§ 502.409 Arbitration awards.

(a)(1) The award in an arbitration proceeding under this subchapter shall include a brief, informal discussion of the factual and legal basis for the award, but formal findings of fact or conclusions of law shall not be required.

(2) Exceptions to or an appeal of an arbitrator's decision may not be filed with the Commission.

(b) An award entered in an arbitration proceeding may not serve as an estoppel in any other proceeding for any issue that was resolved in the proceeding. Such an award also may not be used as precedent or otherwise be considered in any factually unrelated proceeding.

§ 502.410 Representation of parties.

(a) The provisions of § 502.21 apply to the representation of parties in dispute resolution proceedings, as do the provisions of § 502.27 regarding the representation of parties by nonattorneys.

(b) A neutral in a dispute resolution proceeding may require participants to demonstrate authority to enter into a binding agreement reached by means of a dispute resolution proceeding.

§ 502.411 Mediation and other alternative means of dispute resolution.

(a) Parties are encouraged to utilize mediation or other forms of alternative dispute resolution in all formal proceedings. The Commission also encourages those with disputes to pursue mediation in lieu of, or prior to, the initiation of a Commission proceeding.

(b) Any party may request, at any time, that a mediator or other neutral be appointed to assist the parties in reaching a settlement. If such a request is made in a proceeding assigned to an Administrative Law Judge, the provisions of § 502.91 apply. For all other matters, alternative dispute resolution services may be requested directly from the Federal Maritime Commission Alternative Dispute Resolution Specialist, who may serve as the neutral if the parties agree or who will arrange for the appointment of a neutral acceptable to all parties.

(c) The neutral shall convene and conduct mediation or other appropriate dispute resolution proceedings with the parties.

(d) *Ex parte Communications.* Except with respect to arbitration, the provisions of § 502.11 do not apply to dispute resolution proceedings, and mediators are expressly authorized to conduct private sessions with parties.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–20755 Filed 8–17–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 98–147; FCC 01–204]

Deployment of Wireline Services Offering Advanced Telecommunications Capability

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reevaluates certain provisions of the Commission's collocation rules on remand from the United States Court of Appeals for the District of Columbia Circuit. Specifically, the Commission amends its rules regarding which equipment is ''necessary for interconnection or access to unbundled network elements'' within the meaning of section 251(c)(6) of the Communications Act of 1934, as amended, (Communications Act or Act) and thus may be collocated without an incumbent local exchange carrier's (incumbent LEC's) approval. The Commission also amends its rules regarding cross-connects between collocators at an incumbent LEC's premises. The Commission further amends its rules addressing how an incumbent LEC may assign and configure physical collocation space.

DATES: Effective September 19, 2001.

FOR FURTHER INFORMATION CONTACT: William Kehoe, Special Counsel, or Kimberly Cook, Attorney Advisor, Policy and Program Planning Division, Common Carrier Bureau, (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fourth Report and Order* in CC Docket No. 98–147, released August 8, 2001. The complete text of this Order is available for inspection and copying during regular business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, SW., Washington, DC. It is also available on the Commission's website at *http://www.fcc.gov.*

Synopsis of Fourth Report and Order

1. The Commission concludes that equipment is ''necessary for interconnection or access to unbundled network elements'' within the meaning of section 251(c)(6) of the Communications Act of 1934, as amended (Communications Act or Act), and thus may be collocated without an incumbent local exchange carrier's (incumbent LEC's) approval if, an inability to deploy that equipment would, as a practical, economic, or operational matter, preclude the requesting carrier from obtaining interconnection or access to unbundled network elements as contemplated in sections 251(c)(2) and 251(c)(3) of the Act. The Commission also concludes that section 251(c)(6) allows a requesting carrier to collocate any equipment necessary for obtaining equal interconnection or nondiscriminatory access to unbundled network elements as contemplated in sections 251(c)(2) and 251(c)(3). Applying the statutory standard set forth in section 251(c)(2), the Commission concludes that section 251(c)(6) allows the interconnecting carrier to collocate any equipment necessary for interconnecting with the incumbent LEC at a level equal in quality to that which the incumbent obtains within its own network or the incumbent provides to any affiliate, subsidiary, or other party. Similarly, applying the statutory standard set forth in section 251(c)(3), the Commission further concludes that section 251(c)(6) allows a requesting carrier to collocate any equipment necessary for obtaining ''nondiscriminatory access'' to an unbundled network element, including any of its features, functions, or capabilities.

