

**APPENDIX C****INITIAL REGULATORY FLEXIBILITY ANALYSIS**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (Further Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the Further Notice. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. § 603(a). In addition, this Further Notice and the IRFA (or summaries thereof) will be published in the Federal Register.

**F. Need for, and Objectives of, the Proposed Rules**

2. The Commission determined that the record in this proceeding demonstrates that basic customer account information that carriers require to ensure accurate billing of end user customers and to execute end user customer requests in a timely manner is not being provided by all LECs and by all IXC. This can inhibit customers' ability to move seamlessly from one carrier to another, and can result in substantial increases in unbillable calls and customer complaints. Therefore, we adopted new rules to facilitate the exchange of customer account information between LECs and IXCs to ensure that consumer's phone service bills are accurate and that their carrier selection requests are honored and executed without undue delay.

3. The record suggests that local service providers experience many of the same difficulties with access to customer account information as described by Joint Petitioners, and that the sharing of necessary customer information is not limited to changes involving presubscribed IXCs. It appears that with the increase in competition and churn in the local market, coupled with the advent of local number portability, the failure to exchange information in a uniform or timely manner may result in an increase in customer migrations from LEC to LEC that are not seamless. Therefore, the Further Notice seeks comment on the exchange of information between LECs and asks whether the Commission should require that all local service providers participate in the exchange of customer account information. We seek comment specifically on whether mandating the exchange of customer account information among LECs will reduce the problems identified by commenters, including double billing, delays in migration, and consumer confusion about their service.

**G. Legal Basis**

4. The legal basis for any action that may be taken pursuant to this Further Notice is contained in sections 1, 4(i), 4(j), 201, 202, 206-208, 222, and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 202, 206-208, 222, and 258, and sections 1.421 and 1.429 of the Commission's rules, 47 C.F.R. §§ 1.421 and 1.429.

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

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>2</sup> The RFA generally

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<sup>1</sup> 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> *See* 5 U.S.C. § 603(b)(3).

defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>3</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act.<sup>4</sup> 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) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>5</sup>

6. We have included small incumbent LECs in this RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a wireline telecommunications business having 1,500 or fewer employees), and "is not dominant in its field of operation."<sup>6</sup> 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.<sup>7</sup> We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

7. Incumbent Local Exchange Carriers. Neither the Commission nor the SBA has developed a small business size standard for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees.<sup>8</sup> According to the FCC's Telephone Trends Report data, 1,310 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services.<sup>9</sup> Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees.<sup>10</sup> Consequently, the Commission estimates that the majority of providers of local exchange services are small entities that may be affected by the rules and policies adopted herein.

8. Competitive Local Exchange Carriers and Competitive Access Providers. Neither the Commission nor the SBA has developed specific small business size standards for providers of competitive local exchange services or competitive access providers (CAPs). The closest applicable size

<sup>3</sup> 5 U.S.C. § 601(6).

<sup>4</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

<sup>5</sup> 15 U.S.C. § 632.

<sup>6</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>7</sup> See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 5 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

<sup>8</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>9</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, at Table 5.3, p. 5 - 5 (May 2004) (*Telephone Trends Report*). This source uses data that are current as of October 22, 2003.

<sup>10</sup> *Id.*

standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees.<sup>11</sup> According to the FCC's Telephone Trends Report data, 563 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services.<sup>12</sup> Of these 563 companies, an estimated 472 have 1,500 or fewer employees, and 91 have more than 1,500 employees.<sup>13</sup> Consequently, the Commission estimates that the majority of providers of competitive local exchange service and CAPs are small entities that may be affected by the rules.

9. Local Resellers. The SBA has developed a specific size standard for small businesses within the category of Telecommunications Resellers. Under that standard, such a business is small if it has 1,500 or fewer employees.<sup>14</sup> According to the FCC's Telephone Trends Report data, 127 companies reported that they were engaged in the provision of local resale services.<sup>15</sup> Of these 127 companies, an estimated 121 have 1,500 or fewer employees, and six have more than 1,500 employees.<sup>16</sup> Consequently, the Commission estimates that the majority of local resellers may be affected by the rules.

10. Toll Resellers. The SBA has developed a specific size standard for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.<sup>17</sup> According to the FCC's Telephone Trends Report data, 645 companies reported that they were engaged in the provision of toll resale services.<sup>18</sup> Of these 645 companies, an estimated 619 have 1,500 or fewer employees, and 26 have more than 1,500 employees.<sup>19</sup> Consequently, the Commission estimates that a majority of toll resellers may be affected by the rules.

11. Interexchange Carriers. Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to providers of interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees.<sup>20</sup> According to the FCC's Telephone Trends Report data, 281 carriers reported that their primary telecommunications service activity was the provision of interexchange services.<sup>21</sup> Of these 281 carriers, an estimated 254 have 1,500 or fewer employees, and 27 have more than 1,500 employees.<sup>22</sup> Consequently, we estimate that a majority of interexchange carriers may be affected by the rules.

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<sup>11</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>12</sup> *Telephone Trends Report*, Table 5.3. The data are grouped together in the *Telephone Trends Report*.

<sup>13</sup> *Id.*

<sup>14</sup> 13 C.F.R. § 121.201, NAICS code 517310.

<sup>15</sup> *Telephone Trends Report*, Table 5.3.

<sup>16</sup> *Id.*

<sup>17</sup> 13 C.F.R. § 121.201, NAICS code 517310.

<sup>18</sup> *Telephone Trends Report*, Table 5.3.

<sup>19</sup> *Id.*

<sup>20</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>21</sup> *Telephone Trends Report*, Table 5.3.

<sup>22</sup> *Id.*

12. **Operator Service Providers.** Neither the Commission nor the SBA has developed a size standard for small entities specifically applicable to operator service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees.<sup>23</sup> According to the FCC's Telephone Trends Report data, 21 companies reported that they were engaged in the provision of operator services.<sup>24</sup> Of these 21 companies, an estimated 20 have 1,500 or fewer employees, and one has more than 1,500 employees.<sup>25</sup> Consequently, the Commission estimates that a majority of operator service providers may be affected by the rules.

13. **Prepaid Calling Card Providers.** The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>26</sup> According to the FCC's Telephone Trends Report data, 40 companies reported that they were engaged in the provision of prepaid calling cards.<sup>27</sup> Of these 40 companies, all 40 are estimated to have 1,500 or fewer employees.<sup>28</sup> Consequently, the Commission estimates that all or most prepaid calling card providers may be affected by the rules.

14. **Other Toll Carriers.** Neither the Commission nor the SBA has developed a size standard for small entities specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees.<sup>29</sup> According to the FCC's Telephone Trends Report data, 65 carriers reported that they were engaged in the provision of "Other Toll Services."<sup>30</sup> Of these 65 carriers, an estimated 62 have 1,500 or fewer employees, and three have more than 1,500 employees.<sup>31</sup> Consequently, the Commission estimates that a majority of "Other Toll Carriers" may be affected by the rules.

#### **I. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

15. As noted, we seek comment on whether mandatory minimum standards for the exchange of customer account information between local service providers could provide consistency within the industry and could eliminate a significant percentage of consumer complaints concerning billing errors. In addition, we ask whether the Commission should mandate the use of CARE transaction codes to facilitate the exchange of customer account information. In the event any new standards for LEC-to-LEC exchanges are adopted, we expect that such standards will be minimal and will provide sufficient

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<sup>23</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>24</sup> *Telephone Trends Report*, Table 5.3.

<sup>25</sup> *Id.*

<sup>26</sup> 13 C.F.R. § 121.201, NAICS code 517310.

<sup>27</sup> *Telephone Trends Report*, Table 5.3.

<sup>28</sup> *Id.*

<sup>29</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>30</sup> *Telephone Trends Report*, Table 5.3.

<sup>31</sup> *Id.*

flexibility in their application that they will not create any significant burden on small entities.

**J. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

16. 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 such 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.<sup>32</sup>

17. The Further Notice seeks comment on whether the Commission should impose mandatory minimum standards on all LECs for the exchange of customer account information between local service providers.<sup>33</sup> We seek specific information addressing the possible impact of such mandatory requirements on smaller carriers. We ask whether implementing CARE codes would be problematic for any LECs, or for small or rural LECs in particular. We also ask commenters to discuss how, if we were to adopt minimum standards for the exchange of information among LECs, we could provide sufficient flexibility to protect carriers, particularly small/rural LECs, from undue burdensome requirements. We do not have any evidence before us at this time regarding whether proposals outlined in this Further Notice would, if adopted, have a significant economic impact on a substantial number of small entities. However, the record in the proceeding involving LEC-to-IXC transfers revealed that there would likely be some additional burdens on small LECs required to transfer customer account information to IXCs. Therefore, we recognize that, in the context of LEC-to-LEC exchanges, mandating the exchange of customer account information may result in additional burdens on small entities. We therefore seek comment on the potential impact of these proposals on small entities, and whether there are any less burdensome alternatives that we should consider.

**K. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

18. In addressing the exchange of customer account information between LECs and IXCs, we noted that section 222 of the Communications Act governs carriers' use of customer proprietary network information and generally prohibits a carrier from disclosing such information. Although we do not believe section 222 duplicates, overlaps, or conflicts with the proposed rules on LEC-to-LEC exchanges, we seek comment on the interplay between section 222 and the proposed rules.

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<sup>32</sup> 5 U.S.C. § 603(c)(1)-(c)(4).

<sup>33</sup> See Further Notice at ¶¶ 75-81.

**APPENDIX D****Committer/Date Filed**

Alliance for Telecommunications Industry Solutions (6/3/04)  
 Americatel Corporation (6/3/04)  
 BellSouth Telecommunications, Inc. (6/3/04)  
 California Public Utilities Commission/People of California (6/3/04)  
 Cincinnati Bell Telephone Company (6/3/04)  
 Cox Communications (6/3/04)  
 Creative Support Solutions (6/3/04)  
 CTIA – The Wireless Association (6/3/04)  
 Frontier & Citizens Communications (6/2/04)  
 Intrado, Inc. (6/3/04)  
 Joint Petitioners (AT&T, Sprint Corporation, & MCI, Inc.) (6/3/04)  
 Martin Group (6/1/04)  
 National Association of Regulatory Utility Commissioners (6/3/04)  
 National Association of State Utility Consumer Advocates (6/3/04)  
 National Telecommunications Cooperative Association (6/3/04)  
 New England Conference of Public Utilities Commissioners (6/3/04)  
 New York Office of the Attorney General (6/3/04)  
 Nextel Communications, Inc. (6/3/04)  
 NeuStar, Inc. (6/3/04)  
 Office of the People's Counsel for the District of Columbia (6/3/04)  
 Oklahoma Rural Telephone Companies (6/3/04)  
 Public Utility Commission of Texas (6/1/04)  
 Qwest Communications International, Inc. (6/3/04)  
 Rural Incumbent Local Exchange Carriers (6/3/04)  
 SBC Communications (6/3/04)  
 TDS Telecommunications Corp. (6/3/04)  
 Telcordia Technologies, Inc. (6/3/04)  
 Texas Statewide Telephone Cooperative, Inc. (6/3/04)  
 Time Warner Telecom, Inc. (6/3/04)  
 Transaction Networks (4/28/04)  
 United States Telecom Association (6/3/04)  
 Verizon (6/3/04)  
 Working Assets Long Distance (6/3/04)

**Abbreviation**

ATIS  
 Americatel  
 BellSouth  
 CPUC  
 CBT  
 Cox  
 CSS  
 CTIA  
 Frontier  
 Intrado  
 Joint Petitioners  
 Martin  
 NARUC  
 NASUCA  
 NTCA  
 NECPUC  
 NYOAG  
 Nextel  
 NeuStar  
 OPC-DC  
 Okla. RTCs  
 PUCTX  
 Qwest  
 Rural ILECs  
 SBC  
 TDS  
 Telcordia  
 TSTCI  
 TWTC  
 TN  
 USTA  
 Verizon  
 Working Assets

**Reply Committer/Date Filed**

Alliance for Telecommunications Industry Solutions (6/18/04)  
 Americatel Corporation (6/18/04)  
 Association for Local Telecommunications Services (6/18/04)  
 California Public Utilities Commission/People of California (6/18/04)  
 Cox Communications (6/18/04)  
 GVNW Consulting, Inc. (6/17/04)  
 Joint Petitioners (AT&T, Sprint Corporation, & MCI, Inc.) (6/18/04)  
 National Exchange Carrier Association, Inc. et al. (6/18/04)  
 National Association of State Utility Consumer Advocates (6/18/04)  
 New Jersey Division of the Ratepayer Advocate (6/18/04)  
 New York Office of the Attorney General (6/10/04)  
 Office of the People's Counsel for the District of Columbia (6/17/04)

ATIS  
 Americatel  
 ALTS  
 CPUC  
 Cox  
 GVNW  
 Joint Petitioners  
 NECA  
 NASUCA  
 NJDRA  
 NYOAG  
 OPC-DC

|  |                    |
|--|--------------------|
| Oklahoma Rural Telephone Companies (6/18/04)             | Okla. RTCs         |
| Oregon Office of the Attorney General (6/18/04)          | OOAG               |
| Pennsylvania Public Utility Commission (6/18/04)         | PPUC               |
| <i>Rural Incumbent Local Exchange Carriers (6/18/04)</i> | <i>Rural ILECs</i> |
| SBC Communications (6/18/04)                             | SBC                |
| TDS Telecommunications Corp. (6/18/04)                   | TDS                |
| Texas Statewide Telephone Cooperative, Inc. (6/18/04)    | TSTCI              |
| Verizon (6/18/04)  | Verizon            |
| WilTel Communications, LLC (6/18/04)                     | WilTel             |
| Working Assets Long Distance (6/18/04)                   | Working Assets     |

**CONSOLIDATED STATEMENT OF  
CHAIRMAN MICHAEL K. POWELL**

- RE: In the Matter of Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligation on All Local and Interexchange Carriers, CG Docket No. 02-386.*
- RE: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278.*
- RE: Presubscribed Interexchange Carrier Charges, CC Docket No. 02-53.*

The three items the Commission adopts today continue our efforts to place consumers at the forefront of the Commission's agenda. Specifically, we take action to strengthen the Commission's telemarketing rules, which were amended in 2003. This continues the work begun in 2003 with the establishment of a national do-not-call registry and other consumer protection measures concerning telemarketing calls. The do-not-call registry now contains over 80 million telephone numbers and continues to serve as an option to protect consumers from unwanted telemarketing calls.

Moreover, the rules we adopt today help to ensure that consumers' phone service bills are accurate and that their carrier selection requests are honored and executed without undue delay. Facilitating the exchange of customer account information in certain situations will assist all carriers in resolving billing issues and moving customers seamlessly from one carrier to another. I am pleased that the Commission has endorsed a proposal that has garnered the support of a broad cross-section of the industry. These standards will create greater industry uniformity without imposing unnecessary burdens on carriers.

Finally, we revise the Commission's policies governing charges associated with a consumer's choice to change long distance providers. The current \$5 safe harbor rate was implemented in 1984, and industry and market conditions have changed dramatically since that time. Moreover, the record in this proceeding clearly demonstrates a large disparity between the costs of PIC change charges that are processed electronically versus those that are processed manually. As a result, based on cost data filed in the record, we set a separate safe harbor rate for electronically and manually processed PIC changes -- \$ 1.25 and \$5.50, respectively. Carriers that have invested in the technology to process and submit PIC changes electronically should be rewarded by offering potential customers a lower PIC change rate reflecting the lower costs of electronic processing. Adopting a two-tiered approach provides an incentive for providers offering long distance service to invest in electronic processing capabilities to gain the competitive advantage of lower PIC change charges for customers switching to these services.

I am pleased to support these three interrelated items. They represent the Commission's commitment to protecting individuals throughout the life-cycle of consumer choice -- from the decision to change providers, to the costs associated with that choice, to a decision to prevent unwanted telemarketing calls.