to which the alternative settlement arrangement applies.

(5) A summary of the terms and conditions of the alternative settlement arrangement if it does not come within the scope of paragraph (b)(4) of this section. However, upon request by the International Bureau, a full copy of such alternative settlement arrangement must be forwarded promptly to the International Bureau.

(c) If the petition for declaratory ruling contains a certification under paragraph (b)(1)(i) of this section that the proposed alternative settlement arrangement is for service on a route between the United States and a World Trade Organization Member, a party may oppose the petition under paragraph (f) of this section with a showing that the participating carrier on the foreign end of the route does not have multiple (more than one) international facilities-based competitors. In such a case, the petitioning party may make a showing under paragraph (b)(1)(iii) of this section, pursuant to paragraph (g) of this section.

(d) An alternative settlement arrangement filed for approval under this section cannot become effective until the petition for declaratory ruling required by paragraph (a) of this section has been granted under paragraph (f) of this section.

(e) On the same day the petition for declaratory ruling has been filed, the filing carrier must serve a copy of the petition on all carriers providing the same or similar service with the foreign carrier identified in the petition.

(f) All petitions for declaratory ruling shall be subject to a 21-day pleading period for objections or comments, commencing the day after the date of public notice listing the petition as accepted for filing. A petition for declaratory ruling shall be deemed granted as of the 28th day without any formal staff action provided that:

(1) The petition is not formally opposed by a pleading meeting the following criteria:

(i) The caption and text of the pleading make it unmistakably clear that the pleading is intended to be a formal opposition;

(ii) The pleading is served upon the other parties to the proceeding; and

(iii) the pleading is filed within the time period prescribed; or

(2) The International Bureau has not notified the filing carrier that grant of the petition may not serve the public interest and that implementation of the proposed alternative settlement arrangement must await formal staff action on the petition.

(g) If objections or comments are filed, the petitioning carrier may file a response pursuant to § 1.45 of this chapter. Petitions that are formally opposed must await formal action by the International Bureau before the proposed alternative settlement arrangement may be implemented.

[FR Doc. 97–32013 Filed 12–5–97; 10:03 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 52 and 64

[DA 97–2528]

Petitions for Waiver of the Four-Digit Carrier Identification Code (CIC) Implementation Schedule

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On December 3, 1997, the Network Services Division of the Commission's Common Carrier Bureau, released an Order granting extensions to certain local exchange carriers (LECs) of the January 1, 1998 deadline for implementing four-digit carrier code identification codes (CIC). The Order is intended to respond to waiver requests received from certain LECs.

EFFECTIVE DATE: December 3, 1997.

FOR FURTHER INFORMATION CONTACT: Elizabeth Nightingale, Attorney, Network Services Division, Common Carrier Bureau, (202) 418–2352.

SUPPLEMENTARY INFORMATION:

Adopted: December 2, 1997
Released: December 3, 1997

I. Introduction

Carrier identification codes (CICs) are numeric codes that enable local exchange carriers (LECs) providing interstate interexchange access services to identify the interstate interexchange carrier (IXC) that the originating caller wishes to use to transmit its interstate call.[1] LECs use the CICs to route traffic to the proper IXC and to bill for the interstate access service provided. CICs facilitate competition by enabling callers to use the services of telecommunications service providers either by presubscription or by dialing a carrier access code, or CAC, which incorporates that carrier's unique Feature Group D CIC.[2] Originally, CICs were unique three-digit codes (XXX) and CACs were five-digit codes incorporating the CIC (10XXX).

2. On April 11, 1997, in the *CICs Second Report and Order,*[3] the Commission approved an industry plan to expand Feature Group D CICs from three to four digits on the ground that it was a reasonable method of meeting future demand for CICs as the supply of three-digit codes was exhausted.[4] The industry agreed that as the expansion from three to four-digit CICs occurred, and as carriers replaced their five-digit CACs with seven-digit CACs, a transition, or permissive dialing period, was needed. The industry, however, was unable to agree on the length of the transition.[5] In its 1994 *CICs NPRM,* the Commission proposed a six-year period.[6] In the *CICs Second Report and Order,* however, because of the rapidly depleting pool of available three-digit

[1] Most access providers are incumbent local exchange carriers (incumbent LECs) that provide access customers with circuits that interconnect to the local carrier's public switched telephone network. Commission rules require that ''interstate access services should be made available on a non-discriminatory basis and, as far as possible, without distinction between end user and IC [interexchange carrier] customers.'' Petition of First Data Resources, Inc., Regarding the Availability of Feature Group B Access Service to End Users, *Memorandum Opinion and Order,* 1986 WL 291786 (rel. May 28, 1986) at para. 13. Typical access customers include interexchange carriers, wireless carriers, competitive access providers, and large corporate users.

[2] Feature Group D access, or ''equal access,'' is known in the industry as ''One-plus'' (''1+'') dialing. This type of access allows calls to be routed directly to the caller's carrier of choice. Feature Group D/equal access offers features, including presubscription, not generally available through other forms of access. In 1988, the Industry Carriers Compatibility Forum (ICCF), operating under the Alliance for Telecommunications Industry Solutions (ATIS), Carrier Liaison Committee (CLC), began to develop a two-part plan to convert and expand three-digit Feature Group D CICs to four digits. The second part of the plan, originally scheduled to occur in the third quarter of 1993, contemplated expansion of three-digit Feature Group D CICs to four digits and eventual elimination of the 10XXX CAC format. *See* Letter of October 13, 1989, from G.J. Handler, Vice President, Network Planning, Bell Communications Research (Bellcore), to Richard M. Firestone, Chief, Common Carrier Bureau, Federal Communications Commission at 2 (Handler Letter). The ICCF's plan was published in 1991. *See Expansion of Carrier Identification Code Capacity for Feature Group D (FGD),* Bellcore Technical Reference TR–NWT–001050, Issue 1 (April 1991) (ICCF Expansion Plan, April 1991). In 1994, the expansion of Feature Group D CICs was scheduled for the first quarter of 1995. *See* Administration of the North American Numbering Plan, *Notice of Proposed Rulemaking,* CC Docket No. 92–237, 9 FCC Rcd 2068, 2076 (1994) (59 FR 24103 (5/10/94) (*CICs NPRM*). In January 1997, the ICCF became part of the Network Interconnection Interoperability Forum (NIIF), which also operates under the auspices of the CLC.