2. The Commission finds that multifunction equipment meets the ''necessary'' standard only if the primary purpose and function of the equipment, as the requesting carrier seeks to deploy it, are to provide the requesting carrier with ''equal in quality'' interconnection or ''nondiscriminatory access'' to one or more unbundled network elements. The Commission also finds that, for purposes of determining whether a piece of equipment is to be used primarily to obtain ''equal in quality'' interconnection or ''nondiscriminatory access'' to one or more unbundled network elements, there must be a logical nexus between the additional functions the equipment would perform and the telecommunication services the requesting carrier seeks to provide to its customers by means of the interconnection or unbundled network

element. The Commission further finds that any function that would not meet its equipment standard as a stand-alone function must not cause the equipment to significantly increase the burden on the incumbent's property. The Commission concludes, in addition, that switching and routing equipment typically meets its equipment standard because an inability to deploy that equipment would, as a practical, economic, or operational matter, preclude a requesting carrier from obtaining nondiscriminatory access to an unbundled network element, the local loop. As a general matter, an incumbent LEC therefore must allow requesting carriers to collocate switching and routing equipment. An incumbent LEC, however, generally need not allow collocation of traditional circuit switches, which are very large pieces of equipment compared to newer, more advanced switching and routing equipment. The Commission finds, in light of the practical, economic, and operational availability of the relatively small switches and routers, that traditional circuit switches generally do not meet its equipment standard.

3. The Commission eliminates its previous requirement, adopted pursuant to section 251(c)(6), that an incumbent LEC allow competitive LECs to construct and maintain cross-connects outside of their immediate physical collocation space at the incumbent's premises. The Commission finds, however, that sections 201 and 251(c)(6) of the Communications Act authorize it to require that an incumbent LEC provision cross-connects between collocated carriers, and the Commission requires that an incumbent LEC provide such cross-connects upon reasonable request. The Commission finds that, in making available a cross-connect offering, an incumbent LEC must provide the appropriate cross-connect as requested by the collocated competitive local exchange carriers (competitive LECs). The Commission notes that the ''appropriate'' cross-connect facility may constitute a ''lit'' service or a dark fiber service depending upon the requirements of the two collocated competitors. Where a collocator is requesting a cross-connect pursuant to the Commission's action under section 201, it shall provide a certification to the incumbent that more than ten percent of the amount of traffic to be transmitted through the cross-connect will be interstate. The Commission specifies that the incumbent LEC cannot refuse to accept the certification, but instead must provision the cross-connect promptly.

4. The Commission eliminates rules that gave carriers requesting physical collocation the option of picking their physical collocation space from among the unused space in an incumbent LEC's premises, that precluded an incumbent LEC from restricting physical collocation to space separated from space housing the incumbent's equipment, and that precluded an incumbent from requiring the construction and use of a separate entrance to access physical collocation space. In their place, the Commission adopts new rules that establish principles to ensure that the incumbent LEC's policies and practices in assigning and configuring physical collocation space are consistent with the statutory requirement that the incumbent provide for physical collocation ''on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.'' The Commission also adopts presumptions that will apply in evaluating an incumbent LEC's policies and practices in these areas.

Final Regulatory Flexibility Analysis

5. 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 (Second Further NPRM)* in CC Docket 98–147, 65 FR 54527, September 8, 2000. The Commission sought written public comment on the proposals in the *Second Further NPRM*, including comment on the Supplemental IRFA. We received comments from The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) specifically directed toward the Supplemental IRFA. These comments are discussed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

I. Need for, and Objectives of, the Fourth Report and Order

6. This *Fourth Report and Order (Fourth Order)* continues the Commission's efforts to facilitate the development of competition in telecommunications services. In the *Advanced Services First Report and Order*, 64 F.R. 23229, April 30, 1999, 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 this Fourth Order, we address the remanded issues and take additional steps toward implementing Congress' goals in enacting section 251(c)(6) of the Communications Act. Specifically, we adopt rule amendments that more appropriately implement the balance reflected in the Communications Act, between promoting competition and technological innovation, and establishing limits on the scope of the intrusion allowed into the incumbent LEC's property rights to avoid unnecessary takings of such property. Nonetheless, through these amended rules, we reaffirm our commitment to ensuring that facilities-based competitors, including those that are small entities, have the incentive and ability to invest in alternative infrastructure and innovative technologies, while, at the same time, ensuring that incumbents retain similar incentives and capabilities.

