

2. Section 334.812 would be added to read as follows:

**§ 334.812 New River, Radford Army Ammunitions Plant, Restricted Area, Virginia.**

(a) *The area.* The waters within an area beginning at ordinary high water on the shore at latitude 37°08'59.4" N, longitude 076°40'15.5" W; thence along the shoreline to latitude 37°08'58.8" N, longitude 076°40'06" W; thence across the river to latitude 37°09'03.1" N, longitude 076°39'59.4" W; thence along the shoreline to latitude 37°09'06.9" N, longitude 076°39'54.1" W; thence across the river to the point of origin.

(b) *The regulation.* The public shall have unrestricted access and use of the waters adjacent to the Radford Ammunition Plant whenever the facility is in Force Protection Condition Normal Alpha, or Bravo. Whenever the facility is in Force Protection Condition Charlie, all vessels and persons that desire access to the waters of the New River adjacent to the Radford Ammunition plant must agree/submit to an inspection by security personnel to insure they do not pose a threat to the facility. No explosives, explosive devices, chemical or biological agents, handguns, rifles, shotguns, muzzle loaded guns, or other device/devices that would pose a risk to the facility or personnel assigned to the facility will be allowed in the waters designated by this regulation unless written permission is granted by the Commanding Officer, Radford or persons as he/she may delegate this authority to. Once a vessel and/or person has been cleared to enter this restricted area they will be allowed unrestricted use of the waters. Whenever the facility is in Force Protection Delta, the waters, designated in this regulation, will be closed to all traffic and use. The Commanding Officer may authorize exceptions to this regulation as conditions warrant.

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers shall be enforced by the Commanding Officer, Radford Ammunitions Plant or persons or agencies as he/she may authorize including any Federal Agency, State, Local or County Law Enforcement agency, or Private Security Firm in the employment of the facility, so long as the entity undertaking to enforce this Restricted Area has the legal authority to do so under the appropriate Federal, State or Local laws.

Dated: April 18, 2003.

**Lawrence A. Lang,**

*Acting Chief, Operations Division, Directorate of Civil Works.*

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 64**

**[WC Docket No. 02-112, CC Docket No. 00-175; FCC 03-111]**

**Sunset of the BOC Separate Affiliate and Related Requirements and 2000 Biennial Regulatory Review Separate Affiliate Requirements**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this proceeding, the Commission seeks comment on the appropriate classification of Bell Operating Companies' (BOCs) and incumbent independent local exchange carriers' (independent LECs) provision of in-region, interstate and international interexchange telecommunications services. It seeks comment on how changes to the competitive landscape within the interexchange market should affect this classification and on what approach is appropriate for BOCs and independent LECs, if and when these carriers may provide in-region, interexchange services outside of a separate affiliate. The Commission also asks parties to comment on whether there are alternative regulatory approaches, in lieu of dominant carrier regulation, that the Commission could adopt to detect or deter any potential anticompetitive behavior.

**DATES:** Comments are due June 30, 2003, and Reply Comments are due July 28, 2003.

**ADDRESSES:** 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Robert Tanner, Attorney-Advisor, and Pamela Megna, Senior Economist, Competition Policy Division, Wireline Competition Bureau, at (202) 418-1580, or via the Internet at [rtanner@fcc.gov](mailto:rtanner@fcc.gov) and [pmegna@fcc.gov](mailto:pmegna@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in WC Docket No. 02-112 and CC Docket No. 00-175, FCC 03-111, adopted May 15, 2003, and released May 19, 2003. The complete text of this FNPRM is available for inspection and copying during normal business hours

in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com). It is also available on the Commission's Web site at <http://www.fcc.gov>.

**Synopsis of the Further Notice of Proposed Rulemaking**

1. *Background.* In the *Competitive Carrier* proceeding, which included the *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, Notice of Proposed Rulemaking, WC Docket No. 02-112, (67 FR 42211, June 21, 2002) and the *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, Memorandum Opinion and Order, WC Docket No. 02-112, (68 FR 6351, February 7, 2003), the Commission established a regulatory framework to distinguish between carriers with market power (*i.e.*, dominant carriers) and those without market power (*i.e.*, non-dominant carriers). Currently, BOCs (with the exception of Verizon in the state of New York where the requirements sunset this past December 23, 2002) are required to provide in-region, interLATA services through a separate section 272 affiliate, and independent LECs are required to provide in-region, interstate services through a separate affiliate. Both types of interexchange affiliates are regulated as non-dominant. Both BOCs and independent LECs are permitted to provide interexchange services out-of-region on an integrated basis and are regulated as non-dominant.

2. The Commission has concluded that the section 272 separate affiliate and related requirements sunset on a state by state basis, and it has allowed the requirements to sunset in New York by operation of law. The Commission has also sought comment in the *2000 Biennial Regulatory Review: Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules* (66 FR 50139, October 2, 2001) proceeding on whether to eliminate the separate affiliate requirements imposed on independent LECs when they provide in-region, domestic interstate or international interexchange services. To the extent that the Commission permits BOCs and independent LECs to provide long distance services on an integrated basis, the FNPRM seeks comment on how these carriers should be classified.

3. *Identification of BOC and Independent LEC In-Region, Interstate and International Interexchange Markets.* The Commission seeks comment on the relevant markets in which BOCs and independent LECs provide these interstate and international interexchange services. The Commission seeks comment on whether the mass market and enterprise markets are the appropriate customer classes for this proceeding. The Commission also asks commenters to consider services provided over traditional wireline local telephone networks as well as comparable services provided over other platforms. This FNPRM seeks comment on the relevant service and geographic markets in which these carriers provide services and the ability of BOCs and independent LECs to exercise market power in any relevant market. The Commission seeks to develop a record on both the retail long distance and upstream access markets.

4. *Market Power Analysis.* The FNPRM recognizes that there have been significant changes in the competitive landscape since the Commission considered whether to categorize the incumbent LECs' long distance affiliates as dominant or non-dominant, including: BOC authority to offer in-region, interLATA services in 41 states (and the District of Columbia); an increase in bundled telecommunications services offerings; an increase in offerings of wide area pricing plans by mobile telephony carriers; and an increase in the provision of Internet-based applications. Accordingly, the Commission seeks comment on how these changes should affect its relevant market and market power analysis.

5. *Appropriate Regulatory Requirements.* The Commission seeks comment on whether there is a continued need for dominant carrier regulation of BOCs' in-region, long distance services after sunset of the section 272 structural and related requirements. In addition, the Commission asks whether it should classify independent LECs as non-dominant or dominant in their provision of in-region, long distance services if it eliminates or modifies the separate affiliate requirements currently imposed on independent LECs. The Commission also seeks comment on alternatives to dominant carrier regulation as a means of addressing any issues that arise when telephone companies provide in-region, long distance services on an integrated basis.

6. The Commission seeks comment on whether the statutory requirements that

continue to apply to BOCs under section 272(e) reduce the need for dominant carrier regulation. For instance, the Commission asks parties whether sections 272(e)(1) and (e)(3) provide adequate safeguards to deter anticompetitive behavior and whether the Commission should rely on enforcement activity alone or should adopt additional requirements to implement these provisions.

7. The Commission also asks parties to comment on whether adoption of the measures considered in the Special Access Performance Metrics proceeding would aid enforcement of section 272(e)(1), and thus provide sufficient post-sunset safeguards. In addition, it asks whether similar measures would be appropriate to apply to independent LECs. Finally, the Commission seeks comment on whether additional safeguards are necessary to prevent potential cost misallocation and discrimination.

