have requested that IRFA comments be submitted under a separate and distinct heading.[741] Neither the RFA nor the SBA's rules prescribe the manner in which comments may be submitted in response to an IRFA[742] and, in such circumstances, it is well established that an administrative agency can structure its proceedings in any manner that it concludes will enable it to fulfill its statutory duties.[743] Based on our past practice, we find that separation of comments responsive to the IRFA facilitates our preparation of a compulsory summary of such comments and our responses to them, as required by the RFA. Comments on the impact of our proposed rules on small entities have been integrated into our analysis and consideration of the final rules. We therefore reject SBA's argument that we improperly required commenters to include their comments on the IRFA in a separate section.

358. We also reject SBA's assertion that none of the alternatives in the *NPRM* were designed to minimize the impact of the proposed rules on small businesses and the Idaho Public Utilities Commission's assertion that our rules will be burdensome on new entrants. For example, we proposed that incumbent LECs be required to disclose all information relating to network design and technical standards and information concerning changes to the network that affect interconnection facilities.[744] This proposal allows a potential competitor, that may be a small entity, to collect the information necessary to achieve and maintain efficient interconnection. Thus, the competitor can enter the market by relying, in part or entirely, on the incumbent LEC's facilities. Reduced operational entry barriers are designed to provide reasonable opportunities for new entrants, particularly small entities, to enter the market by minimizing the initial investment needed to begin providing service.

359. In addition, we disagree with the Idaho Public Utilities Commission's contention that the rules devised by the Commission will be burdensome to the majority of Idaho's incumbent LECs. We believe section 251(f) and the rules we have crafted provide states with significant flexibility to "deal with the needs of individual companies in light of public interest concerns," as requested by the Idaho Commission. We note that, pursuant to section 251(f), smaller LECs may petition their state commissioners for suspension or modification of the implementation schedule for toll dialing parity established under section 251(b)(3). Although we have required incumbent LECs to continue performing their current functions related to the administration of numbers, this requirement will expire when numbering administration is transferred to the new North American Number Plan (NANP) Administrator, pursuant to Section 251(e). As incumbent LECs are currently performing these functions and

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[741] *See, e.g., Inquiry into the Development of Regulatory Policy in Regard to Direct Broadcast Satellites*, 86 F.C.C.2d 719, 755 (1981).

[742] *See* 5 U.S.C. § 603 (IRFA requirements).

[743] *See Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 524-25 (1978) (*citing FCC v. Schreiber*, 381 U.S. 279, 290 (1965) and *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 138 (1940)).

[744] *NPRM* paras. 189-190.

we have received no comments from incumbent LECs objecting to this requirement, we do not consider it burdensome for them to continue to perform these tasks during the transition period.

360. In addition, we disagree with SCBA's assertion that the IRFA was deficient because it did not identify small cable operators as entities that would be affected by the proposed rules. The IRFA in the *NPRM* states: "Insofar as the proposals in this Notice apply to telecommunications carriers other than incumbent LECs (generally interexchange carriers and new LEC entrants), they may have a significant impact on a substantial number of small entities."[745] The phrase "new LEC entrants" clearly encompasses small cable operators that become providers of local exchange service. The *NPRM* even identifies cable operators as potential new entrants.[746] Thus, the record shows that we have identified small cable operators as entities that would be affected by the proposed rules.

C. Description and Estimate of the Small Entities Affected by the Rules

361. The RFA defines "small entity" to include the definition of "small business concern" under the Small Business Act, 15 U.S.C. § 632.[747] 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.[748] The SBA has defined companies listed under Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications)[749] and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1,500 employees.[750] The SBA has defined companies listed under the SIC category 7379 (Business Services, not otherwise classified) to be small entities when they have annual receipts of less than five million dollars.[751] These standards also apply in determining whether an entity is a small business for purposes of the RFA.

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[745] *NPRM* para. 277.

[746] *NPRM* para. 6.

[747] *See* 5 U.S.C. § 601(6) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632).

[748] *See* 15 U.S.C. § 632(1)(a).

[749] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

[750] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4813.

[751] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 7379.

362. The rules we adopt today regarding dialing parity and nondiscriminatory access apply to all LECs. The rules regarding public disclosure of changes to local networks apply to all incumbent LECs. Finally, the rules regarding numbering administration impose financial obligations on all telecommunications carriers. These rules also affect IXCs, providers of cellular, broadband PCS, and geographic area 800 MHz and 900 MHz specialized mobile radio services, including licensees who have obtained extended implementation authorizations in the 800 MHz or 900 MHz SMR services, either by waiver or under section 90.629 of the Commission's rules,[752] which may be small business concerns. However, these rules will apply to SMR licensees only if they offer real-time, two-way voice service that is interconnected with the public switched network. Additional business entities affected by this rulemaking include providers of telephone toll service, providers of telephone exchange service, independent operator service providers, independent directory assistance providers, independent directory listing providers, independent directory database managers, and resellers of these services. These entities could be small business concerns.

363. Consistent with our prior practice, we shall continue to exclude small incumbent LECs from the definition of a small entity for the purpose of this FRFA. Nevertheless, as mentioned above, we include small incumbent LECs in our FRFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass "small incumbent LECs." We use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by SBA as "small business concerns."[753]

364. Local Exchange Carriers. Neither the Commission nor SBA has developed a definition of small providers of local exchange services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies, SIC category 4813. For the purposes of revenue reporting, 1,347 companies reported doing business as LECs at the end of 1994.[754] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with any more particularity the number of LECs that would qualify as small business concerns. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and rules adopted in this *Order*.

365. Interexchange Carriers. Neither the Commission nor SBA has developed a definition of small entities that would apply specifically to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications

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[752] 47 C.F.R. § 90.629.

[753] *See* 13 C.F.R. § 121.210 (SIC 4813).

[754] Federal Communications Commission, CCB, Industry Analysis Division, *Telecommunications Industry Revenue: TRS Fund Worksheet Data*, Tbl. 21 (Average Total Telecommunications Revenue Reported by Class of Carrier) (Feb. 1996).

companies other than radiotelephone (wireless) companies, SIC category 4813. The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with Telecommunications Relay Service (TRS). According to our most recent data, 97 companies reported that they were engaged in the provision of interexchange services.[755] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 97 small entity IXCs that may be affected by the decisions and rules adopted in this *Order*.

366. Cellular Service Providers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of cellular service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with TRS. According to our most recent data 789 companies reported that they were engaged in the provision of cellular services.[756] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 789 small entity cellular service carriers that may be affected by the decision and rules adopted in this *Order*.

367. Broadband PCS Licensees. The broadband PCS spectrum is divided into six frequency blocks designated A through F. Pursuant to 47 C.F.R. § 24.720(b), the Commission has defined "small entity" in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. This regulation defining "small entity" in the context of broadband PCS auctions has been approved by the SBA.[757] The Commission has auctioned broadband PCS licenses in Blocks A, B, and C. We do not have sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auction. Based on this information, we conclude that the number of broadband PCS licensees affected by the decisions in this *Order* includes, at a minimum, the 90 winning bidders that qualified as small entities in the Block C broadband PCS auction.

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[755] *Id.*

[756] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

[757] *See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581-84 (1994).

368. At present, no licenses have been awarded for Blocks D, E, and F of broadband PCS spectrum. Therefore, there are no small businesses currently providing these services. A total of 1,479 licenses will be awarded, however, in the D, E, and F Block broadband PCS auctions, which are scheduled to begin on August 26, 1996. Eligibility for the 493 F Block licenses is limited to entrepreneurs with average gross revenues of less than $125 million. We cannot estimate the number of these licenses that will be won by small entities, nor how many small entities will win D or E Block licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees[758] and that no reliable estimate of the number of prospective D, E, and F Block licensees can be made, we assume, for purposes of our evaluations and conclusions in this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA. Broadband PCS licensees are affected by the decisions and rules adopted in this *Order* to the extent that they provide telephone exchange service.

369. SMR Licensees. Pursuant to 47 C.F.R. § 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average gross revenues of less than $15 million in the three previous calendar years. This definition of a "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.[759]

370. The rule adopted in this *Order* applies to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. Since the RFA amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses in this category. We do know that one of these firms has over $15 million in revenues. We assume, for purposes of our evaluations and conclusions in this FRFA, that all of the remaining extended implementation authorizations may be held by small entities, which may be affected by the decisions and rules adopted in this *Order*.

371. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area

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[758] *See* United States Department of Commerce, Bureau of the Census, *Standard Industrial Classification Manual* (1992) (*1992 Census*) SIC Code 4812.

[759] *See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool*, PR Docket No. 89-583, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2693-702 (1995); *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, PR Docket No. 93-144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463 (1995).

SMR licensees affected by the rule adopted in this *Order* includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis to estimate, moreover, how many small entities within the SBA definition will win these licenses. Because nearly all radiotelephone companies have fewer than 1,000 employees and no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of our evaluations and conclusions in this FRFA, that all of the licenses will be awarded to small entities, as defined by the SBA. Those SMR licensees that provide telephone exchange service will be affected by the decisions in this *Order*.

372. Providers of Telephone Toll Service, Providers of Telephone Exchange Service. Neither the Commission nor the SBA has developed a definition of small entities applicable to providers of telephone toll service and telephone exchange service. According to the 1992 Census, there were approximately 3,497 firms engaged in providing telephone services, as defined therein, for at least a year.[760] 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, PCS providers, covered SMR providers, providers of telephone toll service, providers of telephone exchange service, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small businesses because they are not "independently owned and operated."[761] It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are providers of telephone toll service or providers of telephone exchange service and are small entities that may be affected by this *Order*.

373. Independent Operator Service Providers, Independent Directory Assistance Providers, Independent Directory Listing Providers, and Independent Directory Database Managers. We were unable to obtain reliable data regarding the number of entities that provide these telecommunications services or how many of these are small entities. The Commission has not developed a definition of small entities applicable to telecommunications service providers. Therefore, the closest applicable definition of a small entity providing telecommunications services is the definition under SBA rules applicable to business services companies, SIC 7389, which defines a small entity to be a business services company with annual receipts of less than five million dollars. U.S. Census data provides that 46,289 firms providing business services had annual receipts of 5 million dollars or less.[762] Because it

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[760] *See* United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities; Establishment and Firm Size*, at Firm Size 1-123 (1995) *(1992 Census)*.

[761] 15 U.S.C. § 632(a)(1).

[762] *1992 Census*, Table 2D, SIC Code 7389.

seems unlikely that all of the business services firms would meet the other criteria, it seems reasonable to conclude that fewer than 46,289 firms may be small entities that might be affected by our *Order*.

374. Resellers. Neither the Commission nor 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, SIC category 4813. However, the most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with TRS. For the purposes of revenue reporting, 206 companies reported doing business as resellers at the end of 1994.[763] Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small entities or small incumbent LEC concerns under SBA's definition. Consequently, we estimate that there are fewer than 206 small entity resellers that may be affected by the decisions and rules adopted in this *Order*.

375. Telephone Companies. U.S. Census data provides that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least a year.[764] 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, PCS providers, covered SMR providers, providers of telephone toll service, providers of telephone exchange service, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small businesses because they are not "independently owned and operated."[765] It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are telephone companies and small entities that may be affected by this *Order*.

376. Cable System Operators. SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than $11 million in revenues annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. According to the Census Bureau, there were 1,323 such cable and other pay television services generating less

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[763] Federal Communications Commission, CCB, Industry Analysis Division, *Telecommunications Industry Revenue: TRS Fund Worksheet Data*, Tbl. 21 (Average Total Telecommunications Revenue Reported by Class of Carrier) (Feb. 1996).

[764] *See* United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities; Establishment and Firm Size*, at Firm Size 1-123 (1995) *(1992 Census)*.

[765] 15 U.S.C. § 632(a)(1).

than $11 million in revenue that were in operation for at least one year at the end of 1992.[766] The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation, which has been approved by SBA.[767] Under the Commission's rules, a "small cable company is one serving fewer than 400,000 subscribers nationwide." Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with the other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable companies that may be affected by the decisions and rules adopted in this *Order*.

377. The Communications Act of 1934 also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[768] There were 63,196,310 basic cable subscribers at the end of 1995, and 1,450 cable system operators serving fewer than 1 percent (631,960) of subscribers.[769] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable systems operators that would qualify as small cable operators under the definition in the Communications Act of 1934.

D. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements and their Effect on Small Businesses And Steps Taken to Minimize the Significant Economic Impact on Small Entities and Alternatives Considered

378. Structure of the Analysis. In this section of the FRFA, we analyze the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities as a result of this *Order*.[770] As a part of this discussion, we mention some of the types of skills that will be needed to meet the new requirements. We also describe the steps taken to minimize the economic impact of our decisions on small entities, including the significant

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[766] *1992 Census, supra*, at Firm Size 1-123.

[767] Small Bus. Admin., *13 C.F.R. Part 121 - Small Business Size Regulations*, Proposed Rules, 60 Fed. Reg. 57982, 57988 (Nov. 24, 1995).

[768] 47 U.S.C. § 543(m)(2).

[769] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[770] *See* 5 U.S.C. § 604(a)(4).

alternatives considered and rejected.[771] Due to the size of this *Order*, we set forth our analysis separately for individual sections of the *Order*, using the same headings as were used above in the corresponding sections of the *Order*.

379. To the extent that any statement contained in this FRFA is perceived as creating ambiguity with respect to our rules or statements made in preceding sections of this *Order*, the rules and statements set forth in those preceding sections shall be controlling.

380. Dialing Parity Requirements. The dialing parity provisions of section 251(b)(3) entitle customers to choose different carriers for their local exchange, intraLATA toll, and interLATA toll services without the burden of dialing access codes. Each LEC is required to provide dialing parity to providers of telephone exchange and telephone toll service with respect to all telecommunications services that require dialing to route a call. This obligation encompasses international, interstate, intrastate, local and toll services.

381. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements. In order to comply with the guidelines and minimum federal standards established in this *Order*, each LEC must implement toll dialing parity utilizing the "full 2-PIC" presubscription method and following the mandated timetable for implementation of toll dialing parity. Although no timetable was adopted for implementing local dialing parity it is expected that it will be achieved through LECs' compliance with other section 251 requirements. LECs may recover the incremental costs of implementing local and toll dialing parity such as the costs of dialing parity-specific switch software, hardware, signalling system upgrades and necessary consumer education. These costs will be recovered from all providers of telephone exchange service and telephone toll service in the area served by the LEC, including the LEC, through the use of a competitively-neutral allocator established by each state. Compliance with these requirements may entail the use of engineering, technical, operational, and accounting skills.

382. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered. This *Order* adopts broad guidelines and minimum federal standards for toll dialing parity so that LECs and competing providers of telephone toll service, many of whom will be small business entities, will not be subject to an array of differing state standards and timetables requiring them to research and tailor their operations to the unique requirements of each state

383. First, we required all LECs to implement toll dialing parity based on LATA boundaries.[772] Non-BOC LECs, including many smaller LECs, that implement intraLATA and interLATA toll dialing parity may choose whichever LATA within their state that they deem to be most appropriate to define the area within which they will offer intraLATA toll

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[771] *See* 5 U.S.C. § 604(a)(5).

[772] *See supra* para. 37.

dialing parity. State commissions, in ruling upon such a choice of LATA association, shall determine whether the proposed LATA association is in the public interest. Because many smaller LECs have not been subject to LATA boundary distinctions, we also gave states the flexibility to take such factors into account and to require that toll dialing parity be based on state rather than LATA boundaries in their jurisdictions. Insofar as a state determines that presubscription should occur along state, rather than LATA, boundaries, we anticipate that such a determination will assist smaller LECs, in particular, by permitting those LECs to define their service markets based on a geographic distinction that is familiar to consumers.

384. In addition, we adopted the "full 2-PIC" nationwide presubscription method for implementing the toll dialing parity requirements.[773] In making this decision we considered a number of methodologies, including the "modified 2-PIC," "the multi-PIC" and the "smart-PIC" methods. We concluded that the "modified 2-PIC" would limit the number of competitive service providers that could participate in the market and that the "multi-PIC" method had not yet proven to be technically and economically feasible. As the "full 2-PIC" method is widely available and well defined, we noted that LECs, many of which are small entities, would not be forced to purchase and maintain an expensive, untested, and new technology. The *Order* provides that, until the Commission considers the use of the "multi-PIC" or "smart-PIC methods," states may impose such additional requirements only after evaluating the technical feasibility and economic impact of those requirements on smaller LECs in their jurisdictions.

385. We instituted a federal toll dialing parity implementation schedule rather than allowing states to implement their own schedules.[774] This federally-mandated plan will provide certainty for competitors, some of which may be small business entities, seeking to become telephone toll service providers. Both LECs and competing providers of telephone toll service will be able to develop business plans and advertising strategies based upon specific timelines. This ability to plan ahead is cost-efficient and levels the playing field for all seeking to participate in the marketplace.

386. We also concluded that a LEC may not accomplish toll dialing parity by automatically assigning toll customers to itself, to a customer's currently presubscribed interLATA or interstate toll carrier, or to any other carrier except when, in a state that already has implemented intrastate, intraLATA toll dialing parity, the subscriber has selected the same interLATA and intraLATA, or interstate and intrastate, presubscribed carrier.[775] This requirement prevents a carrier from automatically designating itself as a toll carrier without notifying the customer of the opportunity to choose an alternative carrier, one or more of which may be a small business.

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[773] *See supra* paras. 49-50.

[774] *See supra* para. 62.

[775] *See supra* para. 81.

387. Lastly, we implemented national rules for the recovery of dialing parity costs.[776] Although it was suggested that these costs be borne only by new entrants, and not incumbent LECs, we determined that the network upgrades necessary to achieve dialing parity should be recovered on a competitively-neutral basis. A competitively neutral cost recovery mechanism prevents incumbent LECs from imposing excessive fees upon competing entrants, some of which may be small businesses. The imposition of excessive fees could constitute an impediment to entry into the intraLATA toll market by small entities that lack extensive financial resources and could reinforce the marketplace dominance of established LECs. A competitively-neutral cost recovery mechanism also benefits small LECs that might otherwise have been unduly burdened by a cost allocation plan requiring an equal payment from each entity.

388. Nondiscriminatory Access Provisions. Under section 251(b)(3), all LECs are required to allow competing providers of telephone exchange service and telephone toll service access to telephone numbers, operator services, directory assistance, and directory listings that is at least equal in quality to the access the LEC itself receives, without unreasonable dialing delays. LECs are required to make available to competing providers operator services and directory assistance and all adjunct features necessary for the use of these services.

389. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements. In order to comply with the nondiscriminatory access provisions all LECs must share subscriber listing information with their competitors in "readily accessible" tape or electronic formats. This information must be provided upon request and in a timely manner.[777] In addition, each LEC must process all calls from competing providers, including calls to the LEC's operator services and directory assistance, on an equal basis as calls originating from the providing LEC.[778] LECs that refuse to comply with reasonable, technically feasible requests from competing providers for "rebranding" of resold operator services or directory assistance are presumed to be unlawfully restricting access to these services.[779] Compliance with these requests may require the use of engineering, computer, accounting, and legal skills.

390. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered. The entitlement to access, on a nondiscriminatory basis, to telephone numbers, operator services, directory assistance and directory listings will benefit providers competing with incumbent LECs. Many of these

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[776] *See supra* para. 92.

[777] *See supra* para. 141.

[778] *See supra* para. 159.

[779] *See supra* paras. 128, 148.

competitors will be small business entities. The requirement that LECs make their operator assistance and directory listing services available to competitors may allow those competitors to save the time and money it would take to build similar information resources. Additionally, these competing providers will benefit because they will be able to offer consumers at least the same quality of operator service and directory assistance that is provided by the established LEC. Small entities will be able to compete with established LECs more quickly and with less initial investment. Their services will have an opportunity to become equally valuable and equally marketable to consumers. We have declined to support alternatives that would have allowed LECs to degrade or limit access to these services, because such behavior would bar competitive entry into the telecommunications services market.

391. Network Disclosure. Pursuant to section 251(c)(5) incumbent LECs are required to provide "reasonable public notice" of changes in their network which would affect a competing service provider's performance or ability to provide service or otherwise affect carriers' interoperability. The types of changes that incumbent LECs must disclose include, but are not limited to, changes that affect transmission, signalling standards, call routing, network configuration, electronic interfaces or data elements.

392. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements. To implement this disclosure requirement, this *Order* imposes a new filing requirement on incumbent LECs that plan to make changes to their networks. An incumbent LEC has a choice of filing certain information with the Commission or of filing a short certification with the Commission that the equivalent information has been disclosed elsewhere. In either case, the incumbent LEC is also responsible for maintaining the accuracy of the information. Compliance with this requirement may require the use of engineering, technical, computer, and legal skills.

393. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered. This recordkeeping submission requirement should, in fact, ease the burden on smaller entities in their endeavor to remain abreast of changes to the incumbent LEC network with which they interconnect. In our *Order*, we authorize the use of industry forums, industry publications, and the Internet, to make public disclosure of network changes and required technical information by incumbent LECs. We believe that "this approach would build on a voluntary practice that now exists in the industry and would result in broad availability of the information."[780] By making information broadly available, we hope to facilitate the participation of entities, such as small businesses, that lack the resources to participate in industry forums. We originally postulated that public notice should be provided exclusively through industry fora or industry publications.[781] Upon further consideration, however, we broadened the means by which an

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[780] *NPRM* at para. 191.

[781] *See supra* para. 192.

incumbent LEC could satisfy our public notice requirement to include two alternative low-cost mechanisms -- use of the Internet or filing with the Commission.[782] These additional options will be beneficial to small incumbent LECs because they will allow those small LECs to meet their network disclosure obligations without incurring the costs associated with attending industry conferences or publishing the information in an industry magazine or journal.

394. Numbering Administration. Section 251(e) confers upon the Commission exclusive authority over all matters relating to the administration of numbering resources that pertain to the United States. To implement section 251(e)(1) the Commission plans to designate a North American Numbering Plan (NANP) Administrator that will administer telecommunications numbering in the United States equitably and impartially. Pursuant to 251(e)(2) the cost of establishing and maintaining the NANP Administrator will be borne by all telecommunications carriers on a competitively neutral basis.

395. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements. The Commission has authorized state public utility commissions to perform the task of implementing new area codes subject to Commission guidelines. If a state commission chooses to initiate and plan area code relief, it must inform the NANP Administrator of the functions the commission will perform. All telecommunications carriers will be required to contribute to the costs of establishing numbering administration. Compliance with this requirement will require engineering, technical, operational, and accounting skills.

396. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered. Although the Commission has authorized states to implement new area codes, it has stipulated that states may not implement them in a manner that will unduly favor or disadvantage any particular industry segment or group of consumers.[783] Accordingly, the Commission has prohibited service-specific or technology specific area code overlays, because they would exclude certain services or carriers, that may be small business entities, from the existing area code and would segregate their operations in a new area code.[784] If states choose to implement all-service overlays, the Commission has required that there be 10-digit dialing for all local calls in areas served by such overlays to ensure that competition will not be deterred as a result of dialing disparity.[785] Without mandatory 10-digit dialing, customers might find it less attractive to switch carriers because competing LECs, many of which may be new entrants to the market and may include small businesses, would have to assign their customers numbers in the new overlay area code.

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[782] *See supra* para. 198.

[783] *See supra* para. 281.

[784] *See supra* para. 285.

[785] *See supra* para. 286.

This would require those customers to dial 10 digits much more often than the incumbents' customers. Requiring 10-digit dialing for all local calls avoids the potentially anti-competitive effect of all-service area code overlays. In addition, to advance competition, the Commission has required that where an area code overlay is implemented, every entity authorized to provide local exchange service in the old area code, which may include small businesses, must be assigned at least one NXX in that area code.

397. Under the 1996 Act each telecommunications carrier must contribute to cover the cost of numbering administration. Many alternatives for allocating these costs were considered to ensure that each carrier would contribute to a fund to cover the cost of numbering administration on a competitively neutral basis. The contributions will be based on the carrier's gross revenues from its provision of telecommunications services reduced by all payments for telecommunications services or facilities that are paid to other telecommunications carriers. Such a competitively neutral cost allocation plan benefits small incumbent LECs that might have been unduly burdened by a cost apportionment plan requiring an equal payment from each entity.[786]

E. Report to Congress

398. The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this *Order*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the *Federal Register*.

VII. ORDERING CLAUSES

399. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201-209, 218, 251, and 332 of the Communications Act, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-209, 218, 251 and 332, Parts 51 and 52 of the Commission's rules, 47 C.F.R. Parts 51, 52 are **AMENDED** as set forth in Appendix B hereto.

400. IT IS FURTHER ORDERED that the policies, rules, and requirements set forth herein ARE ADOPTED.

401. IT IS FURTHER ORDERED, pursuant to Sections 416(a) and 413 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 416(a) and 413, that the Secretary shall serve this *Second Report and Order and Memorandum Opinion and Order* on all local exchange carriers, as defined in Section 3(26) of the Communications Act of 1934, as amended, 47 U.S.C. § 153(26), that have designated in writing an agent in the District of Columbia, upon whom service of all notices and process and all orders, decisions, and

[786] *See supra* para. 343.

requirements of the Commission may be made for and on behalf of the local exchange carrier, as required by Section 413 of the Communications Act of 1934, as amended, 47 U.S.C. § 413.

402. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 408 of the Communications Act, as amended, 47 U.S.C. § 408, all authorizations for state commissions, Bellcore, and local administrators, including LECs, to perform certain numbering administration functions, consistent with the terms as defined in this *Order*, are effective immediately. Because of the need to avoid disruption in numbering administration, we find that there is good cause for this action pursuant to 5 U.S.C. § 553(d)(3). All other policies, rules, and requirements set forth herein are effective 30 days after publication of this order in the *Federal Register*, except for collections of information subject to approval by the Office of Management and Budget ("OMB"), which are effective 70 days following publication in the *Federal Register*.

403. IT IS FURTHER ORDERED that, pursuant to Sections 4, 5, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 155, and 405, *In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois*, IAD File no. 94-102, Declaratory Ruling and Order, 10 FCC Rcd. 4596 (1995) IS CLARIFIED to the extent indicated herein at paragraph numbers 281-293.

404. IT IS FURTHER ORDERED that, pursuant to the authority contained in Sections 4(i), 251(e)(1), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 251(e)(1) and 405, Comcast Corporation's Petition for Clarification or Reconsideration of *In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois*, IAD File no. 94-102, Declaratory Ruling and Order, 10 FCC Rcd. 4596 (1995), IS DISMISSED as moot.

405. IT IS FURTHER ORDERED that, pursuant to the authority contained in Sections 4(i), 251(e)(1), and 405 of the Communications Act, as amended, 47 U.S.C. §§154(i), 251(e)(1), and 405, the Petition for Limited Clarification and/or Reconsideration filed by the Pennsylvania Public Utilities Commission and the Request for Clarification filed by the National Association of Regulatory Utility Commissioners of *In the Matter of Administration of the North American Numbering Plan*, CC Docket No. 92-237, Report and Order, 11 FCC Rcd 2588 (1995) ARE hereby DISMISSED.

406. IT IS FURTHER ORDERED that the relief requested in the petition for declaratory ruling filed by the Texas Public Utilities Commission is DENIED.

407. IT IS FURTHER ORDERED that, pursuant to section 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(1), authority is delegated to the Chief, Common Carrier Bureau, to act on petitions filed by parties wishing to dispute proposed area code plans, to act on toll dialing parity implementation plans filed by LECs seeking to implement toll dialing parity, and to issue orders fixing reasonable public notice

periods in the case of contested short term disclosure by incumbent local exchange carriers of network changes under 251(c)(5).

