

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket Nos. 99–272, 92–105, 92–237; FCC 01–384]

The Use of N11 Codes and Other Abbreviated Dialing Arrangements; Administration of the North American Numbering Plan

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this *Notice of Proposed Rulemaking (NPRM)* the Federal Communications Commission (FCC or Commission) seeks comment on proposed methods to promote further competition and choice in the retail directory assistance (DA) market, in accordance with the pro-competitive, de-regulatory national policy framework set forth in the Telecommunications Act of 1996 (The Act), and consistent with the Commission's statements in the *Local Competition Second Report and Order*. This *NPRM* seeks comment on the directory assistance presubscription issue, as raised in a proposal filed by Telegate, Inc. (Telegate), a competing DA provider. This *NPRM* also seeks comment on other proposals to promote competition in the retail DA market.

DATES: Comments are due on or before April 1, 2002. Reply comments are due on or before April 30, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–B204F, Washington, DC, 20554.

FOR FURTHER INFORMATION CONTACT: Rodney McDonald, 202/418–77513, Fax 202/418–2345, TTY 202/418–0484, rlmcdona@fcc.gov, Network Services Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking, CC Docket Nos. 99–273, 92–105, 92–237, FCC 01–384 (NPRM)*, adopted December 21, 2001 and released January 9, 2002. The full text of the *NPRM* is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554, or copies may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Suite CY–B402, Washington, DC 20554, phone (202) 863–2893.

Synopsis of the Further Notice of Proposed Rulemaking CC Docket Nos. 99–273, 92–105, 92–237

1. On September 9, 1999, the Commission released the *SLI/DA Order and Notice of Proposed Rulemaking (SLI/DA Order and NPRM)*, 64 FR 51910 (September 27, 1999). In the *SLI/DA Order and NPRM*, the Commission tentatively concluded that competition in the directory assistance market is in the public interest. The Commission also tentatively concluded that competitive directory assistance providers are unable fully to compete without equal access to the local exchange carriers' (LECs) local directory assistance databases. The Commission invited comment on whether certain competitive directory assistance providers are providers of telephone exchange service or telephone toll service and thus entitled to nondiscriminatory access to those databases pursuant to section 251(b)(3) of the Act. The Commission also sought comment on whether competitive directory assistance providers that are not providers of telephone exchange service or telephone toll service also are entitled to nondiscriminatory access to directory assistance, including access to directory assistance databases.

2. On October 13, 1999, Telegate filed comments in response to the *SLI/DA Order and NPRM*. In its comments, Telegate argued that full competition in the DA market could not exist until LECs no longer have exclusive possession of the 411 code. Telegate proposed opening up 411 to competition by allowing customers to choose by presubscription their provider of directory assistance service, just as they can presubscribe to their primary interexchange carrier (IXC) for long distance services. None of the reply comments substantively addressed this portion of Telegate's comments.

3. On February 9, 2000, Telegate met with Common Carrier Bureau (Bureau) staff members to discuss further the 411 presubscription proposal. On March 10, 2000, at the Bureau's request, Telegate filed an ex parte memorandum illustrating Telegate's 411 presubscription proposal in further detail. On April 27, 2000, the Bureau issued a public notice seeking comment on Telegate's proposal. In the *Telegate Public Notice*, the Bureau solicited comments on Telegate's proposal to enhance competition in the directory assistance market by requiring LECs to implement presubscription for the 411 abbreviated dialing code, specifically soliciting comments on the technical feasibility and economic viability of

requiring LECs to implement presubscription to N11 abbreviated dialing codes in general. This included presubscription to 411 in the directory assistance proceeding, as well as presubscription to other N11 codes, particularly to 711 for access to Telecommunications Relay Service (TRS).