[3] Administration of the North American Numbering Plan, Carrier Identification Codes (CICs), *Second Report and Order,* CC Docket No. 92–237, FCC 97–125 (released April 11, 1997) (62 FR 19056 (April 18, 1997)) (*CICs Second Report and Order*).

[4] *See CICs Second Report and Order* at para. 28.

[5] *See* Handler Letter at 2.

[6] *See CICs NPRM,* 9 FCC Rcd at 2076–77.

CICs, the Commission decided to end the transition on January 1, 1998. The Commission also denied requests to ''grandfather'' (*i.e.*, to permit carriers to continue to use) previously assigned three-digit CICs that are in use at the end of the transition.[7] The Commission's decisions were intended to advance the pro-competitive objectives of the Communications Act of 1934 (the Communications Act or the Act),[8] as amended by the Telecommunications Act of 1996 (1996 Act).[9]

3. On October 22, 1997, in the *CICs Order on Reconsideration*,[10] the Commission modified the decision in the *CICs Second Report and Order* regarding the length of the transition during which three and four-digit Feature Group D CICs co-exist, and created a ''two-step'' end to the transition to four-digit CICs. Under the *CICs Order on Reconsideration*, all LECs that provide equal access must have completed switch changes to recognize four-digit CICs by January 1, 1998, the end of the first phase. The second phase, which ends on June 30, 1998, is intended to allow interexchange carriers time to prepare their networks for, and educate their customers about, the replacement of three-digit CICs by four-digit CICs. After June 30, 1998, only four-digit CICs and seven-digit CACs will be recognized. The Commission also affirmed its decision in the *CICs Second Report and Order* not to grandfather the use of three-digit CICs and five-digit CACs that are in use during the transition.

4. Several small LECs have filed petitions for waiver of the *CICs Second Report and Order*'s January 1, 1998 conversion deadline.[11] Hardy requests an extension until April 30, 1998; Pierce requests an extension until May 1, 1998; Northeast, Pioneer, Hartington, and Jefferson request extensions until June 30, 1998; Hartman requests an extension until July 1, 1998; and Clarks, Eustis/Home, and Henderson request extensions until January 1, 2000. The LECs generally argue that extensions are warranted because the operating system software they need to upgrade to four-digit CIC capability is not currently available and is very costly.

5. In this Order, we conclude that, for the reasons discussed below: (1) The petitions of Hardy, Pierce, Northeast, and Pioneer should be granted, by extending for them the switch conversion deadline for four-digit CIC capability for the time periods requested; (2) the petitions of Hartman, Clarks, Eustis/Home, and Henderson should be granted in part, by extending for them the switch conversion deadline for four-digit CIC capability, but only until June 30, 1998, and should be denied in part, to the extent they request extensions beyond that date; and (3) the petitions of Hartington and Jefferson should be dismissed as moot.

II. Petitions

A. Request for Extension Until April 30, 1998

6. Hardy, an incumbent LEC serving rural areas of West Virginia,[12] that has provided interLATA equal access since 1992,[13] requests an extension of the switch conversion deadline until April 30, 1998. Hardy claims that it is technically infeasible for it to comply with the January 1, 1998 deadline. Hardy currently operates an Alcatel E–10-Five switch. Hardy asserts that the software required to accept four-digit Feature Group D CICs was not available when it purchased the interLATA equal access software from Altcatel in March 1990.[14] Hardy asserts that Alcatel has notified Hardy that it will not provide the software upgrades for four-digit CICs.[15] Hardy explains that it needs to comply with the Rural Utilities Service (RUS) requirements (a process it started in early 1997) to deploy a new switch that would include, among other things, four-digit CIC capability. Hardy asserts that the requested extension of time until April 30, 1998, will enable it to continue its efforts to select, purchase, and deploy a switch capable of providing the four-digit CIC function.[16]

B. Request for Extension Until May 1, 1998

7. Pierce, a small, rural LEC providing equal access, requests an extension of the switch conversion deadline until May 1, 1998.[17] Pierce claims that it is technically and economically infeasible for it to comply with the January 1, 1998 deadline.[18] Pierce operates two Northern Telecom (Nortel) switches, using operating systems software release version 404.41, which does not have four-digit CIC capability.[19] Pierce asserts that since May 1997, it has made good faith efforts to purchase an updated release, but that Nortel has not responded to confirm either price or acceptance of the order for the software.[20] Pierce asserts that it is currently trying to negotiate with Nortel. Once contracts are signed, a lead time of 180 days is expected, which Pierce claims would mean a mid-1998 implementation date.[21] Pierce asserts that the Commission's grant of a waiver in the present case is consistent with Commission precedent recognizing the technical and economic burdens imposed on small and rural LECs in implementing software upgrades and granting waivers when those burdens are demonstrated.[22]

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[7] *See CICs Second Report and Order* at para. 46.

[8] 47 U.S.C. §§ 151 *et seq.*

[9] Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56 (1996); *see* Joint Explanatory Statement of the Committee of the Conference, H.R. Rep. No. 458, 104th Cong., 2d Sess. 113.

[10] Administration of the North American Numbering Plan, Carrier Identification Codes (CICs), *Order on Reconsideration, Order on Application for Review, and Second Further Notice of Proposed Rulemaking,* CC Docket No. 92–237, FCC 97–386 (released October 22, 1997) (62 FR 55762 (October 28, 1997)) (*CICs Order on Reconsideration*). Prior to the release of the *CICs Order on Reconsideration,* on October 9, 1997, the Commission issued a *Further Notice of Proposed Rulemaking* in this docket. *See* Administration of the North American Numbering Plan, Carrier Identification Codes (CICs), *Further Notice of Proposed Rulemaking and Order,* CC Docket No. 92–237, FCC 97–364 (released October 9, 1997) (62 FR 54817 (October 22, 1997) (*CICs FNPRM*). The issues raised in the *CICs FNPRM* are unrelated to the waiver petitions we address here.

[11] *See Petition for Limited Waiver of Clarks Telecommunications Co.,* CC Docket No. 92–237, October 2, 1997 (*Clarks Petition*); *Joint Petition for Limited Waiver of Eustis Telephone Exchange, Inc. and Home Telephone Company of Nebraska,* CC Docket No. 92–237, October 2, 1997 (*Eustis/Home Petition*); *Petition for Limited Waiver of Hardy Telecommunications, Inc.,* CC Docket No. 92–237, September 23, 1997 (*Hardy Petition*); *Response to Inquiry by Hardy Telecommunications, Inc.,* CC Docket No. 92–237, September 29, 1997 (*Hardy Response to Inquiry); Petition for Waiver of Hartington Telecommunications Co., Inc.,* CC Docket No. 92–237, October 9, 1997 (*Hartington Petition*); *Errata to Petition for Waiver of Hartington Telecommunications Co., Inc.,* CC Docket No. 92–237, October 10, 1997 (*Hartington Errata to Petition); Petition for Limited Waiver of Hartman Telephone Exchanges, Inc.,* CC Docket No. 92–237, October 6, 1997 (*Hartman Petition); Petition for Limited Waiver of Henderson Telephone Company,* CC Docket No. 92–237, October 2, 1997 (*Henderson Petition); Petition for Waiver of Jefferson Telephone Company,* CC Docket No. 92–237, October 23, 1997 (*Jefferson Petition); Petition for Limited Waiver of Pierce Telephone Company, Inc.,* CC Docket No. 92–237, November 5, 1997 (*Pierce Petition); Petition for Waiver of Northeast Nebraska Telephone Company,* CC Docket No. 92–237, November 5, 1997 (*Northeast Petition); Petition for Limited Waiver of Pioneer Telephone Cooperative, Inc.,* CC Docket No. 92–237, November 14, 1997 (*Pioneer Petition*).

[12] Hardy serves approximately 2,600 access lines. *See Hardy Petition* at 1.

[13] *See Hardy Response to Inquiry.*

[14] *See id.*

[15] *See Hardy Petition* at 2–3.

[16] *See id.*

[17] *See Pierce Petition* at 1 and 3. Pierce serves approximately 1,870 access lines. *See id.* at n.3.

[18] *See id.* at 1–2.

[19] *See id.* at 2.

[20] *See id.* at 3.

[21] *See id.*

[22] *See id.* at 3–4, *citing* Rules and Policies Regarding Calling Number Identification Service—Caller ID, *Order and Fourth Notice of Proposed Rulemaking,* CC Docket No. 91–281, 10 FCC Rcd 13796, 13808 (1995)(60 FR 63491 (December 11, 1995)) (*Caller ID Order*).

C. Requests for Extensions until June 30, 1998

8. Northeast, Pioneer, Hartington, and Jefferson, all rural LECs, request extensions of the switch conversion deadline until June 30, 1998. Northeast and Hartington serve Nebraska, Pioneer serves Oklahoma, and Jefferson serves South Dakota.[23] Hartington and Jefferson assert that they do not provide Feature Group D equal access, because they have never received a request for equal access.[24] Northeast asserts that since April 15, 1997, it has provided equal access in three of its 12 exchanges, notwithstanding that it has never received a request for equal access.[25] Pioneer asserts that all of its 77 end offices were converted to equal access by May 1, 1996.[26] Pioneer asserts that 65 of its exchanges, serving approximately 86 percent of its access lines, are four-digit CIC capable.[27] Pioneer's extension request, therefore, applies to the 12 non-conforming exchanges.[28] Northeast asserts that the switching equipment providing equal access in each of the three exchanges is not four-digit CIC capable at this time.[29] Northeast, Hartington, and Jefferson all assert that no IXCs with four-digit CICs have shown an interest in serving their exchange areas.[30] Each argues that, even it were to receive a request for equal access, the market it serves is small and the company would be allowed three years after a bona fide request to begin providing equal access.[31] Northeast, Hartington and Jefferson all assert that, for these reasons, granting their waiver requests would not thwart the Commission's policy goal of expansion of competition in the interexchange market.[32] Northeast, Hartington, and Jefferson indicate that they have demonstrated an intent to implement four-digit CIC capability as soon as practicable.[33]

9. Northeast asserts that it began negotiations to replace switching equipment at its three equal access exchanges shortly after the Commission released the April 1997 *CICs Second Report and Order*.[34] Northeast asserts that, after months of negotiations, it ordered new, four-digit CIC capable, switching equipment for two of the exchanges in October 1997.[35] Northeast asserts that the equipment is scheduled to be delivered by mid-December 1997, and installed by mid-February 1998.[36] Northeast asserts that negotiations are ongoing for the third exchange.[37] Northeast asserts that for this exchange, it expects that the new, four-digit CIC compliant switch will be ordered shortly after Northeast's next board meeting on November 18, 1997, delivered in early 1998, and installed during the first quarter of 1998.[38] Northeast also asserts that it interprets the recent *CICs Order on Reconsideration and Second Further Notice of Proposed Rulemaking* as not requiring Northeast to comply with the January 1, 1998 conversion deadline, because it has never received a bona fide request for equal access.[39] Northeast asserts, therefore, that it may not need to request a waiver of the January 1, 1998 conversion deadline, but states that it is doing so, out of an abundance of caution.[40]