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

7. In the Supplemental IRFA, we 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. We also solicited comments on alternatives to the proposed rules that would minimize the impact that any changes to our rules might have on small entities. In their comments, OPASTCO states that the Supplemental IRFA did not provide ''the flexibility necessary to accommodate the needs of small [incumbent LECs] and their customers.'' OPASTCO also states 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 states that the Supplemental IRFA failed ''to describe the 'significant alternatives' for small [incumbent LECs] that [were] presumptively under consideration'' in this rulemaking. As noted above, OPASTCO filed comments specifically directed to the Supplemental IRFA and to issues that were raised in the NPRM but not addressed in this Fourth Order which is limited to issues that the D.C. Circuit remanded. In making the determinations reflected in the Fourth Order, we have considered the impact of our actions on small entities.

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). In this Fourth Order, we take a number of steps that may affect small entities that either provide or obtain collocation pursuant to section 251(c)(6) of the Communications Act. The requirements we adopt will require small incumbent LECs to change their collocation practices. As Congress contemplated in enacting section 251(c)(6), however, our collocation requirements benefit small competitive local exchange carriers (competitive LECs) in their efforts to compete against incumbent LECs in the provision of telecommunications services, including advanced services. We believe that, on balance, the benefits to small competitive LECs of our actions in this Fourth Order far outweigh any burdens these place on small incumbent LECs.

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 4,822 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. We have 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. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC 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 proposed rules, herein adopted.

12. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone (wireless) company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone (wireless) 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 (wireless) companies that might qualify as small entities or small incumbent LECs. 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 (wireless) companies are small entities or small incumbent LECs that may be affected by the proposed rules, herein adopted.

13. *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 for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent data, there are 1,395 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 1,395 providers of local exchange service are small entities or small incumbent LECs that may be affected by the proposed rules, herein adopted.

14. *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 telephone communications companies other than radiotelephone (wireless) companies. According to the most recent data, there are 204 carriers engaged in the provision of interexchange services. 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 IXCs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are less than 204 small entity IXCs that may be affected by the proposed rules, herein adopted.

15. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers

(CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than except radiotelephone (wireless) companies. According to the most recent data, there are 349 CAPs and competitive LECs engaged in the provision of competitive local exchange services. 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 CAPs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are less than 349 small entity CAPs providing competitive local exchange services that may be affected by the proposed rules, herein adopted.

16. *Resellers (including debit card providers).* 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 radiotelephone (wireless) companies. According to the most recent data, there are 541 local and toll resellers engaged in the resale of telephone service. 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 541 small local and toll resellers that may be affected by the proposed rules, herein adopted.

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

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

18. The Fourth Order imposes nominal increases in projected reporting, recordkeeping, and other compliance requirements. Both of these changes affect small and large companies equally. First, the Fourth Order requires a competitive LEC that is requesting incumbent-LEC provisioned cross-connects pursuant to section 201 of the Act to provide a short certification that the amount of interstate traffic to be transmitted over the cross-connect constitutes more than ten percent of all traffic transmitted over that cross-connect. This certification requirement stems from jurisdictional considerations. Thus, it is not possible to exempt small entities from compliance with the certification requirement.

19. In the Fourth Order, the Commission requires that an incumbent LEC must allow a requesting carrier to submit physical collocation space preferences prior to assigning that carrier space. This will enable the requesting carrier to request the space that best fits its operational needs. We also amend our existing space report rule to require that, upon request, an incumbent LEC must submit to the requesting carrier a report describing in detail the space that is available for collocation in a particular incumbent LEC premises. Thus, the new rule requires more detailed information within a report that already must be provided. A professional would likely prepare the additional information in a limited period of time. To give the rule any meaning, this report must be generated by small and large entities alike. Otherwise, carriers requesting collocation at a small incumbent LEC's facility would not have the all of the information available to make an educated space preference request.

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

20. 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.

