Frequency or frequency band	Subpart	Class of station	Remarks
136.950 MHz	I	MA, FAE	International and domestic VHF.
136.975 MHz	I	MA, FAE	International and domestic VHF.
*	*	*	*

9. Amend § 87.187 by adding new paragraph (dd) to read as follows:

§ 87.187 Frequencies.

* * * * *

(dd) The frequencies 136.425, 136.450, 136.475, and 136.500 MHz are designated for flight information services-broadcast (FIS–B) and may not be used by aircraft for transmission.

10. In § 87.263, amend by revising paragraphs (a)(1) and (a)(5) to read as follows:

§ 87.263 Frequencies.

(a) *Domestic VHF service.* (1) Frequencies in the 128.8125–132.125 MHz and 136.4875–137.00 MHz bands are available to serve domestic routes, except that the frequency 136.750 MHz is available only to aeronautical enroute stations located at least 288 kilometers (180 miles) from the Gulf of Mexico shoreline (outside the Gulf of Mexico region). The frequencies 136.900 MHz, 136.925 MHz, 136.950 MHz and 136.975 MHz are available to serve domestic and international routes. Frequency assignments are based on 25 kHz spacing. Use of these frequencies must be compatible with existing operations and must be in accordance with pertinent international treaties and agreements.

* * * * *

(5) The frequency 136.750 MHz is available in the Gulf of Mexico Region to serve domestic routes over the Gulf of Mexico and adjacent coastal areas. Assignment of this frequency in the Gulf of Mexico Region shall be to licensees first licensed on this frequency in the Gulf of Mexico Region prior to January 1, 1994, their successors and assigns, and is not subject to the conditions in § 87.261(c) and paragraph (a)(2) of this section. For the purpose of this paragraph, the Gulf of Mexico Region is defined as an area bounded on the east, north, and west by a line 288 km (180 miles) from the Gulf of Mexico shore line. Inland stations must be located within forty-eight kilometers (30 miles) of the Gulf of Mexico shore line.

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[FR Doc. 01–12162 Filed 5–14–01; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket Nos. 96–98, 99–68; FCC 01–131]

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic

AGENCY: Federal Communications Commission.

ACTION: Final rule; order on remand and report and order.

SUMMARY: In this final rule, the Commission reconsiders the proper treatment of telecommunications traffic delivered to Internet service providers (ISPs) for purposes of inter-carrier compensation. The Commission reaffirms its previous conclusion that traffic delivered to an ISP is predominantly interstate access traffic, in particular, information access, subject to section 201 of the Communications Act of 1934, as amended (the Act), and the Commission establishes an appropriate cost recovery mechanism for the exchange of such traffic.

DATES: The amendments to 47 CFR part 51 are effective June 14, 2001. However the portion of the Order specified in the ordering clauses takes effect upon May 15, 2001.

FOR FURTHER INFORMATION CONTACT: Tamara Preiss, Deputy Chief, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1520.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Remand and Report and Order in CC Docket Nos. 96–98, 99–68, adopted April 18, 2001, and released on April 27, 2001. The full text of this document is available for public inspection Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m. in the FCC Reference Information Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, DC 20554. The complete text of the order may be purchased from the Commission's duplicating contractor, ITS, Inc., at 1231 20th Street N.W., Washington, DC 20036 (202–857–3800).

Synopsis of Order on Remand and Report and Order

1. After a remand by the U.S. Court of Appeals for the D.C. Circuit in *Bell Atlantic Telephone Cos.* v. *FCC,* 206 F.3d 1 (D.C. Cir. 2000), in this final rule the Commission reconsiders the rationales underlying its regulatory treatment of telecommunications traffic delivered to ISPs to determine whether ISP-bound traffic is subject to statutory reciprocal compensation requirements. A more comprehensive review of the statute reveals that Congress intended to exempt certain enumerated categories of service from the universe of ''telecommunications'' subject to the reciprocal compensation requirements of section 251(b)(5), 47 U.S.C. 251(b)(5). The statute does not mandate reciprocal compensation for ''exchange access, information access, and exchange services for such access'' when the service is provided by local exchange carriers (LECs) to interexchange carriers (IXCs) or information service providers. The Commission finds that Congress specifically exempted the services enumerated under section 251(g), 47 U.S.C. 251(g), from the newly-imposed reciprocal compensation requirement in order to ensure that section 251(b)(5) is not interpreted to override either existing or future regulations prescribed by the Commission. Because the Commission interprets paragraph (g) as a carve-out provision, the focus of the inquiry is on the universe of traffic that falls within paragraph (g) and *not* the universe of traffic that falls within paragraph (b)(5).

