PART 298—OBLIGATION GUARANTEES

1. The authority citation for part 298 continues to read as follows:

Authority: 46 App. U.S.C. 1114(b), 1271 *et seq.*; 49 CFR 1.66.

§ 298.2 [Amended]

2. In § 298.2, the definition of Depository is amended by removing all words after ''Depository means'' and adding in their place ''the U.S. Department of Treasury, acting in its capacity under Section 1109 of the Act.''

§ 298.21 [Amended]

3. In § 298.21 revise paragraph (f)(2) to read as follows:

§ 298.21 Limits.

* * * * *

(f) * * *

(2) As long as we have not paid the Guarantees, you or other recipient shall promptly deposit these moneys with us to be held by the Depository in accordance with the Depository Agreement.

* * * * *

§ 298.22 [Amended]

4. In § 298.22 revise paragraph (b)(2) to read as follows:

§ 298.22 Amortization of Obligations.

* * * * *

(b) * * *

(2) You establish a fund with the Depository in which you deposit an equal annual amount necessary to redeem the outstanding Obligations at maturity; or

* * * * *

§ 298.33 [Amended]

5. Section 298.33 is amended as follows:

a. In paragraph (a), by removing the word ''us'' and adding the words ''the Depository'' in its place.

b. By removing paragraph (b)(2)(i) and redesignating paragraphs (b)(2) (ii) through (iv) as paragraphs (b)(2) (i) through (iii).

§ 298.34 [Removed and Reserved]

§ 298.35 [Amended]

6. Section 298.35(d) introductory text is revised to read as follows:

§ 298.35 Title XI Reserve Fund and Financial Agreement.

* * * * *

(d) *Deposits.* Unless the Company, as of the close of its accounting year, was subject to and in compliance with the financial requirements set forth in paragraph (b)(2) of this section, the Company shall make one or more deposits to us to be held by the Depository (the Title XI Reserve Fund), as further provided for in the Depository Agreement. The amount of deposit as to any year, or period less than a full year, where applicable, will be determined as follows:

* * * * *

Dated: September 24, 2002.

By Order of the Maritime Administrator.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 02–24695 Filed 9–27–02; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 98–147; FCC 02–234]

Deployment of Wireline Services Offering Advanced Telecommunications Capability

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addresses a petition for clarification or partial reconsideration of the *Collocation Remand Order* (66 FR 43516, August 20, 2001). The document makes clear that nothing in the *Collocation Remand Order* disavows any federal jurisdiction the Commission otherwise has to resolve cross-connect disputes. It also concludes that, under section 201(a) of the Communications Act of 1934, as amended (Communications Act or Act), incumbent LECs must include cross-connect offerings made under section 201 in federal tariffs. This document further concludes that in certain limited circumstances incumbent local exchange carriers (LECs) may rely on individual case basis pricing when establishing rates for cross-connects.

DATES: Effective October 30, 2002, except that the Commission's actions with regard to federal tariffing of the cross-connect requirement and regarding pricing of cross connects in paragraph three of this document are not effective until approved by the Office of Management and Budget. The Commission will publish a document announcing the effective date of this requirement.

FOR FURTHER INFORMATION CONTACT: John Adams, Attorney-Advisor, Competition Policy Division, Wireline Competition Bureau, at (202) 418–1580, or via the Internet at *jkadams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration of Fourth Report and Order* (*Order on Reconsideration*) in CC Docket No. 98–147, FCC 02–234, adopted August 14, 2002, and released September 4, 2002. The complete text of this *Order on Reconsideration* 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.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Synopsis of the Order on Reconsideration

1. *Background.* In the *Collocation Remand Order* (66 FR 43516, August 20, 2001) the Commission reevaluated provisions of its collocation rules on remand from the United States Court of Appeals for the District of Columbia Circuit. The Commission addressed, among other matters, whether incumbent LECs are required to provision cross-connects between collocators. The Commission concluded that while an incumbent LEC is not required to allow collocators to install and maintain cross-connects between their collocated equipment themselves, an incumbent LEC must nevertheless provide these cross-connects between two collocators upon reasonable request.