21. In this Fourth Order, the Commission adopts collocation rules in implementation of section 251(c)(6) of the Communications Act. These rules respond to the D.C. Circuit's decision in *GTE* v. *FCC*, remanding certain rules the Commission had adopted to implement that provision. Our actions will affect both telecommunications carriers that request collocation and the incumbent LECs that, under section 251(c)(6), must provide collocation. As indicated above, both groups of carriers include entities that, for purposes of this FRFA, are classified as small entities. Neither section 251(c)(6) nor the D.C. Circuit decision permits the Commission to exempt any incumbent LECs, including those that are small entities, from their collocation obligations. Indeed, section 10(d) of the Communications Act precludes the Commission from forbearing from the application of section 251(c)(6) to any entity prior to that section's full implementation, an event that has not yet occurred.

22. In this Fourth Order, the Commission takes a number of steps that may affect small entities that either provide or obtain collocation pursuant to section 251(c)(6) of the Communications Act. The requirements the Commission adopts will require incumbent LECs to change their collocation practices. As Congress contemplated in enacting section 251(c)(6), our collocation requirements benefit small competitive LECs in their efforts to compete against incumbent LECs, both large and small, in the provision of telecommunications services, including advanced services. The Commission believes that, on balance, the benefits to small competitive LECs of our actions in this Fourth Order far outweigh any burdens the Fourth Order places on small incumbent LECs.

23. As set forth more fully below, the Commission believes that our actions in this Fourth Order are consistent with the RFA. Specifically, as OPASTCO urges, the requirements the Commission adopts provide substantial flexibility to incumbent LECs, including small incumbent LECs, in implementing section 251(c)(6). *See* OPASTCO Comments at 6; para. 3, *supra.* OPASTCO does not address directly any of the issues remanded by the D.C. Circuit and thus does not raise any specific alternatives we might consider in this Fourth Order. The Commission's requirements, however, stop short of

allowing any incumbent LEC to act inconsistent with that statutory provision. Any such action would be inconsistent with the requirements of section 251(c)(6) and would upset the balance reflected in the statute. Such action also would substantially burden competitive LECs, including those that are small entities, in their efforts to compete against incumbent LECs.

24. The record makes clear that, absent the adoption of rules addressing the matters remanded by the D.C. Circuit, incumbent LECs will impede requesting carriers' collocation efforts.

25. The Commission's actions in this Fourth Order should benefit requesting carriers, many of which may be small entities, by reducing barriers they encounter in seeking to compete effectively in the provision of advanced services and other telecommunications services. The Commission's actions seek to balance the property interests of the incumbent LECs, including small incumbent LECs, with the public interest in promoting innovation and competition. It is concluded that rules that are more restrictive or less restrictive would not strike the appropriate balance.

26. In this Fourth Order, the Commission adopts standards that determine which competitive LECs, including small carriers, may collocate equipment at incumbent LEC premises pursuant to section 251(c)(6). These standards provide that equipment is ''*necessary* for interconnection or access to unbundled network elements'' within the meaning of section 251(c)(6) if an inability to deploy that equipment would, as a practical, economic, or operational matter, preclude the requesting carrier from obtaining interconnection or access to unbundled network elements as contemplated in sections 251(c)(2) and 251(c)(3). The Commission also finds that multifunction equipment meets the ''necessary'' standard only if the primary purpose and function of the equipment, as the requesting carrier seeks to deploy it, would be practically, economically, or operationally necessary for that carrier to obtain ''equal in quality'' interconnection or ''nondiscriminatory access'' to one or more unbundled network elements. The Commission rejects incumbent LEC and competitive LEC requests for alternative equipment standards because we believe such standards would be inconsistent with section 251(c)(6). The Commission also finds that standards more favorable to the incumbent LECs would thwart competition without significantly improving the interests of the incumbent LECs, while standards more favorable to competitive LECs would not properly take into consideration the property interests of the incumbent LECs. Therefore, the Commission selects the alternative that best balances the impact on each party, including small entities, and maximizes benefits.

