new uses described in the paragraph (a)(2) of this section.

(2) The significant new use is use of any of the six chemical substances listed in paragraph (a)(1) of this section in aerosol spray paint for non-industrial, indoor spray application.

(b) [Reserved]

[FR Doc. 02–963 Filed 1–14–02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 01–337, FCC 01–360]

Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on changes, if any, the Commission should make to its traditional regulatory requirements for incumbent local exchange carriers' (LECs) broadband service. In particular, it asks: What the relevant product and geographic markets should be for broadband services; whether incumbent LECs possess market power in any relevant market; and whether dominant carrier safeguards or other regulatory requirements should govern incumbent LECs provision of broadband service.

DATES: Comments are due March 1, 2002 and Reply Comments are due April 1, 2002.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket No. 01–337, FCC 01–360, adopted December 12, 2001, and released December 20, 2001. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail qualexint@aol.com. It is also available on the Commission's Web site at *http://www.fcc.gov.*

Synopsis of the Notice of Proposed Rulemaking (NPRM)

1. In this proceeding, the Commission initiates an examination of appropriate regulatory requirements for incumbent LECs' provision of domestic broadband telecommunications services (broadband services). The NPRM focuses on traditional Title II common carrier regulation, arising largely out of sections 201 and 202 of the Communications Act of 1934, as amended, as applied to incumbent LEC provision of broadband services. In particular, the Commission seeks comment on what regulatory safeguards and carrier obligations, if any, should apply when a carrier that is dominant in the provision of traditional local exchange and exchange access services provides broadband service.

2. The Commission asks for comments on the nature and scope of the market for domestic broadband services. It also seeks comment on the relevant market dynamics—including intermodal competition and the nascent stage of market development for residential broadband services—affecting the provision of domestic broadband services. The Commission requests comment on the appropriate regulatory requirements under Title II of the Act for the provision of broadband services by incumbent LECs given current market conditions.

3. In particular, the Commission asks interested parties to address how the Commission can best balance the goals of encouraging broadband investment and deployment, fostering competition in the provision of broadband services, promoting innovation, and eliminating unnecessary regulation. As part of this proceeding, the Commission also invites comment on the Petition filed by SBC Communications on October 3, 2001, requesting an expedited ruling that it is non-dominant in the provision of broadband services, and asking the Commission to forbear from dominant carrier regulation of those services.

4. Background. The NPRM summarizes the various regulatory requirements the Commission has developed in the past, which involve streamlining regulation of firms in increasingly competitive markets, and competitive safeguards to ensure competition in related markets.

5. Identification of Incumbent LEC-Provided Broadband Services Markets. The Commission asks for comment aimed at defining and analyzing the relevant markets in which incumbent LECs provide these broadband services. Consistent with Commission precedent, our regulatory response should be guided by a full understanding of the existing market dynamics for broadband services. The Commission begins its analysis by asking questions about the relevant product and geographic markets for incumbent LEC-provided broadband services. It then analyzes what, if any, market power the incumbent LECs may possess in the relevant markets for broadband services.

6. Appropriate Regulatory Requirements. Once the Commission has defined the relevant product and geographic markets for broadband services, it can use this information to determine what regulatory requirements, if any, should govern the provision of broadband services. The Commission begins by briefly describing relevant portions of the existing regulatory structure for broadband services provided by incumbent LECs. Then it invites interested parties to propose alternative requirements for these broadband services in light of existing market and technological developments. The Commission encourages interested parties to develop proposals for new or modified regulatory requirements for broadband services.

I. Initial Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided in section V.B. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

II. Need for, and Objectives of, the Proposed Rules

8. In this proceeding, the Commission seeks comment on: (1) The nature and scope of the market for domestic broadband services; (2) the relevant market dynamics affecting the provision of domestic broadband services; and (3) the appropriate regulatory requirements for the provision of broadband services by incumbent LECs, given current market conditions. The basic elements of the existing regulatory requirements for incumbent LEC-provided broadband services were initially developed in an era of circuit-switched, analog voice services, and may no longer serve the public interest. Thus, the Commission asks interested parties to address how it can best balance the goals of

encouraging advanced telecommunications investment and deployment, fostering competition in the provision of broadband services, promoting innovation, and eliminating unnecessary regulation. This proceeding also invites comment on the Petition filed by SBC Communications on October 3, 2001, requesting an expedited ruling that it is non-dominant in the provision of advanced services, and asking the Commission to forebear from dominant carrier regulation of those services.

III. Legal Basis

9. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 4, 10, 201–202, 214, 303 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 160, 201–204, 214, 303, and 403, section 706 of the Telecommunications Act of 1996, and sections 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200–1.1216, of the Commission's rules, 47 CFR §§ 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200–1.1216.

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

10. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

11. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' 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. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

12. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small local exchange carriers. The closest applicable definitions for this type of carrier under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide appears To be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, there are 1,335 incumbent LECs. Although some of these carriers may not be independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are no more than 1,335 small entity incumbent LECs that may be affected by the proposals in the NPRM.

V. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

13. The Commission expects that any proposal we may adopt pursuant this NPRM will decrease existing reporting, recordkeeping or other compliance requirements. As noted above, dominant carriers are currently subject to a broad range of regulatory requirements that are generally intended to protect consumers from unjust and unreasonable rates, terms, and conditions and unreasonable discrimination in the provision of communications services. The Commission's dominant carrier regulation includes rate regulation and tariff filing requirements, and also requires supporting information, which in some cases includes detailed cost data, to be filed by dominant carriers with their tariff filings. Incumbent LECs are subject to rate level regulation in the provision of their interstate access services. The BOCs and GTE are subject to mandatory price cap regulation, and several other incumbent LECs have entered price caps on an elective basis, while smaller incumbent LECs are regulated under rate-of-return regulation. In addition, in markets where carriers may have the incentive and ability to leverage control over bottleneck facilities to disadvantage competitors in related markets, the Commission has developed various safeguards to neutralize that ability. This NPRM seeks comment on what relevance, if any, these types of regulations have for broadband services provided by incumbent LECs, and asks whether it would be appropriate to streamline the traditional dominant carrier regulations of incumbent LECs' provision of broadband services.

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

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

15. The overall objective of this proceeding is to reduce existing regulatory burdens on incumbent LECs to the extent consistent with the public interest. The NPRM seeks specific proposals as to which existing regulations might be removed or streamlined in their application to broadband services, and asks parties to comment on whether incumbent LECs should be reclassified as non-dominant in the provision of broadband services. The NPRM further asks parties to discuss the extent to which different categories of broadband services face different levels of competition, warranting different regulatory treatment, and to address the extent to which the markets for different broadband services are at different stages in their development and thus should be treated differently for regulatory purposes. It asks what forms of regulation or de-regulation would best spur deployment of alternative technologies and facilities by existing and potential competitors, and seeks comment on whether existing regulation inhibits or stimulates the deployment of broadband services.

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

16. None.

Ordering Clauses

17. Accordingly, pursuant to the authority contained in sections 2, 4(i)–

4(j), 201, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 152, 154(i)–4(j), 201, 303(r), this NPRM is adopted.

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

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–903 Filed 1–14–02; 8:45 am]

BILLING CODE 6712–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 01–338, CC Docket No. 96–98, CC Docket No. 98–147, FCC 01–361]

Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on whether the Commission should adopt a more granular approach to its unbundling analysis under section 251 of the Communications Act of 1934 (the Act) and on the identification of specific unbundling requirements for incumbent local exchange carriers (LECs). In particular, the Commission seeks comment on whether it should consider application of its unbundling requirements on the basis of service, geographic, facility, customer or other factors. In addition, the Commission seeks comment on whether to retain, modify or eliminate its existing definitions and requirements for network elements. The Commission also seeks comment on the role of state commissions and whether to retain or modify the existing triennial review process for examination of its unbundling requirements.

DATES: Comments are due March 18, 2002 and Reply Comments are due April 30, 2002.

FOR FURTHER INFORMATION CONTACT: Jeremy Miller, Attorney Advisor, Policy and Program Planning Division, Common Carrier Bureau, telephone (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket No. 01–338, FCC 01–361, adopted December 12, 2001, and released December 20, 2001. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via email *qualexint@aol.com.* It is also available on the Commission's website at *http://www.fcc.gov.*

Synopsis of the Notice of Proposed Rulemaking

1. Background. In the Third Local Competition Report and Order, (65 FR 19334, April 11, 2000) the Commission stated that it would reexamine its network element unbundling requirements every three years. In addition, the Commission intends to address a number of outstanding issues concerning the unbundling obligations of incumbent LECs raised by parties in the last several years.

2. The Commission seeks comment on how it should apply section 251(d)(2). In particular, the Commission seeks comment on how to align more directly its unbundling requirements with the multiple stated goals of the Act, such as the directive to encourage the deployment of advanced telecommunications capability. The Commission also seeks comment on whether and how to apply a more granular approach to its existing unbundling analysis by incorporating such refinements as considering for each network element the specific service to be provided, the geographic location, the facility to be unbundled, or the customer to be served. The Commission also seeks comment on what triggers might be adopted to limit or sunset unbundling requirements over time.

3. The Commission seeks comment on its existing rules for network elements. The Commission seeks comment on how to apply a more refined unbundling analysis to its existing unbundling requirements and whether it should retain, modify or eliminate any of these requirements. In addition, the Commission seeks comment on parties' practical experience with the current unbundling requirements. The Commission also seeks comment on a number of general issues including (1) application of the ''just, reasonable and nondiscriminatory'' standard of section 251(c)(3); (2) the relationship between services as governed by sections 251(c)(4) and 251(b)(1) and network elements as governed by sections 251(d)(2) and 251(c)(3); (3) the Commission's existing co-mingling restrictions; (4) the Commission's safe harbor provisions for ''significant local usage;'' (5) the relationship between section 271(c)(2)(B) and sections 251(d)(2) and 251(c)(3); (6) the applicability of sections 201, 202 or other sections of the Act to incumbent LEC wholesale services in the absence of a section 251 unbundling obligation; and (7) clarification of the term ''superior'' as used in the now invalidated rule 47 CFR 51.311(c).

4. State Role. The Commission seeks comment on the role of states in adoption and implementation of unbundling requirements. Among other alternatives, the Commission offers for comment a proposal to adopt national standards for unbundling that would leave specific implementation to the states.

5. Procedural Issues. The Commission seeks comment on whether to retain or modify the existing triennial review process for the examination of its unbundling requirements. The Commission also seeks comment on the use of a sunset period for unbundling obligations and whether it needs to consider transitional mechanisms to address the potential financial impact that would be created by changes to unbundling obligations.

I. Initial Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act (RFA), as amended, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this document. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the document provided above. The Commission will send a copy of the document, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, this document will be published in the **Federal Register**.