2. *Federal Enforcement of Cross-Connect Requirement.* In the *Collocation Remand Order,* the Commission stated that it anticipated ''that cross-connect disputes, like other interconnection related disputes, can be addressed in the first instance at the state level.'' In the *Order on Reconsideration,* to avoid any uncertainty, the Commission clarifies that nothing in that statement disavows any federal jurisdiction it otherwise might have under the Act to resolve cross-connect disputes. The Commission states that specific questions would be addressed on a case-by-case basis in the event of a complaint.

3. *Federal Tariffing of Cross-Connect Requirement.* The Commission concludes that incumbent LECs must file tariffs for cross-connect offerings made pursuant to section 201 of the

Communications Act at the federal level. The Commission states that this is a necessary result of Section 203(a)'s mandate that all services subject to the Commission's jurisdiction under section 201 be federally tariffed. In order to minimize any unnecessary regulatory burdens, however, the Commission clarifies that incumbents shall have the flexibility to include the rates, terms, and conditions under which they provide cross-connects in their expanded interconnection tariffs, stand-alone tariffs, or other appropriate federal tariffs.

4. *Pricing of Cross-Connects.* A carrier provides facilities or services on an individual case basis when it provides them to a specific customer under rates, terms, and conditions that must be negotiated upon request of the service. Based on the record before it, the Commission declines to adopt a blanket rule against the use of individual case basis pricing for cross-connects because it was unable to determine the extent to which generally available offerings at standardized rates will be possible.

Paperwork Reduction Act Analysis

5. The actions contained the have been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the PRA, and will go into effect upon announcement in the **Federal Register** of OMB approval.

Supplemental Final Regulatory Flexibility Act Analysis

6. As required by the *Regulatory Flexibility Act* (RFA), a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the *Order on Reconsideration and Second Further Notice of Proposed Rulemaking* (*Order on Reconsideration* and *Second Further Notice*) in CC Docket 98–147. The Commission sought written public comment on the proposals in the *Second Further Notice,* including comment on the Supplemental IRFA. The Commission received comments from The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) specifically directed toward the Supplemental IRFA. These comments were previously addressed fully in the Final Regulatory Flexibility Analysis (FRFA) included as part of the *Collocation Remand Order,* and are addressed only briefly. The Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) conforms to the RFA.

I. Need for, and Objectives of, the Order on Reconsideration

7. This *Order on Reconsideration* continues the Commission's efforts to facilitate the development of competition in telecommunications services. In the *Advanced Services First Report and Order,* the Commission strengthened its collocation rules to reduce the costs and delays faced by carriers that seek to collocate equipment at the premises of incumbent local exchange carriers (incumbent LECs). In *GTE* v. *FCC,* the D.C. Circuit vacated several of those rules and remanded the case to the Commission. In the *Collocation Remand Order,* the Commission addressed the remanded issues. Among other actions, the Commission required incumbent local exchange carriers (incumbent LECs) to provide cross-connects between collocated carriers upon reasonable request. In the *Order on Reconsideration,* the Commission addressed a petition for clarification or partial reconsideration of that decision.

II. Summary of Significant Issues Raised by Public Comments in Response to the Supplemental IRFA

8. In the Supplemental IRFA, the Commission stated that any rule changes would impose minimum burdens on small entities, including both telecommunications carriers that request collocation and the incumbent LECs that, under section 251(c)(6) of the Communications Act, must provide collocation to requesting carriers. The Commission also solicited comments on alternatives to the proposed rules that would minimize the impact that any changes to its rules might have on small entities. In their comments, OPASTCO stated that the Supplemental IRFA did not provide ''the flexibility necessary to accommodate the needs of small (incumbent LECs) and their customers.'' OPASTCO also stated that the Supplemental IRFA does not specify the specific requirements that might be imposed on small incumbent LECs or the extent to which those requirements might burden small incumbent LECs. Finally, OPASTCO stated that the Supplemental IRFA failed ''to describe the ''significant alternatives'' for small (incumbent LECs) that [were] presumptively under consideration'' in this rulemaking. As noted, the Commission responded to OPASTCO's comments in the previous *Collocation Remand Order.*

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

8. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of entities that will be affected by the rules. The RFA defines ''small entity'' as having the same meaning as the term ''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, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).

