Carol W. Browner,

Administrator.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80–286; FCC 97–354]

Jurisdictional Separations Reform and Referral to the Federal-State Joint Board

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On October 2, 1997, the Commission adopted a Notice of Proposed Rulemaking (NPRM), that initiates a proceeding with the goal of reviewing comprehensively the Part 36 jurisdictional separations procedures to ensure that they meet the objectives of the Telecommunication Act of 1996 (1996 Act), and to consider changes that may need to be made to the jurisdictional separations process in light of changes in the law, technology, and market structure of the telecommunications industry. Pursuant to section 410(c) of the Communications Act, the Commission refers the issues raised in the NPRM to the Federal-State Joint Board established in CC Docket No. 80–286 (Separations Joint Board) for preparation of a recommended decision.

This NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

DATES: Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before December 10, 1997, and reply comments on or before January 26, 1998. Written comments by the public on the proposed and/or modified information collections are due December 10, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before January 5, 1998.

ADDRESSES: Parties should send their comments or reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Parties should also send a paper copy, and a copy on 3.5 inch diskette formatted in an IBM compatible form using, if possible, WordPerfect 5.1 for Windows software, to Connie Chapman of the Common Carrier Bureau's Accounting and Audits Division, 2000 L Street, N.W., room 258H, Washington, D.C. 20554. Parties also must serve comments on the Federal-State Joint Board in accordance with the service list (See Attachment). Commenters should also provide one copy of any documents filed in this proceeding to the Commission's copy contractor, International Transcription Service, 1231 20th Street, N.W., Washington, D.C. 20036.

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Lynn Vermillera, Accounting and Audits Division, Common Carrier Bureau, (202) 418–7120. Alternate contact, Connie Chapman (202) 418–0885. For additional information concerning the information collections contained in this Notice contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted October 2, 1997, and released October 7, 1997 The full text of this Commission NPRM is available for inspection and copying during normal business hours in the FCC Public Reference Room (Room 239), 1919 M St., N.W., Washington, D.C. The complete text of this NPRM may also be purchased from the Commission's copy contractor, International Transcription Service, 1231 20th Street, N.W., Washington, D.C. 20036.

Summary of Notice of Proposed Rulemaking

1. The NPRM seeks comment on the changes in law, technology, and market structure of the telecommunications industry that affect the separations process. It then seeks comment on the criteria that should be used to evaluate the existing separations process and proposals to reform the process in light of the goals of our comprehensive review.

2. In addition, the NPRM seeks comment on whether separations rules are still needed during the transition period from a regulated to a competitive marketplace. In this section, the Commission seeks comment on whether some form of separations must exist under the 1930 *Smith* v. *Illinois* decision, or whether statutory, regulatory and market changes since that decision have been so pronounced and persuasive as to make its holding inapplicable in the new deregulatory environment.

3. The NPRM then seeks comment on industry proposals to replace the existing Part 36 separations rules. In particular, the NPRM seeks comment on three industry proposals. The NPRM first seeks comment on NYNEX's proposal to separate costs for individual incumbent local exchange carriers (ILECs) in a given study area based on a single, frozen, interstate allocation factor. It then seeks comment on Bell South's proposal to separate costs in each study area based on two factors, one for investment and one for expenses. It then seeks comment on Southwestern Bell's proposal to consolidate the several dozen plant and service categories in the existing separations rules into four cost categories.

4. The NPRM then evaluates the existing separations rules and seeks comment on how various separations reform options would affect prices and revenue requirements. In this section, the NPRM seeks comment on revisions to the definition of ''study area.'' It also seeks comment on whether the existing set of plant, expense, and service categories should be revised. The NPRM also seeks comment on whether there is a need to revise the way in which costs are apportioned to each category and the way in which those costs are then apportioned to the interstate and intrastate jurisdiction.

5. The NPRM also seeks comment on whether and how to separate the costs associated with interconnection. In this section, the Commission proposes two alternatives for allocating the costs of providing interconnection between the state and federal jurisdiction. The first alternative is for the costs, once identified in part 32 as proposed in the companion NPRM on accounting for interconnection, to be removed entirely from the separations process and allocated through a process designed to apply exclusively to these costs. The second alternative is that the costs, once identified in part 32, be separated

through the current separations process and allocated directly to the state jurisdiction. In this section, the NPRM also seeks comment on whether the 8th Circuit holding in *Iowa Utilities Board* v. *FCC* requires the assignment of all costs associated with the provision of local exchange service to the intrastate jurisdiction.

6. Finally, the NPRM requests comment regarding changes to the separations rules that may be necessary as a result of the *Universal Service Order* and the Communications Assistance for Law Enforcement Act (CALEA).

Paperwork Reduction Act

7. This NPRM contains either a proposed or modified information collection. 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 collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this Notice; OMB notification of action is due January 5, 1998. 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.

OMB Approval Number: 3060–0233.

Title: Part 36—Separations.

Form No.: N/A.

Type of Review: Revision.

Respondents: Businesses or other for profit.

Number of Respondents: 100.

Estimated Time Per Response: 20 hours.

Total Annual Burden: 2000 hours for proposal only. 63,800 burden hours for all Part 36 requirements.

Estimated costs per respondent: $0.

Needs and Uses: In the Notice of Proposed Rulemaking issued in CC Docket No. 80–286, the Commission initiates a proceeding with the goal of reviewing comprehensively our Part 36 jurisdictional separations procedures to ensure that they meet the objectives of the 1996 Act and to consider changes that may need to be made to the jurisdictional separations process in light of changes in the law, technology, and market structure of the telecommunications industry. The Commission seeks comment on a proposal allowing incumbent LECs to separate joint and common costs on an individual basis. The Commission also seeks comment on whether this proposal should be contingent on an ILEC's showing that competition exists in the local markets for which they seek relaxed separations rules. If such a showing is required, the Commission also seeks comment on what level of competition would be required and what indicators should be used to measure the levels of competition in local markets to ensure that joint and common costs are allocated in a manner that produces just and reasonable rates. The proposed requirement will be used to determine whether competition exists in local markets.

Regulatory Flexibility Analysis

8. This NPRM seeks comment on the extent to which separations rules are required, what standards should be used to evaluate separations proposals, and what changes should be made to our existing separations rules. The NPRM states that we want to adopt rules that are easily interpreted and that will minimize any regulatory burdens on affected parties. Section 603 of the Regulatory Flexibility Act (RFA), as amended,[1] requires an initial Regulatory Flexibility Act Analysis in notice-and-comment rulemaking proceedings unless we certify that ''the rule will not, if promulgated, have a significant economic impact on a significant number of small entities.''[2]

9. Section 603 of the Regulatory Flexibility Act (''RFA'')[3] requires an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities for rulemakings that are required to have public notice and comment. We have determined that the RFA is inapplicable to this proceeding insofar as it pertains to the Bell Operating Companies and other incumbent local exchange carriers. The RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act.[4] Under the Small Business Act, a ''small business concern'' is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (''SBA'').[5] Section 121.201 of the Small Business Administration regulations defines a small telecommunications entity in SIC code 4813 (Telephone Companies Except Radio Telephone) as any entity with 1,500 or fewer employees at the holding company level.[6] Because our proposals concerning the Part 36 separations process will affect all incumbent local exchange carriers providing interstate services, some entities employing fewer than 1500 employees at the holding company level may be affected by the proposals made in this NPRM. However, we do not consider such entities to be ''small entities'' under the RFA because they are either affiliates of large corporations or dominant in their field of operations. Therefore, we do not believe that the proposed rules will affect a substantial number of small entities. Even if small ILECs were ''small entities'' under the SBA, however, we would still certify that no regulatory flexibility analysis is necessary here because none of the proposals in this NPRM, if adopted, would have a significant economic impact (as such term is used in the RFA) on the carriers which must comply with our accounting rules. One of the primary objectives of this proceeding is to seek comment on proposals to simplify the current separations process in an effort to lessen the regulatory burden on carriers in furtherance of a deregulatory national policy framework.

10. We therefore certify, pursuant to section 605(b) of the RFA, that the rules proposed in this NPRM will not have a significant economic impact on a substantial number of small entities. The Commission will publish this certification in the **Federal Register** and will provide a copy of the certification to the Chief Counsel for Advocacy of the SBA. The Commission will also include this certification in the report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act.[7]

Ordering Clause

11. Accordingly, *It Is Ordered* that, pursuant to sections 1, 2, 4, 201–205, 215, 218, 220, 229, 254, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 201–205, 215, 218, 220, 229, 254 and 410 that *Notice Is Hereby Given* of proposed amendments to Part 36 of the Commission's rules, 47 CFR Part 36, as

[1] 5 U.S.C. § 603.

[2] *Id.* at § 605(b).

[3] *See id.* § 603.

[4] *Id.* § 601(6) (adopting 15 U.S.C. § 632(a)(1)).

[5] *Id.* § 632. *See, e.g., Brown Transport Truckload, Inc.* v. *Southern Wipers, Inc.*, 176 B.R. 82 (N.D. Ga. 1994).

[6] 13 CFR 121.201.

[7] 5 U.S.C. § 801(a)(1)(A).

described in this *Notice of Proposed Rulemaking.*

12. *It Is Further Ordered* that, pursuant to section 410(c) of the Communications Act of 1934, 47 U.S.C. 410(c), the proposals set forth in the Notice of Proposed Rulemaking are hereby referred to the Federal-State Joint Board established in CC Docket No. 80–286 for preparation of a recommended decision.

13. *It Is Further Ordered,* that a copy of all filings in this proceeding shall be served on each of the appointees and staff personnel on the attached service list.