27. The Commission also concludes that switching and routing equipment generally meets our equipment standard because an inability to deploy that equipment would, as a practical, economic, and operational matter, preclude a requesting carrier from accessing all the features, functions, and capabilities of unbundled local loops. An incumbent LEC therefore generally must allow requesting carriers to collocate the relatively small switching and routing equipment that technological advances have enabled manufacturers to develop. An incumbent LEC, however, generally need not allow collocation of traditional circuit switches, which are very large pieces of equipment. The Commission finds, in light of the practical, economic, and operational availability of the relatively small switches and routers and the materially lesser burden collocation of these switches and routers imposes on an incumbent's property interests, that traditional circuit switches generally do not meet our equipment standard. The Commission believes that this approach toward switching and routing equipment furthers the purposes behind the RFA, because it allows small competitive LECs flexibility in configuring their networks while precluding the collocation of switching and routing equipment that would infringe small incumbent LECs' property interests. It is noted that any alternative that might allow a small incumbent LEC to generally preclude the collocation of relatively small switches and routers within its premises would violate the statutory mandate that incumbent LECs, both large and small, provide for the collocation of ''necessary'' equipment.

28. In addition, in this Fourth Order, we eliminate the requirement that, pursuant to section 251(c)(6), an incumbent LEC allow competitive LECs to construct and maintain cross-connects outside of their immediate physical collocation space at the incumbent's premises. The Commission considered maintaining this requirement, but that alternative would be inconsistent with the Communications Act and would not properly take into consideration the property interests of the incumbent LECs. The elimination of this requirement gives small incumbent LECs flexibility that was not available under the Commission's prior collocation rules.

29. The Commission finds that sections 201 and 251 of the Communications Act provide statutory authority to require an incumbent LEC to provision cross-connects between collocated carriers, and we require that an incumbent LEC provide such cross-connects upon reasonable request. The Commission considered not requiring incumbent LECs to provision cross-connects between collocated carriers, but that alternative would allow incumbent LECs to provide collocation to competitive LECs in an unjust, unreasonable, and discriminatory manner. It is noted that all incumbent LECs, including those that are small carriers, cross-connect their own equipment within their premises. Indeed, those premises are, by design, places where a carrier can cross-connect equipment. The benefits to competition from requiring that a small incumbent LEC provision cross-connects between collocators within its premises far outweigh any additional burden such a requirement may impose on that carrier. In addition, allowing a small incumbent LEC to refrain from provisioning cross-connects between collocated carriers would allow the incumbent to impose unreasonable and discriminatory terms and conditions on collocators, in violation of the Communications Act.

30. In this Fourth Order, the Commission eliminates the requirement that incumbent LECs allow the requesting carrier to select its physical collocation space from among the unused space in the incumbent's premises as well as requirements constraining how incumbents LEC may configure physical collocation space. The Commission now allows incumbent LECs, in certain circumstances, to restrict physical collocation to space separated from space housing the incumbent's equipment and to require the construction and use of a separate entrance to access physical collocation space. The Commission rejects the alternative of retaining the prior rules, because they failed to properly balance the congressional goal of promoting competition against the need to protect an incumbent LEC's property interests against unwarranted intrusion. The elimination of these prior rules gives incumbent LECs, including small entities, flexibility that was not previously available.

31. The Commission recognizes, however, that an incumbent LEC has powerful incentives that, left unchecked, may influence it to allocate

space in a manner inconsistent with its statutory duty to provide for physical collocation ''on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.'' Accordingly, the Commission establishes specific principles that each incumbent LEC, including those that are small carriers, must follow in assigning physical collocation space. These rules are designed to ensure that incumbent LECs, both large and small, act as neutral property owners and managers, rather than as direct competitors of the carriers requesting collocation, in assigning physical collocation space to requesting carriers. Alternatives that would give a small incumbent LEC more flexibility in assigning space might enable it to act unreasonably and discriminatorily in violation of section 251(c)(6). Those alternatives also would burden requesting carriers, including those that are small carriers, by increasing the costs they incur in competing against incumbent LECs. Therefore, for both statutory and public policy reasons, the Commission does not adopt a different standard for incumbent LECs that are small entities.

32. The Commission also rejects the alternative of allowing incumbent LECs, including those that are small entities, to restrict physical collocation to space separated from space housing the incumbent's equipment and to require the construction and use of a separate entrance to access physical collocation space in all instances, because we find that such separation measures would be unreasonable and discriminatory in certain circumstances. The Commission concludes, for example, that an incumbent LEC may require such separation measures only where legitimate security concerns, or operational constraints unrelated to the incumbent's or any of its affiliates' or subsidiaries' competitive concerns, warrant them. This is consistent with the D.C. Circuit's recognition that alternatives other than separation are sufficient to address incumbent LECs' security concerns. To the extent small incumbent LECs encounter security concerns or operational constraints that differ from those incumbent LECs encounter, our rules permit small incumbent LECs to take those differences into account in their space assignment and configuration policies and practices.

