

B. Executive Order 12866

The General Services Administration has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866.

C. Regulatory Flexibility Act

This final rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule removes from the FPMR coverage at 101-25.5, Guidelines for Making Purchase or Lease Determinations, and 101-31.2, Use of Private Inspection, Testing, and Grading Services.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose reporting, recordkeeping or information collection requirements which require the approval of the Office of Management and Budget pursuant to 44 U.S.C. 3501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is not a major rule under 5 U.S.C. 804.

List of Subjects in 41 CFR Parts 101-25 and 101-31

For the reasons set forth in the preamble, 41 CFR parts 101-25, 101-31, and 101-38 are amended as follows:

1. The authority citation for parts 101-25, 101-31, and 101-38 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

PART 101-25—GENERAL

2. Subpart 101-25.5 is revised to read as follows:

Subpart 101-25.5—Purchase or Lease Determinations

§ 101-25.500 Cross-reference to the Federal Acquisition Regulation (FAR)(48 CFR Chapter 1, Parts 1-99).

For guidance see Federal Acquisition Regulation Subpart 7.4 (48 CFR Subpart 7.4).

PART 101-31—INSPECTION AND QUALITY CONTROL

3. Subpart 101-31.2 is revised to read as follows:

Subpart 101-31.2—Private Inspection, Testing, and Grading Services

§ 101-31.200 Cross-reference to the Federal Acquisition Regulation (FAR)(48 CFR Chapter 1, Parts 1-99).

For guidance see Federal Acquisition Regulation (e.g., Subpart 7.5, and Parts 37 and 46) (48 CFR Subpart 7.5, and Parts 37 and 46).

PART 101-38—MOTOR VEHICLE MANAGEMENT

4. Section 101-38.105 is amended by removing paragraph (g) and redesignating paragraphs (h) and (i) as paragraphs (g) and (h) respectively.

Dated: May 19, 1999.

David J. Barram,

Administrator of General Services.

[FR Doc. 99-16197 Filed 6-28-99; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION**47 CFR Parts 0, 43, 63, and 64**

[IB Docket Nos. 98-148, 95-22, CC Docket No. 90-337 (Phase II), FCC 99-73]

Biennial Review of the Reform of the International Settlements Policy and Associated Filing Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document removes outdated rules that govern the manner in which U.S. international telecommunications carriers relate to foreign carriers that provide service in competitive markets. The Commission concludes that it should remove the existing international settlements policy (ISP): for settlement arrangements between U.S. carriers and foreign telecommunications carriers that lack market power; and for all settlement arrangements on routes where U.S. carriers are able to terminate at least 50 percent of their U.S. billed traffic in the foreign market at rates that are at least 25 percent below the applicable benchmark settlement rate.

The Commission believes that the new rules will create greater incentives for U.S. carriers to adopt business strategies that will enable them to obtain low rates to terminate U.S. traffic in foreign markets.

DATES: These rules contain information collections that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date of these

rules. Public and agency comments are due on the information collections August 30, 1999.

FOR FURTHER INFORMATION CONTACT: Robert McDonald, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418-1470.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 99-73, adopted on April 15, 1999, and released on May 6, 1999. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257) of the Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. The document is also available for download over the Internet at <http://www.fcc.gov/bureaus/international/orders/1999/fcc99073.wp>. The complete text of this Order also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857-3800.

This document contains information collections subject to the Paperwork Reduction Act of 1995 (PRA). It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the modified information collections contained in this proceeding.

Summary of Report and Order

1. In August 1998, the Commission issued a Notice of Proposed Rulemaking (63 FR 44224, August 18, 1998) in which it proposed substantial changes in the way it regulates international telecommunications carriers' relations with their foreign counterparts. The Commission initiated this proceeding pursuant to Section 11 of the Telecommunications Act of 1996, 47 U.S.C.161, which directs the Commission to undertake a review on every even-numbered year of all regulations that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer necessary in the public interest. In this proceeding the Commission adopts most of the proposals contained in the Notice and implements procedures that will grant regulatory relief to carriers while increasing the efficiency of the Commission.

2. The Commission finds that removing the ISP and related filing

requirements between U.S. carriers and foreign carriers that lack market power in foreign markets would remove unnecessary regulatory burdens on U.S. carriers and at the same time future competition in the U.S. international services market. The vast majority of commenting parties support this change in Commission policy.

3. The Commission adopted the ISP and related filing requirements to prevent whipsawing by a foreign monopoly carrier. Where the carrier in the foreign market lacks market power, however, its ability to whipsaw U.S. carriers is substantially diminished, if not eliminated. Except in unusual circumstances, a U.S. carrier that is faced with an attempt at whipsawing by a foreign carrier that lacks market power on the foreign end of a particular route may respond by entering an agreement with a different foreign carrier on the route. The Commission thus concludes that the ISP is not necessary to prevent whipsawing for settlement arrangements with foreign carriers that lack market power.

4. The Commission will no longer require U.S. carriers that conclude arrangements with foreign carriers that lack market power in the foreign market to comply with the terms of the ISP or its contract filing requirements. Instead, the Commission finds that a policy that promotes the conclusion of unrestricted commercial arrangements between U.S. carriers and foreign carriers that lack market power in the foreign market will best further our goal of promoting competition in the international services market. The Commission finds that its 47 CFR 43.51 contract filing requirement should no longer apply to any U.S. carrier arrangement with a foreign carrier that lacks market power.