9. 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 data the Commission publishes annually in its *Carrier Locator* report, which encompasses data compiled from FCC Form 499–A Telecommunications Reporting Worksheets. According to data in the most recent report, there are 5679 service providers. These carriers include, *inter alia,* providers of telephone exchange service, wireline carriers and service providers, LECs, interexchange carriers, competitive access providers, and resellers.

10. The Commission included small incumbent LECs in this present RFA analysis. 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. The Commission therefore included small incumbent LECs in this RFA analysis, although the Commission emphasized that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

11. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census (Census Bureau) reports that, at the end of 1992, there

were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' For example, a personal communications service (PCS) provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the rules adopted herein.

12. *Local Exchange Carriers*. Neither the Commission nor the SBA has developed a definition for small providers of local exchange service (LECs). The closest applicable definition under the SBA rules is Wired Telecommunications Carriers. According to the most recent data, there are 2,050 incumbent and other LECs. The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, The Commission estimates that fewer than 2,050 providers of local exchange service are small entities or small incumbent LECs that may be affected by the rules adopted herein.

13. *Interexchange Carriers*. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. According to the most recent data, there are 229 carriers engaged in the provision of interexchange services. Of these 229 carriers, 181 reported that they have 1,500 or fewer employees and 48 reported that alone, or in combination with affiliates, they have more than 1,500 employees. The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are less than 229 small entity IXCs that may be affected by the rules adopted herein.

14. *Wireless Service Providers*. The SBA has developed a definition for small businesses within the two separate categories of Cellular and Other Wireless Telecommunications or Paging. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's most recent Telephone Trends Report data, 1,495 companies reported that they were engaged in the provision of wireless service. Of these 1,495 companies, 989 reported that they have 1,500 or fewer employees and 506 reported that, alone or in combination with affiliates, they have more than 1,500 employees. The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireless service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 989 or fewer small wireless service providers that may be affected by the rules.

IV. Description of Projected Reporting, Record Keeping, and Other Compliance Requirements

15. The *Order on Reconsideration* imposes nominal changes in projected reporting, record keeping, and other compliance requirements. These changes affect small and large companies equally.

16. In the *Order on Reconsideration*, in order to comply with a statutory mandate, the Commission requires that an incumbent LEC must include the rates, terms, and conditions under which they provide cross-connects in their federal tariffs. In order to minimize any unnecessary regulatory burdens, however, the Commission makes clear that incumbents shall have the flexibility to include their cross-connect offerings in any appropriate federal tariffs.

17. In the *Order on Reconsideration*, consistent with its existing policy, the Commission allows incumbent LECs the flexibility to use individual case basis (ICB) pricing for cross-connects under specific limited circumstances. The Commission also retains its requirement that incumbent LECs must amend their tariffs to provide for firm rates when those circumstances change. These tariffing requirements give greater certainty to collocators, many of which are small entities, without imposing undue burdens on any incumbent LEC.

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

18. The RFA requires an agency to describe any significant 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.

19. In this *Order on Reconsideration*, the Commission clarifies that nothing in its prior order disavows any federal jurisdiction we otherwise have under the Act to resolve cross-connect disputes. The Commission also requires incumbent LECs, including those classified as small entities, to include their cross-connect offerings in their federal tariffs. In order to minimize any unnecessary regulatory burdens, however, the Commission clarifies that incumbents shall have the flexibility to include the rates, terms, and conditions under which they provide cross-connects in any appropriate federal tariffs. In so doing, the Commission implicitly rejects, as unnecessarily burdensome, alternatives such as requiring incumbent LECs to file new, stand-alone tariffs for their cross-connect offerings. The Commission also permits incumbent LECs to use ICB pricing in these tariffs in appropriate circumstances. The Commission rejects as inconsistent its prior policy the alternative of precluding all use of ICB pricing for cross-connects. Rejection of this alternative ensures that incumbent LECs have an additional measure of flexibility in developing their federal cross-connect tariffs.

Ordering Clauses

20. Pursuant to sections 1–4, 201–03, 251–54, 256, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–54, 201–03, 251–54, 256, and 303(r), that the Petition for Reconsideration or Clarification jointly filed by Association

for Local Telecommunications Services, e.spire Communications, Inc., KMC Telecom, Inc., McLeodUSA Telecommunications Services, Inc., and NuVox, Inc. September 19, 2001, *Is granted* to the extent set forth in the document.

