

## New Legislation

On August 9, 2004, the President signed the Coast Guard and Maritime Transportation Act of 2004 (Pub. L. 108-293) (the Act), which addressed most of the questions listed above and negated the need for this rulemaking as follows:

On the question of charters back to the owner (questions 1 and 2 above), section 608(a) of the new Act added new paragraph (f) to 46 U.S.C. 12106 to clarify Congress's position on the issue by requiring that the owner of a lease-financed vessel certify annually that it (or, if the vessel is owned by a trust or similar arrangement, the beneficiary of the trust or similar arrangement) is independent from, and not an affiliate of, any charterer of the vessel or any person who has the right, directly or indirectly, to control or direct the movement or use of the vessel.

On the question of limitations to grandfather rights (question number 3 above), section 608(c) of the Act required that the amendments made by section 608 and any regulations published after February 4, 2004, with respect to coastwise endorsements do not apply to a certificate of documentation, or renewal of one, endorsed with a coastwise endorsement for a vessel under 46 U.S.C. 12106(e) or a replacement vessel of a similar size and function, that was issued before August 9, 2004, as long as the vessel is owned by the person named in the certificate, or by a subsidiary or affiliate of that person, and as long as the controlling interest in the owner has not been transferred to a person that was not an affiliate of the owner as of August 9, 2004. A similar grandfather provision in section 608(c) of the Act was applied to offshore supply vessels, except that it was limited only to 3 years after enactment of the Act or until August 9, 2007.

On the question of third-party auditing of applications for coastwise endorsements (question number 4 above), the Act did not address the issue and it is being carried forward to the future rulemaking discussed below.

## Future Rulemaking

The new Act requires that the Coast Guard publish final regulations by August 8, 2005, to carry out section 608 of the Act, including amendments made by the Act to 46 U.S.C. 12106. Therefore, the Coast Guard will publish in the **Federal Register** a new notice of proposed rulemaking with opportunity for public comment to address these changes. In addition, the Coast Guard will again consider the issue of third-

party audits in the new notice and will address, in that notice, all comments on the subject submitted since the February 4, 2004, notice.

## Withdrawal

For the reasons stated above, the Coast Guard and MARAD are withdrawing the joint notice of proposed rulemaking published on February 4, 2004 (69 FR 5403).

**Authority:** The Coast Guard's portion of this rulemaking is taken under authority of 46 U.S.C. 2103 and 12106 and Department of Homeland Security Delegation No. 0170.1. The Maritime Administration's portion of this rulemaking is taken under authority of 46 App. U.S.C. 802, 803, 808, 835, 839, 1114(b), 1195, 46 U.S.C. chs.301 and 313; 49 U.S.C. 336; 49 CFR 1.66.

Dated: November 2, 2004.

**Thomas H. Collins,**

*Admiral, Coast Guard Commandant.*

Dated: March 29, 2005.

By Order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[WT Docket Nos. 03-103, 05-42; FCC 04-287]

### Air-Ground Telecommunications Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission requests comment on competitive bidding procedures for commercial and general aviation Air-Ground Radiotelephone Service licenses. In a related document, the Commission has revised the rules and band plan governing the commercial Air-Ground Radiotelephone Service. If mutually exclusive applications are filed for the new commercial Air-Ground Radiotelephone Service licenses that are made available, the Commission will resolve such applications by competitive bidding. The Commission also will resolve by competitive bidding pending mutually exclusive applications for general aviation Air-Ground Radiotelephone Service licenses. To date, the Commission has accepted for filing nine groups of mutually exclusive general aviation applications, which are currently

pending. An auction will be scheduled to resolve these applications. The auction will be limited to the parties in each of the nine groups of applicants that have filed mutually exclusive applications, which constitute closed filing groups.

**DATES:** Submit comments on or before May 3, 2005, and submit reply comments on or before May 13, 2005. For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Lynne Milne, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, at 202-418-7055, or via e-mail at [Lynne.Milne@fcc.gov](mailto:Lynne.Milne@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Notice of Proposed Rulemaking (NPRM)* portion of the Commission's *Report and Order and Notice of Proposed Rulemaking*, FCC 04-287, in WT Docket Nos. 03-103 and 05-42, adopted December 15, 2004, and released February 22, 2005. The Commission is concurrently publishing a summary of the *Report and Order* in the **Federal Register**. The full text of the document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, 445 12th St., SW., Room CY-A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor: Best Copy & Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 800-378-3160, facsimile 202-488-5563, or via e-mail at [fcc@bcpweb.com](mailto:fcc@bcpweb.com). The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365 or at [Brian.Millin@fcc.gov](mailto:Brian.Millin@fcc.gov).

### Synopsis of the Notice of Proposed Rulemaking

#### A. Incorporation by Reference of the Part 1 Standardized Auction Rules

1. In this *NPRM*, we propose to conduct auctions of both commercial and general aviation Air-Ground Radiotelephone Service licenses in conformity with the general competitive bidding rules set forth in part 1, subpart Q, of the Commission's Rules, and substantially consistent with the bidding procedures that have been employed in previous Commission auctions.

2. Specifically, we propose to employ the part 1 rules governing, among other

things, designated entities, application and payment procedures, collusion issues, and unjust enrichment. Under this proposal, such rules would be subject to any modifications that the Commission may adopt in its part 1 Competitive Bidding proceeding. In addition, consistent with current practice, matters such as the appropriate competitive bidding design, as well as minimum opening bids and reserve prices, would be determined by the Wireless Telecommunications Bureau ("WTB") pursuant to its delegated authority. We seek comment on this proposal. In particular, we request comment on whether any of our part 1 competitive bidding rules would be inappropriate, or should be modified, for auctions of either commercial or general aviation air-ground licenses.

3. With respect to the commercial air-ground licenses we are making available, we are providing applicants with the opportunity to bid on licenses constituting different band configurations. Accordingly, the determination of whether individual commercial air-ground license applications are mutually exclusive for purposes of section 309(j) will be based on whether different applicants have applied for licenses in different band plan license configurations as well as on whether different applicants have applied for the same licenses. In other words, because only one band configuration will be implemented, applicants that apply for licenses in different configurations will be considered to have filed mutually exclusive applications. We tentatively conclude, however, that this and any other differences from our past auctions do not necessitate any changes to our part 1 competitive bidding rules, and that WTB can address such differences through its standard practice of seeking comment on and adopting procedures for specific auctions. We seek comment on this tentative conclusion.

#### *B. Provisions for Designated Entities*

4. In authorizing the Commission to use competitive bidding via section 309(j), Congress mandated that the Commission "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services." In addition, section 309(j)(3)(B) of the Communications Act requires that in establishing eligibility criteria and bidding methodologies, the Commission promote "economic opportunity and competition \* \* \* by avoiding excessive concentration of licenses and

by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women." One of the principal means by which the Commission furthers these statutory goals is the award of bidding credits to small businesses. The Commission defines eligibility requirements for small business bidding credits on a service-specific basis, taking into account the capital requirements and other characteristics of the particular service.

5. We tentatively conclude that small business bidding credits are appropriate for commercial Air-Ground Radiotelephone Service licenses. We base this conclusion on the fact that no commercial air-ground license will authorize the use of as much spectrum as other nationwide services for which the Commission has declined to adopt small business bidding credits. In addition, we believe that the operation of a commercial air-ground service may require lower capital expenditures than other nationwide services, such as satellite services, because the necessary infrastructure may be less costly. Thus, we tentatively conclude that small businesses may be able to attract the necessary capital to provide commercial air-ground service, particularly if they are assisted by bidding credits. We seek comment on these tentative conclusions.

6. Having tentatively concluded that small businesses may be able to provide commercial air-ground service, we nonetheless recognize that such operations may be very capital-intensive relative to other services provided to smaller geographic areas. We therefore propose to use the same small business definitions we have adopted for other capital-intensive services that serve large geographic areas. Specifically, we propose to define a small business as an entity with average annual gross revenues for the three preceding years not exceeding \$40 million, and to define a very small business as an entity with average annual gross revenues for the three preceding years not exceeding \$15 million. We also propose a 15 percent bidding credit for small businesses and a 25 percent bidding credit for very small businesses, as set forth in our standardized schedule at 47 CFR 1.2110(f)(2).

7. We request comment on these proposals. In particular, we invite commenters to discuss the expected capital requirements and other characteristics of the commercial air-ground operations that may be provided using the licenses made available by the

*Report and Order*, and the relationship of such requirements and characteristics to small business definitions and bidding credits. We invite commenters to provide comparisons with other services for which the Commission has established bidding credits. To the extent commenters support a different bidding credit regime than the one proposed here, they should support their proposals with relevant information. Such comments should provide information on, for example, the technology that a commercial air-ground licensee is likely to employ, the cost of deployment, and other factors that may affect capital requirements for commercial air-ground operations.

8. We also seek comment on whether our proposed designated entity provisions, if applied to the commercial Air-Ground Radiotelephone Service, would promote participation by businesses owned by minorities and by women, as well as participation by rural telephone companies. To the extent that commenters propose additional provisions to enhance participation by minority-owned or women-owned businesses, commenters should address how we should craft such provisions to meet the relevant standards of judicial review.

9. In contrast to the commercial air-ground licenses made available by the *Report and Order*, general aviation air-ground licenses are specialized licenses that are generally valued by relatively small businesses. For this reason, we expect that small businesses interested in acquiring these licenses are unlikely to have difficulty obtaining the capital needed to participate in an auction. We seek comment on whether small business bidding credits would be appropriate for the general aviation Air-Ground Radiotelephone Service.

#### **Procedural Matters**

##### *A. Initial Regulatory Flexibility Analysis*

10. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before May 3, 2005. Reply comments must be filed on or before May 13, 2005. The Commission will send a copy of this *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

1. Need for, and Objectives of, the Proposed Rules

11. The *Report and Order* addresses revisions to the rules and spectrum band plan for the 800 MHz commercial Air-Ground Radiotelephone Service spectrum. The *Report and Order* makes available new nationwide air-ground licenses in three band configurations: (1) Band plan 1, comprised of two overlapping, shared, cross-polarized 3 MHz licenses (licenses A and B, respectively), (2) band plan 2, comprised of an exclusive 3 MHz license and an exclusive 1 MHz license (licenses C and D, respectively), and (3) band plan 3, comprised of an exclusive 1 MHz license and an exclusive 3 MHz license (licenses E and F, respectively), with the blocks at opposite ends of the band from the second configuration. Licenses will have a ten-year term. Licenses will be awarded to winning bidders for the licenses comprising the configuration that receives the highest aggregate gross bid, subject to long-form license application review.

12. If mutually exclusive applications are filed for the commercial air-ground licenses that comprise the three band configurations defined in the *Report and Order*, the Commission will be required to resolve such applications by competitive bidding pursuant to the requirements of section 309(j) of the Communications Act. Similarly, the Commission is required to resolve by competitive bidding mutually exclusive general aviation air-ground applications. To date, the Commission has accepted for filing nine groups of mutually exclusive general aviation applications, which are currently pending. Therefore, WTB will, pursuant to its delegated authority, schedule an auction to resolve these applications.

13. In the *NPRM*, we request comment on a number of issues relating to competitive bidding procedures for both commercial air-ground and general aviation licenses. We propose to conduct auctions of both commercial and general aviation air-ground licenses in conformity with the general competitive bidding rules set forth in part 1, subpart Q, of the Commission's Rules, and substantially consistent with the bidding procedures that have been employed in previous Commission auctions. Specifically, we propose to employ the part 1 rules governing, among other things, designated entities, application and payment procedures, collusion issues, and unjust enrichment. Under this proposal, such rules would be subject to any modifications that the Commission may adopt in its part 1 Competitive Bidding proceeding. In

addition, consistent with current practice, matters such as the appropriate competitive bidding design, as well as minimum opening bids and reserve prices, would be determined by WTB pursuant to its delegated authority. We seek comment on this proposal as well as on whether any of our Part 1 competitive bidding rules would be inappropriate, or should be modified, for auctions of either commercial or general aviation air-ground licenses.

14. With respect to the commercial air-ground licenses we are making available, we are providing applicants with the opportunity to bid on licenses constituting different band configurations. Accordingly, the determination of whether individual commercial air-ground license applications are mutually exclusive for purposes of section 309(j) will be based on whether different applicants have applied for licenses in different band plan license configurations as well as on whether different applicants have applied for the same licenses. In other words, because only one band configuration will be implemented, applicants that apply for licenses in different configurations will be considered to have filed mutually exclusive applications. We tentatively conclude, however, that this and any other differences from our past auctions do not necessitate any changes to our part 1 competitive bidding rules, and that WTB can address such differences through its standard practice of seeking comment on and adopting procedures for specific auctions. We seek comment on this tentative conclusion.

15. We tentatively conclude that small business bidding credits are appropriate for the commercial air-ground service. We base this conclusion on the fact that no commercial air-ground license will authorize the use of as much spectrum as other nationwide services for which the Commission has declined to adopt small business bidding credits. In addition, we believe that the operation of a commercial air-ground service may require lower capital expenditures than other nationwide services, such as satellite services, because the necessary infrastructure may be less costly. Thus, we tentatively conclude that small businesses may be able to attract the necessary capital to provide commercial air-ground service, particularly if they are assisted by bidding credits. We seek comment on these tentative conclusions.

16. Having tentatively concluded that small businesses may be able to provide commercial air-ground service, we nonetheless recognize that such operations may be very capital-intensive

relative to other services provided to smaller geographic areas. We therefore propose to use the same small business definitions we have adopted for other capital-intensive services that serve large geographic areas. Specifically, we propose to define a small business as an entity with average annual gross revenues for the three preceding years not exceeding \$40 million, and to define a very small business as an entity with average annual gross revenues for the three preceding years not exceeding \$15 million. (We are coordinating these size standards with the U.S. Small Business Administration.) We also propose a 15 percent bidding credit for small businesses and a 25 percent bidding credit for very small businesses, as set forth in our standardized schedule at 47 CFR 1.2110(f)(2).

17. We request comment on these proposals. In particular, we invite commenters to discuss the expected capital requirements and other characteristics of the commercial air-ground operations that may be provided using the licenses made available by the *Report and Order*, and the relationship of such requirements and characteristics to small business definitions and bidding credits. We invite commenters to provide comparisons with other services for which the Commission has established bidding credits. To the extent commenters support a different bidding credit regime than the one proposed here, they should support their proposals with relevant information. Such comments should provide information on, for example, the technology that a commercial air-ground licensee is likely to employ, the cost of deployment, and other factors that may affect capital requirements for commercial air-ground operations.

18. We also seek comment on whether our proposed designated entity provisions, if applied to the commercial air-ground service, would promote participation by businesses owned by minorities and by women, as well as participation by rural telephone companies. To the extent that commenters propose additional provisions to enhance participation by minority-owned or women-owned businesses, commenters should address how we should craft such provisions to meet the relevant standards of judicial review.

19. In contrast to the commercial air-ground licenses made available by the *Report and Order*, general aviation air-ground licenses are specialized licenses that are generally valued by relatively small businesses. For this reason, we expect that small businesses interested in acquiring these licenses are unlikely

to have difficulty obtaining the capital needed to participate in an auction. We seek comment on whether small business bidding credits would be appropriate for the general aviation air-ground service.

## 2. Legal Basis

20. The proposed action is authorized under §§ 1, 4(i), 11, 303(r) and (y), 308, 309, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 161, 303(r), 303(y), 308, 309, and 332.

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

21. 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 rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

22. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the great majority of firms can, again, be considered small. According to the most

recent Trends in Telephone Service data, 719 carriers reported that they were engaged in the provision of cellular service, personal communications service, or specialized mobile radio telephony services, which are placed together in the data. We have estimated that 294 of these are small, under the SBA small business size standard.

23. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. Again, we note that SBA has a small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard. *See also* paragraph 19, *supra*, which describes two proposed small business size standards for the commercial Air-Ground Radiotelephone Service.

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

24. This *NPRM* does not propose any new reporting, recordkeeping, or other compliance requirements but merely proposes to extend the Commission's existing part 1 competitive bidding and application requirements to the commercial and general aviation Air-Ground Radiotelephone Service.

## 5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

25. 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: "(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) and exemption from coverage of the rule, or any part thereof, for small entities."

26. Specifically to assist small businesses, the *NPRM* proposes to establish the same small business size standards and associated small business bidding credits for the commercial Air-Ground Radiotelephone Service as the Commission has adopted for a number

of other wireless services, and also asks whether small business bidding credits would be appropriate for the general aviation Air-Ground Radiotelephone Service. The Commission will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. We invite comment on any additional significant alternatives parties believe should be considered and on how the approach outlined in the *NPRM* will impact small entities, including small non-profits and small governmental entities.

## 6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

27. None.

## Initial Paperwork Reduction Act of 1995 Analysis

28. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

29. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before May 3, 2005, and reply comments on or before May 13, 2005. Comments and reply comments should be filed in both WT Docket Nos. 03-103 and 05-42. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

30. Comments may be filed either by filing electronically, such as by using the Commission's Electronic Comment Filing System (ECFS), or by filing paper copies. Parties are strongly urged to file their comments using ECFS. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Only one copy of an electronic submission must be filed. In completing the transmittal screen, the electronic filer should include its full name, Postal Service mailing address, and the applicable docket or rulemaking number, WT Docket Nos. 03-103 and 05-42. Parties also may submit comments electronically by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and

should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

31. Parties who choose to file by paper may submit such filings by hand or messenger delivery, by U.S. Postal Service mail (First Class, Priority, or Express Mail), or by commercial overnight courier. Parties must file an original and four copies of each filing in WT Docket Nos. 03-103 and 05-42. Parties that want each Commissioner to receive a personal copy of their comments must file an original plus nine copies. If paper filings are hand-delivered or messenger-delivered for the Commission's Secretary, they must be delivered to the Commission's contractor at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002-4913. To receive an official "Office of the Secretary" date stamp, documents must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission. (The filing hours at this facility are 8 a.m. to 7 p.m.) If paper filings are submitted by mail through the U.S. Postal Service (First Class mail, Priority Mail, and Express Mail), they must be sent to the Commission's Secretary, Marlene H. Dortch, Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. If paper filings are submitted by commercial overnight courier (*i.e.*, by overnight delivery other than through the U.S. Postal Service), such as by Federal Express or United Parcel Service, they must be sent to the Commission's Secretary, Marlene H. Dortch, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743. (The filing hours at this facility are 8 a.m. to 5:30 p.m.)

32. Parties may also file with the Commission some form of electronic media submission (*e.g.*, diskettes, CDs, tapes, etc.) as part of their filings. In order to avoid possible adverse affects on such media submissions (potentially caused by irradiation techniques used to ensure that mail is not contaminated), the Commission advises that they should not be sent through the U.S. Postal Service. Hand-delivered or messenger-delivered electronic media submissions should be delivered to the Commission's contractor at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002-4913. Electronic media sent by commercial overnight courier should be sent to the Commission's Secretary, Marlene H. Dortch, Federal Communications Commission, Office of the Secretary,

9300 East Hampton Drive, Capitol Heights, MD 20743.

33. Regardless of whether parties choose to file electronically or by paper, they should also send one copy of any documents filed, either by paper or by e-mail, to each of the following: (1) Best Copy & Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, facsimile (202) 488-5563, or e-mail at [www.fcc@bcpiweb.com](mailto:www.fcc@bcpiweb.com); and (2) Richard Arsenault, Mobility Division, Wireless Telecommunications Bureau, 445 12th Street, SW., Washington, DC 20554, or e-mail at [Richard.Arsenault@fcc.gov](mailto:Richard.Arsenault@fcc.gov).

34. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. These documents also will be available electronically at the Commission's Disabilities Issues Task Force Web site, <http://www.fcc.gov/dtf>, and from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII text, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Best Copy & Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (800) 378-3160, facsimile (202) 488-5563, or via e-mail at [www.fcc@bcpiweb.com](mailto:www.fcc@bcpiweb.com). This document is also available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Brian Millin at (202) 418-7426, TTY (202) 418-7365, [Brian.Millin@fcc.gov](mailto:Brian.Millin@fcc.gov), or send an e-mail to [access@fcc.gov](mailto:access@fcc.gov).

#### *C. Ex Parte Rules Regarding the NPRM—Permit-But-Disclose Comment Proceeding*

35. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed in accordance with Commission rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206.

#### **Ordering Clauses**

36. Pursuant to the authority contained in sections 1, 4(i), 11, and 303(r) and (y), 308, 309, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 161, 303(r), (y), 308, 309, and 332, this Notice of Proposed Rulemaking is hereby *adopted*, and parts 1 and 22 of

the Commission's rules are amended accordingly.

37. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

#### **List of Subjects**

##### *47 CFR Part 1*

Administrative practice and procedure, Communications common carriers, Radio, Telecommunications.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 05-6950 Filed 4-12-05; 8:45 am]

**BILLING CODE 6712-01-P**

## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 69**

[WC Docket No. 05-25; RM-10593; FCC 05-18]

#### **Special Access Rates for Price Cap Local Exchange Carriers**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Commission initiates a rulemaking proceeding to determine the regulatory framework to apply to price cap local exchange carriers' (LECs) interstate special access services after June 30, 2005, including whether to maintain, modify, or repeal the pricing flexibility rules. Bell Operating Company (BOC) interstate special access services have assumed increasing significance as a key input for business customers, commercial mobile radio service (CMRS) providers, interexchange carriers (IXCs), and competitive LECs, and BOC revenues from these services have increased significantly since price cap regulation began.

**DATES:** Comments are due on or before June 13, 2005 and reply comments are due on or before July 12, 2005.

**ADDRESSES:** All filings must be sent to the Commission's Secretary, Marlene H. Dortch, 445 12th Street, SW., TW-B204, Washington, D.C. 20554. Parties should also send a copy of their paper filings to Margaret Dailey, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-A232, 445 12th Street, SW., Washington, DC 20554. Parties shall also serve one copy with the Commission's copy contractor, Best