5. In determining whether it should continue to apply the ISP, the Commission adopts a presumption that a foreign carrier lacks market power when it possesses less than a 50 percent market share in each of the relevant foreign markets.

6. The Commission finds that it is necessary to adopt a mechanism to ensure that carriers enter into arrangements that deviate from the ISP only with carriers that lack market power in the foreign market, and that a relaxation of the ISP would not enable U.S. carriers to enter into arrangements that deviate from the ISP with foreign carriers that could exercise their market power to the detriment of U.S. consumers. The Commission will therefore make an affirmative finding to determine which carriers possess market power in specific foreign markets, and make a list of such carriers

public. Carriers would thus be precluded from exchanging traffic outside of the ISP with carriers on the list unless otherwise allowed. The Commission finds that this approach will best advance its policy of allowing U.S. carriers to enter into arrangements with foreign carriers that lack market power with a minimum of regulatory oversight, while maintaining the ISP for certain arrangements with foreign carriers that possess market power in the foreign market. The Commission's rules include a presumption that a foreign carrier does not possess market power in a foreign market if it possesses less than 50 percent market share in each of the relevant foreign markets. The Commission thus issues, concurrently with the release of this Order, a public notice containing a list of foreign carriers that it believes do not qualify for this presumption, for the purposes of identifying arrangements that are not required to comply with the ISP and the Commission's No Special Concessions rule. This list is based on publicly available information, compiled from official sources, including the International Telecommunication Union (ITU). (Public Notice, DA 99-809, published elsewhere in this issue.) Interested parties may challenge the inclusion or exclusion of any carrier on the list by submitting a petition for declaratory ruling and the appropriate supporting documentation to demonstrate that a carrier included on the list lacks market power or that a carrier excluded from the list has market power. The Commission may also amend the list on its own motion. The list will be updated periodically and posted on the Commission's web page at <http://www.fcc.gov/ib>. Carriers are responsible for ensuring that arrangements they enter into outside of the ISP comply with the Commission's rules in the event of additions to the list.

7. The Commission amends Sections 43.51 and 64.1001 to remove the ISP and related contract filing requirements for arrangements between U.S. carriers and foreign carriers that lack market power. Section 43.51 will also specify procedures for modifying the list of foreign carriers that do not qualify for the presumption that they lack market power. The Commission also amends its No Special Concessions Rule, Section 63.14, to eliminate the requirement that a carrier seeking to enter into an exclusive arrangement with a foreign carrier that lacks market power submit with the Section 43.51 contract filing (which the Commission here eliminates) information to demonstrate that the

foreign carrier lacks market power. This rule change will permit carriers to rely on the Commission's published list of foreign carriers for purposes of determining which foreign carriers are the subject of the prohibitions contained in Section 63.14.

8. The Commission concludes that it would serve the public interest to remove the ISP completely on certain routes, including for arrangements with foreign carriers that possess market power in the foreign market. The Commission finds that lifting the ISP has significant merits where the potential harm due to a foreign carrier's abuse of market power is limited. The Commission declines, however, to adopt the standard proposed in the Notice to remove the ISP on all routes where it currently allows international simple resale (ISR). Instead, the Commission removes the ISP completely only on those routes where U.S. carriers have the ability to settle U.S. traffic at rates that are 25 percent below the benchmark, or less. The Commission believes this provides the proper balance between, on the one hand, its goal in this proceeding of eliminating regulations that impede the development of competition, and, on the other hand, the longstanding goal of the ISP of preventing anticompetitive behavior that can harm U.S. consumers. The Commission also finds that on those routes where U.S. carriers have the ability to settle U.S. traffic at rates that are 25 percent below the benchmark, or less, the ISP is no longer necessary, regardless of whether the foreign country is a WTO Member or a non-WTO Member country. The Commission therefore repeals this rule, as applied in such cases, as it is no longer in the public interest.

9. The Commission further finds that it is not necessary to require all traffic that is terminated in a foreign market to be settled at 25 percent below the applicable benchmark settlement rate, or less, in order to lift the ISP. Rather, the Commission finds that removing the ISP where at least 50 percent of U.S.-billed traffic is terminated at such rates will ensure that the ISP is maintained only where it is necessary. The Commission finds that the ability of U.S. carriers to terminate at least 50 percent of the U.S.-billed traffic in the foreign market at rates that are 25 percent below the benchmark rate or less is convincing evidence that competitive pressures exist in the foreign market to constrain the market power of the foreign carrier. The Commission thus finds that where at least 50 percent of traffic is terminated at rates 25 percent lower than the

benchmark, or less, a foreign carrier is unlikely to have the ability to exercise market power to harm U.S. consumers and that the ISP is thus unnecessary.