21. The *Order on Reconsideration Shall become effective* October 30, 2002. The collections of information contained in this *Order on Reconsideration Are contingent* upon approval of the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date of this requirement.

22. The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this *Order on Reconsideration*, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 51

Interconnection, Telecommunications Carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–24720 Filed 9–27–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 98–147; FCC 02–234]

Deployment of Wireline Services Offering Advanced Telecommunications Capability

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document finds that federally mandated limits on the time period for which incumbent local exchange carriers (LECs) and competitive LECs may reserve potential collocation space for future use are not warranted. It further concludes that disputes regarding the conversion of virtual collocation arrangements to physical collocation arrangements should be addressed on a case-by-case basis. Finally, it determines that, although point-of-termination bays (POT bays) constitute a technically feasible point of interconnection, an incumbent LEC may not compel collocators to interconnect through them.

DATES: Effective October 30, 2002.

FOR FURTHER INFORMATION CONTACT: John Adams, Attorney-Advisor, Competition Policy Division, Wireline Competition Bureau, at (202) 418–1580, or via the Internet at *jkadams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fifth Report and Order* in CC Docket No. 98–147, FCC 02–234, adopted August 14, 2002, and released September 4, 2002. The complete text of this *Report and Order* 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.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Synopsis of the Fifth Report and Order

1. *Background.* In the *Second Further Notice* (65 FR 54527, September 8, 2000), the Commission sought comment on several collocation-related issues that the Commission has not yet addressed. These issues included whether the Commission should adopt a national policy limiting the period for which potential collocation space can be reserved for future use. Parties to this proceeding asked that the Commission clarify its policies regarding the conversion of virtual collocation arrangements to physical arrangements and regarding the use of POT bays with physical collocation arrangements.

2. *Space Reservation Policies.* In the *Second Further Notice,* the Commission stated that the primary responsibility for resolving space reservation disputes lay with the states and therefore declined to adopt specific space reservation period at that time. The Commission, however, requested comment as to whether it should adopt a national space reservation policy that would apply where a state does not set its own standard. Based on the record, the Commission is not convinced that national space reservation policy is needed at this time to ensure that requesting carriers obtain reasonable and nondiscriminatory access to potential collocation space. The Commission states that, because a variety of factors can impact the availability of central office space, the states continue to be in the best position to monitor this situation and adopt policies that best address the particular space reservation issues in that state. The Commission also states that to the extent the state commissions have not adopted specific periods for space reservations, space reservation disputes should be resolved on a case-by-case basis.

3. *Conversion of Virtual Arrangements to Physical Arrangements.* The Commission states that it would not require, as a general matter, that incumbent local exchange carriers (incumbent LECs) permit in-place conversions of virtual collocation arrangements to physical collocation arrangements. The Commission concludes that a blanket rule might result in some physical arrangements occupying space that would otherwise be unsuited for physical collocation. At the same time, the Commission recognizes that, under section 251(c)(6) of the Communications Act, an incumbent LEC must provide for physical collocation on terms and conditions that are just, reasonable, and nondiscriminatory. The Commission determines that any disputes regarding whether an incumbent LEC complies with this standard in evaluating requests to move a virtual arrangement to part of the incumbent LEC's premises where physical collocation is allowed should be addressed on a case-by-case basis.

4. *POT Bays.* In the *Advanced Services First Report and Order* (63 FR 4420, August 18, 1998), the Commission adopted §51.323(k)(2) of the Commission's rules, which provides that ''[a]n incumbent LEC may not require competitors to use an intermediate interconnection arrangement in lieu of direct connection to the incumbent's network if technically feasible.'' In the *Fifth Report and Order,* the Commission states that, by definition, a POT bay is not an ''intermediate interconnection arrangement,'' but rather simply a convenient demarcation point between the incumbent LEC's facilities and those of the collocator. The Commission therefore concludes that the prohibition against intermediate interconnection arrangements in § 51.323(k)(2) does not apply to POT bays. The Commission notes, however, that the Communications Act mandates that incumbent LECs allow competitive LECs to interconnect at ''any technically feasible point.'' The Commission therefore concludes that while incumbent LECs may offer interconnection through POT bays as one technically feasible method of interconnection with a collocated competitive LEC, they may not unilaterally require competitive LECs to