2. The Commission specifically finds that ISP-bound traffic falls within at least one of the three enumerated categories in section 251(g). Regardless of whether this traffic falls under the category of ''exchange access,'' an issue pending before the U.S. Court of Appeals for the D.C. Circuit in a separate proceeding, the Commission concludes that this traffic, at a minimum, falls under the rubric of ''information access,'' a legacy term imported into section 251(g) of the 1996 Act from the *Modified Final Judgment (MFJ),* but not expressly defined in the Communications Act. *See United States* v. *AT&T,* 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983). The

ISP-bound traffic at issue here falls within that category because it is access traffic destined for an information service provider. Because the legacy term ''information access'' in section 251(g) encompasses ISP-bound traffic, this traffic is excepted from the scope of the ''telecommunications'' subject to reciprocal compensation under section 251(b)(5). For these reasons, the Commission finds that Congress, through section 251(g), expressly limited the reach of section 251(b)(5) to exclude ISP-bound traffic.

3. For services that qualify under section 251(g), compensation is based on rules, regulations, and policies that preceded the Telecommunications Act of 1996 (1996 Act), and not on section 251(b)(5) which was minted by the 1996 Act. At least until the Commission by regulation should determine otherwise, Congress preserved the pre-1996 Act regulatory treatment of all the interstate access services enumerated under section 251(g). Although section 251(g) does not itself compel this outcome with respect to *intrastate* access regimes (because it expressly preserves only *the Commission's* traditional policies and authority over *interstate* access services), it nevertheless highlights an ambiguity in the scope of ''telecommunications'' subject to section 251(b)(5)—demonstrating that the term must be construed in light of other provisions in the statute. In this regard, the Commission again concludes that it is reasonable to interpret section 251(b)(5) to exclude traffic subject to parallel intrastate access regulations, because it would be incongruous to conclude that Congress was concerned about the effects of potential disruption to the interstate access charge system, but had no such concerns about the effects on analogous intrastate mechanisms.

4. Accordingly, the Commission affirms, although for different reasons, the conclusion in *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Declaratory Ruling* in CC Docket No. 96–98 and *Notice of Proposed Rulemaking (NPRM)* in CC Docket No. 99–68, 14 FCC Rcd 3689 (1999), *64 FR 14239 (March 24,1999) (Declaratory Ruling),* that ISP-bound traffic is not subject to the reciprocal compensation obligations of section 251(b)(5).

5. Having found that ISP-bound traffic is excluded from section 251(b)(5) by section 251(g), the Commission finds that it has authority pursuant to section 201 to establish rules governing intercarrier compensation for such traffic. Under section 201, the Commission has long exercised its *jurisdictional* authority to regulate the interstate access services that local exchange carriers (LECs) provide to connect callers with IXCs or information service providers in order to originate or terminate calls that travel across state lines. Access services to ISPs for Internet-bound traffic are no exception. The Commission has held, and the Eighth Circuit has recently concurred, that traffic bound for information service providers (including Internet access traffic) often has an interstate component. Indeed, that court observed that the interstate and intrastate components cannot be reliably separated. Thus, ISP traffic is properly classified as interstate. Hence, it falls under the Commission's section 201 jurisdiction.

6. The Commission further concludes that section 251(i) provides additional support for the finding that Congress has granted the Commission the authority on a going-forward basis to establish a compensation regime for ISP-bound traffic.

7. Because the Commission determines that intercarrier compensation for ISP-bound traffic is within the jurisdiction of this Commission under section 201, it is incumbent upon the Commission to establish an appropriate cost recovery mechanism for delivery of this traffic. Based upon the record before it, the Commission believes that the most efficient recovery mechanism for ISP-bound traffic is likely to be bill and keep, whereby each carrier recovers costs from its own end-users.