10. The Commission will amend its rules establishing procedures for carriers seeking to enter into an arrangement that does not comply with the ISP with a foreign carrier that possesses market power on a route for which the ISP has not previously been lifted. Such carriers must file a petition for declaratory ruling that at least 50 percent of U.S.-billed traffic on the route is terminated in the foreign market at rates that are 25 percent below the benchmark settlement rate, or less. For upper income routes, 25 percent below the benchmark rate is 11.25 cents; for upper middle income routes, 25 percent below the benchmark rate is 14.25 cents; and for lower income routes, 25 percent below the benchmark rate is 17.25 cents. Carriers filing such petitions should include the appropriate supporting documentation demonstrating that the route qualifies for exemption from the ISP. Such documentation may include settlement rate or other data published by the Commission. The Commission will issue a public notice upon the filing of such a petition and may, in each case, determine an appropriate deadline for filing comments. Unopposed requests may be granted by public notice. The Commission will publish and periodically update a list of international routes exempt from the ISP on the Commission's web page at <http://www.fcc.gov/ib>.

11. The Commission also concludes here that it should amend its filing requirements to allow that settlement rate information and copies of contracts required to be filed under Section 43.51 be filed confidentially for arrangements with foreign carriers that possess market power on routes where it removes the ISP. The Commission finds that requiring carriers to file copies of arrangements entered into with foreign carriers that possess market power in the relevant foreign telecommunications markets provides a valuable tool to ensure that U.S. carriers do not enter into arrangements that would allow the foreign carrier to exercise its market power to the detriment of U.S. consumers. The Commission will therefore amend Sections 43.51 and 64.1001 of the Commission's rules to require carriers that exchange traffic with foreign carriers that possess market power on routes where it has lifted the ISP to file information on rates paid for the origination and/or termination of international traffic and copies of their contracts with these foreign carriers with the Commission. Such information

may be filed with the Commission under confidential seal. This filing requirement covers all arrangements between U.S. and foreign carriers that possess market power, including arrangements currently classified as ISR arrangements and alternative settlement arrangements. The Commission finds that a confidential filing requirement will adequately deter the kind of anticompetitive conduct in which affiliated carriers or joint venture partners could engage.

12. Removing the ISP could exacerbate the concern about anticompetitive behavior by allowing a foreign carrier to adopt a strategy that would raise the costs of its U.S. affiliate's rivals and thus improve the position of the joint enterprise. The Commission finds that on routes where it removes the ISP, the danger of harm from such action, generally, is significantly reduced. Due to heightened concern about anticompetitive arrangements between U.S. carriers and their affiliates and joint venture partners, however, the Commission finds it necessary to adopt an additional safeguard to deter such arrangements. The Commission adopts a safeguard that prohibits U.S. carriers that are affiliated or non-equity joint venture partners with foreign carriers that possess market power in the foreign market from entering into arrangements that may present a significant adverse impact on competition on the international route. If the Commission finds that carriers have entered into such arrangements, the Commission reserves the right to take appropriate action to remedy the situation, including reimposing the ISP on the route.

13. In 1996, the Commission adopted the *Flexibility Order* (62 FR 5535, February 6, 1997), which established a framework for permitting flexibility in its accounting rate policies where appropriate market and regulatory conditions exist. Under the flexibility policy, the Commission maintains a presumption in favor of allowing flexible settlement arrangements with carriers in WTO Member markets that can be rebutted only by a showing that the foreign carrier that is a party to the flexible settlement arrangement does not face competition from multiple facilities-based carriers. The Commission finds here, that the changes it makes in this Order to exempt from the ISP arrangements between U.S. and foreign carriers that lack market power, and between U.S. and all foreign carriers on routes that allow U.S. carriers to terminate at least 50 percent of their traffic at rates that are at least 25 percent below the applicable

benchmark settlement rate largely supersede the policies adopted in the *Flexibility Order*. The Commission therefore finds that maintaining the flexibility policies and procedures would needlessly complicate its accounting rate policies. The Commission eliminates the flexibility policy and therefore removes Section 64.1002 of its rules.

14. The Commission finds, however, that there may be unforeseen circumstances in which it may be in the public interest to allow an arrangement with a foreign carrier with market power to deviate from the ISP, even though the standard for removing the ISP has not been met. The Commission will therefore entertain waivers of the ISP for individual settlement arrangements. Among the factors the Commission will consider are whether granting such a waiver would promote the public interest in achieving cost-based rates for terminating international traffic, while precluding the abuse of foreign market power.

15. The Commission finds that there is no valid reason to apply the No Special Concessions rule to the terms and conditions under which traffic is settled, including the allocation of return traffic, on a route where the Commission removes the ISP. It makes no sense for the No Special Concessions rule to impose a nondiscrimination requirement for settlement arrangements on routes where it removes the ISP. The point of removing the ISP is to allow market forces to determine the types of arrangements into which carriers enter. The Commission therefore will amend Section 63.14 of the Commission's rules to clarify that the No Special Concessions rule does not apply to the terms and conditions under which traffic is settled, including the allocation of return traffic, on routes where the Commission removes the ISP. The Commission also finds that the No Special Concessions rule should apply to interconnection of international facilities, private line provisioning and maintenance, and quality of service on routes where the Commission removes the ISP. The Commission finds that there is still a risk of anticompetitive conduct for arrangements with foreign carriers that possess market power, even on routes where the Commission removes the ISP. The Commission therefore will maintain the No Special Concessions rule, as modified above, on all routes, regardless of whether the ISP applies.

16. In the Notice, the Commission sought comment on whether removing the ISP and related filing requirements may allow carriers to enter into

arrangements that may have anticompetitive effects. In particular, the Commission noted that U.S. carriers have, in the past, expressed concern regarding whether their competitors may negotiate arrangements to accept "groomed" traffic, *i.e.* traffic that terminates in particular geographic regions. The Commission finds that the danger of anticompetitive effects of grooming arrangements are unlikely. The Commission therefore finds that a prohibition against incumbent local exchange carriers accepting "groomed" international traffic is unnecessary.