408. IT IS FURTHER ORDERED that, to the extent that issues from CC Docket No. 95-185, *In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Service Providers,* are resolved here, we incorporate the relevant portions of the record in that docket pertaining to paging carriers being charged fees for the opening of central office codes and for blocks of numbers.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A - LIST OF PARTIES

Comments: (filed on or before May 20, 1996)

American Communications Services, Inc. (ACSI)
Ameritech
Association for Local Telecommunications Services (ALTS)
AT&T Corporation (AT&T)
Beehive Telephone Company, Inc. (Beehive)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Corporation (BellSouth)
Cellular Telecommunications Industry Association (CTIA)
Cincinnati Bell Telephone Company (CBT)
Citizens Utilities Company (Citizens Utilities)
Cox Communications, Inc. (Cox)
District of Columbia Public Service Commission (District of Columbia Commission)
Excel Telecommunications (Excel)
Florida Public Service Commission (Florida Commission)
Frontier Corporation (Frontier)
General Communication, Inc. (GCI)
General Services Administration/Department of Defense (GSA/DOD)
GTE Service Corporation (GTE)
GVNW Inc./Management (GVNW)
Illinois Commerce Commission (Illinois Commission)
Indiana Utility Regulatory Commission (Indiana Commission Staff)
Lincoln Telephone and Telegraph Company (Lincoln Telephone)
Louisiana Public Service Commission (LPSC)
MCI Telecommunications Corporation (MCI)
MFS Communications Company, Inc. (MFS)
Michigan Public Service Commission (Michigan Commission Staff)
National Cable Television Association, Inc. (NCTA)
New Jersey, Staff of Board of Public Utilities (New Jersey Commission)
NEXTLINK Communications, L.L.C. (NEXTLINK)
Northern Telecom inc. (Nortel)
NYNEX Telephone Companies (NYNEX)
Office of the Ohio Consumers' Counsel (Ohio Consumers' Counsel)
Omnipoint Communications, Inc. (Omnipoint)
Pacific Telesis Group (PacTel)
Paging Network, Inc. (PageNet)
Pennsylvania Public Utility Commission (Pennsylvania Commission)
People of the State of California and the Public Utility Commission of the State of California (California Commission)
Public Utilities Commission of Ohio (Ohio Commission)
Rural Telephone Coalition (Rural Tel. Coalition)

SBC Communications Inc. (SBC)
Small Cable Business Association (SCBA)
Sprint Corporation (Sprint)
Telecommunications Resellers Association
Telecommunications Carriers for Competition (TCC)
Teleport Communications Group Inc. (Teleport)
Texas Public Utilities Commission (Texas Commission)
The Western Alliance (Western Alliance)
Time Warner Communications Holdings, Inc. (Time Warner)
U S WEST, Inc. (U S WEST)
United States Telephone Association (USTA)
Vanguard Cellular Systems, Inc. (Vanguard)
WinStar Communications, Inc. (WinStar)

Replies: (filed on or before June 3, 1996)

A-Plus Network, Inc. (A-Plus)
ACSI
American Electric Power Service Corp.
Ameritech
AT&T
Bell Atlantic
Bell Atlantic/NYNEX Mobile
BellSouth
California Commission
Carolina Power and Light Co.
CBT
Citizens Utilities
Consolidated Edison Company of New York (Con Ed)
Cox
Delmarva Power and Light (Delmarva)
District of Columbia Commission
General Communication, Inc. (GCI)
GSA/DOD
GTE Service Corporation (GTE)
Iowa Network Services, Inc., SDN Inc., and KIN Network, Inc. (Iowa Network Services)
Joint Cable Companies
Koch
MCI
MFS
Minnesota Independant Equal Access Corporation (MIEAC)
Motorola, Inc.
Municipal Utilities

National Exchange Carriers Association (NECA)
NCTA
New England Electric Companies
New Mexico Public Service Corporation
NEXTLINK
NYNEX
Ohio Consumers' Counsel
Ohio Edison Company
PacTel
PageNet
Puerto Rico Telephone Company
Rural Tel. Coalition
SBC
Sprint
TCC
Telecommunications Resellers Association
Teleport
U S WEST
USTA
Vanguard
Western Alliance
WinStar

Parties filing comments in the Texas PUC matter

Comments

AT&T
BellSouth
Century Cellunet, Inc. (Century Cellunet)
Competitive Telecommunications Association (CompTel)
Cox
GTE
Houston Cellular Telephone Company (HCTC)
Intelcom Group (U.S.A.), Inc. (Intelcom)
MCI
MFS
Nextel Communications, Inc. (Nextel)
PageNet
Personal Communications Industry Association (PCIA)
ProNet, Inc. (ProNet)
SBC
Sprint Spectrum
Sprint