8. As the Commission recognizes in the accompanying *Notice of Proposed Rulemaking, Developing a Unified Intercarrier Compensation Regime,* CC Docket Nos. 01–92, 98–98, *Notice of Proposed Rulemaking,* FCC 01–132 (April 27, 2001), compensation regimes that require carrier-to-carrier payments are likely to distort the development of competitive markets by divorcing cost recovery from the ultimate consumer of services. In the *NPRM,* the Commission suggests that, given the opportunity, carriers always will prefer to recover their costs from other carriers rather than their own end-users in order to gain competitive advantage. Thus, carriers have every incentive to compete, not on the basis of quality and efficiency, but on the basis of their ability to shift costs to other carriers, a troubling distortion that prevents market forces from distributing limited investment resources to their most efficient uses.

9. The Commission believes that this situation is particularly acute in the case of carriers delivering traffic to ISPs because these customers generate extremely high volumes of traffic that are entirely one-directional. Indeed, the weight of the evidence in the current record indicates that precisely the types of market distortions identified above are taking place with respect to ISP traffic. For example, comments in the record indicate that competitive local exchange carriers (CLECs), on average, terminate eighteen times more traffic than they originate, resulting in annual CLEC reciprocal compensation billings of approximately two billion dollars, ninety percent of which is for ISP-bound traffic. Moreover, the traffic imbalances for some competitive carriers are in fact much greater, with several carriers terminating more than forty times more traffic than they originate. There is nothing inherently wrong with carriers having substantial traffic imbalances arising from a business decision to target specific types of customers. In this case, however, the Commission believes that such decisions are driven by regulatory opportunities that disconnect costs from end-user market decisions. Thus, under the current carrier-to-carrier recovery mechanism, it is conceivable that a terminating carrier could serve an ISP free of charge and recover all of its costs from originating carriers. This result distorts competition by subsidizing one type of service at the expense of others.

10. Based upon the current record in this proceeding, however, bill and keep appears to be the preferable cost recovery mechanism for ISP-bound traffic because it eliminates a substantial opportunity for regulatory arbitrage. The Commission does not fully adopt a bill and keep regime in this Order, however, because there are specific questions regarding bill and keep that require further inquiry, and the Commission believes that a more complete record on these issues is desirable before requiring carriers to recover most of their costs from end-users. Because these questions are equally relevant to its evaluation of a bill and keep approach for other types of traffic, the Commission will consider them in the context of the *NPRM.* Moreover, the Commission believes that there are significant advantages to a global evaluation of the intercarrier compensation mechanisms applicable to different types of traffic to ensure a more systematic, symmetrical treatment of these issues.

11. Because the record in this proceeding indicates a need for immediate action with respect to ISP-bound traffic, however, in this final rule

the Commission implements an interim recovery scheme that: (i) moves aggressively to eliminate arbitrage opportunities presented by the existing recovery mechanism for ISP-bound by lowering payments and capping growth; and (ii) initiates a 36-month transition towards a complete bill and keep recovery mechanism while retaining the ability to adopt an alternative mechanism based upon a more extensive evaluation in the *NPRM* proceeding. Specifically, the Commission adopts a gradually declining cap on the amount that carriers may recover from other carriers for delivering ISP-bound traffic. The Commission also caps the amount of traffic for which any such compensation is owed, in order to eliminate incentives to pursue new arbitrage opportunities. In sum, the Commission's goal in this Order is decreased reliance by carriers upon carrier-to-carrier payments and an increased reliance upon recovery of costs from end-users. In this regard, the Commission emphasizes that the rate caps the Commission imposes are not intended to reflect the costs incurred by each carrier that delivers ISP traffic. Some carriers' costs may be higher; some are probably lower. Rather, the Commission concludes, based upon all of the evidence in this record, that these rates are appropriate limits on the amounts recovered from other carriers and provide a reasonable transition from rates that have (at least until recently) typically been much higher. Carriers whose costs exceed these rates are (and will continue to be) able to collect additional amounts from their ISP customers. As noted, and explained in more detail in the Order, the Commission believes that such end-user recovery likely is the most efficient mechanism.