17. Given its conclusion that grooming arrangements are not a cause for concern on routes where it has removed the ISP, the Commission hereby removes the condition imposed on Bell Operating Company international Section 214 certificates, which required these carriers to obtain prior Commission approval of grooming arrangements.

18. The Commission sought comment in the Notice on whether it should continue to afford carriers the option of filing either a notification or a modification notice for simple changes in accounting rates negotiated with foreign carriers. The Commission finds that adopting a single procedure for accounting rate changes will simplify its regulatory structure and avoid confusion for parties seeking to make the required filings with the Commission. The Commission therefore adopts its proposal to remove the option of filing a notification and require that all accounting rate filings be governed under the existing procedures for accounting rate modifications.

19. The Commission also sought comment on the extent to which it should continue to require that carriers making accounting rate filings serve every carrier that provides service on the international route with a copy of the filing. The Commission noted that the number of international carriers is growing on many routes and sought comment on whether another approach is warranted. The Commission also noted that it had been urged to require that accounting rate filings be placed on public notice, as is required for petitions seeking approval of flexible settlement arrangements. Further, the Commission noted that it has introduced an electronic filing mechanism for accounting rate filings, and that information contained in such filings would be available on the Commission's web site at <http://www.fcc.gov/ib>. The Commission's electronic filing system for accounting rate filings was introduced very recently, however, and the Commission has not had sufficient

experience with the system to determine whether the information available on the Commission's web site will be an adequate substitute for the existing service requirement. The Commission therefore declines to remove the existing service requirement at this time. The Commission anticipates, however, that it may remove the service requirement in the near future, as it continues to implement the new electronic filing system. The Commission will therefore eliminate the existing service requirement within 3 months of the release of this Order. The Commission delegates to the Chief, International Bureau the authority to implement this change and direct the International Bureau to issue a Public Notice at that time to make this change in the Commission's rules.

20. The Commission also has pending two remaining issues on reconsideration of the *Foreign Carrier Entry Order* (60 FR 6732, December 29, 1995; 61 FR 4937, February 9, 1996). In that order, the Commission adopted the requirement that U.S. facilities-based carriers obtain separate Section 214 authority and demonstrate that equivalency exists when such carriers seek to provide ISR over their *facilities-based* U.S. international private lines. The Commission adopted an exception to this general rule, however, to permit a carrier to use its U.S. facilities-based private lines to carry switched traffic without demonstrating equivalency where two conditions are met: (1) the private line is interconnected to the public switched network on one end only—either the U.S. end or the foreign end; and (2) the foreign correspondent with which the U.S. facilities-based carrier is interchanging switched traffic is not the owner of the underlying foreign private line half-circuit. The Commission finds above that there are significant public interest benefits to permitting U.S. facilities-based carriers to provide switched services, without limitation, outside the ISP in correspondence with foreign carriers that lack market power. In light of this conclusion, the provision the Commission adopted in the *Foreign Carrier Entry Order* permitting one-end interconnection by U.S. facilities-based carriers is superfluous. The Commission's decision to lift the ISP for all U.S. carrier arrangements with foreign carriers that lack market power thus effectively subsumes the rule that permits one-end interconnection by U.S. facilities-based carriers. The Commission therefore eliminates that rule.

21. British Telecommunications North America (BTNA) seeks reconsideration

of the Commission's decision not to allow resellers on the U.S. end to offer one-end interconnection services. The Commission finds merit to BTNA's argument that U.S. private line resellers should be accorded the same regulatory freedom as U.S. facilities-based carriers to exchange switched traffic in correspondence with foreign carriers that lack market power. The Commission therefore modifies its rules to permit U.S.-authorized private line resellers to interconnect their private lines to the public switched network, at one or both ends, for the provision of switched basic services, and thus, to engage in ISR in either of the following circumstances: (1) on any route where the resale carrier exchanges switched traffic with a foreign carrier that lacks market power; or (2) on any route for which the Commission has authorized the provision of ISR. This rule supersedes the condition that appears in the Section 214 authorizations of private line resellers that limits their ability to resell interconnected private lines to routes for which the Commission have authorized ISR.

22. The Commission also directs all U.S. private line carriers to amend their international private line tariffs to track the policy and rules the Commission adopts in this Order. In particular, the Commission shall require that a carrier's tariff explicitly state the Commission's policy that the private line user may engage in resale of the international private line for the provision of a switched, basic telecommunications service upon authorization from the Commission under Section 214 of the Communications Act of 1934, as amended, and provided that the private line is used only on a route where the resale carrier exchanges switched traffic with a foreign carrier that the Commission has determined lacks market power; or on any route for which the Commission has authorized the provision of switched services over private lines. Carriers will be required to amend their international private line tariffs within ten days after the effective date of the rules adopted in this order.

Final Regulatory Flexibility Certification

23. The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, 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 "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).