10. Pioneer asserts that grant of its request will allow Pioneer to complete its network reconfiguration and deploy new switch facilities in the most rational and efficient manner. This will, in turn, benefit its customers, who will be spared the costs of an abrupt change in Pioneer's plan.[41] Pioneer states that in January 1995, it began a series of network-wide equipment upgrades to bring new services to its customers, including the four-digit CIC function. Pioneer asserts that upon issuance of the *CICs Second Report and Order*, it accelerated its network conversion to four-digit CICs, a process it had anticipated being completed by the year 2000, under the originally proposed six-year transition.[42] Pioneer contends that its conversion process was delayed when an area code split was ordered, beginning on November 1, 1997, affecting 62 of its 77 exchanges.[43] For the 12 exchanges for which it seeks an extension, Pioneer argues that it would be economically infeasible to meet the January 1, 1998 deadline.[44] After exploring all reasonable alternatives, Pioneer asserts that additional time is needed, until June 30, 1998, to convert these 12 exchanges. Pioneer notes that its request would ensure compliance when the permissive dialing period ends, and would, therefore, mean that the only IXCs affected by the grant of this waiver request would be those IXCs using new four-digit CICs.[45]

11. Hartington has entered into a contract with Nortel for the purchase of four-digit CIC compliant switching equipment, but claims that installation and testing of the new equipment may not occur until March 1998, at the earliest.[46] Like Clarks and Eustis/Home, Jefferson uses Nortel operating systems software release version 403.31. Jefferson asserts that it discovered that to achieve four-digit CIC capability, an upgrade costing approximately $100,000 would be necessary.[47] Jefferson also notes that the company is in the process of being sold, and expresses concern about spending $100,000 on switching upgrades.[48]

D. Request for Extension Until July 1, 1998

12. Hartman, a small LEC[49] serving Nebraska that has provided equal access since 1995, requests an extension of the switch conversion deadline until July 1, 1998.[50] Hartman uses Nortel operating systems software release version 405.10, and argues that, to obtain four-digit CIC

[23] Northeast operates 4,120 access lines in twelve exchanges. *See Northeast Petition* at 2. Hartington operates 1,600 access lines serving 3,000 people. *See Hartington Petition* at 2. Pioneer serves approximately 50,000 access lines through 77 end offices. *See Pioneer Petition* at 2. Jefferson operates 550 access lines serving 1,100 people. *See Jefferson Petition* at 2.

[24] Hartington asserts that it does not pass CICs in its signalling (*Hartington Petition* at 2) and that Hartington customers make long distance calls through Feature Group C dialing arrangements. If customers wish to use the services of an IXC other than AT&T for interLATA calls, they may use either a credit card service or Feature Group B dialing arrangement (*Hartington Errata to Petition*). Jefferson asserts that its customers connect with competing long distance carriers through Feature Group B and C dialing. *See Jefferson Petition* at 2.

[25] *See Northeast Petition* at 2. These three exchanges have a total of 1,149 access lines. *See id.*

[26] *See Pioneer Petition* at 2. Pioneer asserts that it began the equal access conversion process in 1991. *Id.*

[27] *Id.* at 3.

[28] *Id.* These exchanges are Apache, Arnett, Buffalo, Canton, Chester, Drummond, Fort Supply, Gage, Longdale, Quinlan, Shattuck, and Waynoka.

[29] *See Northeast Petition* at 2.

[30] *See Northeast Petition* at 5; *Hartington Petition* at 3–4; *Jefferson Petition* at 4.

[31] *See Jefferson Petition* at 5–6; *Hartington Petition* at 4; *Jefferson Petition* at 4. Jefferson also notes that this is particularly true given that IXCs have until June 30, 1998 to convert their own services to four-digit CICs. *See Jefferson Petition* at 5–6.

[32] *See Northeast Petition* at 5–6; *Hartington Petition* at 3–4; *Jefferson Petition* at 4.

[33] *See Northeast Petition* at 7; *Hartington Petition* at 5; *Jefferson Petition* at 6.

[34] *See Northeast Petition* at 2.

[35] *See id.* at 2–3.

[36] *See id.* at 3. Northeast asserts that installation of new switching equipment is a more complicated and lengthy process than installation of software upgrades. *See id.* at n.5.

[37] *See id.* at 3.

[38] *See id.*

[39] *See id.* at 3–4, *citing CICs Order on Reconsideration* at n.75 and *CICs Second FNPRM* at para. 84.

[40] *See Northeast Petition* at 4.

[41] *See Pioneer Petition* at 9.

[42] *See id.* at 2–3.

[43] *Id.* at 3.

[44] *Id.* at 4.

[45] *Id.* at 4 and 9.

[46] *See Hartington Petition* at 2.

[47] *See Jefferson Petition* at 2 and n.3.

[48] *Id.* at 6.

[49] Hartman operates 450 access lines serving three exchanges on the Nebraska/Kansas border. *See Hartman Petition* at 3.

[50] *See id.* at 1.

capability, the company will need to upgrade this software and buy additional equipment.[51] Hartman asserts that, after months of negotiations, it has signed a contract with Nortel to upgrade to release 406.10, but argues that, because Nortel has been overwhelmed with upgrade requests, the delivery date for the upgrade is uncertain.[52] Hartman asserts that it has considered other manufacturers but has discovered that it would not be economical to purchase the equipment from them.[53] Like Pierce, Hartman refers to Commission precedent granting waivers when technical and economic burdens imposed on small and rural LECs in implementing software upgrades are demonstrated.[54]

E. Requests for Extension Until January 1, 2000

13. Clarks, Eustis/Home, and Henderson each request a two-year extension of the switch conversion deadline, until January 1, 2000. Each is a small LEC[55] that currently is providing equal access.[56] Each asserts that compliance with the January 1, 1998 conversion requirement is technically and economically infeasible because the operating system software needed to upgrade to four-digit CIC capability is not currently available and is very costly. None of the companies routinely performs upgrades to its Nortel switches, and each asserts that due to the large number of update requests, Nortel has a long waiting list of LECs seeking to obtain the new software releases.[57] Clarks and Eustis/Home both use Nortel operating systems software release version 403.31. They state that they have been considering upgrading to Nortel's operating systems software release version 410.10, but argue that the process is lengthy due to Nortel's long waiting list.[58] Eustis/Home asserts that it does not expect to receive the new release until mid-1998.[59] Henderson uses Nortel operating systems software release version 402.52. Henderson asserts that it expects a mid-1998 implementation, based on contract negotiations with Nortel. Henderson notes, however, that if it decides to purchase new equipment from another manufacturer, implementation could take several more months.[60] Like Pierce and Hartman, Clarks, Eustis/Home, and Henderson refer to Commission precedent granting waivers when technical and economic burdens imposed on small and rural LECs in implementing software upgrades are demonstrated.[61]

14. Clarks, Eustis/Home, and Henderson argue that to obtain four-digit CIC capability, they must upgrade software or hardware and purchase additional equipment. Clarks notes that it is considering purchasing a new switch, which requires completion of RUS requirements, followed by installation of the equipment. The total process assertedly would take 18–20 months.[62] Eustis/Home also argues that switch replacement would take 18–20 months.[63] Henderson asserts that it is making good faith efforts to purchase an updated release, but argues that Nortel has refused to deal with Henderson using the RUS contract, and negotiations are taking months.[64] Eustis/Home and Henderson assert that they have also consulted with Stromburg-Carlson and Mitel about updated releases.[65]

III. Discussion

15. The Commission may waive any provision of its rules, in whole or in part, if good cause is shown.[66] An applicant for waiver must demonstrate that special circumstances warrant a deviation from the general rule and that such deviation will serve the public interest.[67] In evaluating each petition for waiver before us here, we have weighed the following factors: the LEC's diligence in upgrading its switches; the availability from manufacturers of products required to accomplish the upgrade; and the impact of an extension of the conversion deadline on the IXCs served by the LEC's switches and on customers' ability to reach IXCs through CAC dialing.

16. *Requests for Extension of Hardy, Pierce, Northeast, Pioneer and Hartman.* We find that the petitions for waiver filed by Hardy, Pierce, Northeast, Pioneer, and Hartman demonstrate the special circumstances meriting a waiver of the January 1, 1998 conversion deadline. First, each has demonstrated that it is diligently working to upgrade or replace its switches. For example, Hardy initiated the RUS process to deploy a new switch with the four-digit CIC capability in early 1997, when it learned that its switch vendor does not provide software upgrades to implement four-digit CICs capability. Pierce has been working to purchase four-digit CIC capable upgrades since May 1997, shortly following the release of the *CICs Second Report and Order* establishing the January 1, 1998 deadline for LEC conversion to four-digit CICs. Similarly, Northeast states that it began negotiations to replace its switching equipment shortly after the release of the *CICs Second Report and Order* in April 1997. After months of negotiations, Northeast has now ordered new, four-digit CIC capable, switching equipment for two of its exchanges, expects to place an order for its third switch in November 1997, and anticipates installation of all of the required new equipment during the first quarter of 1998. Pioneer states that it began a series of network-wide equipment upgrades, that would include four-digit CIC capability, in January 1995 and accelerated that conversion following the release of the *CICs Second Report and Order.* Although its conversion process was delayed by an area code split, Pioneer requests an extension for only 12 of its 77 exchanges and only until the end of the permissive dialing period on June 30, 1998. Hartman indicates that it is making good faith efforts to purchase updated software; indeed, Hartman states that it has signed a contract with Nortel for an upgraded operating systems software release.

17. Second, based on their petitions, we conclude that Hardy, Pierce, Northeast, and Hartman have demonstrated that the product needed to accomplish the upgrade to their individual networks is not readily available from switch manufacturers, which has delayed their ability to meet the January 1, 1998 conversion deadline. In Hardy's case, Alcatel has notified it that it will not provide the software upgrades necessary to implement four-digit CIC capability. Thus, Hardy must select, purchase and deploy a new switch capable of providing the four-digit CIC function.

[51] *See id.* at 2–3.

[52] *Id.*

[53] *See id.*

[54] *See id.* at 4, *citing Caller Id Order, cited* at n.22, *supra.*

[55] Clarks and Henderson each serves 1000 access lines, and Eustis/Home combined serves 1300 access lines. *See Clarks Petition* at n.3; *Henderson Petition* at n.3; *Eustis/Home Petition* at n.3. Eustis and Home are commonly owned. *See Eustis/Home Petition* at 1.

[56] Clarks states that it has been providing equal access since 1989. Eustis/Home and Henderson do not indicate when they began providing equal access.

[57] *See Clarks Petition* at 3; *Eustis/Home Petition* at 3.

[58] *See Clarks Petition* at 3; *Eustis/Home Petition* at 3.

[59] *See Eustis/Home Petition* at 3.

[60] *See Henderson Petition* at 3.

[61] *See e.g., Clarks Petition* at 4, *citing Caller Id Order, cited* at n.22, *supra.*

[62] *See Clarks Petition* at 3.

[63] *See Eustis/Home Petition* at 3.

