If a competitive LEC charges a blended access rate other than a negotiated rate, however, the Commission finds that such a rate must reasonably approximate the rate that an IXC would have paid to the competing incumbent LECs for access to the competitive LEC's customers.

Billing Name Information

17. The Commission also declines to condition the IXCs' section 201(a) duty to accept competitive LEC access services on the provision of billing name and address (BNA) information that the IXC deems sufficient. The Commission considered the issue of LEC obligations to provide BNA information in the context of an extensive rulemaking proceeding, and determined that, in some cases, LECs are required to provide billing information under tariff. Moreover, competitive LECs persuasively argue that this proposal would encourage IXCs to find inadequacies with competitive LECs' BNA information in order to avoid accepting (and paying for) access service. This could create a loophole in the 201(a) obligation that the Commission imposed and would thereby again endanger the ubiquity of the network, a consideration that substantially animated the *CLEC Access Reform Order*.

Other Matters

18. The Commission also declines to addresses several other specific requests contained in petitions for reconsideration and clarification. For instance, the Commission declines to address whether past refusals of AT&T to continue providing service without authority from the Commission violate section 214 and section 203(c) of the Act. The Commission finds that whether the prior actions of AT&T violated the Act depends on fact-specific findings that are more appropriately handled in the context of an enforcement proceeding. Similarly, the Commission finds that any claims of violations of section 202(a) or section 203(c) should be decided on a case-by-case basis because such claims depend on fact-specific circumstances. Moreover, the Commission rejects a request to impose a negotiation or arbitration requirement on IXCs and permit competitive LECs to tariff rates above the benchmark if cost-justified. The Commission observes that this request assumes incorrectly that the Commission adopted a cost-based approach to competitive LEC access charges in its *CLEC Access Reform Order*.

19. Further, in the *CLEC Access Reform Order*, the Commission determined that section 201(a) of the Act places certain limitations on an IXC's ability to refuse competitive LEC access service. In determining these limitations, the Commission focused on the first clause of section 201(a), which requires common carriers to furnish communication service upon reasonable request therefor. In this discussion, the Commission also referenced the second clause of section 201(a), which empowers the Commission, after a hearing and determination of the public interest, to order common carriers to establish physical connections with other carriers, and to establish through routes and charges for certain communications. The Commission did not, however, explicitly rely on this portion of section 201(a) in imposing limitations on an IXC's ability to refuse service. The Commission now finds it necessary to clarify its intent to rely on the second clause of section 201(a) to support such limitations. Accordingly, the Commission finds that an IXC's refusal to accept competitive LEC access service at rates at or below the benchmark would run afoul of the second clause of section 201(a).

20. Finally, the Commission denies a Petition for Temporary Waiver of Commission rule in 47 CFR 61.26(d), the CLEC new markets rule, as applied to certain MSAs that Z–Tel was capable of serving as of the petition date. The Commission denies the petition because the arguments made by Z–Tel and other parties in support of a waiver are identical to those considered and rejected in this decision. The Commission also denies the petition for the separate reason that Z–Tel failed to demonstrate any special circumstances necessary to support a waiver of the Commission's rules.

Eighth Report and Order

21. In the Further Notice of Proposed Rulemaking issued with the *CLEC Access Reform Order*, the Commission raised various questions relating to toll-free (8YY) traffic originating on competitive LEC networks. The Commission concludes that it is not necessary immediately to cap competitive LEC access rates for 8YY traffic at the rate of the competing incumbent LEC, and allows it to be governed by the same declining benchmark rate to which other competitive LEC access traffic is subject. The Commission is not convinced that the revenue-sharing arrangements that competitive LECs may have entered into with 8YY generators necessarily affect the level of traffic that these customers, typically universities and hotels, generate. The IXCs have failed to demonstrate that commission payments to 8YY generators such as universities or hotels translate effectively into incentives for the individuals who actually use those facilities to place excessive or fraudulent 8YY calls. Moreover, even if the Commission were persuaded that there was an incentive for 8YY traffic generation, the fact that competitive LEC access rates are now subject to the declining benchmark should eliminate any harm to IXCs from this traffic.