VI. Report to Congress

33. The Commission will send a copy of the Fourth Order, including this FRFA, in a report to be sent to Congress pursuant to the SBREFA. In addition, the Commission will send a copy of the Fourth Order, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Fourth Order and the FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

34. Pursuant to sections 1–4, 201, 202, 251–254, 256, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–54, 201, 202, 251–54, 256, 271, and 303(r), that this *Fourth Report and Order* is adopted.

35. Pursuant to sections 1–4, 201, 202, 251–54, 256, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–54, 201, 202, 251–54, 256, 271, and 303(r), that Part 51 of the Commission's rules, 47 CFR part 51, *is amended*, as set forth in Rule Changes, and that those rule amendments *shall become* effective thirty days after publication of the text or summary thereof in the **Federal Register**, unless the FCC publishes a document in the **Federal Register** to delay or withdraw them.

36. The Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Fourth Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Final Paperwork Reduction Analysis

37. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 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 Paperwork Reduction Act of 1995, and will go into effect 30 days after publication in the **Federal Register**, unless the FCC publishes a document in the **Federal Register** to delay or withdraw them.

List of Subjects in 47 CFR Part 51

Communications, Common carriers, Collocation, Interconnection, Unbundled network elements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 51 as follows:

PART 51—INTERCONNECTION

1. The authority for Part 51 continues to read as follows: Sections 1–5, 7, 201–05, 207–09, 218, 225–27, 251–54, 271, 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 225–27, 251–54, 271, 332, unless otherwise noted.

2. Section 51.5 is amended by adding in alphabetical order a definition of ''multi-functional equipment'' to read as follows:

§ 51.5 Terms and definitions.

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Multi-functional equipment. Multi-functional equipment is equipment that combines one or more functions that are necessary for interconnection or access to unbundled network elements with one or more functions that would not meet that standard as stand-alone functions.

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3. Section 51.321 is amended by revising paragraph (h) to read as follows:

§ 51.321 Methods of obtaining interconnection and access to unbundled elements under section 251 of the Act.

* * * * *

(h) Upon request, an incumbent LEC must submit to the requesting carrier within ten days of the submission of the request a report describing in detail the space that is available for collocation in a particular incumbent LEC premises. This report must specify the amount of collocation space available at each requested premises, the number of collocators, and any modifications in the use of the space since the last report. This report must also include measures that the incumbent LEC is taking to make additional space available for collocation. The incumbent LEC must maintain a publicly available document, posted for viewing on the incumbent LEC's publicly available Internet site, indicating all premises that are full, and must update such a document within ten days of the date at which a premises runs out of physical collocation space.

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4. Section 51.323 is amended by revising paragraphs (b), (c), (e), (f) introductory text, (h), (i) introductory text, and (k)(2) and adding paragraphs (f)(7), (i)(4)(i) through (i)(4)(v), (i)(5), and (i)(6)(i) through (i)(6)(iv) to read as follows:

§ 51.323 Standards for physical collocation and virtual collocation.

* * * * *

(b) An incumbent LEC shall permit the collocation and use of any

equipment necessary for interconnection or access to unbundled network elements.

(1) Equipment is necessary for interconnection if an inability to deploy that equipment would, as a practical, economic, or operational matter, preclude the requesting carrier from obtaining interconnection with the incumbent LEC at a level equal in quality to that which the incumbent obtains within its own network or the incumbent provides to any affiliate, subsidiary, or other party.

(2) Equipment is necessary for access to an unbundled network element if an inability to deploy that equipment would, as a practical, economic, or operational matter, preclude the requesting carrier from obtaining nondiscriminatory access to that unbundled network element, including any of its features, functions, or capabilities.

(3) Multi-functional equipment shall be deemed necessary for interconnection or access to an unbundled network element if and only if the primary purpose and function of the equipment, as the requesting carrier seeks to deploy it, meets either or both of the standards set forth in paragraphs (b)(1) and (b)(2) of this section. For a piece of equipment to be utilized primarily to obtain equal in quality interconnection or nondiscriminatory access to one or more unbundled network elements, there also must be a logical nexus between the additional functions the equipment would perform and the telecommunication services the requesting carrier seeks to provide to its customers by means of the interconnection or unbundled network element. The collocation of those functions of the equipment that, as stand-alone functions, do not meet either of the standards set forth in paragraphs (b)(1) and (b)(2) of this section must not cause the equipment to significantly increase the burden on the incumbent's property.

(c) Whenever an incumbent LEC objects to collocation of equipment by a requesting telecommunications carrier for purposes within the scope of section 251(c)(6) of the Act, the incumbent LEC shall prove to the state commission that the equipment is not necessary for interconnection or access to unbundled network elements under the standards set forth in paragraph (b) of this section. An incumbent LEC may not object to the collocation of equipment on the grounds that the equipment does not comply with safety or engineering standards that are more stringent than the safety or engineering standards that the incumbent LEC applies to its own equipment. An incumbent LEC may not object to the collocation of equipment on the ground that the equipment fails to comply with Network Equipment and Building Specifications performance standards or any other performance standards. An incumbent LEC that denies collocation of a competitor's equipment, citing safety standards, must provide to the competitive LEC within five business days of the denial a list of all equipment that the incumbent LEC locates at the premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that the incumbent LEC contends the competitor's equipment fails to meet. This affidavit must set forth in detail: the exact safety requirement that the requesting carrier's equipment does not satisfy; the incumbent LEC's basis for concluding that the requesting carrier's equipment does not meet this safety requirement; and the incumbent LEC's basis for concluding why collocation of equipment not meeting this safety requirement would compromise network safety.

* * * * *

(e) When providing virtual collocation, an incumbent LEC shall, at a minimum, install, maintain, and repair collocated equipment meeting the standards set forth in paragraph (b) of this section within the same time periods and with failure rates that are no greater than those that apply to the performance of similar functions for comparable equipment of the incumbent LEC itself.

(f) An incumbent LEC shall provide space for the collocation of equipment meeting the standards set forth in paragraph (b) of this section in accordance with the following requirements:

* * * * *

(7) An incumbent LEC must assign collocation space to requesting carriers in a just, reasonable, and nondiscriminatory manner. An incumbent LEC must allow each carrier requesting physical collocation to submit space preferences prior to assigning physical collocation space to that carrier. At a minimum, an incumbent LEC's space assignment policies and practices must meet the following principles:

(A) An incumbent LEC's space assignment policies and practices must not materially increase a requesting carrier's collocation costs.

(B) An incumbent LEC's space assignment policies and practices must not materially delay a requesting carrier occupation and use of the incumbent LEC's premises.

(C) An incumbent LEC must not assign physical collocation space that will impair the quality of service or impose other limitations on the service a requesting carrier wishes to offer.

(D) An incumbent LEC's space assignment policies and practices must not reduce unreasonably the total space available for physical collocation or preclude unreasonably physical collocation within the incumbent's premises.

* * * * *

(h) As described in paragraphs (1) and (2) of this section, an incumbent LEC shall permit a collocating telecommunications carrier to interconnect its network with that of another collocating telecommunications carrier at the incumbent LEC's premises and to connect its collocated equipment to the collocated equipment of another telecommunications carrier within the same premises, provided that the collocated equipment is also used for interconnection with the incumbent LEC or for access to the incumbent LEC's unbundled network elements.

(1) An incumbent LEC shall provide, at the request of a collocating telecommunications carrier, a connection between the equipment in the collocated spaces of two or more telecommunications carriers, except to the extent the incumbent LEC permits the collocating parties to provide the requested connection for themselves or a connection is not required under paragraph (h)(2) of this section. Where technically feasible, the incumbent LEC shall provide the connection using copper, dark fiber, lit fiber, or other transmission medium, as requested by the collocating telecommunications carrier.

(2) An incumbent LEC is not required to provide a connection between the equipment in the collocated spaces of two or more telecommunications carriers if the connection is requested pursuant to section 201 of the Act, unless the requesting carrier submits to the incumbent LEC a certification that more than 10 percent of the amount of traffic to be transmitted through the connection will be interstate. The incumbent LEC cannot refuse to accept the certification, but instead must provision the service promptly. Any incumbent LEC may file a section 208 complaint with the Commission challenging the certification if it believes that the certification is deficient. No such certification is required for a request for such connection under section 251 of the Act.