[64] *See Henderson Petition* at 3.

[65] *See Eustis/Home Petition* at 3.

[66] *See* 47 C.F.R. § 1.3.

[67] *Northeast Cellular Telephone Co.* v. *FCC,* 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio* v. *FCC,* 418 F.2d 1153 (D.C. Cir. 1969).

Pierce has been unable to obtain from Nortel the product necessary to upgrade its Nortel switches. Pierce estimates that upgrades can be operational, however, 180 days after a contract with Nortel is signed. Northeast maintains that replacement switching equipment was purchased only after months of negotiations. Hartman asserts that, because Nortel has been overwhelmed with upgrade requests, the delivery date for its upgrade is uncertain. In Pioneer's case, although it does not claim that replacement switching equipment is unavailable, we note that Pioneer also is replacing its switching equipment, rather than implementing an upgrade to its existing equipment. Thus, we conclude that the absence of this claim is not dispositive of its petition.

18. Third, we conclude that the impact of an extension of the conversion deadline on the IXCs served by Hardy, Pierce, Northeast, Pioneer, and Hartman, and on the ability of those LECs' customers to reach IXCs through CAC dialing, does not outweigh the burden on the LECs that would be imposed by a denial of their petitions for waiver. Hardy, Pierce, Northeast, Pioneer, and Hartman are small, rural LECs serving a limited number of access lines. Hardy operates in West Virginia, serving 2,600 access lines. Pierce, a local exchange carrier in Nebraska, serves about 1,870 access lines. Northeast also operates in Nebraska, serving about 1,150 access lines. Hartman operates 450 access lines serving three exchanges on the Nebraska/Kansas border. Pioneer operates in Oklahoma, and although it serves approximately 50,000 access lines, only 14 percent of those access lines are affected by its request for an extension of the January 1, 1998 conversion deadline.[68] Hardy, Pierce, Northeast and Pioneer have not requested an extension of the conversion deadline beyond June 30, 1998. Accordingly, the grant of their requested waivers will not affect or interfere with the end of the permissive dialing period on June 30, 1998. Hartman requests an extension of the conversion deadline until July 1, 1998, only one day after the end of the permissive dialing period. As explained below, we grant Hartman an extension until June 30, 1998, which will not affect or interfere with the end of the permissive dialing period.

19. We recognize that the grant of these extensions will shorten or eliminate the time we provided for IXCs to prepare their networks and to educate their customers, in creating a two-step transition in our *Order on Reconsideration*. We find, however, that the technical and economic burden on these LECs that would be imposed by a denial of the extensions outweighs the burden to the IXCs and their customers. Each petitioner asserts that, even if it were technically feasible, it would suffer undue economic burden in attempting to meet the January 1, 1998 conversion deadline. Further, the economic burdens imposed by a denial of the extensions would be borne by the LECs' customers. We note, moreover, that only IXCs that have been issued a four-digit CIC (who cannot currently receive CAC calls originating with the LECs' customers) will be affected by the grant of the waivers. The petitioners' networks can, and will continue to, accept CAC calling for IXCs with three-digit CICs until the transition ends on June 30, 1998. Although we recognize the potential anticompetitive effects of the dialing disparity and seek to minimize them, we believe that those effects are outweighed by the economic and technical burdens likely to be imposed on the LECs by a failure to extend the conversion deadline for them. Thus, on balance, we find that the impact of an extension of the conversion deadline on the IXCs served by Hardy, Pierce, Northeast, Pioneer, and Hartman, and on the ability of those LECs' customers to reach IXCs through CAC dialing, does not outweigh the burden on the LECs that would be imposed by a denial of the extension requests.

20. We find that the conversion extension dates requested by Hardy and Pierce are reasonable. Hardy's and Pierce's requests for extensions until April 30, 1998, and May 1, 1998, respectively, allow for at least a brief period of time during which the IXCs served by these LEC switches can coordinate the conversion with them and can educate their customers about the necessary dialing changes.

21. We also find the amount of additional time requested by Northeast and Pioneer, until June 30, 1998, to be reasonable. On June 30, the permissive dialing period will end. We recognize that granting the extension until June 30, 1998, will effectively eliminate the benefits of the two-step transition created by the Commission in the *CICs Order on Reconsideration* for the IXCs served by these LECs' limited number of access lines. As noted above, we conclude, however, that the burden on the LECs that would be imposed by a denial of the extension outweighs the burden to IXCs and their customers. We reject Northeast's interpretation of the Commission's actions as requiring conversion by a LEC only if it is providing equal access in response to a request. The *CICs Order on Reconsideration*, in requiring that LECs providing equal access convert to four-digit CIC capability by January 1, 1998, does not distinguish between those LECs providing equal access voluntarily and those providing it in response to a request. This is consistent with the Commission's requirement in the *Independent Telephone Company Equal Access Report and Order*,[69] issued over twelve years ago, that companies not receiving a request for equal access implement equal access as soon as practicable.[70]

22. We also find that Hartman's request for an extension until July 1, 1998, is generally reasonable. Because the permissive dialing period ends on June 30, 1998, we grant Hartman's request until that date, rather than until July 1, 1998, to avoid disruption to IXCs and to the public when the permissive dialing period ends on June 30, 1998.

23. *Requests for Extension of Clarks, Eustis/Home, and Henderson.* We find that Clarks', Eustis/Home's, and Henderson's requested extensions, until January 1, 2000, are unreasonable. While we find that these LECs warrant an extension of the conversion deadline, we find that these LECs have failed to demonstrate the reasonableness of the amount of time they request, and to explain why, after seven months, a decision as to whether to replace their switches as a means of becoming four-digit CIC compliant has not been reached. As explained below, we grant extensions of the conversion deadline to Clarks, Eustis/Home, and Henderson, but only until June 30, 1998, which should be sufficient time for them to upgrade their switches.

24. Clarks, Eustis/Home, and Henderson all argue that switch replacement may be necessary before their networks are four-digit CIC compliant. Both Clarks and Eustis/Home assert that if switch replacement is necessary, they would not be ready to convert for 18–20 months. Henderson, while asserting that it could expect mid-1998 implementation of a switch upgrade, asserts that implementation could take several more months if it decides to purchase new equipment from a different manufacturer. We

[68] Pioneer states that currently 65 of its existing exchanges, serving approximately 86 percent of its access lines, are capable of providing the four-digit CIC function by the January 1, 1998 deadline. *See Pioneer Petition* at 3.

[69] *See* In the Matter of MTS and WATS Market Structure Phase III, *Report and Order*, CC Docket No. 78–72, 100 F.C.C.2d 860 (1985)(*Independent Telephone Company Equal Access Order*).

[70] *See id.* at para. 48, *cited in CICs Second FNPRM* at para. 83.

recognize, based on Hardy's experience, that if Clarks, Eustis/Home, and Henderson decide to replace their switches, which would involve the RUS funding approval process, the entire process could take as long as 16 months.[71] Clarks, Eustis/Home, and Henderson have not yet decided, however, whether to pursue that course of action, instead of upgrading existing ones, as a means of becoming four-digit CIC compliant. None of these carriers, who assertedly began considering conversion options as early as April 1997, has explained why, after seven months, a decision as to whether to replace their switches, a process which they all assert is a lengthy one, has not been reached. Hardy states that it began the RUS process for deploying a new switch in early 1997, and asks for an extension until only April 30, 1998; Clarks, Eustis/Home, and Henderson, on the other hand, began considering options at most only three months later than Hardy, yet request extensions of two years, rather than four months, as requested by Hardy.

25. Based on their petitions, we find that a more limited extension is warranted. Clarks, Eustis/Home, and Henderson warrant extensions of the conversion deadline to upgrade their switches because each has demonstrated diligence in pursuing switch upgrades, and the unavailability from manufacturers of products required to accomplish the upgrade. The impact of an extension on the IXCs served by them, and on the ability of those LECs' customers to reach IXCs through CAC dialing, does not outweigh the burden on the LECs that would be imposed in the absence of an extension.

26. First, Clarks, Eustis/Home, and Henderson have demonstrated that they are diligently working to upgrade their switches. Each asserts that, upon issuance of the *CICs Second Report and Order* in April 1997, it began assessing the steps necessary to meet the January 1, 1998 conversion deadline. Clarks currently is negotiating with Nortel regarding upgrade costs, for the updated operating system software necessary to accept four-digit CICs, and the equipment necessary to operate the software. Eustis/Home has been taking bids from several sources to obtain the fairest price for upgrades, and, in the past few months, has been communicating with vendors in addition to Nortel (such as Stromburg-Carlson and Mitel), regarding the purchase of software. Henderson is in the process of negotiations with Nortel regarding contract specifics for switch upgrades.

27. Second, based on their petitions, we conclude that Clarks, Eustis/Home, and Henderson have demonstrated that the product needed to accomplish the upgrade to their individual networks is not readily available from switch manufacturers, delaying their ability to meet the January 1, 1998, conversion deadline. Each petitioner asserts that Nortel has informed it that Nortel has a long waiting list for upgrades. Eustis/Home is currently on the waiting list for an updated version of the operating system software, but cannot expect to receive it before mid-1998. Henderson also estimates a mid-1998 implementation, based on the assumption that, once a contract is signed, approximately 180 days are needed for implementation.

28. Third, we conclude that the impact of an extension of the conversion deadline on the IXCs served by Clarks, Eustis/Home, and Henderson, and on the ability of those LECs' customers to reach IXCs through CAC dialing, does not outweigh the burden on the LECs that would be imposed absent an extension. Clarks, Eustis/Home, and Henderson are small, rural LECs serving a limited number of access lines. Clarks and Henderson each serves 1000 access lines, and Eustis/Home (which are commonly owned) combined serves 1300 access lines. Because, as discussed below, we are granting these LECs extensions only until June 30, 1998, the extensions will not affect or interfere with the end of the permissive dialing period on June 30, 1998.

29. We find that, based on the record, an extension until June 30, 1998, should provide sufficient time for Clarks, Eustis/Home, and Henderson to upgrade their existing switches. The burdens on IXCs and their customers of an extension beyond June 30, 1998, however, are much greater. An extension beyond that date will make it difficult for the IXCs served by them to educate their customers about the changes in dialing patterns and will affect the IXCs' customers' ability to reach them. The burdens imposed on IXCs and their customers of a longer extension outweigh any burdens that might be imposed on these LECs by our failure to extend the conversion deadline beyond June 30, 1998.

30. Consistent with our desire to avoid requiring parties to incur inefficient cost expenditures, if Clarks, Eustis/Home, and Henderson, decide to replace their switches, we will consider further extension requests from them, provided they demonstrate that they have continued to work diligently towards conversion. Any party seeking a further extension should be prepared to provide detailed documentation of the steps taken, since issuance of this Order, to achieve switch conversion by June 30, 1998. Because a grant of a further extension, even for the slightest amount of time, will cause disruption to callers if all equal access LEC end offices are not converted to recognize four-digit CICs once the permissive dialing period has ended, we will scrutinize closely any request for a further extension. For this reason, we expect any further extension requests to be for the shortest amount of time practicable.

31. Finally, we note that the *CICs Order on Reconsideration*, in addition to requiring four-digit CIC conversion by equal access LECs as of January 1, 1998, also requires that LECs must offer a standard intercept message beginning on or before June 30, 1998, explaining that a dialing pattern change has occurred and instructing the caller to contact its IXC for further information.[72] The Commission requires that, in developing an intercept message, LECs must consult with IXCs and reach agreement on the content of the message and on the period of time during which the message will be provided.[73] We emphasize that the LECs to whom we grant conversion extensions here must comply with the Commission's intercept message requirement.

32. *Requests for Extension of Hartington and Jefferson*. Hartington and Jefferson both state that they do not provide equal access. As noted above, in the *CICs Order on Reconsideration*, the Commission modified the decision in the *CICs Second Report and Order* regarding the length of the transition during which three and four-digit Feature Group D CICs co-exist, and created a ''two-step'' end to the transition to four-digit CICs, with January 1, 1998, the end of the first phase, being the deadline for LECs providing equal access to complete switch changes to recognize four-digit CICs.

33. In the *CICs Second FNPRM*, issued concurrently with the *CICs Order on Reconsideration*, the Commission, noting that some independent incumbent LECs in rural and isolated areas do not provide equal access, stated that a requirement that all LEC end office switches be upgraded to accept four-digit CICs by January 1, 1998, may have the unintended effect of requiring

[71] If Hardy began this process on January 1, 1997, and is ready for implementation by April 30, 1998, the total amount of time required would be 16 months.

[72] *See CICs Order on Reconsideration* at para. 26.

[73] *See id.*

those LECs that have never received a bona fide request for equal access or that are not subject to a specific timetable for providing equal access nonetheless to upgrade their end offices to offer equal access by January 1, 1998.[74] The Commission noted that such a requirement would modify the Commission's equal access implementation schedule for non-GTE independent telephone companies, set by the 1985 *Independent Telephone Company Equal Access Report and Order.* As more than twelve years have passed since adoption of the *Independent Telephone Company Equal Access Report and Order,* the Commission, in the *CICs Second FNPRM,* tentatively concluded that eventually all LEC end offices should be required to provide equal access.[75] Because the *CICs Order on Reconsideration* requires January 1, 1998 switch conversion to accommodate four-digit CICs only by those LECs providing equal access, however, and because Hartington and Jefferson are not providing equal access, we dismiss their petitions as moot.

IV. Ordering Clauses

34. *It is ordered,* pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Limited Waiver of Hardy Telecommunications Inc., *is granted,* by extending for it the switch conversion deadline for four-digit CIC capability until April 30, 1998.

35. *It is further ordered,* pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Limited Waiver of Pierce Telephone Company, Inc., *is granted,* by extending for it the switch conversion deadline for four-digit CIC capability until May 1, 1998.

36. *It is further ordered,* pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Waiver of Northeast Nebraska Telephone Company *is granted,* by extending for it the switch conversion deadline for four-digit CIC capability until June 30, 1998.

37. *It is further ordered,* pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Limited Waiver of Pioneer Telephone Cooperative, Inc., *is granted,* by extending for it the switch conversion deadline for four-digit CIC capability until June 30, 1998.

38. *It is further ordered,* pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Limited Waiver of Hartman Telephone Exchanges, Inc., *is granted in part,* by extending for it the switch conversion deadline for four-digit CIC capability until June 30, 1998, and *denied in part,* to the extent Hartman requests extension beyond that date.

39. *It is further ordered,* pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Limited Waiver of Clarks Telecommunications Co. *is granted in part,* by extending for it the switch conversion deadline for four-digit CIC capability until June 30, 1998, and *denied in part,* to the extent Clarks requests extensions beyond that date.

40. *It is further ordered,* pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Joint Petition for Limited Waiver of Eustis Telephone Exchange, Inc. and Home Telephone Company of Nebraska, *is granted in part,* by extending for them the switch conversion deadline for four-digit CIC capability until June 30, 1998, and *denied in part,* to the extent Eustis and Home request extension beyond that date.

41. *It is further ordered,* pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Limited Waiver of Henderson Telephone Company *is granted in part,* by extending for it the switch conversion deadline for four-digit CIC capability until June 30, 1998, and *denied in part,* to the extent Henderson requests extension beyond that date.

42. *It is further ordered,* pursuant to authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Waiver of Hartington Telecommunications Co., Inc., *is dismissed as moot.*

43. *It is further ordered,* pursuant to authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Waiver of Jefferson Telephone Company *is dismissed as moot.*

Federal Communications Commission.

Geraldine A. Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 97–32177 Filed 12–4–97; 4:03 pm]

BILLING CODE 6712–01–P

[74] *See CICs Second FNPRM* at para. 84.

[75] Specifically, the *CICs Second FNPRM* tentatively concluded that (1) LECs with stored program-controlled (SPC) switches that have not received a bona fide request for equal access should be required to upgrade their facilities to provide equal access and to accept four-digit CICs within three years of the effective date of an *Order* adopted in this proceeding; and (2) LECs whose end offices are equipped with non-SPC switches should be required to provide equal access and to convert their switches to accept four-digit CICs when they next replace their switching facilities. *See CICs Second FNPRM* at para. 84.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 900124–0127; I.D. 112897E]

Fisheries of the Northeastern United States; Atlantic Surf Clam and Ocean Quahog Fishery; Minimum Clam Size for 1998

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

ACTION: Suspension of surf clam minimum size limit.

SUMMARY: NMFS informs the public that the minimum size limit of 4.75 inches (12.07 cm) for Atlantic surf clams is suspended for the 1998 fishing year. The intended effect is to relieve the industry from a regulatory burden that is not necessary as the vast majority of surf clams harvested are larger than the minimum size limit.

DATES: January 1, 1998, through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508-281-9104.

SUPPLEMENTARY INFORMATION: Section 648.72(c) of the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) allows the Regional Administrator, Northeast Region, NMFS, to suspend annually by publication of an announcement in the **Federal Register**, the minimum size limit for Atlantic surf clams. This action