24. In the Notice in this proceeding, the Commission certified that the proposed rules “[would] not, if promulgated, have a significant economic impact on a substantial number of small entities.” No comments were received concerning this certification. The purposes of this proceeding are to eliminate some regulatory requirements and to simplify and clarify other existing rules. These rule changes will affect facilities-based international telecommunications carriers exclusively—in particular, approximately 10 facilities-based international telecommunications carriers. Neither the Commission nor SBA has developed a small business definition specifically applicable to such international carriers; therefore, the Commission will utilize the definition under the SBA rules for Communications Services, Not Elsewhere Classified (NEC). Under this definition, a small business is one with \$11.0 million or less in annual receipts. Based on information filed with the Commission, the subject facilities-based international telecommunications carriers do not fall within the above definition of “small business” because they each have more than \$11.0 million in annual receipts. The rule modifications at issue do not impose any additional compliance burden on persons dealing with the Commission, including small entities. Rather, this action removes filing requirements in scaling back application of the Commission’s International Settlements policy. Accordingly, the Commission certifies, pursuant to the RFA, that the rules adopted herein will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Report and Order and Order on Reconsideration*, including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). In addition, the *Report and Order and Order on Reconsideration* and this certification will be sent to the Chief Counsel for Advocacy of the Small

Business Administration, and will be published in the **Federal Register**. See 5 U.S.C. 605(b).

Supplemental Final Regulatory Flexibility Analysis

25. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice in IB Docket No. 95–22, and a Final Regulatory Flexibility Analysis (FRFA) was incorporated into the *Report and Order* in that docket. The Order contains a Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) which conforms to the RFA.

26. *Need for, and Objectives of, the Present Action.* This action creates greater opportunities for U.S. international private line resellers to carry U.S. international traffic outside of the settlements process. It also harmonizes the treatment of private line resellers with that of facilities-based carriers.

27. *Summary of Significant Issues Raised by Reconsideration Petitions.* No petitions were received in direct response to the FRFA in the *Report and Order*, nor were small business issues raised.

28. *Description and Estimate of the Number of Small Entities to which the Rules Will Apply.* As noted in the associated Final Regulatory Flexibility Certification in IB Docket No. 98–148, *supra*, the RFA directs agencies to provide a Regulatory Flexibility Analysis in 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 Commission’s action on reconsideration in IB Docket No. 95–22 will affect telecommunications resellers, including resellers that are small businesses; therefore, the Commission incorporates this present Supplemental FRFA into its *Report and Order and Order on Reconsideration*.

29. In light of the petitions for reconsideration in IB Docket No. 95–22, the Commission modifies its rules to allow U.S. international private line resellers to carry switched traffic over international private line circuits in correspondence with foreign carriers that lack market power. The Commission expects that these changes will allow U.S. private line resellers, including small entities, to take advantage of new opportunities in the international telecommunications marketplace. As noted in the associated certification, *supra*, in instances where

neither the Commission nor the SBA has developed a small business definition specifically applicable to the entities potentially affected by its action, the Commission utilizes the pertinent definition under the SBA rules. Here, neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than a radiotelephone (wireless) company. The Commission describes available statistics for telecommunications entities generally, including resellers, then give more particular information on resellers.

30. The SBA has developed a small business definition for establishments engaged in providing “Telephone Communications, Except Radiotelephone” (wireless) to be such businesses having no more than 1,500 employees. The U.S. Bureau of the Census reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities. 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 wireline carriers and service providers that would qualify as small business concerns under the SBA’s definition. Consequently, the Commission estimates that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities that may be affected by present action.

31. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS). According to TRS data, 339 reported that they were engaged in the resale of telephone service (including debit card providers). The Commission does not have data specifying the number of these carriers that 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 resellers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 339 small entity resellers that may be affected by the rules.

32. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* In its reconsideration of IB Docket No. 95-22, the Commission modifies its rules to allow U.S. private line resellers to carry switched traffic over international private line circuits in correspondence with foreign carriers that lack market power. The Commission expects that these changes will expand the ability of U.S. private line resellers, including small entities, to reap economic benefits by taking advantage of new opportunities in the international telecommunications marketplace.

33. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* As discussed, in reconsideration of the petitions in IB Docket No. 95-22, the Commission modifies its rules to allow U.S. private line resellers to carry switched traffic over international private line circuits in correspondence with foreign carriers that lack market power. Authorized private line resellers will be subject to no reporting, recordkeeping, or compliance requirements in order to carry switched traffic over international private line circuits in correspondence with foreign carriers that lack market power.

34. *Report to Congress.* The Commission will send a copy of the *Report and Order and Order on Reconsideration*, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order and Order on Reconsideration*, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order and Order on Reconsideration* and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

Paperwork Reduction Act of 1995 Analysis

35. This Order contains information collections which will be submitted to the Office of. As part of our continuing effort to reduce paperwork burdens, the Commission invites the general public

and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due August 30, 1999. Comments should address the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060-XXXX.
Title: Operating Agreements of Common Carriers & Affiliates.
Form Number: N/A.
Type of Review: New collection.
Respondents: Business and other for-profit entities.
Number of Respondents: 20.
Number of Responses: 1180.
Estimated Time Per Response: 5 hours.

Frequency of Response: On Occasion.
Total Annual Burden: 5900.
Total Annual Costs: None.
Needs and Uses: The information contained in these reports will be used by the Commission to determine whether the activities reported have affected or are likely to affect adversely the carrier's service to the public or whether these activities result in undue or unreasonable increases in charges. If this information was not reported, the Commission would not be able to ascertain the impact of these activities on the just and reasonable rates as required by the Act.