List of Subjects in 47 CFR Part 36

Jurisdictional Separations Procedures; Standard Procedures for Separating Telecommunications Property, Costs, Revenues, Expenses, Taxes and Reserves for Telecommunications Companies.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Attachment—Service List: 80–286 Separations Federal-State Joint Board

The Honorable Reed E. Hundt, Chairman, Federal Communications Commission, 1919 M Street N.W.—Room 814, Washington, D.C. 20554, 202–418–1000

The Honorable Rachelle B. Chong, Commissioner, Federal Communications Commission, 1919 M Street N.W.—Room 844, Washington, D.C. 20554, 202–418–2200

The Honorable Susan Ness, Commissioner, Federal Communications Commission, 1919 M Street N.W.—Room 832, Washington, D.C. 20554, 202–418–2100

The Honorable Cheryl L. Parrino, Chair, Wisconsin Public Service Commission, Post Office Box 7854, Madison, WI 53707–7854

The Honorable David W. Rolka, Commissioner, Pennsylvania Public Utility Commission, North Office Building—Room 110, Commonwealth Avenue and North Street, Harrisburg, PA 17105

The Honorable Joan H. Smith, Commissioner, Oregon Public Utility Commission, 550 Capitol Street, N.E., Salem, OR 97310

The Honorable Thomas L. Welch, Chairman, Maine Public Utilities Commission, 242 State Street, State House Station 18, Augusta, ME 04333

Joint Board Staff

Debra M. Kriete, Pennsylvania Public Utility Commission, North Office Building—Room 110, Commonwealth Avenue and North Street, Harrisburg, PA 17105–3265

Steve Burnett, Federal Communications Commission, Common Carrier Bureau—Accounting & Audits Div., 2000 L Street, N.W.—Room 257, Washington, D.C. 20036

Connie Chapman, Federal Communications Commission, Common Carrier Bureau—Accounting & Audits Div., 2000 L Street, N.W.—Room 258H, Washington, D.C. 20036

Sandy Ibaugh, Indiana Utility Regulatory Commission, 302 W. Washington, Suite E–306, Indianapolis, IN 46204

Jonathon Lakritz, California Public Utilities Commission, California State Building 505 Van Ness Avenue, San Francisco, California 94102

Samuel Loudenslager, Arkansas Public Service Commission, 1000 Center Street, Little Rock, AR 72203

Chuck Needy, Federal Communications Commission, Common Carrier Bureau—Accounting & Audits Div., 2000 L Street, N.W.—Room 812, Washington, D.C. 20036

Paul Pederson, Missouri Public Service Commission, Post Office Box 360, Jefferson City, MO 65102

Scott Potter, Public Utilities Commission of Ohio, 180 E. Broad St., 3rd Fl., Columbus, OH 43215

James Bradford Ramsay, Assistant General Counsel, National Association of Regulatory Utility Commissioners, 1102 ICC Building, Constitution Avenue & 12th Street, N.W., Post Office Box 684, Washington, D.C. 20044–0684

Jeffrey J. Richter, Public Service Commission of Wisconsin, P.O. Box 7854, Madison, WI 53707–7854

Mike Sheard, Montana Public Utilities Commission, 1701 Prospect Ave., P.O. Box 202601, Helena, MT 59620

Kaylene Shannon, Federal Communications Commission, Common Carrier Bureau—Accounting & Audits Div., 2000 L Street, N.W.—Room 200H, Washington, D.C. 20036

Joel B. Shifman, Maine Public Utilities Commission, State House Station #18, Augusta, ME 04333

Fred Sistarenik, State Joint Board Staff Chair, New York State Department of Public Service, Communications Division, Three Empire State Plaza, Albany, New York 12223–1350

Cynthia Van Landuyt, Oregon Public Utility Commission, 550 Capitol St. NE, Salem, OR 97310

Lynn Vermillera, Federal Communications Commission, Common Carrier Bureau—Accounting & Audits Div., 2000 L Street, N.W.—Room 200E, Washington, D.C. 20036

John Wobbleton, Federal Communications Commission, Common Carrier Bureau—Accounting & Audits Div., 2000 L Street, N.W.—Room 257, Washington, D.C. 20036

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 102997A]

RIN 0648-AK13

Fisheries of the Exclusive Economic Zone Off Alaska; Revise Management Authority of Pelagic Shelf Rockfish; Notice of Availability

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 46 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) for Secretarial review. This amendment would remove black and blue rockfish from the FMP. The State of Alaska would then assume management of those species. This action is necessary to allow the State of Alaska to implement more responsive, regionally based, management of these species than is currently possible under the FMP. NMFS is requesting comments from the public on the proposed amendment, copies of which may be obtained from the Council (see **ADDRESSES**).

DATES: Comments on Amendment 46 must be submitted by January 5, 1998.

ADDRESSES: Comments on the FMP amendment should be submitted to Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendment 46 and the Environmental Assessment/Regulatory Impact Review (EA/RIR) and related economic analysis prepared for the proposed action are available from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving, 907–586–7228.