

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2003-16457; Airspace Docket No. 03-ASO-4]

RIN 2120-AA66

#### Proposed Revision of Federal Airway V-521

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** This action withdraws the notice of proposed rulemaking (NPRM) published in the **Federal Register** on January 14, 2004 (69 FR 2091). In that notice the FAA proposed to revise a segment of Very High Frequency Omnidirectional Range (VOR) Federal Airway 521 (V-521), between the Lee County Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC), and the RINSE intersection. The change was proposed to support the development of a new Standard Terminal Arrival Route (STAR) to serve the Southwest Florida International Airport and the Page Field Airport at Fort Myers, FL. However, after an internal review, the FAA has decided not to implement the planned STAR, therefore, the proposed revision of V-521 is being withdrawn upon publication of this action.

**EFFECTIVE DATE:** 0901 UTC, April 8, 2004.

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Airspace and Rules, Office of System Operations and Safety, ATO-R, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

**SUPPLEMENTARY INFORMATION:** On January 14, 2004, an NPRM was published in the **Federal Register** (69 FR 2091) proposing to amend Title 14 Code of Federal Regulations (14 CFR) part 71 (part 71) to revise a segment of

V-521 between the Lee County VORTAC and the RINSE intersection. The change was proposed to support the development of a new STAR to serve the Southwest Florida International Airport and Page Field Airport at Fort Myers, FL. These changes were planned as part of an airspace redesign effort to enhance the management of air traffic operations into and out of southwest Florida.

After an internal review of the plan, the FAA has decided not to implement the planned STAR. Consequently, the proposed revision to V-521 is being withdrawn upon publication of this action.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Withdrawal

In consideration of the foregoing, the NPRM, Docket No. FAA-2003-16457/ Airspace Docket No. 03-ASO-4, as published in the **Federal Register** on January 14, 2004 (69 FR 2091), is hereby withdrawn.

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

\* \* \* \* \*

Issued in Washington, DC, on April 1, 2004.

**Reginald C. Matthews,**

*Manager, Airspace and Rules Division.*

[FR Doc. 04-7958 Filed 4-7-04; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[GN Docket No. 04-54; FCC 04-55]

#### Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps To Accelerate Such Deployment

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of Inquiry; solicitation of comments.

**SUMMARY:** In this document, the Commission seeks comment on various market, investment, and technological trends in order for the Commission to

analyze and assess whether infrastructure capable of supporting advanced services is being made available to all Americans in a reasonable and timely fashion.

**DATES:** Comments are due on or before May 10, 2004. Reply comments are due on or before May 24, 2004.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. *See*

**SUPPLEMENTARY INFORMATION** for further filing instructions.

**FOR FURTHER INFORMATION CONTACT:** Regina M. Brown, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400, TTY (202) 418-0484.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Inquiry*, GN Docket No. 04-54, released March 17, 2004. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554.

#### I. Introduction

1. In this *Notice of Inquiry* (Notice), the Commission begins its fourth inquiry under section 706 of the Telecommunications Act of 1996 (the 1996 Act) into "whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion." We seek comment on various market, investment, and technological trends in order for the Commission to analyze and assess whether infrastructure capable of supporting advanced services is being made available to all Americans in a reasonable and timely fashion.

2. In section 706, Congress directed the Commission and the states to encourage the deployment of advanced telecommunications capability to all Americans. In conjunction with this objective, Congress instructed this Commission to conduct regular inquiries concerning the availability of advanced telecommunications capability. In so doing, Congress recognized that the availability of infrastructure capable of transmitting broadband or advanced services was critical to the future of our nation. Advanced services already play a vital role, and will continue to do so throughout the 21st century, in the

nation's economy and the life of its people. Many U.S. companies, both large and small, now depend on advanced services to run various facets of their businesses, including tracking inventory, monitoring consumer relations, and forecasting product sales. Moreover, advanced services have created new jobs, while enabling skilled employees to work more effectively in their current jobs. Advanced services have also created greater flexibility and opportunity in the workplace, particularly in the increased use of telecommuting by employees who remain connected to their jobs despite distance and other factors.

3. In addition to their benefits to the economy, advanced services have a dramatic impact on everyday citizens. Advanced services improve the educational opportunities of children and adults everywhere. High-speed connections to the Internet allow children in rural areas from Alaska to Florida to access the same information as schoolchildren in urban areas. Moreover, distance learning provides more choices for children and adults to access educational materials of distant learning institutions.

4. Telemedicine networks made possible by advanced services save lives and improve the standard of healthcare in sparsely-populated, rural areas. These services bring the skills and knowledge of specialized doctors and other medical professionals to people that would otherwise have to travel long distances to reach them. Advanced services also permit rural healthcare providers to utilize the latest medical information, which, in turn, improves the general provision of healthcare in areas of the country that have traditionally been underserved.

5. Applications that require advanced telecommunications capability will continue to grow exponentially. Only a few years ago, applications and services that we take for granted today were unheard of by a vast segment of the population. These developments are expected to reduce the cost of communication and to spur innovation and individualization on a previously unthinkable scale. For example, companies are developing services and applications making use of Internet Protocol (IP), including Voice over IP (VoIP), which are delivered over broadband connections. This new communications environment could provide each consumer with a highly customized, low-cost choice of services delivered in the manner of his or her choosing. Therefore, monitoring the progress of deployment of advanced telecommunications platforms and

determining if steps can or should be taken to further encourage this growth is one of the Commission's most important duties. We strongly encourage commenters to provide data and new ideas on how to conduct this and future section 706 inquiries. We also invite the Federal-State Joint Conference on Advanced Telecommunications Services (Joint Conference) to submit any information that it deems appropriate into this docket.

## II. Issues for Inquiry

6. At the outset, we solicit information consistent with the framework utilized in past reports: (i) How should we define advanced telecommunications capability? (ii) is advanced telecommunications capability being deployed to all Americans? (iii) is the current level of deployment reasonable and timely? and (iv) what actions, if any, can be taken to accelerate deployment? We intend, however, to extend our analysis beyond the framework of our previous 706 reports to examine additional questions of potential interest to policymakers. In particular, we seek to develop a more rigorous analysis of the availability of advanced telecommunications capability in different market segments and areas of varying densities. Moreover, we seek to develop a better understanding of the economic considerations that support the deployment of advanced telecommunications capability. We hope to analyze available information relating to consumer adoption and usage of services requiring advanced telecommunications capability. We also intend to examine trends in other nations and how our deployment of advanced telecommunications capability affects our role in a global economy. We welcome any additional information that commenters believe would further public understanding and dialogue on these critical issues.

### A. What Is "Advanced Telecommunications Capability"?

7. We seek comment on how we should define "advanced telecommunications capability" for purposes of this inquiry. Since 1999, the Commission has used the terms "advanced telecommunications capability" as "high-speed, switched, broadband telecommunications capability," but did not specify what speed should be encompassed within these terms. In the past, the Commission used the terms "advanced telecommunications capability" and "advanced services" to describe services and facilities with an upstream

(customer-to-provider) and downstream (provider-to-customer) transmission speed of more than 200 kilobits per second (kbps). The Commission also used the term "high-speed" to describe services and facilities with over 200 kbps capability in at least one direction. Given the rapid technological changes in the marketplace, we seek comment on the need to alter the definitional framework utilized in prior inquiries. Has technology or the marketplace evolved such that we should redefine the term "advanced services" to be speeds higher than 200 kbps in one or both directions? Have consumer expectations with respect to bandwidth needs changed since prior reports? What sources of information currently exist regarding the deployment of advanced telecommunications capability under alternative definitions? We note that we intend to seek comment in a separate proceeding on whether to amend our existing FCC Form 477 reporting program to gather more detailed information about the provision of services at speeds higher than 200 kbps. Are there reasons other than the status of technological development that support modifying the definition? Are any other attributes, besides speed in which a particular quantity of information can be transmitted, relevant to the definition of advanced telecommunications capability?

8. In a report to Congress released after our last 706 inquiry, the General Accounting Office (GAO) recommended that the Commission "should develop a strategy for periodically evaluating whether existing informal and experimental methods of data collection are providing the information needed to monitor the essential characteristics and trends of the Internet backbone market and the potential effects of the convergence of communications services." The GAO also recommended that "if a more formal data collection program is deemed appropriate, [the Commission] should exercise its authority to establish such a program." We seek comment on the GAO's recommendations, and whether our existing methods of data collection relating to the Internet backbone are sufficient.

### B. Is Advanced Telecommunications Capability Being Deployed to All Americans?

9. We seek comment on whether advanced telecommunications capability is being deployed to all Americans. In particular, we seek comment on three general areas in order to facilitate our analysis: (1) The availability of advanced

telecommunications capability and whether it has changed since the *Third Report*, 66 FR 44636, August 24, 2001; (2) the economics underlying investment in advanced infrastructure and service deployment; and (3) various advances in advanced services technology.

10. *Availability.* As previously noted, the Commission began gathering data about the provision of high-speed and advanced services to end users in 2000. Our current data collection program requires any facilities-based provider that has at least 250 high-speed service lines or wireless channels in service in a state to report basic information about its service offerings and customers twice yearly. Each filer provides data on the total number of lines or wireless channels by technology (*i.e.*, service provided on coaxial cables, wireline telephone lines, fixed wireless, or satellite). For each "technology subtotal," providers report additional detail concerning the percentage of lines that are connected to residential and small business users, the percentage of lines that provide service at more than 200 kbps in both directions, and the number of lines that provide speeds exceeding 2 Mbps.

11. From this data, we obtain a verifiable count of how much service within specified parameters is being delivered by those service providers that responded. Given the association between subscription and deployment, such data collection provides a means to assess the pace at which advanced telecommunications capabilities are being made available in different parts of the country and across different demographic groups. Moreover, we will shortly propose to revise our current FCC Form 477 to obtain more detailed understanding of the provision of services with greater bandwidth than 200 kbps and the availability of the broadband technologies that have achieved the greatest mass market acceptance to date, cable modems and DSL connections, which should facilitate future 706 inquiries.

12. We recognize that altering our current Form 477 reporting framework could provide additional information that would be useful in analyzing the state of deployment of advanced telecommunications capabilities. Obtaining more detailed information about services at speeds higher than 200 kbps could become a valuable tool to assist us in future section 706 inquiries. At the same time, we encourage commenters in this proceeding to provide us with more detailed information about the provision of

services today at speeds higher than 200 kbps.

13. We recognize that providers are not currently required to report the number or type of high-speed service subscribers in each zip code, but only to report the zip codes in which they had at least one high-speed service subscriber. As a result, we cannot determine from our data the extent to which high-speed services in a given zip code indicates that high-speed services are widely available, or whether they are restricted to certain types of customers located in limited areas. The zip code data depicts areas where at least one customer receives high-speed services in the last mile to the customer premises. This data provides the Commission with one tool for our analysis of whether advanced telecommunications capability is being made available to all Americans. We also note that we will shortly propose to require providers to indicate which technologies are being used to provide connections in a given zip code, which should enable more accurate mapping in the future of where specific technologies are in use, and we will seek comment on whether to require providers to indicate the number of subscribers in a given zip code.

14. We now have semi-annual data about subscribership to high-speed and advanced services dating from December 1999 through June 2003. These data represent a significant time series for analysis and discussion. Now that the Commission has several years of data, we are particularly interested in analyzing the trends that have developed over time. These data show a continued, steady increase in both residential and small business high-speed lines since our last 706 report. Cable modem and ADSL continue to be the market leading technologies, at present. We request comment on what conclusions we should draw from these data.

15. We welcome additional data from external sources that will enable us to make informed judgments about whether advanced telecommunications capability is being made available to consumers in a reasonable and timely manner. We request objective, empirical data from companies, think tanks, governments, analysts, consumer groups, and others. We especially welcome data organized in ways that will enable us to measure investment, availability, and subscription for different technologies, companies, areas, and types of consumers. Additionally, we seek information relating to the price points and actual speeds at which high-speed and advanced services are being

made available to consumers, and information relating to product tiering. We also seek data that would shed additional light on the extent to which consumers have a choice of competing providers of advanced or high-speed services. In addition, we seek comment on whether there are other ways of analyzing our existing FCC Form 477 data.

16. *Economics of Network Investment and Service Deployment.* In the *Third Report*, the Commission observed that carriers continued to invest in the high-speed and advanced services sector in a substantial way, resulting in increased availability of high-speed and advanced services for consumers across the nation. The Commission took note, however, that investment trends had generally slowed and gone through a period of transition since the *Second Report*, 65 FR 11059, March 1, 2000. Despite these trends, the Commission concluded that investment in infrastructure for most high-speed and advanced services markets remained strong, and that the market would continue to expand and availability to increase.

17. We seek comment on current investment trends and the extent to which they may reflect the availability of high-speed and advanced services. We seek comment on the relationship between the pace of investment, consumer demand, and general market expectations. We also seek comment on whether providers of high-speed and advanced services have access to sufficient levels of capital to fund infrastructure build-out and whether additional steps should be taken to accelerate deployment.

18. We seek to develop a greater understanding of the economics underlying deployment of advanced telecommunications capability and services that utilize that capability. How do the economics change over time as certain levels of deployment and/or penetration are achieved? Do the economics of deploying advanced telecommunications capability reduce availability in some communities? What role could universal service play in ensuring that deployment is reasonable and timely for all Americans? How do providers differentiate their product among different consumer groups? What strategies, tactics, plans, organization, and operational structures do firms utilize to deliver technology and related services to consumers?

19. We note that some companies offer tiered service schemes, which permit both entry level and more sophisticated, higher bandwidth services to be delivered over the same

infrastructure. To what extent could the availability of different product tiers affect penetration in today's marketplace? To what extent should the existence of product tiering affect our assessment of whether advanced telecommunications capability is being deployed on a reasonable and timely basis?

20. *Trends in Developing Technologies.* In prior reports, the Commission looked closely at the various technologies currently capable of providing high-speed and advanced services as well as those technologies that are likely to emerge in the near future. In particular, the *Third Report* described in detail several "last mile" technologies of high-speed systems: (1) Cable modem service; (2) digital subscriber line (DSL, especially asymmetric DSL or ADSL); (3) other Local Exchange Carrier (LEC)-provided wireline services; (4) terrestrial fixed wireless service; and (5) satellite service. The Commission determined that competition among providers within certain technologies is emerging and that there is potential for several different technological options for providing high-speed and advanced services.

21. We seek comment as to any new developments in this area. Are there new technologies that are now being used to provide high-speed or advanced services, or likely to be used in the near future, such as Wi-Fi or Wi-Max, or broadband over power lines? If so, how widely have these new technologies been deployed and what percentage of customers utilize such services? What is the role of mobile wireless technologies? To what extent may some of these developments improve the speed and range of services offered to consumers? Are these technological developments likely to be particularly beneficial to specific groups of customers, such as rural customers or customers with disabilities? Have there been any other changes in the industry that affect the Commission's conclusions in the *Third Report*?

22. We note that the Commission's Form 477 data collection program captures the marketplace presence of broadband services that utilize new and innovative technologies once consumer up-take of the services reaches a certain level. Our data collection does not, however, directly monitor the development of new technologies with likely, or possible, application to advanced services. Nor does our data collection program directly monitor the development of innovative applications that utilize advanced telecommunications capability. We

therefore invite parties to bring to our attention technologies that might be used by current or potential providers to deliver new advanced services to consumers. In addition, we are interested in technologies that might be used directly by consumers, e.g., within the consumer's premises, to lower the cost or difficulty of installing or using advanced services. We also are interested in technologies that might enable new broadband applications of interest to consumers.

### C. Is Deployment Reasonable and Timely?

23. Once we have gathered information on the deployment of advanced telecommunications capability, section 706 requires that we determine whether such capability is being deployed to all Americans "in a reasonable and timely fashion." We generally seek comment on whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion and ask commenters to describe the empirical basis for their conclusions.

24. In determining whether deployment is reasonable and timely, the Commission examined in the *Second* and *Third Reports* various aspects of the deployment of, and market for, advanced services. In particular, it examined the availability of high-speed and advanced services, focusing both on how it has changed since prior reports and how it was projected to change in the future. Second, it examined investment in the infrastructure to support advanced services. Third, it reviewed trends in the alternatives available to consumers of advanced services, assessing both the number of providers offering service through a particular technology and the different technological options available to consumers. We request comment on whether to modify our analytical framework in this inquiry, and welcome suggestions of additional or alternative criteria. Are there other areas of inquiry that would be informative for the Commission to explore?

25. In the *Third Report*, the Commission specifically considered the availability of advanced services for several groups of consumers, including businesses, residential consumers, rural communities, elementary and secondary schools, individuals living on tribal lands, and persons with disabilities. Should we separately examine these specific categories in this inquiry? Are there other types of consumers or geographic areas, such as insular areas, that are likely to experience broadband

deployment at a different pace such that we should also monitor the rate of deployment to those customers and areas?

26. We specifically seek comment on the status of deployment of high-speed and advanced services to consumers living in rural areas. Our data collection shows that subscription to advanced services in sparsely populated zip codes has grown, and the gap in reported lines in service between densely and sparsely populated zip codes has shrunk. For example, in June 2003, 68.5% of the most sparsely populated zip codes had high-speed subscribers, compared to 36.8% two years earlier. Moreover, over the last two years, the gap between the most densely populated zip codes and most sparsely populated zip codes had shrunk from 61.3 percentage points to 30.4 percentage points, largely due to increases in the number of most sparsely populated zip codes with subscribers. What are some of the reasons for this reduction in the gap between the most densely populated and the most sparsely populated zip codes? To what extent is the gap in subscribership among more densely and more sparsely populated areas due to the fact that many smaller providers operating in rural areas may fall below the current reporting threshold for our Form 477 data collection program? Do consumers in rural areas enjoy choices among technologies and tiers of high-speed services comparable to those available to consumers in urban areas? Are high-speed services available to consumers in rural areas at rates comparable to those rates charged in urban areas?

27. We note that the National Exchange Carrier Association (NECA) recently published a study that concluded that technological advances among small, mostly rural local telephone companies between 2001 and 2003 were greater than expected. In fact, the number of NECA companies currently deploying DSL services increased from 557 in 2001 to 814 in 2003. According to the NECA report, 78.95% of member companies' access lines now are equipped for DSL. NECA concluded that rural telephone companies are meeting the growing consumer demand for advanced services in spite of the hurdles they must overcome, including the lack of economies of scale that large, non-rural companies are afforded. What lessons can be learned from the steps taken by some NECA members to encourage deployment in less-developed areas? Are there steps that the Commission should take that would encourage further deployment in rural areas?

28. We also seek focused comment on the deployment of advanced telecommunications capability to low income individuals. We note that, as of June 2003, 98.5% of the highest income zip codes reported high-speed lines, and 78.3% of the lowest income zip codes reported high-speed lines. By comparison, as of June 2001, 96.4% of the highest income zip codes reported high-speed lines, and 59.1% of the lowest income zip codes reported high-speed lines. As a result, over the last two years, the gap between the highest income zip codes and the lowest income ones shrunk from 37.3 to 20.2 percentage points, primarily due to increases in the number of low-income zip codes with subscribers. Why has the gap between the highest income zip codes and the lowest income zip codes decreased over the past two years? Have any specific developments occurred that account for these changes? To what extent are firms marketing lower priced tiers of services to lower income individuals?

29. In addition, we seek comment on the availability of advanced telecommunications capability to individuals living on tribal lands and in the U.S. territories. In June 2003, high-speed services were available in 86.9% of zip codes that contain tribal territories, up from 71.3% in June 2001. At this time, service providers report high-speed lines in Puerto Rico and the Virgin Islands, but no service providers report high-speed lines in the Pacific Insular Islands. Does the information from our data collection program adequately capture the availability of high-speed or advanced services in these areas? In areas where services are being made available, are they being deployed to all consumers, or just a limited number of consumers? What types of unique challenges are there to the deployment of advanced services in tribal areas or U.S. territories? Are these challenges similar or distinguishable from those encountered by consumers living in rural areas of the nation? What types of technology are being used to provide advanced services on tribal lands? What types of technology are most widely deployed on tribal lands and why? Are there certain types of technological developments that may be especially promising for future deployment in tribal areas or the U.S. territories?

30. We also seek specific comment on the deployment of advanced telecommunications capability to elementary and secondary schools and classrooms. The U.S. Department of Education publishes on an annual basis various statistics relating to Internet

access in U.S. public schools and classrooms. Among other things, the most recent study documents the steady increase in number of schools with Internet access, and the number of instructional classrooms with Internet access. For instance, in 2002, 99% of public schools had access to the Internet, compared to 14% in 1996. Moreover, in 2002, 92% of public school classrooms had access to the Internet, compared to 14% in 1996. In 2002, 94% of public schools reported using broadband connections for Internet access, compared to 80% in 2000 and 85% in 2001. Do these figures support a conclusion that advanced telecommunications capability is being deployed to elementary and secondary schools and classrooms on a reasonable and timely basis? Are there any other sources of information that would provide insight into whether the deployment of advanced telecommunications services to elementary and secondary schools and classrooms is occurring on a reasonable and timely basis?

31. To what extent do persons with disabilities have access to advanced telecommunications? Have there been recent developments in adaptive technologies that improve the capacity of persons with disabilities to access advanced telecommunications? Does the availability of video relay services through the Telecommunications Relay Service Fund play a role in promoting demand for and access to high-speed services among persons with disabilities? To what extent does income, employment, or other factors among persons with disabilities influence their ability to access advanced or high-speed services? How should the Commission evaluate the "availability" of advanced telecommunications services for persons with disabilities, given the unique challenges that persons with disabilities may encounter in accessing advanced services? Are advanced services being made available to medically underserved rural communities?

#### **D. What Actions Can Accelerate Deployment?**

32. Pursuant to the 1996 Act, "the Commission and each State commission \* \* \* shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans \* \* \* by utilizing \* \* \* price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment." The *Third*

*Report* described several examples of these and other activities that the Commission, other governmental entities, private groups and individuals have undertaken to promote competition and speed the deployment of advanced services. These included Commission proceedings to establish a regulatory framework for broadband services, promote investment through increased opportunities for broadband competition, reform our universal service system, and encourage the efficient use of spectrum. We note that the Congressional Budget Office recently published a report that analyzed the development of the residential broadband market to assess whether structural features or regulatory obstacles impede its further rapid growth, and concluded that federal intervention was not warranted at this time. To the extent commenters advocate that we should undertake additional actions to encourage the deployment of advanced telecommunications capability, they should set forth those proposals with specificity.

33. We also note that if we find that advanced telecommunications capability is not being deployed in a reasonable and timely manner, we are to "take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and promoting competition in the telecommunications market." Are there groups of Americans for whom the pace of deployment justifies action under section 706 to remove barriers to infrastructure investment or to promote competition? If so, what would those specific actions entail, and what would the costs and benefits of those actions be?

34. In the *Third Report*, the Commission expressed concern about the difficulty some companies have faced in securing access to the rights-of-way necessary to deploy advanced telecommunications infrastructure in a timely manner. Based on its commitment to ensuring that rights-of-way issues are resolved in a fair and expeditious manner, the Commission announced that it intended to explore solutions through a dialogue with industry and state and local colleagues, in order to remove barriers that may hinder investment in infrastructure for advanced or high-speed services. On October 16, 2002, the Commission hosted a public Rights-of-Way Forum. The Rights-of-Way Forum focused on exploring the Commission's role in facilitating discussion, identifying model principles and practices, and developing consensus positions among

local authorities, state regulators, and the industry. We invite comment regarding the record developed at the Commission's Rights-of-Way Forum.

35. We note that several other organizations, such as the National Association of Regulatory Utility Commissioners (NARUC) and the National Telecommunications and Information Administration (NTIA) have also initiated discussions regarding rights-of-way issues. For example, during the July 2002 NARUC conference, a study committee released a white paper that urged the Commission to include a section in the 706 report that discusses barriers to "deployment of broadband networks associated with abusive rights-of-way practices of federal, state and local units of government and steps that need to be taken to abate those practices." The NARUC study committee on rights-of-way issues also recommended the development of a set of national broadband principles and put forth model rights-of-way access rules. In addition, the NTIA launched a States and Local Rights-of-Way Resources Website, which is designed to foster an exchange of ideas to improve the management and use of rights-of-way. Further, the Commission's Intergovernmental Advisory Committee, formerly known as the Local State Government Advisory Committee (LSGAC), provides guidance to the Commission on issues of importance to state, local and tribal governments, including public rights-of-way matters.

36. We seek comment on the types of best practices that could help create reliable and reasonable expectations regarding management of the public rights-of-way that may help remove barriers to investment in advanced telecommunications services. We also seek comment on methods of facilitating resolution of rights-of-way disputes. Are the Commission's current rules effective in resolving rights-of-way disputes and promoting competition? We also ask commenters to discuss the distinction between federal and state responsibilities regarding the use of the public rights-of-way. We note that several states have adopted specific rules and regulations concerning the administration of the public rights-of-way. We request commenters to discuss their experiences in states where rights-of-way rules have been enacted. In addition, we seek comment on the types of practices used by municipalities or communities to encourage the deployment of advanced telecommunications capabilities. For example, we ask commenters to discuss efforts by municipalities or

communities to provide advanced telecommunications capabilities to end-user customers or to aggregate demand to encourage private sector deployment.

#### **E. What are Patterns of Consumer Adoption and Usage of Services Utilizing Advanced Telecommunications Capability?**

37. We seek information about how and why consumers, both individuals and businesses, adopt and use services utilizing advanced telecommunications capability. We seek to develop a better understanding of the specific applications and services that utilize advanced platforms. If the application or service existed prior to the advent of advanced infrastructure capable of transmitting information at higher speeds, how has it benefited by the deployment of such infrastructure? To what degree, if any, could these applications and services be improved if advanced infrastructure was more ubiquitous? Are there certain economies of scale that could be achieved if broadband was used by more individuals or businesses? Would the same be true if advanced telecommunications capability was deployed in more places?

38. We also seek information about consumers of advanced services. What types of entities, e.g., businesses or individuals, purchase advanced services? How integral have advanced services become to these consumers? To what degree do businesses and individuals rely on advanced services to conduct business, sell products, or accomplish specific tasks? We also hope to examine how other individuals or businesses that interact with the consumers of advanced services are indirectly affected by the use of advanced services. For example, do customers of businesses that utilize advanced services enjoy lower prices, greater choices, or faster service? Moreover, what applications and services used by such individuals require access to advanced services themselves? We request that commenters not only discuss specific, current services and applications, but possible future ones as well.

#### **F. Does Deployment of Advanced Telecommunications Capability in the United States Impact Our Role in the International Arena?**

39. The United States was recently ranked 11th worldwide in broadband use in a recent report by the International Telecommunications Union. According to another study, the number of broadband subscribers per inhabitant is said to be higher in South

Korea, Canada, Japan, Iceland, Sweden, Denmark, Belgium, and the Netherlands than in the U.S. We ask parties to comment on the potential reasons for relatively high broadband penetration rates in some foreign nations. To the extent that these factors are different for different countries, we ask that parties identify specific actions (or inactions) taken to promote broadband deployment. It has been reported that several foreign governments provide direct investment in the deployment of advanced services. We note that the European Union is seeking widespread broadband access in all of its fifteen member nations by next year. What other factors have contributed to the higher utilization of advanced services in other countries? Are there lessons that we could learn from the experiences of other countries? Based on these experiences, are there actions that the Commission should take to accelerate the deployment of advanced telecommunications capability? Are higher levels of penetration in other nations indicative of broader availability of advanced telecommunications capability? Given that usage of advanced services may be more ubiquitous throughout the populations in a number of countries than in the United States, we wish to understand the factors that have contributed to this apparent discrepancy, including methodological or design flaws in existing studies that may have over- or under-estimated the extent of broadband use in particular countries.

40. How does our deployment of advanced infrastructure vis-à-vis other nations affect the ability of our citizens to participate in a global economy? Are domestic jobs and industries more likely to move to other countries where the advanced services deployment and/or penetration is higher? What effect, if any, do any trends in this area have on international trade and the U.S. economic position in the global economy? Commenters should not only focus on the present impact but also on what the effect will be for the foreseeable future.

### **III. Procedural Matters**

41. We invite comment on the issues and questions set forth in the Notice contained herein. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments as follows: comments are due on or before May 10, 2004, and reply comments are due on or before May 24, 2004. All filings should refer to GN Docket No. 04-54. Comments may be filed using the Commission's Electronic Comment

Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

42. Comments filed through ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number, which in this instance is GN Docket No. 04–54. Parties may also submit an electronic comment 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.

43. Parties that choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at a new location in downtown Washington, DC. The address is 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location will be 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

44. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

If you are sending this type of document or using this delivery method * * *	It should be addressed for delivery to * * *
Hand-delivered or messenger-delivered paper filings for the Commission's Secretary.	236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002 (8 to 7 p.m.)

If you are sending this type of document or using this delivery method * * *	It should be addressed for delivery to * * *
Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail).	9300 East Hampton Drive, Capitol Heights, MD 20743 (8 a.m. to 5:30 p.m.)
United States Postal Service first-class mail, Express Mail, and Priority Mail.	445 12th Street, SW., Washington, DC 20554

45. Parties who choose to file by paper should also submit their comments on diskette. These diskettes, plus one paper copy, should be submitted to: Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications, at the filing window at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case GN Docket No. 04–54, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CYB402, Washington, DC 20554 (see alternative addresses above for delivery by hand or messenger).

46. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., CY–B402, Washington, DC 20554 (see alternative addresses above for delivery by hand or messenger) (telephone 202–863–2893; facsimile 202–863–2898) or via e-mail at [qualexint@aol.com](mailto:qualexint@aol.com).

47. The full text of this document is available for public inspection and copying during regular business hours at 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](mailto:qualexint@aol.com).

48. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with § 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the Notice in order to facilitate our internal review process.

49. We note that there are many other proceedings now underway at the Commission that include issues that could affect a company's, or class of companies' incentive and ability to deploy advanced telecommunications capability. If commenters wish to refer to their filing in another proceeding, they must provide in their comments in this proceeding a complete recitation of the pertinent information and also attach a copy of the filing to which they refer.

50. Subject to the provisions of 47 CFR 1.1203 concerning "Sunshine Period" prohibitions, this proceeding is exempt from ex parte restraints and disclosure requirements, pursuant to 47 CFR 1.1204(b)(1). Because many of the matters on which we request comment in this Notice may call on parties to disclose proprietary information such as market research and business plans, we suggest that parties consult 47 CFR 0.459 about the submission of confidential information.

#### IV. Further Information

51. Alternative formats (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 voice, (202) 418–7365 TTY, or [bmillin@fcc.gov](mailto:bmillin@fcc.gov). This Notice can also be downloaded in Microsoft Word and ASCII formats at [http://www.fcc.gov/ccb/universal\\_service/highcost](http://www.fcc.gov/ccb/universal_service/highcost).

#### V. Ordering Clause

52. Pursuant to the authority contained in section 706 of the



Telecommunications Act of 1996, this *Notice of Inquiry* is adopted.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04-7531 Filed 4-7-04; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AI72

#### Endangered and Threatened Wildlife and Plants; Reopening of the Public Comment Period for the Determination of Distinct Vertebrate Population Segment for the California Gnatcatcher (*Polioptila californica*)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of public comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period for the proposed determination of a distinct vertebrate population segment for the California gnatcatcher (*Polioptila californica*). The comment period will provide the public, and Federal, State, and local agencies and Tribes with an opportunity to submit written comments on the proposal. Comments previously submitted for this proposal need not be resubmitted as they have already been incorporated into the public record and will be fully considered in any final decision.

**DATES:** The original comment period closed on June 23, 2003. The public comment period for this proposal is now reopened, and we will accept comments and information until 5 p.m. May 24, 2004. Any comments received after the closing date may not be considered in the final decisions on these actions.

**ADDRESSES:** Written comments and materials may be submitted to us by any one of the following methods:

1. You may submit written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92009.

2. You may hand-deliver written comments and information to our Carlsbad Fish and Wildlife Office at the above address, or fax your comments to 760/431-9618.

Comments and materials received, as well as supporting documentation used

in preparation of the proposed determination of distinct vertebrate population segment for the California gnatcatcher, will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone 760/431-9440; facsimile 760/431-9618).

#### SUPPLEMENTARY INFORMATION:

##### Public Comments Solicited

We solicit comments or suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning our proposed determination of distinct vertebrate population segment for the California gnatcatcher, and on the taxonomic status of the gnatcatcher.

With respect to our consideration of listing of the California gnatcatcher species north of the international border as a distinct vertebrate population segment (DPS), we are particularly soliciting comments on the following:

- (1) Do the recent genetic findings referenced in this report justify a review of the taxonomy of the California gnatcatcher?

- (2) Is there any other new information that we should consider in this context?

In our consideration of the U.S. population of the California gnatcatcher as a DPS, we have presented a proposed five factor analysis of the status of the U.S. population. With respect to this analysis, we are particularly soliciting information on the following:

- (1) Existing populations of the California gnatcatcher, including the coastal California gnatcatcher subspecies, within its range in the United States;

- (2) Existing populations of the California gnatcatcher, including the coastal California gnatcatcher subspecies, in Mexico;

- (3) Information on the regulatory authorities available for the protection of the California gnatcatcher in Mexico;

- (4) Information on the adequacy of regulatory authorities available to protect coastal California gnatcatcher habitat in California absent the application of the Act;

- (5) Ways in which the California gnatcatcher exists in the U.S. or throughout the range of the coastal California gnatcatcher subspecies, in an ecological setting that is unusual or unique compared to the California gnatcatcher generally; and

(6) Any other information that we should consider in our review of the species' taxonomy.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours.

Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments received will be available for public inspection, by appointment, during normal business hours at the above address.

#### Background

On April 24, 2003, we published a proposed rule in the **Federal Register** (68 FR 20228) to designate critical habitat for the coastal California gnatcatcher subspecies and propose our determination of a distinct vertebrate population segment for the California gnatcatcher. In today's **Federal Register**, we also reopened the comment period on the proposed designation of critical habitat. By this notice we are reopening the comment period on the proposed determination of the DPS for the California gnatcatcher. We intend to proceed to finalize these two rulemakings separately.

A recent scientific paper (Zink, R.M., G.F. Barrowclough, J. L. Atwood, and R.C. Blackwell-Rago. 2000. Genetics, taxonomy, and conservation of the threatened California gnatcatcher. *Conservation Biology* 14(5):1394-1405) presents results of genetic research on the California gnatcatcher and calls into question the status of the coastal California gnatcatcher as a separate subspecies. This paper presents a contradictory view to previously published taxonomic reviews of the species. However, Atwood's research supported the original listing of the gnatcatcher. Zink *et al.* (2000) analyzed the genetic structure of California gnatcatcher populations throughout the range by looking for variation in the mitochondrial DNA (mtDNA) control region and three mtDNA genes. Their analysis found genetic structuring