12. Beginning on the effective date of the final rule, and continuing for six months, intercarrier compensation for ISP-bound traffic will be capped at a rate of $.0015/minute-of-use (mou). Starting in the seventh month, and continuing for eighteen months, the rate will be capped at $.0010/mou. Starting in the twenty-fifth month, and continuing through the thirty-sixth month or until further Commission action (whichever is later), the rate will be capped at $.0007/mou. In addition to the rate caps, the Commission imposes a cap on total ISP-bound minutes for which a LEC may receive this compensation. For the year 2001, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to, on an annualized basis, the number of ISP-bound minutes for which that LEC was entitled to compensation under that agreement during the first quarter of 2001, plus a ten percent growth factor. For 2002, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to the minutes for which it was entitled to compensation under that agreement in 2001, plus another ten percent growth factor. In 2003, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to the 2002 ceiling applicable to that agreement. This interim regime affects only the intercarrier *compensation* (i.e., the rates) applicable to the delivery of ISP-bound traffic. It does not alter carriers' other obligations under the Commission's part 51 rules, 47 CFR part 51, or existing interconnection agreements, such as obligations to transport traffic to points of interconnection. These caps are consistent with projections of the growth of dial-up Internet access for the first two years of the transition and are necessary to ensure that such growth does not undermine the goal of limiting intercarrier compensation and beginning a transition toward bill and keep. Nothing in the final rule prevents any carrier from serving or indeed expanding service to ISPs, so long as they recover the costs of additional minutes from their ISP customers.

13. Because the transitional rates are *caps* on intercarrier compensation, they have no effect to the extent that states have ordered LECs to exchange ISP-bound traffic either at rates below the caps or on a bill and keep basis (or otherwise have not required payment of compensation for this traffic). The rate caps are designed to provide a transition toward bill and keep, and no transition is necessary for carriers already exchanging traffic at rates below the caps. Thus, if a state has ordered all LECs to exchange ISP-bound traffic on a bill and keep basis, or if a state has ordered bill and keep for ISP-bound traffic in a particular arbitration, those LECs subject to the state order would continue to exchange ISP-bound traffic on a bill and keep basis.

14. In order to limit disputes and costly measures to identify ISP-bound traffic, the Commission adopts a rebuttable presumption that traffic exchanged between LECs that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic subject to the compensation mechanism set forth in the final rule. This ratio is consistent with those adopted by state commissions to identify ISP or other convergent traffic that is subject to lower intercarrier compensation rates. Carriers that seek to rebut this presumption, by showing that traffic above the ratio is not ISP-bound traffic or, conversely, that traffic below the ratio is ISP-bound traffic, may seek appropriate relief from their state commissions pursuant to section 252 of the Act.

15. It would be unwise as a policy matter, and patently unfair, to allow incumbent LECs to benefit from reduced intercarrier compensation rates for ISP-bound traffic, with respect to which they are net payors, while permitting them to exchange traffic at state reciprocal compensation rates, which are much higher than the caps the Commission adopts here, when the traffic imbalance is reversed. Because the Commission is concerned about the superior bargaining power of incumbent LECs, the Commission will not allow them to ''pick and choose'' intercarrier compensation regimes, depending on the nature of the traffic exchanged with another carrier. The rate caps for ISP-bound traffic that the Commission adopts here apply, therefore, only if an incumbent LEC offers to exchange all traffic subject to section 251(b)(5) at the same rate. Thus, if the applicable rate cap is $.0010/mou, the ILEC must offer to exchange section 251(b)(5) traffic at that same rate. Similarly, if an ILEC wishes to continue to exchange ISP-bound traffic on a bill and keep basis in a state that has ordered bill and keep, it must offer to exchange all section 251(b)(5) traffic on a bill and keep basis. If, however, a state has ordered bill and keep for ISP-bound traffic only with respect to a particular interconnection agreement, as opposed to state-wide, the Commission does not require the incumbent LEC to offer to exchange all section 251(b)(5) traffic on a bill and keep basis. This limitation is necessary so that an incumbent is not required to deliver all section 251(b)(5) in a state on a bill and keep basis even though it continues to pay compensation for most ISP-bound traffic in that state. For those incumbent LECs that choose not to offer to exchange section 251(b)(5) traffic subject to the same rate caps the Commission adopts for ISP-bound traffic, the Commission orders them to exchange ISP-bound traffic at the state-approved or state-arbitrated reciprocal compensation rates reflected in their contracts. This ''mirroring'' rule ensures that incumbent LECs will pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic.