22. The Commission also rejects AT&T's request that we adopt a separate competitive LEC access rate for outbound 8YY traffic carried over dedicated local access facilities. The Commission finds that the record does not support adoption of a separate lower benchmark rate based on the incumbent LEC local switching rate. To the extent that AT&T is concerned that it is paying two carriers for originating a call, the Commission addresses that concern by clarifying that the rate that a competitive LEC charges for access components when it is not serving the end-user should be no higher than the rate charged by the competing incumbent LEC for the same functions. When there are no intermediate carriers between the competitive LEC and the end-user, the fact that the end-user may provide some portion of the facilities would seem to be irrelevant.

Supplemental Final Regulatory Flexibility Analysis

23. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the 1999 *Further Notice of Proposed Rulemaking* (FNPRM) in CC Docket No. 96–262, 64 FR 51280, September 22, 1999. The Commission sought written public comment on the proposals in that FNPRM, including comment on the IRFA. A Final Regulatory Flexibility analysis was provided in the *Sixth Report and Order,* 65 FR 38684, June 21, 2000, as well as the *Seventh Report and Order,* 66 FR 27892, May 21, 2001, and *Further Notice of Proposed Rulemaking,* 66 FR 27927, May 21, 2001 (*CLEC Access Reform Order*). This present Supplemental Final Regulatory Flexibility Act Analysis conforms to the RFA. To the extent that any statement in this Supplemental FRFA is perceived as creating ambiguity with respect to Commission rules or statements made in the sections of these orders preceding the Supplemental FRFA, the rules and statement set forth in those preceding sections are controlling.

Need for, and Objectives of, the Rules

24. In the *CLEC Access Reform Order,* the Commission revised its tariff rules more closely to align tariffed competitive LEC access rates with those of incumbent LECs. Specifically, the Commission limited to a declining benchmark the amounts that competitive LECs may tariff for interstate access services; restricted the interstate access rates of competitive LECs entering new markets to the rates of the competing incumbent local exchange carrier (incumbent LEC); and established a rural exemption permitting qualifying carriers to charge rates above the benchmark for their interstate access services. In adopting these rules, the Commission sought to ensure, by the least intrusive means possible, that competitive LEC access charges are just and reasonable. The Commission also sought to reduce existing regulatory arbitrage opportunities, spur efficient local competition, and avoid disrupting the development of competition in the local telecommunications market.

25. With this order, the Commission disposes of seven petitions for reconsideration or clarification of these rules, and a related waiver request. Specifically, the Commission rejects each of the reconsideration requests and related request for waiver, but makes

several clarifications. In response to an issue raise by Qwest in a petition for clarification or, in the alternative, reconsideration, the Commission clarifies that the benchmark rate is available only when a competitive LEC provides an IXC with access to the competitive LEC's own end-users. The Commission finds that the rate that a competitive LEC charges for access components when it is not serving the end-user should be no higher than the rate charged by the competing incumbent LEC for the same functions, and we amend the current rules in accordance with this finding. The Commission also clarifies that the competing incumbent LEC rate is the end office switching rate when a competitive LEC originates or terminates calls to end-users and the tandem switching rate when a competitive LEC passes calls between two other carriers. The Commission concludes that the regulation of these rates is necessary for all the same reasons the Commission identified in the *CLEC Access Reform Order*.