OMB Control Number: 3060-0454.
Title: Regulation of International Accounting Rates.
Form Number: N/A.
Type of Review: Revision of a currently approved collection.
Respondents: Business and other for-profit entities.
Number of Respondents: 20.
Estimated Time Per Response: 1 hour.
Frequency of Response: On occasion. We estimate that more carriers will file for fewer markets (about 38). Third party disclosure.

Total Annual Burden: 760.
Total Annual Costs: \$25,270.
Needs and Uses: The information is a method for the Commission to monitor the international accounting rates to ensure that the public interest is being

served and also to enforce Commission policies.

OMB Control Number: 3060-0764.
Title: Regulation of International Accounting Rates.
Form Number: N/A.
Type of Review: Elimination of a currently approved collection.
Respondents: Business and other for-profit entities.
Number of Respondents: -30.
Estimated Time Per Response: 16 hours.

Total Annual Burden: -80 hours.
Total Annual Costs: -\$180,000.
Needs and Uses: This Order removes Section 64.1002, and thus this collection of information is no longer necessary.

Written comments by the public on the proposed information collections are due on or before August 30, 1999. Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov. For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

Ordering Clauses

36. Accordingly, *it is ordered* that, pursuant to Sections 1, 2, 4(i), 201, 203, 205, 214, 303(r), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 152, 154(i), 201, 205, 214, 303(r), 309, the policies, rules, and requirements discussed herein *are adopted* and Parts 43 and 63 of the Commission's rules, 47 CFR Parts 43 and 63, *are amended* as set forth in the rule changes.

37. *It is further ordered* that the petitions for reconsideration in CC Docket No. 90-337 *are denied*.

38. *It is further ordered* that the petitions for reconsideration in IB Docket No. 95-22 *are granted in part and denied in part*, as discussed herein.

39. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *shall send* a copy of this *Report and Order and Order on Reconsideration*, including the Final Regulatory Flexibility Certification and the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

40. *It is further ordered* that the policies, rules, and requirements established in this decision shall take effect after the Commission publishes a document in the **Federal Register** announcing the effective date of these rules or in accordance with the

requirements of 5 U.S.C. 801(a)(3) and 44 U.S.C. 3507.

List of Subjects in 47 CFR Parts 0, 43, 63, and 64

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 43, 63, and 64 as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.457 is amended by adding paragraph (d)(1)(vi) to read as follows:

§ 0.457 Records not routinely available for public inspection.

* * * * *

(d) * * *

(1) * * *

(vi) The rates, terms and conditions in any agreement between a U.S. carrier and a foreign carrier that govern the settlement of U.S. international traffic, including the method for allocating return traffic, if the U.S. international route is exempt from the international settlements policy under § 43.51(g) of this chapter.

* * * * *

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

3. The authority citation for part 43 continues to read as follows:

Authority: 47 U.S.C. 154; Telecommunications Act of 1996, Pub. L. 104–104, secs. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

4. Section 43.51 is amended by revising paragraphs (a), (b) and (e), and by adding paragraphs (f) and (g) to read as follows:

§ 43.51 Contracts and concessions.

(a) Any communications common carrier that: is engaged in domestic communications and has not been classified as nondominant pursuant to § 61.3 of this chapter or, except as provided in paragraphs (f) and (g) of this section, is engaged in foreign

communications, and enters into a contract with another carrier, including an operating agreement with a communications entity in a foreign point for the provision of a common carrier service between the United States and that point; must file with the Commission, within thirty (30) days of execution, a copy of each contract, agreement, concession, license, authorization, operating agreement or other arrangement to which it is a party and amendments thereto with respect to the following:

(1) The exchange of services;

(2) Except as provided in paragraph (c) of this section, the interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, or the basis of settlement of traffic balances; and

(3) The rights granted to the carrier by any foreign government for the landing, connection, installation, or operation of cables, land lines, radio stations, offices, or for otherwise engaging in communication operations.

(b) If the agreement referred to in this section is made other than in writing, a certified statement covering all details thereof must be filed by at least one of the parties to the agreement. Each other party to the agreement which is also subject to these provisions may, in lieu of also filing a copy of the agreement, file a certified statement referencing the filed document. The Commission may, at any time and upon reasonable request, require any communication common carrier not subject to the provisions of this section to submit the documents referenced in this section.

* * * * *

(e) *International settlements policy.*

(1) Except as provided in paragraph (g) of this section, if a carrier files an operating agreement (whether in the form of a contract, concession, license, etc.) referred to in paragraph (a) of this section to begin providing switched voice, telex, telegraph, or packet-switched service between the United States and a foreign point and the terms and conditions of such agreement relating to the exchange of services, interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, the allocation of return traffic, or the basis of settlement of traffic balances, are not identical to the equivalent terms and conditions in the operating agreement of another carrier providing the same or similar service between the United States and the same foreign point, the carrier must also file with the International Bureau a modification request under § 64.1001 of this chapter. Unless a carrier is

providing switched voice, telex, telegraph, or packet-switched service between the United States and a foreign point pursuant to an operating agreement that is exempt from the international settlements policy under paragraph (g) of this section, the carrier shall not bargain for or agree to accept more than its proportionate share of return traffic.

