throughout the service area prior to designation as an ETC also involves matters properly within the state's intrastate jurisdiction under section 2(b) of the Act, such matters that are inseparable from the federal interest in promoting universal service in section 254 remain subject to federal preemption.

19. *Section 214.* We find that the requirement that a carrier provide service throughout the service area prior to its designation as an ETC conflicts with the meaning and intent of section 214(e)(1). Section 214(e)(1) provides that a common carrier designated as an eligible telecommunications carrier shall ''offer'' and advertise its services. The statute does not require a carrier to provide service prior to designation. As discussed above, we have concluded that a carrier cannot reasonably be expected to enter a high-cost market prior to its designation as an ETC and provide service in competition with an incumbent carrier that is receiving support. We believe that such an interpretation of section 214(e) directly conflicts with the meaning of section 214(e)(1) and Congress' intent to promote competition and access to telecommunications service in high-cost areas.

20. While Congress has given the state commissions the primary responsibility under section 214(e) to designate carriers as ETCs for universal service support, we do not believe that Congress intended for the state commissions to have unlimited discretion in formulating eligibility requirements. Although Congress recognized that state commissions are uniquely suited to make ETC determinations, we do not believe that Congress intended to grant to the states the authority to adopt eligibility requirements that have the effect of prohibiting the provision of service in high-cost areas by non-incumbent carriers. To do so effectively undermines congressional intent in adopting the universal service provisions of section 254.

21. *Section 254.* Consistent with the guidance provided above, we find a requirement that a carrier provide service prior to designation as an ETC inconsistent with the underlying principles and intent of section 254. Specifically, section 254 requires the Commission to base policies for the advancement and preservation of universal service on principles that include promoting access to telecommunications services in high-cost and rural areas of the nation. Because section 254(e) provides that only a carrier designated as an ETC under section 214(e) may be eligible to receive federal universal service support, an interpretation of section 214(e) requiring carriers to provide service throughout the service area prior to designation as an ETC stands as an obstacle to the accomplishment of the congressional objectives outlined in section 254. If new entrants are effectively precluded from universal service support eligibility due to onerous eligibility criteria, the statutory goals of preserving and advancing universal service in high-cost areas are significantly undermined.

22. In addition, such a requirement conflicts with the Commission's interpretation of section 254, specifically the principle of competitive neutrality adopted by the Commission in the *Universal Service Order*. In the *Universal Service Order*, the Commission stated that, ''competitive neutrality in the collection and distribution of funds and determination of *eligibility* in universal service support mechanisms is consistent with congressional intent and necessary to promote a pro-competitive, de-regulatory national policy framework.'' As discussed above, a requirement to provide service throughout the service area prior to designation as an ETC violates the competitive neutrality principle by unfairly skewing the provision of universal service support in favor of the incumbent LEC. As stated in the *Universal Service Order*, ''competitive neutrality will promote emerging technologies that, over time, may provide competitive alternatives in rural, insular, and high cost areas and thereby benefit rural consumers.'' Requiring new entrants to provide service throughout the service area prior to ETC designation discourages ''emerging technologies'' from entering high-cost areas. In addition, we note that section 254(f) provides that, ''[a] State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service.'' For the reasons discussed extensively above, we find an interpretation of section 214(e) requiring the provision of service throughout the service area prior to designation as an ETC to be inconsistent with the Commission's universal service policies and rules.

III. Ordering Clauses

23. Pursuant to sections 4(i), 253, and 254 of the Communications Act of 1934, as amended, and section 1.2 of the Commission's rules, and Article VI of the U.S. Constitution, that this Declaratory Ruling is adopted.

24. It is further ordered that Western Wireless' Petition for Preemption of an Order of the South Dakota Public Utilities Commission shall be placed in abeyance pending resolution of the appeal.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–22852 Filed 9–7–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 98–147; FCC 00–297]

Deployment of Wireline Services Offering Advanced Telecommunications Capability

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document invites further comment on a number of issues related to the obligation of incumbent LECs to provide collocation. The Second Further Notice responds to the decision of the United States Court of Appeals for the District of Columbia Circuit in *GTE Service Corp.* v. *FCC,* by requesting comment on the meaning of ''necessary'' and ''physical collocation.'' In addition, the document requests comment on whether an incumbent LEC must permit collocators to cross-connect with other collocators and on other collocation-related issues.

DATES: Written comments by the public on the proposed information collections are due October 12, 2000, and reply comments are due November 14, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before November 7, 2000.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW, Washington, D.C. 20554. 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 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *jboley@fcc.gov,* and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to *Edward.Springer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: William Kehoe, Special Counsel, or Julie Patterson, Attorney Advisor, Common Carrier Bureau, Policy and

Program Planning Division, 202–418–1580. Further information also may be obtained by calling the Common Carrier Bureau's TTY number: 202–418–0484. For additional information concerning the information collections in this Second Further Notice of Proposed Rulemaking, 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 Second Further Notice of Proposed Rulemaking in CC Docket No. 98–147, FCC 00–297, adopted on August 9, 2000, and released August 10, 2000. This NPRM contains proposed information collection(s) 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 information collections contained in this proceeding. The complete text of this Second Further Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 Twelfth Street, S.W. Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS), CY–B400, 445 Twelfth Street, S.W., Washington, D.C.