26. The Commission also responds to a request by the Rural Independent Competitive Alliance (RICA) to clarify whether PICCs may be tariffed in addition to the rural exemption rate specified in § 61.26(e) of the Commission's rules and whether PICCs may be tariffed when the competing incumbent LEC does not have a PICC. In this order, the Commission clarifies that any PICC imposed by a competitive LEC qualifying for the rural exemption may be assessed in addition to the rural benchmark rate if and only to the extent that the competing incumbent LEC charges a PICC. In the *CLEC Access Reform Order,* the Commission found that the ability of rural competitive LECs to assess a multi-line business PICC obviated, in part, the need for a CCL charge because the PICC provided a potential revenue source. This clarification will ensure that rural competitive LECs are able to assess a PICC on IXCs as intended by the Commission, but if and only to the extent that the competing incumbent LEC charges a PICC. Further, this clarification is necessary to more closely align tariffed competitive LEC access rates with those of incumbent LECs.

27. In a separate petition for clarification, U.S. TelePacific asks the Commission to clarify and establish a simple methodology by which the benchmark rate will be set where a competitive LEC service area includes territory served by more than a single incumbent LEC. In this order, the Commission confirms that competitive LECs serving an area with multiple incumbent LECs can qualify for the safe harbor by charging different rates for access to particular end-users based on the access rate that would have been charged by the incumbent LEC in whose service area that particular end-user resides. As an alternative method, the Commission will permit a competitive LEC to charge an IXC a blended access rate only if that rate reasonably approximates the rate that an IXC would have paid to the competing incumbent LECs for access to the competitive LEC's customers. By permitting an alternative methodology based on a blended rate, the Commission seeks to ensure that the competitive LEC access rates are just and reasonable, and, at the same time, to minimize the burdens associated with establishing several different rates within a competitive LEC's service area.

Legal Basis

28. These orders are adopted pursuant to sections 1–5, 201–205, 214, 218–220, 254, 303(r), 403, 405, 502 and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 201–205, 214, 218–220, 254, 303(r), 403, 405, 502 and 503.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

29. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

30. In this section, we further describe and estimate the number of small entity licensees and regulatees that may also be indirectly affected by rules adopted pursuant to this Order. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

31. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.*, a wired telecommunications carrier having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

32. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

33. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,337 carriers reported that they were engaged in the provision of local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

34. *Competitive Local Exchange Carriers (CLECs), Competitive Access*

Providers (CAPs), and ''Other Local Exchange Carriers.'' Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to ''Other Local Exchange Carriers,'' all of which are discrete categories under which TRS data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 35 carriers reported that they were ''Other Local Service Providers.'' Of the 35 ''Other Local Service Providers,'' an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and ''Other Local Exchange Carriers'' are small entities that may be affected by the rules and policies adopted herein.

35. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 261 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 261 companies, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the rules and policies adopted herein.

36. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to operator service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 companies reported that they were engaged in the provision of operator services. Of these 23 companies, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of operator service providers are small entities that may be affected by the rules and policies adopted herein.

37. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to payphone service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 761 companies reported that they were engaged in the provision of payphone services. Of these 761 companies, an estimated 757 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by the rules and policies adopted herein.

38. *Prepaid Calling Card Providers.* The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 37 companies reported that they were engaged in the provision of prepaid calling cards. Of these 37 companies, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

39. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to ''Other Toll Carriers.'' This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission's data, 92 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these 92 companies, an estimated 82 have 1,500 or fewer employees and ten have more than 1,500 employees. Consequently, the Commission estimates that most ''Other Toll Carriers'' are small entities that may be affected by the rules and policies adopted herein.

40. *Paging.* The SBA has developed a small business size standard for Paging, which consists of all such firms having 1,500 or fewer employees. According to Census Bureau data for 1997, in this category there was a total of 1,320 firms that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional seventeen firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

41. *Cellular and Other Wireless Telecommunications.* The SBA has developed a small business size standard for Cellular and Other Wireless Telecommunication, which consists of all such firms having 1,500 or fewer employees. According to Census Bureau data for 1997, in this category there was a total of 977 firms that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional twelve firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

42. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.'' These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-

auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Based on this information, the Commission concludes that the number of small broadband PCS licenses will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F Block auctions, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. We note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

43. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.* A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

44. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies. This standard provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

45. *200 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order*, we adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

46. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years. The SBA has approved these size standards. The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz bands to firms that had revenues of no more than $40 million in each of the three previous calendar years, or that had revenues of no more than $15 million in each of the previous calendar years. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In

the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. We note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

47. *Private and Common Carrier Paging.* In the Paging *Third Report and Order*, we developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 471 carriers reported that they were engaged in the provision of either paging and messaging services or other mobile services. Of those, the Commission estimates that 450 are small, under the SBA business size standard specifying that firms are small if they have 1,500 or fewer employees.

48. *700 MHz Guard Band Licensees.* In the 700 MHz Guard Band Order, we adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

49. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The Commission uses the SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

50. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. We will use SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

51. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

52. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

53. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are

not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

54. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A ''small business'' is an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity. We conclude that the number of geographic area WCS licensees affected by this analysis includes these eight entities.

55. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies adopted herein.

56. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

57. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

58. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. The SBA has approved these size standards. We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum.

59. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the

18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

60. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

61. *Internet Service Providers.* While internet service providers (ISPs) are only indirectly affected by our present actions, and ISPs are therefore not formally included within this present IRFA, we have addressed them informally to create a fuller record and to recognize their participation in this proceeding. The SBA has developed a small business size standard for Online Information Services, which consists of all such companies having $21 million or less in annual receipts. According to Census Bureau data for 1997, there were 2,751 firms in this category, total, that operated for the entire year. Of this total, 2,659 firms had annual receipts of $9,999,999 or less, and an additional 67 had receipts of $10 million to $24,999,999. Thus, under this size standard, the great majority of firms can be considered small.

62. *Satellite Service Carriers.* The SBA has developed a size standard for small businesses within the category of Satellite Telecommunications. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 31 carriers reported that they were engaged in the provision of satellite services. Of these 31 carriers, an estimated 25 have 1,500 or fewer employees and six, alone or in combination with affiliates, have more than 1,500 employees. Consequently, the Commission estimates that there are 31 or fewer satellite service carriers which are small businesses that may be affected by the rules and policies proposed herein.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

63. In this order, the Commission finds that the rate that a competitive LEC charges for access components when it is not serving the end-user should be no higher than the rate charged by the competing incumbent LEC for the same functions, and we amend the current rules in accordance with this finding. This amendment requires competitive LECs to review the federal tariff of the competing incumbent LEC to determine the rate charged for various functions or services. Under the current rules, after June 21, 2004, review of the competing incumbent LEC's tariff is required to determine the ''competing ILEC rate.'' Therefore, this amendment does not modify the existing compliance requirement.

64. Pursuant to a rule clarification adopted in this order, if a competitive LEC eligible to charge a higher access rate pursuant to the rural exemption chooses to also charge a PICC, the competitive LEC is required to review the federal tariff of the competing incumbent LEC to see if the incumbent LEC for that particular end-user charges a PICC, and if so, the amount of that incumbent LEC's PICC. Under the current rules, review of the competing incumbent LEC's tariff is required to determine the rural exemption amount. Therefore, this clarification does not modify the existing compliance requirement.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

65. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

66. Throughout this order, we seek to further resolve questions and contentious issues that remain with respect to competitive LEC access services. Because there are both small entity IXCs and small entity competitive LECs—often with conflicting interests in this proceeding—we expect that small entities will be affected by the clarifications adopted in this decision. As discussed below, we conclude, based on a consideration both of the steps needed to minimize significant economic impact on small entities and of significant alternatives, that our clarifications best balance the goals of removing opportunities for regulatory arbitrage and minimizing the burdens placed on carriers.

67. In this order, the Commission clarifies that the benchmark rate is available only when a competitive LEC provides an IXC with access to the competitive LEC's own end-users. With this clarification, the Commission will minimize the opportunity for regulatory arbitrage, and ensure that small IXCs continue to pay just and reasonable rates for competitive LEC switched access services. This clarification also ensures that IXCs continue to accept and pay for competitive LEC access services, thereby protecting universal connectivity.

68. In adopting this clarification, the Commission considers and rejects the alternative approach advanced by some competitive LECs, which would permit competitive LECs to charge the full benchmark rates when they provide any component of the interstate switched access services used in connecting an end-user to an IXC. We believe that an approach in which rates are not tethered to the provision of particular services would be an invitation to abuse because it would enable multiple competitive LECs to impose the full benchmark rate on a single call. This outcome would be inconsistent with the Commission's goal to ensure just and reasonable competitive LEC access rates. The approach advanced by competitive LECs also would enable competitive LECs to discriminate among IXCs, including small entities, by providing varying levels of service for the same price. Thus, we believe the clarification provided will minimize the impact that excessive rates and discriminatory behavior may have on IXCs, including any small businesses.

69. The Commission finds that the rate that a competitive LEC charges for access components when it is not serving the end-user should be no higher than the rate charged by the competing incumbent LEC for the same functions. We conclude that regulation of these rates is necessary for all the reasons that we identified in the *CLEC Access Reform Order.* Specifically, an IXC may have no choice but to accept traffic from an intermediate competitive LEC chosen by the originating or

terminating carrier and it is necessary to constrain the ability of competitive LECs to exercise this monopoly power. At the same time, the Commission declines to require a specific rate structure or rate elements for the services provided by a competitive LEC in an effort to minimize the regulatory burdens on competitive LECs, including small businesses.

70. In addition, the Commission clarifies that the competing incumbent LEC rate is the end office switching rate when a competitive LEC originates or terminates calls to end-users and the tandem switching rate when a competitive LEC passes calls between two other carriers. In providing this clarification, the Commission considers and rejects the proposal advanced by NewSouth because it would allow competitive LECs to charge IXCs, including small entities, for services they may not provide. We find that clarification of the competing incumbent LEC rate is necessary to avoid litigation and uncertainty. Eliminating the uncertainty surrounding the existing rules will benefit both competitive LECs and IXCs, including small businesses, by preventing potential billing disputes.

71. The Commission also clarifies the application of the multi-line business PICC under the rural exemption. Although Sprint advances an alternative interpretation of how the PICC is to be calculated under the rural exemption, that interpretation would deprive competitive LECs, including small entities, of additional revenues taken into account when formulating the rural exemption in the *CLEC Access Reform Order*. Under the clarification provided, a competitive LEC seeking to charge a PICC under the rural exemption must determine whether the competing incumbent LEC charges a PICC and the amount of that PICC. Although this imposes a minimal additional burden on competitive LECs, the additional burden is outweighed by the direct benefit of additional access revenues in rural areas in prescribed circumstances.

72. Moreover, in this order, the Commission clarifies what access rate applies when more than one incumbent LEC operates within a competitive LEC's service area. The Commission agrees with competitive LECs that, without such clarification of the current rules, competitive LEC market entry will be delayed or possibly abandoned altogether because of uncertainty about rates and the prospect of IXC refusal to pay, or litigation. Eliminating the uncertainty surrounding the existing rules will benefit both competitive LECs and IXCs, including small businesses, by preventing potential billing disputes.

73. Further, in clarifying the applicable access rate in these circumstances, the Commission determined that it would permit a competitive LEC to charge an IXC a blended access rate if it does not result in revenues that exceed those the competing incumbent LECs would receive from IXCs for access to those customers. The Commission will permit a blended rate in some circumstances because it recognizes that requiring different rates for individual end-users within a service area might be particularly burdensome for small entities. Although the Commission considered specific alternative methods for determining the blended rate, it declines to specify the precise manner in which a competitive LEC must set its access rates when it serves the area of multiple incumbent LECs. Rather, the Commission requires only that the blended access rate reasonably approximate the rate that an IXC would have paid to the competing incumbent LEC for access to the competitive LEC's customers. The adopted approach balances the needs of small entities for flexibility in formulating a blended rate, yet ensures that the blended rate is just and reasonable in accordance with the Act.