(2) Except as provided in paragraph (g) of this section, if a carrier files an amendment to the operating agreement referred to in paragraph (a) of this section under which it already provides switched voice, telex, telegraph, or packet-switched service between the United States and a foreign point, and other carriers provide the same or similar service to the same foreign point, and the amendment relates to the exchange of services, interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, the allocation of return traffic, or the basis of settlement of traffic balances, the carrier must also file with the International Bureau a modification request under § 64.1001 of this chapter.

(f) *Confidential treatment.* (1) A carrier providing service on an international route that is exempt from the international settlements policy under paragraph (g)(2) of this section, but that is required by paragraph (a) or (b) of this section to file a contract covering that route with the Commission, may request confidential treatment under § 0.457 of this chapter for the rates, terms and conditions that govern the settlement of U.S. international traffic.

(2) Carriers requesting confidential treatment under this paragraph must include the information specified in § 64.1001(c) of this chapter. Such filings shall be made with the Commission, with a copy to the Chief, International Bureau. The transmittal letter accompanying the confidential filing shall clearly identify the filing as responsive to § 43.51(f).

(g) Exemption from the international settlements policy and contract filing requirements.

(1) A carrier that enters into a contract, including an operating agreement, for the provision of a common carrier service between the United States and a foreign point with a carrier that lacks market power in that foreign market is not subject to the requirements of paragraphs (a), (b) or (e) of this section.

(i) A foreign carrier lacks market power for purposes of paragraph (g)(1) of this section if it does not appear on the Commission's list of foreign carriers that do not qualify for the presumption

that they lack market power in particular foreign points. The list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points is available from the International Bureau's World Wide Web site at <http://www.fcc.gov/ib>.

(ii) The Commission will include on the list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points any foreign carrier that has 50 percent or more market share in the international transport or local access markets of a foreign point. A party that seeks to remove such a carrier from the Commission's list bears the burden of submitting information to the Commission sufficient to demonstrate that the foreign carrier lacks 50 percent market share in the international transport and local access markets on the foreign end of the route or that it nevertheless lacks sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market. A party that seeks to add a carrier to the Commission's list bears the burden of submitting information to the Commission sufficient to demonstrate that the foreign carrier has 50 percent or more market share in the international transport or local access markets on the foreign end of the route or that it nevertheless has sufficient market power to affect competition adversely in the U.S. market.

(2) A carrier that enters into a contract, including an operating agreement, with a carrier in a foreign point for the provision of a common carrier service between the United States and that point is not subject to the international settlements policy in paragraph (e) of this section if the foreign point appears on the Commission's list of international routes that the Commission has exempted from the international settlements policy. The list of exempt routes is available from the International Bureau's World Wide Web site at <http://www.fcc.gov/ib>.

(i) A party that seeks to add a foreign market to the list of markets that are exempt from the international settlements policy must show that U.S. carriers are able to terminate at least 50 percent of U.S.-billed traffic in the foreign market at rates that are at least 25 percent below the benchmark settlement rate adopted for that country in IB Docket No. 96-261.

(ii) A party that seeks to remove a foreign market from the list of markets that are exempt from the international settlements policy must show that U.S. carriers are unable to terminate at least 50 percent of U.S.-billed traffic in the

foreign market at rates that are at least 25 percent below the benchmark settlement rate adopted for that country in IB Docket No. 96-261.

Note to paragraph (g): The Commission's benchmark settlement rates are available in International Settlement Rates, IB Docket No. 96-261, *Report and Order*, 12 FCC Rcd 19,806, 62 FR 45758 (August 29, 1997).

PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

5. The authority citation for part 63 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 160, 161, 201-205, 218, 403, 533 unless otherwise noted.

6. Section 63.14 is amended by revising paragraphs (a) and (c), and by removing paragraph (d), to read as follows:

§ 63.14 Prohibition on agreeing to accept special concessions.

(a) Any carrier authorized to provide international communications service under this part shall be prohibited, except as provided in paragraph (c) of this section, from agreeing to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market and from agreeing to accept special concessions in the future.

Note to paragraph (a): Carriers may rely on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points for purposes of determining which foreign carriers are the subject of the prohibitions contained in this section. The Commission's list of foreign carriers that do not qualify for the presumption that they lack market power is available from the International Bureau's World Wide Web site at <http://www.fcc.gov/ib>.

(c) This section shall not apply to the rates, terms and conditions in an agreement between a U.S. carrier and a foreign carrier that govern the settlement of international traffic, including the method for allocating return traffic, if the international route is exempt from the international settlements policy under § 43.51(g)(2) of this chapter.

7. Section 63.16 is amended by revising paragraph (a) to read as follows:

§ 63.16 Switched services over private lines.

(a) Except as provided in §§ 63.22 (e)(2) and 63.23(d)(2), a carrier may provide switched basic services over its authorized private lines if and only if the country at the foreign end of the private line appears on a Commission list of destinations to which the Commission has authorized the provision of switched services over private lines. The list of authorized destinations is available from the International Bureau's World Wide Web site at <http://www.fcc.gov/ib>.

8. Section 63.22 is amended by revising paragraph (e) to read as follows:

§ 63.22 Facilities-based international common carriers.