16. Finally, a different rule applies in the case where carriers are not exchanging traffic pursuant to

interconnection agreements prior to the adoption date of this Order (April 18, 2001), where, for example, a new carrier enters the market or an existing carrier expands into a market it previously had not served. In such a case, as of the effective date of the final rule, carriers must exchange ISP-bound traffic on a bill-and-keep basis during this interim period.

17. The interim compensation regime the Commission establishes here applies as carriers re-negotiate expired or expiring interconnection agreements. It does not alter existing contractual obligations, except to the extent that parties are entitled to invoke contractual change-of-law provisions. This Order does not preempt any state commission decision regarding compensation for ISP-bound traffic for the period prior to the effective date. Because the Commission now exercises its authority under section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic, however, state commissions will no longer have authority to address this issue. For this same reason, as of the date this Order is published in the **Federal Register**, carriers may no longer invoke section 252(i) to opt into an existing interconnection agreement with regard to the rates paid for the exchange of ISP-bound traffic. Section 252(i) applies only to agreements arbitrated or approved by state commissions pursuant to section 252; it has no application in the context of an intercarrier compensation regime set by this Commission pursuant to section 201. The Commission finds there is good cause under 5 U.S.C. 553(d)(3), however, to prohibit carriers from invoking section 252(i) with respect to rates paid for the exchange of ISP-bound traffic upon publication of this Order in the **Federal Register**, in order to prevent carriers from exercising opt in rights during the thirty days after **Federal Register** publication. To permit a carrier to opt into a reciprocal compensation rate higher than the caps the Commission has adopted during that window would seriously undermine the Commission's effort to curtail regulatory arbitrage and to begin a transition from dependence on intercarrier compensation and toward greater reliance on end-user recovery. In any event, the Commission's rule implementing section 252(i) requires incumbent LECs to make available ''[i]ndividual interconnection, service, or network element arrangements'' to requesting telecommunications carriers only ''for a reasonable period of time.'' 47 CFR 51.809(c). The Commission concludes that any ''reasonable period of time'' for making available rates applicable to the exchange of ISP-bound traffic expires upon the Commission's adoption in this Order of an intercarrier compensation mechanism for ISP-bound traffic.

18. In summary, the interim regime the Commission adopts in this final rule ''provides relative certainly in the marketplace'' pending further Commission action, thereby allowing carriers to develop business plans, attract capital, and make intelligent investments. The interim regime should reduce carriers' reliance on carrier-to-carrier payments as they recover more of their costs from end-users, while avoiding a ''flash cut'' to bill and keep which might upset legitimate business expectations. The Commission believes that the analysis supplied in the Order amply responds to the court mandate that the Commission explains how its conclusions regarding ISP-bound traffic fit within the governing statute.

Paperwork Reduction Act

19. This order contains no new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA).

Final Regulatory Flexibility Analysis

20. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Declaratory Ruling and NPRM. Declaratory Ruling,* 14 FCC Rcd at 3710–13. The Commission sought and received written comments on the IRFA. The Final Regulatory Flexibility Analysis (FRFA) in this Order on Remand and Report and Order conforms to the RFA, as amended. *See* 5 U.S.C. 604. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, was amended by the ''Small Business Regulatory Enforcement Fairness Act of 1996'' (SBREFA), which was enacted as Title II of the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA).

21. To the extent that any statement contained in this FRFA is perceived as creating ambiguity with respect to the Commission's rules, or statements made in preceding sections of this Order on Remand and Report and Order, the rules and statements set forth in those preceding sections shall be controlling.

Need for, and Objectives of, This Order on Remand and Report and Order

22. In the *Declaratory Ruling,* the Commission found that it did not have an adequate record upon which to adopt a rule regarding intercarrier compensation for ISP-bound traffic, but the Commission indicated that adoption of a rule would serve the public interest. *Declaratory Ruling and NPRM,* 14 FCC Rcd at 3707. The Commission sought comment on two alternative proposals, and stated that the Commission might issue new rules or alter existing rules in light of the comments received. *Declaratory Ruling and NPRM,* 14 FCC Rcd at 3711. Prior to the release of a decision on such intercarrier compensation, the U.S. Court of Appeals for the District of Columbia Circuit vacated certain provisions of the *Declaratory Ruling* and remanded the matter to the Commission. *See Bell Atlantic,* 206 F.3d 1.