4. On January 23, 2001, the Commission released the *SLI/DA First Report and Order*, 66 FR 10965 (February 21, 2001) and concluded that LECs must provide competing DA providers that qualify under section 251(b)(3) of the Act with nondiscriminatory access to the LECs' local directory assistance databases, and must do so at nondiscriminatory and reasonable rates. To the extent that such DA providers qualify under section 251(b)(3), the Commission found that a LEC's failure to provide such access might also violate section 201(b). In the *SLI/DA First Report and Order*, the Commission also explained that the competitive provision of directory assistance is a necessary element of a competitive local telecommunications market, and noted that Congress recognized it as such in section 251. The Commission also concluded that LECs are not required to grant competing directory assistance providers nondiscriminatory access to non-local directory assistance databases. Finally, in the *SLI/DA First Report and Order*, the Commission concluded that the language in section 222(e) concerning directory publishing "in any format" applies to telephone directories on the Internet, but that section 222(e) does not apply to orally provided directory listing information. Telegate's proposal was not addressed in that order.

5. In this *NPRM*, the Commission solicits comment on Telegate's proposal. Specifically, we seek comment on Telegate's proposal to enhance competition in the DA market by requiring LECs to implement presubscription to 411. Central to Telegate's proposal is the argument that presubscription to the 411 code for access to DA services is necessary to ensure that full competition will develop in the retail DA market. We also seek comment on whether alternative dialing methods of providing access to DA services would provide a more level playing field for all DA providers to enter the retail DA market, and whether the elimination of the 411 dialing code is a necessary prerequisite for the success of such alternative dialing methods. On February 5, 2002, the Common Carrier Bureau released an *Order* extending the comment cycle for this proceeding. Comments are due on

or before April 1, 2002. Reply are comments due on or before April 30, 2002.

Initial Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act (RFA), 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 *NRPM*. 5 U.S.C. 603. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NRPM*. The Commission will send a copy of the *NRPM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). 5 U.S.C. 603(a).

Need for, and Objectives of, the Proposed Rules

7. The Commission is issuing this *NRPM* to seek comment on whether to modify the Commission's rules to permit presubscription to directory assistance services in order to promote competition and choice in the retail DA market. Additionally, the Commission seeks input concerning other methods of providing DA and their impact on consumers and providers. In the *Local Competition Second Report and Order*, 61 FR 47284 (September 6, 1996), the Commission anticipated that presubscription for particular services ultimately would be defined by technological, economic and marketing considerations, and noted its intent to monitor developments in this area and issue a *Further Notice of Proposed Rulemaking* to address these long range considerations so that end users would be able to preselect alternative providers for a multitude of services, including directory assistance. In the five years since the release of the *Local Competition Second Report and Order*, DA has grown from a simple method of obtaining a telephone number to a sophisticated voice-based portal that potentially can offer the consumer a wide spectrum of high quality services at competitive prices. We solicit comments as to whether the market for the competitive provision of directory assistance has developed to the point that additional steps must now be taken to ensure that all competitors have the same opportunity for access to customers and whether the directory assistance market is sufficiently open to competition that further regulatory action is unnecessary.

Legal Basis

8. The proposed action is authorized under sections 1, 2, 3, 4, 201, 202, 222, and 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 153, 154, 201, 202, 222, and 251.

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

9. 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. 5 U.S.C. 604(a)(3). The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 604(a)(3). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3). 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 SBA. 15 U.S.C. 632. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4). Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." 5 U.S.C. 601(5). As of 1992, there were approximately 85,006 such governmental entities in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities.

10. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by these rules. 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 Telecommunications Provider Locator report, regarding FCC Form 499-A.

11. Total Number of Telephone Companies Affected. The decisions and rules adopted herein may have a significant effect on a substantial number of the small telephone companies identified by SBA. 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. These firms include a variety of different categories of carriers, including LECs, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator services providers, pay telephone operators, personal communications service (PCS) providers, covered specialized mobile radio providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities because they are not "independently owned and operated." 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 that may be affected by this *NRPM*. Since 1992, however, many new carriers have entered the telephone services marketplace. At least some of these new entrants may be small entities that are affected by this *NRPM*.

12. Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. 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 ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer

than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small incumbent LECs.

13. We have included small incumbent LECs in this present 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 telephone communications business having 1,500 or fewer employees), and is not dominant in its field of operation. 15 U.S.C. 632. The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analyses, although we emphasize that this RFA action has no effect on FCC analyses and determination in other, non-RFA contexts.

14. Interexchange Carriers (IXCs). Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Reporting Worksheet, FCC Form 499-A. According to our most recent data, 229 companies reported that they were engaged in the provision of interexchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 229 small entity IXCs that may be affected by the decisions and rules adopted in this *NRPM*.

15. Competitive Access Providers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Reporting

Worksheet, FCC Form 499-A. According to our most recent data, 532 companies reported that they were engaged in the provision of competitive access services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 532 small entity CAPs that may be affected by the decisions and rules adopted in this *NRPM*.

16. Operator Service Providers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of operator services providers nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Reporting Worksheet, FCC Form 499-A. According to our most recent data, 22 companies reported that they were engaged in the provision of operator services. Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of operator services providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 22 small entity operator services providers that may be affected by the decisions and rules adopted in this *NRPM*.

17. Payphone Providers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to payphone providers. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of payphone providers nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Reporting Worksheet, FCC Form 499-A. According to our most recent data, 936 companies reported that they were engaged in the provision of pay telephone services. Although it seems certain that some of these carriers are not independently owned and operated,

or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of payphone providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 936 small entity payphone providers that may be affected by this *NRPM*.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

18. Future rules may require carriers to submit status reports concerning the technologies they will use to provide DA services. Any costs incurred in generating such reports should be nominal for all carriers, including small entities. Costs incurred as a result of this proceeding on the entities affected, including any small businesses, will vary depending on the method of DA provision utilized and its underlying implementation costs. This proceeding may allow some small businesses to participate in the DA market for the first time, which would involve initial start-up costs. These costs, however, could be offset by future profits upon entering the market.

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

19. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 6 U.S.C. 603(c).

20. This *NRPM* offers several possible methods of opening the local DA market up to competition. Each of these methods will have a different impact on small businesses. One alternative involves eliminating the 411 code for DA services. This alternative would provide expanded opportunities for small businesses to enter the market; however, the cost of market entry appears significant. This alternative is discussed in paragraph 45 of the *NRPM*. While this alternative provides a level playing field for all entities, it could also be the most technologically advanced requirement and the alternative with the greatest cost. A

second alternative considered herein explores the possibility of using alternative dialing schemes (such as 555 numbers and abbreviated 411XX dialing codes). National 555 numbers were created to provide a variety of information and telecommunications services. In addition, 555 numbers and 411XX codes could be used instead of the alternative of 411 presubscription. Further comment on these thoughts is included in paragraphs 47 through 52 of the *NRPM*. These alternatives could be easier to implement and less costly for small businesses to enter the market. Both of these alternatives are designed to open the local DA market to competition. Our belief is that by enhancing competition, we have created a space for small businesses to enter the market.

Federal Rules That May Duplicate, or Conflict With the Proposed Rules

20. None.

Report to Congress

21. The Commission will send a copy of this *NRPM*, including a copy of this IRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the *NRPM* and this IRFA will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.

Ordering Clauses

22. Pursuant to the authority contained in sections 1, 2, 3, 4, 201, 202, 222, and 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 153, 154, 201, 202, 222, and 251 the *NRPM* is hereby *adopted*.

23. The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this *NRPM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of Small Business Administration.

Federal Communications Commission.

William F. Caton,
Acting Secretary.

[FR Doc. 02-3623 Filed 2-13-02; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02-255, MM Docket No. 02-20, RM-10368]

Digital Television Broadcast Service; Traverse City, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Central Michigan University proposing the allotment of DTV channel 23, reserved for noncommercial use, to Traverse City, Michigan. DTV Channel *23 can be allotted to Traverse City, Michigan, in compliance with the geographic spacing criteria of section 73.623(d) and the principle community coverage requirements of section 73.625(a) at reference coordinates (45-10-40 N. and 85-05-57 W.). Since the community of Traverse City is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government must be obtained for this allotment.

DATES: Comments must be filed on or before April 1, 2002, and reply comments on or before April 16, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Todd D. Gray, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC (Counsel for Central Michigan University).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 02-20, adopted February 1, 2002, and released February 7, 2001. The full text of this document is available for public inspection and copying during regular

business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via-e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420. List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Michigan is amended by adding, DTV Channel *23 Traverse City.

Federal Communications Commission.

Barbara A. Kreisman,
Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 02-3574 Filed 2-13-02; 8:45 am]

BILLING CODE 6712-01-P