74. Overall, we believe that this order best balances the competing goals that we have for our rules governing competitive LEC switched access charges. Neither in *CLEC Access Reform Order* nor in consideration of the petitions for reconsideration and clarification has there been any identification of additional alternatives that would have further limited the impact on all small entities while remaining consistent with Congress' pro-competitive objectives set out in the Act.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

75. None.

Final Regulatory Flexibility Certifications

76. The RFA requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

Fifth Order on Reconsideration

Background

77. In this *Fifth Order on Reconsideration*, the Commission clarifies some rules in ways that are not expected to have a significant economic impact on a substantial number of small entities. Specifically, in addition to the clarifications discussed in the supplemental FRFA above, the Commission clarifies the existing relationship between the CLEC new markets rule and the rural exemption. In particular, petitioners seek confirmation that new market rule does not apply if the competitive LEC would otherwise qualify for the rural exemption. The Commission agrees that this is the correct interpretation of the existing rule and amends rule section 61.26(e) to more clearly reflect the Commission's original intent. The Commission also amends rule section 61.26(e) to remove references to rate elements that have been eliminated by the Commission. Further, the Commission clarifies the source of its authority to impose interconnection obligations on IXCs under section 201(a).

Substantive Information

78. The amendment to § 61.26(e) of the Commission rules simply clarifies and codifies the existing relationship between the CLEC new markets rule and the rural exemption, and removes references to rate elements that have since been eliminated by the Commission. Because there is no change to the meaning or impact of the existing rule, this amendment will have no significant economic impact. Similarly, the Commission's clarification concerning the source of its authority does not change the meaning or impact of the existing rule on large and small entities.

79. Therefore, we certify that these requirements will not have a significant economic impact on a substantial number of small entities.

Eighth Report and Order

Background Information

80. In the *Eighth Report and Order*, the Commission declines to set a separate access rate for originating toll free (8YY) traffic and allows it to be

governed by the same declining benchmark that applies to other competitive LEC interstate access traffic. In a further notice of proposed rulemaking issued with the *CLEC Access Reform Order*, the Commission raised questions relating to 8YY traffic originating on competitive LEC networks. The Commission sought this information because AT&T had asserted that abuses surrounding competitive LEC-originated 8YY traffic justified immediately capping the access rate for this category of traffic at the rate of the competing incumbent LEC. The Commission determines that the record does not support IXCs' claims that commission payments to 8YY generators translate effectively into incentives for the individuals who actually use those facilities to place excessive or fraudulent 8YY calls.

Substantive Information

81. Because competitive LECs currently charge IXCs the previously established, declining benchmark rate for 8YY traffic, the Commission's decision results in no change to existing competitive LEC access charges for 8YY traffic. Thus, the Commission's decision will have no significant economic impact on competitive LECs or IXCs, large and small.

82. Therefore, we certify that these requirements will not have a significant economic impact on a substantial number of small entities.

No Regulatory Flexibility Analysis or Certification Required

83. In the *CLEC Access Reform Order*, the Commission provided an FRFA that conformed to the RFA. In this present order, the Commission denies petitions for reconsideration and a petition for waiver. Because the Commission promulgates no additional or revised final rules in response to petitions for reconsideration or the petition for waiver, our present action on these petitions is not an RFA matter.

Final Paperwork Reduction Act Analysis

84. This action contained herein contains no new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13.

Report to Congress

85. The Commission will send a copy of these orders, including this Supplemental FRFA and FRFCs, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of these orders, including the Supplemental FRFA and FRFCs, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of these orders and Supplemental FRFA (or summaries thereof) and FRFCs will also be published in the **Federal Register**.

Ordering Clauses

86. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1–5, 201–205, 214, 218–220, 254, 303(r), 403, 405, 502 and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 201–205, 214, 218–220, 254, 303(r), 403, 405, 502 and 503, this *eighth report and order and fifth order on reconsideration,* with all attachments, including revisions to part 61 of the Commission's rules, 47 CFR part 61, is hereby *adopted*.

87. *It is further ordered* that these orders and rule revisions adopted in these orders *shall become effective* July 26, 2004.

88. *It is further ordered* that the Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this *eighth report and order and fifth order on reconsideration*, including the Supplemental Final Regulatory Flexibility Analysis and Final Regulatory Flexibility Certifications, to the Chief Counsel for Advocacy of the Small Business Administration.

89. *It is further ordered* that the Petitions for Reconsideration and Petitions for Clarification filed by Focal Communications Corp. and U.S. LEC Corp., Qwest Communications International, Inc., TDS Metrocom, Inc., and Time Warner Telecom *are denied*.

90. *It is further ordered* that the Petition for Clarification filed by U.S. TelePacific Corp. *is denied in part and granted in part*, to the extent discussed herein.

91. *It is further ordered* that the Petitions for Reconsideration and/or Clarification filed by the Minnesota CLEC Consortium and Rural Independent Competitive Alliance *are denied in part and granted in part,* to the extent discussed herein.

92. *It is further ordered* that the Petition of Z-Tel Communications Inc., for Temporary Waiver of Commission rule in § 61.26(d) is denied.

93. *It is futher ordered* that the Petition of TDS Metrocom, Inc. for Stay Pending Reconsideration is *denied as moot*.

94. *It is further ordered* that the Emergency Petition of Mpower Communications Corp. and North County Communications, Inc. for Stay of Order is *denied as moot*.

List of Subjects

47 CFR Part 61

Communications common carriers, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rules Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 61 to read as follows:

PART 61—TARIFFS

■ 1. The authority citation for part 61 continues to read as follows:

Authority: Secs. 1, 4(i), 4(j), 201–205 and 403 of the Communications Act of 1934, as amended; 47 U.S.C 151, 154(i), 154(j), 201–205 and 403, unless otherwise noted.

■ 2. Section 61.26 is amended by revising paragraphs (a)(1) and (a)(2), revising paragraph (e), and adding paragraph (f) to read as follows:

§ 61.26 Tariffing of competitive interstate switched exchange access services.

(a) * * *

(1) CLEC shall mean a local exchange carrier that provides some or all of the interstate exchange access services used to send traffic to or from an end user and does not fall within the definition of ''incumbent local exchange carrier'' in 47 U.S.C. 251(h).

(2) Competing ILEC shall mean the incumbent local exchange carrier, as defined in 47 U.S.C. 251(h), that would provide interstate exchange access services, in whole or in part, to the extent those services were not provided by the CLEC.

* * * * *

(e) Rural exemption. Notwithstanding paragraphs (b) through (d) of this section, a rural CLEC competing with a non-rural ILEC shall not file a tariff for its interstate exchange access services that prices those services above the rate prescribed in the NECA access tariff, assuming the highest rate band for local switching. In addition to that NECA rate, the rural CLEC may assess a presubscribed interexchange carrier charge if, and only to the extent that, the competing ILEC assesses this charge.

(f) If a CLEC provides some portion of the interstate switched exchange access services used to send traffic to or from an end user not served by that CLEC, the rate for the access services provided may not exceed the rate charged by the

competing ILEC for the same access services.

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1827, 1828, 1829, 1830, 1831, 1832, and 1833

RIN 2700–AC68

Re-Issuance of NASA FAR Supplement Subchapter E

AGENCY: National Aeronautics and Space Administration.

ACTION: Final Rule.

