

## XI. Executive Orders on Federalism

### *What Are the Executive Orders on Federalism and Are They Applicable to This Proposed Rule?*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

## XII. Executive Order 13084

### *What Is Executive Order 13084 and Is It Applicable to This Proposed Rule?*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084

requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; Executive Order 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Executive Order 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: August 17, 2000.

**Timothy Fields, Jr.,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 69

[CC Docket No. 99–316; FCC 99–307]

### Shortening Notice Period for Changes in Participation in NECA's Access Tariffs

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document seeks comment on the National Exchange Carrier Association, Inc.'s (NECA's) proposal to extend the deadline by

which carriers must notify NECA of changes in their participation in NECA's access tariffs. Specifically, the carrier election deadline would be changed from December 31 of the previous year to March 1 of the tariff year. NECA asserts that, because of streamlined tariff notification periods and electronic data collection methods, it no longer requires six months advance notice of tariff participation changes. Moving the notice deadline from December to March 1 of the previous year to March 1 of the tariff year will provide carriers more time in which to make their tariff participation decisions.

**DATES:** Comments are due on or before September 8, 2000, and reply comments are due on or before September 18, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Jennifer McKee, (202) 418–1520.

**SUPPLEMENTARY INFORMATION:** Under 47 CFR 69.3, NECA is responsible for filing an access service tariff as agent for all telephone companies that participate in the association tariff. The association tariff is to be filed with a scheduled effective date of July 1. To provide NECA with sufficient notice, carriers are currently required to notify NECA of any change in their association tariff participation by December 31 of the year preceding the filing of the tariff.

In 1997 the Commission streamlined its tariff filing rules, allowing carriers to file their annual access tariffs on 15 days notice, rather than on 90 days notice. 63 FR 13132, March 18, 1998. The streamlined notice requirement applies to NECA's association access service tariff, allowing NECA to file the tariff on June 16, rather than on April 2, for an effective date of July 1. In addition to the streamlined notice period, NECA now employs electronic data collection and processing routines that were not in use when 47 CFR 69.3 was adopted. These more efficient data collection techniques significantly reduce the time required to assemble and analyze data for NECA's tariff filing. According to NECA, the tariff streamlining rules and improvements in data collection management eliminate the need for carriers to provide six months advance notice to NECA of planned tariff participation changes. Therefore, NECA filed a petition for rulemaking seeking to change the carrier notification date from December 31 of the previous year to March 1 of the tariff year.

We agree with NECA that changes in tariff notification periods and

advancements in data collection and processing methods may warrant a shorter timeframe for carriers to provide notice of tariff participation changes. In addition, as NECA noted in its petition, shorter notice periods will not disadvantage NECA and may help smaller companies make better-informed decisions regarding tariff participation. For instance, because the deadline by which NECA must file proposed revisions to its average schedule formulas is December 31, companies that rely on these formulas to compute interstate access compensation will have more time to analyze the proposed revisions before deciding whether to participate in NECA's access tariff.

Therefore, we propose to amend 47 CFR part 69 to allow carriers until March 1 of each tariff year to notify NECA of any changes in tariff participation. We seek comment on this proposed change.

In the alternative, NECA suggested that the Commission eliminate its requirement that companies notify NECA of changes in their tariff participation. According to NECA, elimination of this requirement will ease the Commission's administrative burden of reviewing applications for special permission filed by carriers that seek waiver of the tariff election deadline. NECA also noted that the Commission's objective of providing NECA ample time to develop annual access rates may be better served by allowing the association to develop internal procedures, which could be adjusted to meet special circumstances. We also seek comment on this proposal.

#### Ex Parte Presentations

This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with 47 CFR 1.1206(b). *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. See 47 CFR 1.1206(b)(2). Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b).

#### Initial Paperwork Reduction Act Analysis

This Notice of Proposed Rulemaking ("NPRM") contains a proposed information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget ("OMB") to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Public and agency comments must be filed by the same filing deadlines as comments on this NPRM; OMB comments are due 60 days from the date of publication of this NPRM in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance 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.

#### Initial Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this NPRM. The RFA, 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"). 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. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the RFA. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**. 5 U.S.C. 603(a).

#### Need for and Objectives of the Proposed Rules

NECA has asserted that changes in tariff notification periods and

advancements in data collection and processing methods have facilitated NECA's ability to prepare association tariffs. Therefore, NECA can receive notifications from carriers changing the status of their association tariff participation closer to the tariff filing deadline. At NECA's request, the Commission is proposing to amend its rules to extend the deadline by which carriers must notify NECA of changes in association tariff participation. Specifically, the notification deadline would be changed from December 31 of the preceding year to March 1 of the tariff year. This extension of the notification deadline will provide carriers additional time to determine their tariff participation status, thus allowing them to make more informed tariff participation decisions.

#### Legal Basis

The proposed action is authorized under sections 1, 4(i), 4(j), 201-205, and 303 of the Communications Act of 1934, as amended. 47 U.S.C. 151, 154(i), 154(j), 201-205, and 303.

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

The RFA requires that an initial regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3). 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"). 15 U.S.C. 632.

In this IRFA, we consider the potential impact of the NPRM on all local exchange carriers ("LECs") that could consider participating in NECA's association tariffs. Neither the Commission nor the SBA has developed a definition for small LECs. The closest applicable definition under the SBA rules is for Standard Industrial Classification ("SIC") category 4813, telephone communications companies other than radiotelephone (wireless) companies. 13 CFR 121.201. For this category, the SBA has defined a small business to be a small entity having no more than 1,500 employees. 13 CFR 121.201.

We have included small incumbent LECs in this RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." 5 U.S.C. 601(3). 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. Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 61 FR 45476, August 29, 1996. Although we have included small incumbent LECs in this RFA analysis, we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

The most reliable source of information regarding the total numbers of certain 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: Interstate Service Providers Report ("Locator")*. This report was compiled using information from Telecommunications Relay Service ("TRS") fund worksheets filed by carriers, including, *inter alia*, LECs, competitive local exchange carriers, interexchange carriers, competitive access providers, satellite service providers, wireless telephony providers, operator service providers, pay

telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

There are two principal providers of local telephone service; incumbent LECs and competing local service providers. However, under 47 CFR part 69, participation in NECA's access service tariffs is limited to incumbent LECs, therefore the proposed rule changes will not affect competing local service providers. 47 CFR 69.2(hh). According to the most recent *Locator* data, 1,410 filers identified themselves as incumbent LECs. Data set forth in the *FCC Preliminary Statistics of Communications Common Carriers ("SOCC")* lists 32 incumbent LECs that have more than 1,500 employees. We do not have data specifying the number of these carriers that are either dominant in their field of operations or are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of incumbent LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,378 incumbent LECs are small entities that may be affected by the proposed rules, if adopted.

#### *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*

An Initial Paperwork Reduction Act analysis is contained in the NPRM. This NPRM seeks comment on a proposed extension of the date by which carriers must notify NECA of changes in participation in association tariffs. Under the current rules this notification must be provided six months prior to the effective date of the tariff, by December 31 of the preceding year. The Commission proposes to allow carriers until March 1 of the tariff year to provide the required notification to NECA. The NPRM also seeks comment on an alternative proposal to eliminate the Commission notification rule and allow NECA to adopt internal procedures governing tariff participation notification.

#### *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

The rule amendments we propose in the NPRM are designed to assist all carriers in making their association tariff participation elections. The proposed extension of the notification date from December 31 to March 1 may particularly benefit smaller carriers that rely on average schedule formulas to compute interstate access

compensation, because NECA is required to file proposed revisions to these schedules by December 31. The extension of the tariff election deadline will provide carriers more time to analyze NECA's proposed revisions before making tariff participation decisions. We seek comment on our tentative conclusions and proposals, and on additional actions we might take in this regard.

#### *Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules*

There are no federal rules that may duplicate, overlap, or conflict with the proposed rules.

#### **Filing of Comments and Reply Comments**

Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments on or before September 8, 2000, and reply comments on or before September 18, 2000. Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies.

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Only one copy of electronically-filed comments must be submitted.

Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-B204, Washington, D.C. 20554.

Parties who choose to file by paper should also submit their comments on diskette. The diskette should be submitted to: Wanda Harris, Federal Communications Commission, Common Carrier Bureau, Competitive Pricing Division, 445 12th Street, S.W., Fifth Floor, Washington, D.C. 20554. The submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a

cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number in this case), type of pleading (comments or reply comments), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554.

#### Ordering Clauses

Pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, and 303, *Notice Is Hereby Given* of the rulemaking described and that *Comment Is Sought* on those issues.

The Commission's Office of Public Affairs, Reference Operations Division, *Shall Send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b).

#### List of Subjects in 47 CFR Part 69

Communications common carriers, Tariffs.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

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### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[DA 00–1838, MM Docket No. 00–142, RM–9923]

#### Radio Broadcasting Services; Hawthorne, NV

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Campbell River Broadcasting, LLC,

seeking the allotment of Channel 254C1 to Hawthorne, NV, as the community's second local FM channel. Channel 254C1 can be allotted to Hawthorne in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 38–31–29 NL; 118–37–25 WL. On the Commission's own motion, the *Notice of Proposed Rule Making* also proposes to delete unoccupied and unapplied-for Channel 228A at Hawthorne unless an expression of interest in activating the channel is received by the initial comment period.

**DATES:** Comments must be filed on or before October 2, 2000, and reply comments on or before October 17, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dan J. Alpert, 2120 N. 21st Road, Suite 400, Arlington, VA 22201 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–142, adopted August 2, 2000, and released August 11, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–21577 Filed 8–23–00; 8:45 am]

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### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[DA 00–1758, MM Docket No. 00–134, RM–9922]

#### Radio Broadcasting Services; Brighton, VT

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Linda A. Davidson seeking the allotment of Channel 270A to Brighton, VT, as the community's first local aural service. Channel 270A can be allotted to Brighton in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.8 kilometers (6.1 miles) northwest, at coordinates 44–51–50 NL; 71–57–26 WL, to avoid a short-spacing to Station WPOR–FM, Channel 270B, Portland, ME. Channel 270A at Brighton, at the reference coordinates, will still result in short-spacings to vacant Channel 270A, Victoriaville, Quebec, and vacant Channel 270A at Bedford, Quebec, Canada. Since Brighton is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence in the allotment, as a specially negotiated short-spaced allotment, must be received from the Canadian government.

**DATES:** Comments must be filed on or before September 25, 2000, and reply comments on or before October 10, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Linda A. Davidson, 2134 Oak Street, Unit C, Santa Monica, CA 90405 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–134, adopted July 26, 2000, and released August 4, 2000. The full text of