Synopsis of the Second Further Notice of Proposed Rulemaking

1. The Second Further Notice of Proposed Rulemaking responds to the decision of the United States Court of Appeals for the District of Columbia Circuit in *GTE Service Corp.* v. *FCC,* 205 F.3d 416 (D.C. Cir. 2000) by requesting comment on the meaning of ''necessary'' and ''physical collocation,'' as used in section 251(c)(6). In addition, the Second Further Notice of Proposed Rulemaking in CC Docket No. 98–147 asks whether an incumbent LEC must permit collocators to cross-connect with other collocators; whether the Commission should require incumbent LECs to make physical collocation space available in increments smaller than the space necessary to accommodate a single rack or bay of equipment; whether the Commission should amend its collocation to facilitate line-sharing and subloop unbundling; and regarding collocation at remote incumbent LEC premises.

2. In addition, the Second Further Notice requests comment on whether the Commission should specify an overall maximum collocation provisioning interval shorter than 90 calendar days or shorter intervals for particular types of collocation arrangements, such as cageless collocation, modifications to existing collocation arrangements, or collocation within remote incumbent LEC structures and whether the Commission should adopt national standards governing the period for which incumbent LECs and collocating carriers can reserve space for future use in incumbent LEC premises.

Paperwork Reduction Act

3. This NPRM contains a proposed 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 collection(s) 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 NPRM; OMB notification of action is due November 7, 2000. 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 Control Number: None.

Title: Proposed Demographic Information and Notifications, Second FNPRM, CC Docket No. 98–147, and Fifth FNPRM, CC Docket No. 96–98.

Form No.: N/A.

Type of Review: New Collections.

Respondents: Business or other for-profit.

Number of Respondents: 1400.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 2800 hours.

Cost to Respondents: $0.

Needs and Uses: Requesting carriers would use demographic and other information obtained from incumbent LECs to determine whether they wish to collocate at particular remote terminals.

Final Regulatory Flexibility Analysis (FRFA)

4. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Advanced Services Order and NPRM (Notice) in CC Docket 98–147. The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. We received no comments specifically directed toward the IRFA. In addition, we incorporated the Final Regulatory Flexibility Analysis (FRFA) into the Advanced Services First Report and Order and received no petitions for reconsideration specifically directed toward the FRFA. This Supplemental Final Regulatory Flexibility Analysis (SFRFA) conforms to the RFA.

Need for and Objectives of This Second Further Notice of Proposed Rulemaking

5. This Second Further Notice continues our efforts to facilitate the development of competition in telecommunications services. In the Advanced Services First Report and Order, 63 FR 45133, August 24, 1998, we strengthened our collocation rules to reduce the costs and delays faced by competitors that seek to collocate equipment in incumbent LEC premises. While many aspects of those rules were affirmed on appellate review, the D.C. Circuit vacated and remanded certain aspects of those rules. In this Second Further Notice, we invite comment on what action we should take regarding the rules the D.C. Circuit vacated and remanded, and on other collocation related issues.

Summary of Significant Issues Raised by Public Comments in Response of the FRFA

6. In the IRFA, we stated that any rule changes would impose minimum burdens on small entities and solicited comments on alternatives to our proposed rules that would minimize the impact that might have on small entities. In the Final Regulatory Flexibility Analysis (FRFA), we discussed the impact on small entities of the rules adopted in the Advanced Services First Report and Order. As noted above, we have received no comments or petitions specifically directed to the IRFA or the FRFA. In making the determinations reflected in the Order, however, we have considered the impact of our actions on small entities.

Description and Estimate of the Number of Small Entities Affected by the Second Further Notice of Proposed Rulemaking

7. In the IRFA to the Advanced Services Order and NPRM, we adopted the analysis and definitions set forth in determining the small entities affected by this Second Further Notice of Proposed Rulemaking for purposes of this SFRFA. The RFA directs agencies to

provide a description of and, where feasible, an estimate of the number of entities that will be affected by the rules. The RFA generally defines ''small entity'' as having the same meaning as the term ''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, unless the Commission has developed one or more definitions that are appropriate to its activities. 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). The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone) to be small entities when they have no more than 1,500 employees. We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

8. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its Carrier Locator report, derived from filings made in connection with the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 4,144 interstate carriers. These carriers include, inter alia, LECs, wireline carriers and service providers, interexchange carriers, competitive access providers, operators services providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

9. We have 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. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

10. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. These firms include a variety of different categories of carriers, including LECs, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 4,144 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 4,144 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rules that potentially could be adopted based upon this Second Further Notice.

11. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,231 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules that could potentially result from this Second Further Notice.

12. *Local Exchange Carriers.* The Commission has not developed a special size definition of small LECs or competitive LECs. The closest applicable definition for these types of carriers under SBA rules is, again, that used for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware 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 1,348 incumbent LECs, 212 competitive LECs, and 442 resellers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are no more than 1,348 small entity incumbent LECs, 212 competitive LECs, and 442 resellers that may be affected by the decisions and rules that could result from this Second Further Notice.

Description of Projected Reporting, Record Keeping, and other Compliance Requirements

13. In the Second Further Notice, we seek comment regarding rules recently vacated and remanded by the D.C. Circuit, as well as on other issues regarding collocation by incumbent LECs. We invite comment, for instance, on whether we should require incumbent LECs to make physical collocation space available in increments smaller than the space necessary to accommodate a single rack or bay of equipment. We request comment on issues relating to collocation at remote incumbent LEC premises, and on whether we should change our collocation rules to facilitate line sharing and subloop unbundling. We ask whether we should specify an overall maximum collocation provisioning interval shorter than 90 calendar days or shorter intervals for particular types of collocation arrangements, such as cageless collocation, modifications to existing collocation arrangements, or collocation within remote incumbent LEC structures. We also ask whether we should adopt national standards governing the period for which incumbent LECs and collocating carriers can reserve space for future use in incumbent LEC premises. As described, the measures under consideration in

this Second Further Notice may, if adopted, result in additional reporting, record keeping, or other compliance requirements for telecommunications carriers, including small entities.

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

14. In this Second Further Notice, we seek to develop a record sufficient to adequately address issues related to developing long-term policies related to collocation. In addressing these issues, we seek to ensure that competing providers, including small entity carriers, obtain access to inputs necessary to the provision of advanced services. We believe that the issues on which we invite comment would impose minimal burdens on small entities, including both telecommunications carriers that request collocation and the incumbent LECs that, under section 251 of the Communications Act, must provide collocation to requesting carriers. As indicated above, both groups of carriers include entities that, for purposes of this SIRFA, are classified as small entities. In framing the issues in this Second Further Notice, we have sought to develop a record on the potential impact our proposed rules could have upon small entities. We thus ask that commenters propose measures to avoid significant economic impact on small business entities.

Procedural Matters

15. Pursuant to sections 1–4, 201, 202, 251–254, 256, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201, 202, 251–254, 256, 271, and 303(r), that the Second Further Notice of Proposed Rulemaking in CC Docket No. 98–147 and the Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96–98 (Published elsewhere in this issue) Are Adopted.

16. The Commission's Consumer Information Bureau, Reference Information Center, Shall Send a copy of this Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98–147 and this Fifth Further Notice of Proposed Rulemaking in CC Docket No., including the Supplemental Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–22890 Filed 9–7–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–98; FCC 00–297]

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document continues the Commission's efforts to facilitate the development of competition in telecommunications services, particularly local telecommunications. The Commission invites comment on whether it should amend its unbundled network element rules to ensure that carriers are able to gain competitive access to subloops and loops as incumbent local exchange carriers (LECs) introduce new network technologies.

DATES: Written comments by the public on the proposed information collections are due October 12, 2000, and reply comments are due on November 14, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before November 7, 2000.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW, Washington, D.C. 20554. 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 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *jboley@fcc.gov,* and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to *Edward.Springer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Johanna Mikes, Attorney Advisor, Common Carrier Bureau, Policy and Program Planning Division, 202–418–1580. Further information also may be obtained by calling the Common Carrier Bureau's TTY number: 202–418–0484. 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 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to Edward.Springer@omb.eop.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fifth Further Notice of Proposed Rulemaking (5th FNPRM) in CC Docket No. 96–98, FCC 00–297, adopted on August 9, 2000, and released August 10, 2000. This 5th FNPRM contains proposed information collection(s) 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 information collections contained in this proceeding. The complete text of this Fifth Further Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 Twelfth Street, S.W. Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS), CY-B400, 445 Twelfth Street, S.W., Washington, D.C.

Synopsis of the Fifth Further Notice of Proposed Rulemaking

1. The Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96–98 invites comment on whether the Commission should amend its local competition rules to respond to new network architectures being deployed by incumbent LECs. In the Fifth Further Notice, we invite comment on several issues concerning the deployment of new network architectures, including whether we should modify or clarify our definition of the loop and transport elements to include access for requesting carriers at the wavelength level. We also request comment on the features, functions, and capabilities of the subloop created by the deployment of new network architectures. We invite comment on incumbent LECs' obligations to provide unbundled access to the subloop, particularly the fiber feeder portion, in situations where there is inadequate existing capacity. In addition, we invite comment on whether, as part of their deployment of additional fiber facility, incumbent LECs plan to retire and remove existing copper plant and how that would affect their obligations under our local