23. This Order on Remand and Report and Order addresses the concerns of various parties to this proceeding and responds to the court's remand. The Commission exercises jurisdiction over ISP-bound traffic pursuant to section 201, and establishes a three-year interim intercarrier compensation mechanism for the exchange of ISP-bound traffic that applies if incumbent LECs offer to exchange section 251(b)(5) traffic at the same rates. During this interim period, intercarrier compensation for ISP-bound traffic is subject to a rate cap that declines over the three-year period, from $.0015/mou to $.0007/mou. The Commission also imposes a cap on the total ISP-bound minutes for which a LEC may receive this compensation under a particular interconnection agreement equal to, on an annualized basis, the number of ISP-bound minutes for which that LEC was entitled to receive compensation during the first quarter of 2001, increased by ten percent in each of the first two years of the transition. If an incumbent LEC does not offer to exchange all section 251(b)(5) traffic subject to the rate caps set forth herein, the exchange of ISP-bound traffic will be governed by the reciprocal compensation rates approved or arbitrated by state commissions.

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

24. The Office of Advocacy, U.S. Small Business Administration (Office of Advocacy) submitted two filings in response to the IRFA. Office of Advocacy, U.S. Small Business Administration *ex parte,* May 27, 1999; Office of Advocacy, U.S. Small Business Administration *ex parte,* June 14, 1999. In these filings, the Office of Advocacy raises significant issues regarding the Commission's description, in the IRFA, of small entities to which the Commission's rules will apply, and the

discussion of significant alternatives considered and rejected. Specifically, the Office of Advocacy argues that the Commission has failed accurately to identify all small entities affected by the rulemaking by refusing to characterize small incumbent local exchange carriers (LECs), and failing to identify small ISPs, as small entities. Office of Advocacy, U.S. Small Business Administration *ex parte,* May 27, 1999, at 1–3; Office of Advocacy, U.S. Small Business Administration *ex parte,* June 14, 1999, at 2–3. The Commission notes that, in the IRFA, the Commission stated that the Commission excluded small incumbent LECs from the definitions of ''small entity'' and ''small business concern'' because such companies are either dominant in their field of operations or are not independently owned and operated. *Declaratory Ruling* and NPRM, 14 FCC Rcd at 3711. The Commission also stated, however, that the Commission would nonetheless, out of an abundance of caution, include small incumbent LECs in the IRFA, and did so. *Declaratory Ruling and NPRM,* 14 FCC Rcd at 3711. Small incumbent LECs and other relevant small entities are included in the Commission's present analysis as described.

25. The Office of Advocacy also states that Internet service providers (ISPs) are directly affected by the Commission's actions, and therefore should be included in its regulatory flexibility analysis. The Commission finds, however, that rates charged to ISPs are only indirectly affected by its actions. The Commission has, nonetheless, briefly discussed the effect on ISPs in the primary text of this Order.

26. Last, the Office of Advocacy also argues that the Commission has failed adequately to address significant alternatives that accomplish its stated objective and minimize any significant economic impact on small entities. Office of Advocacy, U.S. Small Business Administration *ex parte,* June 14, 1999, at 3. The Commission notes that, in the IRFA, it described the nature and effect of its proposed actions, and encouraged small entities to comment (including giving comment on possible alternatives). The Commission also specifically sought comment on the two alternative proposals for implementing intercarrier compensation—one that resolved intercarrier compensation pursuant to the negotiation and arbitration process set forth in section 252, and another that would have had the Commission adopt a set of federal rules to govern such intercarrier compensation. *Declaratory Ruling [IRFA],* 14 FCC Rcd at 3711 (para. 39); *see also Declaratory Ruling,* 14 FCC Rcd at 3707–08 (paras. 30–31). The Commission believes, therefore, that small entities had a sufficient opportunity to comment on alternative proposals.

27. NTCA also filed comments, not directly in response to the IRFA, urging the Commission to fulfill its obligation to consider small telephone companies. NTCA NPRM Comments at vi, 15. Some commenters also raised the issue of small entity concerns over increasing Internet traffic and the use of Extended Area Service (EAS) arrangements. *See, e.g.,* ICORE NPRM Comments at 1–7; IURC NPRM Comments at 7; Richmond Telephone Company NPRM Comments at 1–8. The Commission is especially sensitive to the needs of rural and small LECs that handle ISP-bound traffic, but the Commission finds that the costs that LECs incur in *originating* this traffic extends beyond the scope of the present proceeding and should not dictate the appropriate approach to compensation for *delivery* of ISP-bound traffic.

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

28. The rules the Commission is adopting apply to local exchange carriers. To estimate the number of small entities that would be affected by this economic impact, the Commission first considers the statutory definition of ''small entity'' under the RFA. The RFA generally defines ''small entity'' as having the same meaning as the term ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 5 U.S.C. 632). Under the Small Business Act, a ''small business concern'' is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. 13 CFR 121.201.

29. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its Carrier Locator report, derived from filings made in connection with the Telecommunications Relay Service (TRS). FCC, Carrier Locator: Interstate Service Providers, Figure 1 (Jan. 2000) (Carrier Locator). According to data in the most recent report, there are 4,144 interstate carriers. Carrier Locator at Fig. 1. These carriers include, *inter alia,* incumbent local exchange carriers, competitive local exchange carriers, competitive access providers, interexchange carriers, other wireline carriers and service providers (including shared-tenant service providers and private carriers), operator service providers, pay telephone operators, providers of telephone toll service, wireless carriers and services providers, and resellers.

30. The Commission has included small incumbent local exchange carriers (LECs) in this present regulatory flexibility 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 telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' 5 U.S.C. 601(3). 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. Office of Advocacy, U.S. Small Business Administration *ex parte*, May 27, 1999, at 1–3; Office of Advocacy, U.S. Small Business Administration *ex parte*, June 14, 1999, at 2–3. The Small Business Act contains a definition of ''small business concern,'' which the RFA incorporates into its own definition of ''small business.'' See 15 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 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket, 96–98, *First Report and Order,* 11 FCC Rcd 15499, 16144–45 (1996). The Commission has therefore included small incumbent LECs in this regulatory flexibility analysis, although the Commission emphasizes that this regulatory flexibility analysis action has

no effect on the Commission's analyses and determinations in other, non-RFA contexts.

31. Total Number of Telephone Companies Affected. The United States Bureau of the Census (the Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. 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). 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, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' 15 U.S.C. 632(a)(1). For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rule changes adopted in this proceeding.

32. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. 1992 Census at Firm Size 1–123. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4813. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, the Commission is unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rule changes adopted in this proceeding.

33. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, and Resellers.* Neither the Commission nor the SBA has developed a definition particular to small LECs, interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), or resellers. The closest applicable definition for these carrier-types under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. 13 CFR 121.201, SIC Code 4813. According to the Commission's most recent TRS data, there are 1,348 incumbent LECs and 212 CAPs and competitive LECs. Carrier Locator at Fig. 1. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 1,348 incumbent LECs and fewer than 212 CAPs and competitive LECs that may be affected by the decisions and rule changes adopted in this proceeding.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

34. The rule the Commission is adopting imposes direct compliance requirements on interconnected incumbent and competitive LECs, including small LECs. In order to comply with this rule, these entities will be required to exchange their ISP-bound traffic subject to the rules the Commission is adopting.

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

35. In the *Declaratory Ruling and NPRM* the Commission proposed various approaches to intercarrier compensation for ISP-bound traffic. *Declaratory Ruling,* 14 FCC Rcd at 3707–10. During the course of this proceeding the Commission has considered and rejected several alternatives. None of the significant alternatives considered would appear to succeed as much as the Commission's present rule in balancing its desire to minimize any significant economic impact on relevant small entities with its desire to deal with the undesirable incentives created under the current reciprocal compensation regime that governs the exchange of ISP-bound traffic in most instances. The Commission also finds that for small ILECs and CLECs the administrative burdens and transaction costs of intercarrier compensation will be minimized to the extent that LECs begin a transition toward recovery of costs from end-users, rather than other carriers.

36. Although a longer transition period was considered by the Commission, it was rejected because a three-year period was considered sufficient to accomplish the Commission's policy objectives with respect to all LECs. Differing compliance requirements for small LECs or exemption from all or part of this rule is inconsistent with the Commission's policy goal of addressing the market distortions attributable to the prevailing intercarrier compensation mechanism for ISP-bound traffic and beginning a smooth transition to bill-and-keep.

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

Ordering Clauses

Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i) and (j), 201–209, 251, 252, 332, and 403 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–209, 251, 252, 332, and 403, and section 553 of Title 5, United States Code, 5 U.S.C. 553, that this Order on Remand and Report and Order and revisions to part 51 of the Commission's rules, 47 CFR part 51, ARE ADOPTED. This Order on Remand and Report and Order and the rule revisions adopted herein will be effective 30 days after publication in the **Federal Register** except that, for good cause shown, as set forth in paragraph 82 of this Order and as described in paragraph 17 of this **Federal Register** document, the provision of this Order prohibiting carriers from invoking section 252(i) of the Act to opt into an existing interconnection agreement as it applies to rates paid for the exchange of ISP-bound traffic will be effective immediately upon publication of this Order in the **Federal Register**.

It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this Order on Remand and Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 51

Communications, common carriers, Interconnection, Telecommunications, Internet service providers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

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

PART 51—INTERCONNECTION

1. The authority citation for part 51 continues to read:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 225–27, 251–54, 271, 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. §§ 151–55, 157, 201–05, 207–09, 218, 225–27, 251–54, 271, 332, unless otherwise noted.

2. The heading in part 51, subpart H, is revised to read as follows:

Subpart H—Reciprocal Compensation for Transport and Termination of Telecommunications Traffic

3. Section 51.701(b) is revised to read as follows:

§ 51.701 Scope of transport and termination pricing rules.

* * * * *

(b) *Telecommunications traffic.* For purposes of this subpart, telecommunications traffic means:

(1) Telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access (*see* FCC 01–131, paragraphs 34, 36, 39, 42–43); or

(2) Telecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter.

* * * * *

4. Sections 51.701(a), 51.701(c) through (e), 51.703, 51.705, 51.707, 51.709, 51.711, 51.713, 51.715, and 51.717 are amended by removing the term ''local telecommunications traffic'' and adding in its place ''telecommunications traffic'' each place it appears.

[FR Doc. 01–12165 Filed 5–14–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 01–1082; MM Docket No. 97–86; RM–9025 & RM–9084]

Radio Broadcasting Services; Camdenton and Laurie, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Camdenton Community Broadcasters proposed the allotment of Channel 265A at Camdenton, Missouri, as the community's first local commercial FM service. *See* 62 FR 10010, March 5, 1997. In response to a counterproposal filed by Bott Communications, Inc., we shall allot Channel 265C3 at Laurie, Missouri, as a first local service, at coordinates 38–08–30 and 92–50–37. There is a site restriction 6 kilometers south of the community. No allotment will be made at Camdenton, Missouri. A filing window for Channel 265C3 at Laurie will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective June 11, 2001.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–86, adopted April 18, 2001, and released April 27, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCASTING SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Laurie, Channel 265C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–12091 Filed 5–14–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1081; MM Docket No. 00–6; RM–9791; RM–9890]

Radio Broadcasting Services; McCook, Alliance, Imperial, NE, Limon, Parker, Aspen, Avon, Westcliffe, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of McCook Radio Group, LLC, allots Channel 271C1 to McCook, NE, as the community's fifth local FM service. At the request of The Meadowlark Group, Inc., the Commission substitutes Channel 276C for Channel 276C1 at Limon, CO, reallots Channel 276C to Parker, CO, and modifies the license of Station KAVD accordingly. To accommodate the allotment of Channel 276C to Parker, the Commission also substitutes: (1) Channel 276C3 for Channel 249C3 at Aspen, CO, and modifies the license of Station KSPN; (2) Channel 249C2 for Channel 276C2 at Avon, CO, and modifies the license of Station KZYR; (3) Channel 227A for vacant and unapplied for Channel 276A at Westcliffe, CO; (4) Channel 275CO for Channel 275C at Imperial, NE, and modifies the construction permit of Imperial Media Association. *See* 65 FR 4798, February 1, 2000. A filing window for Channel 271C1 at McCook, NE, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.