(i) As provided herein, an incumbent LEC may require reasonable security arrangements to protect its equipment and ensure network reliability. An incumbent LEC may only impose security arrangements that are as stringent as the security arrangements that the incumbent LEC maintains at its own premises for its own employees or authorized contractors. An incumbent LEC must allow collocating parties to access their collocated equipment 24 hours a day, seven days a week, without requiring either a security escort of any kind or delaying a competitor's employees' entry into the incumbent LEC's premises. An incumbent LEC may require a collocating carrier to pay only for the least expensive, effective security option that is viable for the physical collocation space assigned. Reasonable security measures that the incumbent LEC may adopt include:

* * * * *

(4) Restricting physical collocation to space separated from space housing the incumbent LEC's equipment, provided that each of the following conditions is met:

(i) Either legitimate security concerns, or operational constraints unrelated to the incumbent's or any of its affiliates' or subsidiaries competitive concerns, warrant such separation;

(ii) Any physical collocation space assigned to an affiliate or subsidiary of the incumbent LEC is separated from space housing the incumbent LEC's equipment;

(iii) The separated space will be available in the same time frame as, or a shorter time frame than, non-separated space;

(iv) The cost of the separated space to the requesting carrier will not be materially higher than the cost of non-separated space; and

(v) The separated space is comparable, from a technical and engineering standpoint, to non-separated space.

(5) Requiring the employees and contractors of collocating carriers to use a central or separate entrance to the incumbent's building, provided, however, that where an incumbent LEC requires that the employees or contractors of collocating carriers access collocated equipment only through a separate entrance, employees and contractors of the incumbent LEC's affiliates and subsidiaries must be subject to the same restriction.

(6) Constructing or requiring the construction of a separate entrance to access physical collocation space, provided that each of the following conditions is met:

(i) Construction of a separate entrance is technically feasible;

(ii) Either legitimate security concerns, or operational constraints unrelated to the incumbent's or any of its affiliates' or subsidiaries competitive concerns, warrant such separation;

(iii) Construction of a separate entrance will not artificially delay collocation provisioning; and

(iv) Construction of a separate entrance will not materially increase the requesting carrier's costs.

* * * * *

(k) * * *

(2) Cageless collocation. Incumbent LECs must allow competitors to collocate without requiring the construction of a cage or similar structure. Incumbent LECs must permit collocating carriers to have direct access to their equipment. An 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. An incumbent LEC must make cageless collocation space available in single-bay increments, meaning that a competing carrier can purchase space in increments small enough to collocate a single rack, or bay, of equipment.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. RSPA–98–3783; Amts. 192–90; 195–72]

RIN 2137–AB38

Pipeline Safety: Qualification of Pipeline Personnel; Correction

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations on qualification of pipeline personnel, which were published in the **Federal Register** on August 27, 1999 (64 FR 46853). These corrections are minor and do not affect the substance or content of the rule.

DATES: Effective on August 20, 2001.

FOR FURTHER INFORMATION CONTACT: Richard D. Huriaux, (202) 366–366–4565, or by e-mail at richard.huriaux@rspa.dot.gov, regarding the subject matter of this final rule; or the Dockets Unit, (202) 366–4453, for copies of this final rule or other material in the docket. All materials in this docket may be accessed electronically at http://dms.dot.gov. General information about the RSPA Office of Pipeline Safety can be obtained by accessing OPS's Internet home page at http://ops.dot.gov.

SUPPLEMENTARY INFORMATION

Background

The final regulations that are the subject of these corrections established operator personnel qualification requirements for gas and hazardous liquid pipeline operators.

Need for correction

As published, the final regulations omitted titles for the new subparts to the pipeline safety regulations. Therefore, this document amends the regulations to add the title, ''Qualification of Pipeline Personnel'', to subpart N of 49 CFR part 192 and to subpart G of 49 CFR part 195.

In addition, the final regulations contained incorrect numbering for the evaluation methods in § 192.803(b) and § 195.503(b). This document corrects the numbering to clarify that observation of performance on the job, job training, or simulations are all acceptable methods of observation, which is one of the means of individual evaluation allowed by the rule.

List of Subjects

49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 195

Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

Accordingly, 49 CFR parts 192 and 195 are corrected by making the following correcting amendments:

PART 192—[CORRECTED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

2. Add a heading to Subpart N to read as follows:

Subpart N—Qualification of Pipeline Personnel

3. Amend § 192.803 by revising the definition of *Evaluation* to read as follows: