

Federal Communications Commission.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02-386; FCC 05-29]

Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on issues relating to the exchange of customer account information between Local Exchange Carriers. The Commission specifically questions whether we should require all local service providers to participate in the exchange of customer account information and if so, what information local service providers should be required to supply. In addition, in this document the Commission seeks comment broadly on the interplay between the state rules and any federal rules we might adopt in this area.

DATES: Comments are due on or before July 18, 2005, and reply comments are due August 1, 2005. Written comments on the proposed information collection(s) must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before August 1, 2005.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act (PRA) information collection requirements contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to Leslie.Smith@fcc.gov, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, via the Internet to Kristy_L._LaLonde@omb.eop.gov, or via fax at (202) 395-5167.

FOR FURTHER INFORMATION CONTACT: Lisa Boehley, Consumer & Governmental Affairs Bureau at (202) 418-7395

(voice), or e-mail Lisa.Boehley@fcc.gov. For additional information concerning the PRA information collection requirements contained in this document, contact Leslie Smith at (202) 418-0217, or via the Internet at Leslie.Smith@fcc.gov.

SUPPLEMENTARY INFORMATION: This *Further Notice of Proposed Rulemaking* (FNPRM), *Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers*, CG Docket No. 02-386, FCC 05-29, contains proposed information collection requirements subject to the PRA of 1995, Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection requirements contained in this proceeding.

This is a summary of the Commission's FNPRM, adopted February 10, 2005, and released February 25, 2005. 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. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>.

Copies of this document and any subsequently filed documents in this matter will be 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. The complete text of this decision may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. at their Web site: <http://www.bcpweb.com> or call 1-800-378-3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/pol>.

Initial Paperwork Reduction Act of 1995 Analysis

This FNPRM contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this FNPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due August 1, 2005.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

OMB Control Number: 3060-xxxx.

Title: Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers, CG Docket No. 02-386, *Further Notice of Proposed Rulemaking* (FNPRM), FCC 05-29.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,873; 60 responses per year.

Estimated Time per Response: 0.25 hours.

Frequency of Responses: On occasion and annual reporting requirements.

Total Annual Burden: 28,095 hours.

Total Annual Cost: \$210,713.

Privacy Impact Assessment: No.

Needs and Uses: On February 25, 2005, the FCC released a *Further Notice of Proposed Rulemaking, Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers* (FNPRM), which seeks comment on whether the Commission should require all local service providers to participate in the

exchange of customer account information when a customer switches from one local service provider to another. The Commission is considering the adoption of rules governing information exchanges between local service providers. The Commission is taking this step in response to concerns that have been brought to its attention by particular local service providers. In particular, local service providers complain of the failure on the part of certain providers to transmit basic customer account information when a customer changes from one local service provider to another. The comments suggest that mandatory information exchanges in these situations may help to ensure that customer migrations from one local service provider to another will take place seamlessly and without undue delay. Mandatory information exchanges also may help to ensure the accuracy of customer bills for local telephone service and may assist the Commission and state commissions in their enforcement proceedings related to billing-related consumer complaints. We note that, in the *FNPRM*, the Commission has not proposed specific rules detailing the precise circumstances in which information exchanges may be required. If the Commission determines to adopt such rules, however, we anticipate that they will contain information collection requirements, within the meaning of the PRA.

Synopsis

In this *Further Notice of Proposed Rulemaking* (*FNPRM*), the Commission seeks comment on the exchange of information between Local Exchange Carriers (LECs). We specifically ask whether the Commission should require all local service providers to participate in the exchange of customer account information and if so, what information local service providers should be required to supply. A significant number of commenters recognize that the sharing of customer account information is necessary for service changes involving presubscribed Interexchange Carriers (IXCs). Certain local service providers argue that the exchange of end user account information between local service providers is equally critical when a customer is switching local service. As an incumbent LEC subject to § 271 obligations, one such commenter indicates that it already is required to provide timely customer account information to a requesting CLEC that has acquired a new customer. However, a similar obligation on CLECs does not exist. Many local service providers not

subject to the § 271 requirements fail to exchange information in a uniform manner or to provide complete and timely information, thereby delaying the customer's switch in service. Specifically, particular local service providers describe a problem with "old" local service providers not responding to customer service record requests in a timely or consistent manner. Customers, in turn, who expect service transitions to occur seamlessly and in a timely fashion, are confused about the source of the delay, frustrated, and often give up on the desired change. In addition, ATIS OBF's recent action to develop local service migration guidelines and to outline standards for the exchange of customer service record information suggests that the industry as a whole recognizes the need for uniform standards in connection with local-to-local carrier changes. The *FNPRM* seeks comment on the issues identified in the record of the CARE proceeding regarding LEC-to-LEC communications and on whether mandating the exchange of customer account information among LECs will reduce the problems identified therein, including double billing, delays in migration, and confusion on the part of consumers concerning their local service accounts. The Commission also requests comment on the exchange of "line level" information, such as working telephone number, current preferred interexchange carrier and freeze status, along with calling features such as toll blocking and call forwarding. In addition, the Commission seeks comment broadly on the interplay between the state rules and any federal rules we might adopt in the area of end user migrations between facilities-based providers. We ask that carriers identify problems specific to LEC-to-LEC exchanges that might warrant adopting standards for timeliness. If so, we ask commenters to describe what those standards for timeliness should be. Finally, the *FNPRM* seeks comment on ways to minimize the burdens on small businesses.

Initial Regulatory Flexibility Analysis (IRFA)

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), (*see* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law Number 104–121, Title II, 110 Statute 857 (1996)), 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 *FNPRM*. Written public comments are requested on this *IRFA*. Comments must be identified as responses to the *FNPRM*. The Commission will send a copy of the *FNPRM*, including this *IRFA*, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, this *FNPRM* and the *IRFA* (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

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

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

Legal Basis

The legal basis for any action that may be taken pursuant to this *FNPRM* is contained in §§ 1, 4(i), 4(j), 201, 202, 206–208, 222, and 258 of the

Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201, 202, 206–208, 222, and 258, and § 1.421 and 1.429 of the Commission's rules, 47 CFR 1.421 and 1.429.

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

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. (See 5 U.S.C. 603(b)(3)). The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” (See 5 U.S.C. 601(6)). In addition, the term “small business” has the same meaning as the term “small business concern” under section 3 of the Small Business Act. (See 5 U.S.C. 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definitions(s) in the **Federal Register**.”) Under the Small Business Act, a “small business concern” is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). (See 15 U.S.C. 632).

We have included small incumbent LECs in this RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a wireline telecommunications business having 1,500 or fewer employees), and “is not dominant in its field of operation.” (See 13 CFR 121.201, NAICS code 517110). 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. (See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, FCC (May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” See 5 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret “small

business concern” to include the concept of dominance on a national basis. 13 CFR 121.102(b)). We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

Incumbent Local Exchange Carriers. Neither the Commission nor the SBA has developed a small business size standard for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees (13 CFR 121.201, NAICS code 517110). According to the FCC's Telephone Trends Report data, 1,310 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services (FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, at Table 5.3, p. 5–5 (May 2004) (*Telephone Trends Report*). This source uses data that are current as of October 22, 2003. Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees. Consequently, the Commission estimates that the majority of providers of local exchange service are small entities that may be affected by the rules and policies adopted herein.

Competitive Local Exchange Carriers and Competitive Access Providers. Neither the Commission nor the SBA has developed specific small business size standards for providers of competitive local exchange services or competitive access providers (CAPs). The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees (See 13 CFR 121.201, NAICS code 517110). According to the FCC's Telephone Trends Report data, 563 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. (See *Telephone Trends Report*, Table 5.3. The data are grouped together in the *Telephone Trends Report*). Of these 563 companies, an estimated 472 have 1,500 or fewer employees, and 91 have more than 1,500 employees. Consequently, the Commission estimates that the majority of providers of competitive local exchange service and CAPs are small entities that may be affected by the rules.

Local Resellers. The SBA has developed a specific size standard for small businesses within the category of Telecommunications Resellers. Under that standard, such a business is small if it has 1,500 or fewer employees (See 13 CFR 121.201, NAICS code 517310). According to the FCC's Telephone Trends Report data, 127 companies reported that they were engaged in the provision of local resale services (See *Telephone Trends Report*, Table 5.3). Of these 127 companies, an estimated 121 have 1,500 or fewer employees, and six have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers may be affected by the rules.

Toll Resellers. The SBA has developed a specific size standard for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees (See 13 CFR 121.201, NAICS code 517310). According to the FCC's Telephone Trends Report data, 645 companies reported that they were engaged in the provision of toll resale services. (See *Telephone Trends Report*, Table 5.3). Of these 645 companies, an estimated 619 have 1,500 or fewer employees, and 26 have more than 1,500 employees. Consequently, the Commission estimates that a majority of toll resellers may be affected by the rules.

Interexchange Carriers. Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to providers of interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. (See 13 CFR 121.201, NAICS code 517110). According to the FCC's Telephone Trends Report data, 281 carriers reported that their primary telecommunications service activity was the provision of interexchange services. (See *Telephone Trends Report*, Table 5.3). Of these 281 carriers, an estimated 254 have 1,500 or fewer employees, and 27 have more than 1,500 employees. Consequently, we estimate that a majority of interexchange carriers may be affected by the rules.

Operator Service Providers. Neither the Commission nor the SBA has developed a size standard for small entities specifically applicable to operator service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. (See 13 CFR 121.201, NAICS

code 517110). According to the FCC's Telephone Trends Report data, 21 companies reported that they were engaged in the provision of operator services. (See *Telephone Trends Report*, Table 5.3). Of these 21 companies, an estimated 20 have 1,500 or fewer employees, and one has more than 1,500 employees. Consequently, the Commission estimates that a majority of operator service providers may be affected by the rules.

Prepaid Calling Card Providers. The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. (See 13 CFR 121.201, NAICS code 517310). According to the FCC's Telephone Trends Report data, 40 companies reported that they were engaged in the provision of prepaid calling cards. (See *Telephone Trends Report*, Table 5.3). Of these 40 companies, all 40 are estimated to have 1,500 or fewer employees. Consequently, the Commission estimates that all or most prepaid calling card providers may be affected by the rules.

Other Toll Carriers. Neither the Commission nor the SBA has developed a size standard for small entities specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. (See 13 CFR 121.201, NAICS code 517110). According to the FCC's Telephone Trends Report data, 65 carriers reported that they were engaged in the provision of "Other Toll Services." (See *Telephone Trends Report*, Table 5.3). Of these 65 carriers, an estimated 62 have 1,500 or fewer employees, and three have more than 1,500 employees. Consequently, the Commission estimates that a majority of "Other Toll Carriers" may be affected by the rules.

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

As noted, the Commission seeks comment on whether mandatory minimum standards for the exchange of customer account information between local service providers could provide consistency within the industry and could eliminate a significant percentage

of consumer complaints concerning billing errors. In addition, we ask whether the Commission should mandate the use of CARE transaction codes to facilitate the exchange of customer account information. In the event any new standards for LEC-to-LEC exchanges are adopted, we expect that such standards will be minimal and will provide sufficient flexibility in their application that they will not create any significant burden on small entities.

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

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. (See 5 U.S.C. 603(c)(1)-(c)(4)).

The *FNPRM* seeks comment on whether the Commission should impose mandatory minimum standards on all LECs for the exchange of customer account information between local service providers. (See *Further Notice* at paragraphs 75-81). The Commission seeks specific information addressing the possible impact of such mandatory requirements on smaller carriers, and it asks whether implementing CARE codes would be problematic for any LECs, or for small or rural LECs in particular. The Commission also asks commenters to discuss how, if the Commission were to adopt minimum standards for the exchange of information among LECs, it could provide sufficient flexibility to protect carriers, particularly small/rural LECs, from unduly burdensome requirements. The Commission does not have any evidence before it at this time regarding whether proposals outlined in this *FNPRM* would, if adopted, have a significant economic impact on a substantial number of small entities. However, the record in the proceeding involving LEC-to-IXC transfers revealed that there would likely be some additional burdens on small LECs required to transfer customer account information to IXC's. Therefore, the Commission recognizes, in the context of LEC-to-LEC exchanges, mandating the exchange of customer account

information may result in additional burdens on small entities. The Commission therefore seeks comment on the potential impact of these proposals on small entities, and whether there are any less burdensome alternatives that we should consider.

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

In addressing the exchange of customer account information between LECs and IXC's, the Commission noted that § 222 of the Communications Act governs carriers' use of customer proprietary network information and generally prohibits a carrier from disclosing such information. Although the Commission does not believe § 222 duplicates, overlaps, or conflicts with the proposed rules on LEC-to-LEC exchanges, it seeks comment on the interplay between § 222 and the proposed rules.

Ordering Clauses

Pursuant to the authority contained in §§ 1-4, 201, 202, 222, 258, and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 151-154, 201, 202, 222, 258, and 303(r), the *further notice of proposed rulemaking is adopted*.

The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05-10973 Filed 5-31-05; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05-1341; MB Docket No. 05-188; RM-11240]

Radio Broadcasting Services; Bass River Township and Ocean City, NJ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making