SUMMARY: This rule adopts as final without change, the proposed rule published in the **Federal Register** on March 12, 2004. This final rule amends the NASA FAR Supplement (NFS) by removing from the Code of Federal Regulations (CFR) those portions of the NFS containing information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. This change is consistent with the guidance and policy in FAR Part 1 regarding what comprises the Federal Acquisition Regulations System and requires publication for public comment. The NFS document will continue to contain both information requiring codification in the CFR and internal Agency guidance in a single document that is available on the Internet. This change will reduce the administrative burden and time associated with maintaining the NFS by only publishing in the **Federal Register** for codification in the CFR material that is subject to public comment.

DATES: *Effective Date:* June 24, 2004.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358-1645; e-mail: *Celeste.M.Dalton@nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Currently the NASA FAR Supplement (NFS) contains information to implement or supplement the FAR. This information contains NASA's policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between NASA and contractors or prospective contractors. The NFS also contains information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. Regardless of the nature of the information, as a policy, NASA has submitted to the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) and published in the **Federal Register** all changes to the NFS. FAR 1.101 states in part that the ''Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR. The FAR System does not include internal agency guidance of the type described in 1.301(a)(2).'' FAR 1.301(a)(2) states in part ''an agency head may issue or authorize the issuance of internal agency guidance at any organizational level (*e.g.,* designations and delegations of authority, assignments of responsibilities, work-flow procedures, and internal reporting requirements).'' Further, FAR 1.303 states that issuances under FAR 1.301(a)(2) need not be published in the **Federal Register**. Based on the foregoing, NASA is not required to publish and codify internal Agency guidance.

This final rule will modify the existing practice by only publishing those regulations which may have a significant effect beyond the internal operating procedures of the Agency or have a significant cost or administrative impact on contractors or offerors.

The NFS will continue to integrate into a single document both regulations subject to public comments and internal Agency guidance and procedures that do not require public comment.

Those portions of the NFS that require public comment will continue to be amended by publishing changes in the **Federal Register**. NFS regulations that require public comment are issued as Chapter 18 of Title 48, CFR. Changes to portions of the regulations contained in the CFR, along with changes to internal guidance and procedures, will be incorporated into the NASA-maintained Internet version of the NFS through Procurement Notices (PNs). The single official NASA-maintained version of the NFS will remain available on the Internet. NASA personnel must comply with all regulatory and internal guidance and procedures contained in the NFS.

This change will result in savings in terms of the number of rules subject to publication in the **Federal Register** and provide greater responsiveness to internal administrative changes.

NASA published a proposed rule in the **Federal Register** on March 12, 2004 (69 FR 11828). No comments were received in response to the proposed rule. Therefore, the proposed rule is being converted to a final rule without change.

B. Regulatory Flexibility Act

NASA certifies that this final rule does not have a significant economic impact on a substantial number of small entities with the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601. *et seq*., because this final rule only removes from the CFR information that is considered internal Agency administrative procedures and guidance. The information removed from the CFR will continue to be made available to the public via the Internet.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq*.

List of Subjects in 48 CFR Parts 1827, 1828, 1829, 1830, 1831, 1832, and 1833

Government Procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 48 CFR Parts 1827 through 1833 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 1827 through 1833 continue to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1827—PATENTS, DATA, AND COPYRIGHTS

■ 2. Amend Part 1827 by removing sections 1827.305–3, 1827.305–370, 1827.305–371, paragraphs (d), (e), (f), (g)(3)(B), (g)(3)(C), (g)(3)(D), (h), and (i) in section 1827.404, sections 1827.405, 1827.406, 1827.408, and paragraphs (b), (c), (d), and (e) in section 1827.409.

PART 1828—BONDS AND INSURANCE

■ 3. Amend Part 1828 by removing sections 1828.106, 1828.106–6, Subpart 1828.2, and sections 1828.307, 1828.307–1, 1828.307–2, and 1828.307–70.

PART 1829—TAXES

■ 4. Remove Part 1829.