#### **Initial Regulatory Flexibility Analysis**

8. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this FNPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice provided previously. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

#### **Need for, and Objectives of, the Proposed Rules**

9. In this proceeding, the Commission seeks comment on: (1) The appropriate regulatory classification of BOCs for the provision of in-region, interstate and international interexchange services post sunset of the section 272 safeguards; (2) the appropriate regulatory classification of independent LECs for the provision of in-region, interstate and international interexchange services absent the *Fifth Report and Order* requirements; (3) the relevant identification of service markets affecting the provision of in-region, interstate and international interexchange services; and (4) the appropriate regulatory requirements for the provision of in-region, interstate and

international interexchange services by BOCs and independent LECs, given current market conditions. The basic elements of the existing dominant carrier regulatory requirements were initially developed some 25 years ago and have focused on constraining the ability of dominant carriers to exercise market power. Application of these requirements to carriers without the ability to leverage market power by restricting output could lead to incongruous results. Thus, the Commission asks interested parties to address whether dominant carrier regulations are well or ill-suited to prevent the risks associated with the BOCs' and independent LECs' provision of in-region, interstate and international interexchange services post section 272 sunset (for the BOCs) and absent the separation safeguards (applicable to independent LECs). The Commission also requests that parties address how it can best balance the goals of deterring BOC and independent LEC anticompetitive and discriminatory behavior and eliminating unnecessary regulation.

#### **Legal Basis**

10. The legal basis for any action that may be taken pursuant to the FNPRM is contained in sections 1, 2, 4(i)–4(j), 201, 202, 272 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–4(j), 201, 202, 272 and 303(r).

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

11. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. 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).

12. The Commission has 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 telephone communications business 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. It has therefore included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

13. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically directed toward providers of incumbent local exchange service. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. This provides that such a carrier is small entity if it employs no more than 1,500 employees. Commission data from 2000 indicate that there are 1,329 incumbent local exchange carriers, total, with approximately 1,024 having 1,500 or fewer employees. The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA’s size standard. Consequently, the Commission estimates that there are no more than 1,024 ILECS that are small businesses possibly affected by our action.

#### **Description of Projected Reporting, Recordkeeping and Other Compliance Requirements**

14. The Commission expects that any proposal we may adopt pursuant to this Further Notice will decrease existing reporting, recordkeeping or other compliance requirements. As noted previously, dominant carriers are currently subject to a broad range of regulatory requirements that are generally intended to protect consumers from unjust and unreasonable rates, terms, and conditions and unreasonable discrimination in the provision of communications services. The Commission’s dominant carrier

regulation includes rate regulation and tariff filing requirements, and also requires supporting information, which in some cases includes detailed cost data, to be filed by dominant carriers with their tariff filings. Moreover, the Commission has international dominant carrier tariff filing requirements. This FNPRM seeks comment on whether continued dominant carrier regulation is appropriate post sunset of the section 272 separate affiliate requirements on a state-by-state basis, and whether it is necessary to streamline or modify the traditional dominant carrier regulations of BOCs’ provision of in-region, interstate and international interexchange services. This FNPRM also seeks comment on whether dominant carrier regulation of independent LECs is necessary should the Commission eliminate the separation requirements currently imposed on such carriers for their provision of in-region, interstate and international interexchange services.

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

15. 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.

16. The overall objective of this proceeding is to reduce regulatory burdens on BOCs and independent LECs to the extent consistent with the public interest. The Further Notice seeks specific proposals as to which existing regulations might be removed or streamlined in their application to a BOC’s or independent LEC’s provision

of interstate and international interexchange services absent current safeguards, and asks parties to comment on whether BOCs and independent LECs should be classified as non-dominant in the provision of such services post sunset or, in the case of independent LECs, once separation safeguards are removed. The Further Notice also asks parties to discuss whether, and to what extent, dominant carrier regulation is aptly suited to achieving the Commission’s objectives to promote competition and to deter anticompetitive behavior by BOCs and independent LECs. This Further Notice addresses whether there are specific aspects of dominant carrier regulation that continue to be necessary to constrain BOCs and independent LECs from engaging in certain types of anticompetitive behavior, and whether there are specific aspects of the regulations that do not address potential problems that may arise in the interexchange marketplace, absent the separate affiliate requirements. Again, the Commission seeks comment on these matters, especially as they might affect small entities subject to the rules.

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

17. None.

#### **Ordering Clauses**

18. Pursuant to the authority contained in sections 1, 2, 4(i)–4(j), 201, 202, 272 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–4(j), 201, 202, 272 and 303(r), this FNPRM is adopted.

19. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this FNPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

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