(e)(1) Except as provided in paragraph (e)(2) of this section, the carrier may provide switched basic services over its authorized facilities-based private lines if and only if the country at the foreign end of the private line appears on a Commission list of countries to which the Commission has authorized the provision of switched services over private lines. See § 63.16. If at any time the Commission removes the country from that list or finds that market distortion has occurred in the routing of traffic between the United States and that country, the carrier shall comply with enforcement actions taken by the Commission.

(2) The carrier may use its authorized facilities-based private lines to provide switched basic services in circumstances where the carrier is exchanging switched traffic with a foreign carrier that lacks market power in the country at the foreign end of the private line.

(3) A foreign carrier lacks market power for purposes of paragraph (e)(2) of this section if it does not appear on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points. This list is available from the International Bureau's World Wide Web site at <http://www.fcc.gov/ib>.

9. Section 63.23 is amended by revising paragraph (d) to read as follows:

§ 63.23 Resale-based international common carriers.

(d)(1) Except as provided in paragraph (d)(2) of this section, the carrier may provide switched basic services over its authorized resold private lines if and

only if the country at the foreign end of the private line appears on a Commission list of countries to which the Commission has authorized the provision of switched services over private lines. See § 63.16. If at any time the Commission removes the country from that list or finds that market distortion has occurred in the routing of traffic between the United States and that country, the carrier shall comply with enforcement actions taken by the Commission.

(2) The carrier may use its authorized resold private lines to provide switched basic services in circumstances where the carrier is exchanging switched traffic with a foreign carrier that lacks market power in the country at the foreign end of the private line.

(3) A foreign carrier lacks market power for purposes of paragraph (d)(2) of this section if it does not appear on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points. This list is available from the International Bureau's World Wide Web site at <http://www.fcc.gov/ib>.

* * * * *

PART 64 — MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

10. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 10, 201, 218, 226, 228, 332 unless otherwise noted.

11. Section 64.1001 is amended by revising paragraphs (b) through (g) and by removing paragraphs (h) through (l) to read as follows:

§ 64.1001 International settlements policy and modification requests.

* * * * *

(b) If the international settlement arrangement in the operating agreement or amendment referred to in § 43.51(e)(1) or (e)(2) of this chapter differs from the arrangement in effect in the operating agreement of another carrier providing service to or from the same foreign point, the carrier must file a modification request under this section unless the international route is exempt from the international settlements policy under § 43.51(g) of this chapter.

(c) A modification request must contain the following information:

- (1) The applicable international service;
- (2) The name of the foreign telecommunications administration;
- (3) The present accounting rate (including any surcharges);

(4) The new accounting rate (including any surcharges);

(5) The effective date;

(6) The division of the accounting rate; and

(7) An explanation of the proposed modification(s) in the operating agreement with the foreign correspondent.

(d) A modification request must contain a notarized statement that the filing carrier:

(1) Has not bargained for, nor has knowledge of, exclusive availability of the new accounting rate;

(2) Has not bargained for, nor has any indication that it will receive, more than its proportionate share of return traffic; and

(3) Has informed the foreign administration that U.S. policy requires that competing U.S. carriers have access to accounting rates negotiated by the filing carrier with the foreign administration on a nondiscriminatory basis.

(e) An operating agreement or amendment filed under a modification request cannot become effective until the modification request has been granted under paragraph (g) of this section.

(f) Carriers must serve a copy of the modification request on all carriers providing the same or similar service to the foreign administration identified in the filing on the same day a modification request is filed.

(g) All modification requests will be subject to a twenty-one (21) day pleading period for objections or comments, commencing the date after the request is filed. If the modification request is not complete when filed, the carrier will be notified that additional information is to be submitted, and a new 21 day pleading period will begin when the additional information is filed. The modification request will be deemed granted as of the twenty-second (22nd) day without any formal staff action being taken: provided

(1) No objections have been filed, and

(2) The International Bureau has not notified the carrier that grant of the modification request may not serve the public interest and that implementation of the proposed modification must await formal staff action on the modification request. If objections or comments are filed, the carrier requesting the modification request may file a response pursuant to § 1.45 of this chapter. Modification requests that are formally opposed must await formal action by the International Bureau before the proposed modification can be implemented.

§ 64.1002 [Removed]

12. Section 64.1002 is removed.
[FR Doc. 99-16032 Filed 6-28-99; 8:45 am]
BILLING CODE 6712-10-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98-189; RM-9377; RM-9475]

Radio Broadcasting Services; Manzanita, Cannon Beach and Bay City, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of John L. Zolkoske and Broad Spectrum Communications, Inc., allots Channel 242A to Bay City, OR, as the community's first local aural service, substitutes Channel 235C3 for Channel 243A at Cannon Beach, OR, and modifies the license of Station KCBZ to specify the higher powered channel. The proposal of Zolkoske to allot Channel 235A to Manzanita, OR, as its first local aural service, is dismissed. See 63 FR 59263, November 3, 1998. Channel 242A can be allotted to Bay City in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 45-31-24 NL; 123-53-18 WL. Channel 235C3 can be allotted to Cannon Beach without the imposition of a site restriction, at coordinates 45-53-42 NL; 123-57-36 WL. Canadian concurrence in these allotments has been obtained since both Bay City and Cannon Beach are located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective August 2, 1999. A filing window for Channel 242A at Bay City, OR, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98-189, adopted June 9, 1999, and released June 18, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference