

1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 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." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 8, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. In § 180.472, by alphabetically adding the following commodities to the table in paragraph (b) to read as follows:

§ 180.472 Imidacloprid; tolerances for residues.

	*	*	*	*	*
(b)	*	*	*		
Commodity	Parts per million			Expiration/revocation date	
* * *	*	*	*	*	
Sweet corn, fodder		0.2		12/31/01	
Sweet corn, forage		0.1		12/31/01	
Sweet corn, grain		0.05		12/31/01	
* * *	*	*	*	*	

[FR Doc. 00-3493 Filed 2-15-00; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

Tolerances and Exemptions from Tolerances for Pesticide Chemicals in Food

CFR Correction

In Title 40 of the Code of Federal Regulations, parts 150-189, revised as of July 1, 1999, page 434, § 180.438(a) table is corrected by adding "0.4" under the heading "parts per million" for the entry "Brassica, head and stem subgroup".

[FR Doc. 00-55504 Filed 2-15-00; 8:45 am]

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-78, 98-91, FCC 99-413]

Deployment of Wireline Services Offering Advanced Telecommunications Capability

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, we determine that US West may not avoid the obligations placed on incumbent LECs under section 251(c) of the Act in connection with the provision of advanced services. We find that when xDSL-based advanced services both originate and terminate "within a telephone exchange," and provide subscribers with the capability of communicating with other subscribers in that same exchange, they are properly classified as "telephone exchange service." We also find that xDSL-based advanced services constitute "exchange access" when they provide subscribers with the ability to communicate across exchange boundaries for the purposes of originating or terminating telephone toll services.

DATES: Effective December 23, 1999.

FOR FURTHER INFORMATION CONTACT: Christopher Libertelli, Attorney Advisor, Common Carrier Bureau, Policy and Program Planning Division, 202-418-1580.

SUPPLEMENTARY INFORMATION: This is a summary of the *Order on Remand* in CC Docket 98-147, 98-11, 98-26, 98-78, 98-91, FCC 99-413, adopted on December 23, 1999 and released on December 23, 1999. The complete text of the *Order on Remand* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, S.W., Washington, D.C. and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS Inc.), CY-B400, 445 12th Street, S.W., Washington, D.C.

Synopsis of the Order on Remand

I. Introduction

1. We conclude that advanced services are telecommunications services. The Commission has repeatedly held that specific packet-switched services are "basic services," that is to say, pure transmission services. xDSL and packet switching are simply transmission technologies. We

find that “information access service” is not a category separate and distinct from telephone service and exchange access. We also affirm our initial view in the *Advanced Services Memorandum Opinion and Order*, 63 FR 45140, August 24, 1998, that xDSL-based advanced services are either telephone exchange service or exchange access. We clarify that whether xDSL-based advanced services constitute telephone exchange service or exchange access depends on how such technology is used.

2. We first address whether a service that employs xDSL technology may be classified as telephone exchange service within the meaning of the Act. The 1996 Act provides two alternative definitions for the term “telephone exchange service.” The first definition, which is codified in section 3(47)(A), provides that telephone exchange service includes “service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge.” The second definition, which is codified in section 3(47)(B), provides that the term also includes “comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.” In the *Advanced Services Memorandum Opinion and Order*, we noted that section 3(47)(B) was added to ensure that the definition of telephone exchange service was not limited to traditional voice telephony, but included non-traditional “means of communicating information within a local area.”

3. We conclude that xDSL-based advanced services, when used to permit communications among subscribers within an exchange, or within a connected system of exchanges, constitute telephone exchange services within the meaning of section 3(47)(A) of the Act. Consistent with this, the Commission has expressly made the rules governing basic telephone exchange service equally applicable to LEC provision of data and voice services. The parties have not persuaded us that we should depart from this long-standing practice. Indeed, in this era of converging technologies, limiting the telephone exchange service definition to voice-based communications would undermine a central goal of the 1996 Act—opening local markets to competition to all telecommunications

services. We thus conclude, consistent with past practice, that the term “telephone exchange service” encompasses voice and data services.

4. We recognize that, in the *GTE ADSL Tariffing Order*, CC Docket 98–79, FCC 98–292, May 29, 1998, the Commission noted that a dedicated connection between an end-user and an Internet service provider’s point of presence is similar to private line service. We do not find, however, that such an observation is relevant with respect to determining whether services that employ xDSL technology may constitute telephone exchange service within the meaning of the Act. Rather, the key criterion for determining whether a service falls within the scope of the telephone exchange service definition is whether it permits “intercommunication.” As noted above, in this regard, xDSL-based advanced service and private line service are distinguishable in that xDSL-based services permit intercommunication and private line services do not.

5. The final requirement in section 3(47)(A) is that telephone exchange services be covered by “the exchange service charge.” Although this term is not defined in the Act or the Commission’s rules we glean its meaning from the context in which the phrase is used. We agree with those commenters who argue that the phrase implies that an end-user obtains the ability to communicate within the equivalent of an exchange area as a result of entering into a service and payment agreement with a provider of a telephone exchange service. We thus find that any charges that a LEC assesses for originating and terminating xDSL-based advanced services within the equivalent of an exchange area would be covered by the “exchange service charge.”

6. We thus reject the contention that, because the price of xDSL-based services is not included within the price of basic local telephone service, such services are not covered by “the exchange service charge.” Indeed, we note that, in a competitive environment, where there are multiple local service providers and multiple services, there will be no single “exchange service charge.” We further note that, if a service otherwise satisfies the telephone exchange service definition, a LEC has the option of including the price of that service within the price it charges consumers for basic local telephone service.

7. We conclude that a service falls within the scope of section 3(47)(B) if it permits intercommunication within the equivalent of a local exchange area and

is covered by the exchange service charge. In setting forth the types of services that may fall within the scope of section 3(47)(B), Congress determined, as an initial matter, that such services must be “comparable” to the services described in section 3(47)(A). Although the term “comparable” is not defined in the Act, it is generally understood to mean “having enough like characteristics and qualities to make comparison appropriate.”

8. The xDSL-based advanced services at issue here, when they originate and terminate within an exchange area, satisfy the statutory definition of telephone exchange service under clause (B) of section 3(47) as well, and that clause provides an alternative basis for our conclusion that these services may constitute telephone exchange services. We note that neither the statutory text nor the legislative history accompanying section 3(47)(B) provides guidance on which characteristics and qualities must be present in order for a service to fall within the scope of section 3(47)(B). In these circumstances, we presume that Congress sought to provide the Commission with discretion in determining whether a particular telecommunications service is sufficiently “comparable” to the services described in section 3(47)(A) to constitute telephone exchange service within the meaning of the Act.

9. Because we find that the term “comparable” means that the services retain the key characteristics and qualities of the telephone exchange service definition under subparagraph (A), we reject the argument that subparagraph (B) eliminates the requirement that telephone exchange service permit “intercommunication” among subscribers within a local exchange area. As prior Commission precedent indicates, a key component of telephone exchange service is “intercommunication” among subscribers within a local exchange area.

10. The next question we address is whether, and under what circumstances, xDSL-based advanced services may be classified as exchange access under the Act. As we have previously found, xDSL-based advanced services that are used to connect ISPs with their subscribers to facilitate Internet bound traffic typically constitute exchange access service because the call initiated by the subscriber terminates at Internet websites located in other exchanges, states, or foreign countries.

11. The issue we address here is whether xDSL-based services may

constitute exchange access under the Act. This question arises primarily in the context of services provided to ISPs to facilitate their provision of Internet access services. Applying the definitions contained in section 3 of the Act, we conclude that the service provided by the local exchange carrier to the ISP is ordinarily exchange access service because it enables the ISP to transport the communication initiated by the end-user subscriber located in one exchange to its ultimate destination in another exchange, using both the services of the local exchange carrier and in the typical case the telephone toll service of the telecommunications carrier responsible for the interexchange transport.

12. We evaluate two relevant definitions contained in the Act. Section 3(16), a new provision of the Act, defines "exchange access" as the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll service." (emphasis added) Section 3(48), which was in the original Act, in turn defines "telephone toll service" as "telephone service between stations in different exchanges for which there is made a separate charge." We conclude that because the local exchange carrier provides access permitting the ISP to complete the transmission from its subscriber's location to a destination in another exchange using the toll service it typically has purchased from the interexchange carrier, the access service provided by the local exchange carrier is for the "origination or termination of telephone toll service" within the meaning of the statutory definition. In reaching this conclusion, we further find that the interexchange carrier that provides the interexchange telecommunications to the ISP charges the ISP for those telecommunications and that charge is separate from the exchange service charge that the ISP or end user pays to the LEC. As a result, the "separate charge" requirement of section 3(48) is satisfied with respect to the underlying interexchange telecommunications.

13. We recognize that this analysis with respect to "exchange access" does not by its terms cover traffic jointly carried by an incumbent LEC and a competitive LEC to an ISP where the ISP self-provides the transport component of its internet service. We leave for another day the question of whether the LEC-provided portion of such traffic (which we believe to be rare) falls within the definition of "exchange access" in section 3(16) and whether, as a result, the incumbent LEC would be

subject to the interconnection obligations of section 251(c)(2) with respect to such traffic. We find, however, that even if such traffic traveling over the facilities of an incumbent LEC and a competitive LEC to an ISP falls outside the scope of section 3(16) and is not covered by section 251(c)(2), the ILEC would nevertheless be subject to interconnection obligations imposed by section 251(a) and (to the extent that the service is interstate) section 201(a). Moreover, we note that, to the extent that the LEC-provided portion of such traffic may not fall within the definition of "exchange access," the predominantly inter-exchange end-to-end nature of such traffic nevertheless renders it largely non-local for purposes of reciprocal compensation obligations of section 251(b)(5). In light of our authority to require interconnection under sections 201(a) and 251(a) even in the ISP self-provisioning context, we expect incumbent LECs to continue providing interconnection to competitive LECs without imposing tariff, certification or other requirements on competitive LECs requesting interconnection. We encourage parties alleging the imposition of such requirements to file complaints pursuant to section 208 of the Act.

14. We recognize that we did hold, in the *Non-Accounting Safeguards Order*, 62 FR 02991, January 21, 1997, that ISPs do not receive "exchange access services in connection with their provision of unregulated information services because of their status as non-carriers." However, that Order constitutes a departure from other Commission precedent on this matter. In a contemporaneous Commission decision, the *Local Competition Order*, 61 FR 22008, May 13, 1996, we specifically stated that, although "[t]he vast majority" of exchange access service purchasers are telecommunications carriers, non-carriers "do occasionally purchase" such services. In fact, when the *Non-Accounting Safeguard Order* was issued, the question of whether an xDSL-based service offering directed at ISPs could be "exchange access" or "telephone exchange service" was not before the Commission. Indeed, such service was first offered more than a year after release of that Order.

15. On a more complete record in this proceeding, we correct the inconsistency in our prior orders and overrule the determination made in the *Non-Accounting Safeguards Order* that non-carriers may not use exchange access and affirm our determination in the *Local Competition Order* that non-

carriers may be purchasers of those services. We find that this conclusion is consistent with the Commission's longstanding characterization of the service that LECs offer to enhanced services providers (which include ISPs) as exchange access. In *MTS and WATS Markets Structure Order*, 48 FR 33667, August 22, 1983, the Commission held that "[a]mong the variety of users of access service are * * * enhanced service providers." As recognized in that case, the Commission has always required LECs to offer access services to parties that may not be common carriers. Similarly, we note that enhanced service providers use "exchange access service." More recently, in the *GTE ADSL Tariffing Order*, we noted that "[t]he Commission traditionally has characterized the link from an end user to an ESP as an interstate access service."

16. These holdings comport with the conclusion in the *Local Competition Order* that non-carriers may purchase exchange access services. This historical treatment properly serves as a lens through which to view Congress' intent in codifying a definition of "exchange access" in the 1996 Act. Nothing in the new definition of the Act or in its history suggests that Congress intended to narrow, for the first time, the availability of exchange access service to certain telecommunications service providers. For these reasons, we overrule our statements in the *Non-Accounting Safeguards Order* that non-carriers may not use exchange access, which we find to be inconsistent with our own precedent, and with the structure of the Act.

17. We find that, with respect to access to the local network for the purpose of originating or terminating an interexchange communication, any service that otherwise constitutes "special access" also falls within the definition of "exchange access." We note that "special access" refers to a dedicated path between an end-user and a service provider's point of presence. We agree that special access, which provides access to the exchange through dedicated facilities, is different than switched access, which provides access to the exchange using switches. Both forms of access, however, provide access to exchange facilities, which is the pertinent point under the statutory definition of "exchange access."

18. We also reject the contention that an incumbent LEC is not subject to section 251(c) for its provision of advanced services because such services are neither "telephone exchange services," nor "exchange access services." To the extent that it offers

advanced services, U S West contends, it is not acting as a "local exchange carrier" or "incumbent local exchange carrier," and the obligations imposed by section 251(c) on incumbent local exchange carriers do not apply. Because we have determined that advanced services offered by incumbent LECs are telephone exchange service or exchange access, we not and do not address the section 251 (c) obligations of an incumbent local exchange carrier offering services other than telephone exchange service or exchange access.

List of Subjects in 47 CFR Part 51

Communications, Common carrier, Telecommunications.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

[FR Doc. 00-3644 Filed 2-15-00; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00-158; MM Docket No. 99-10; RM-9435, RM-9688]

Radio Broadcasting Services; Walton and Livingston Manor, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of AM Communications, allots Channel 296A to Livingston Manor, NY, as the community's first local aural service, and denies the request of Dana Puopolo to allot Channel 296A to Walton, NY, as the community's second local FM and third local aural service. See 64 FR 5626, February 4, 1999. Canadian concurrence in the allotment has been received since Livingston Manor is located within 320 kilometers (200 miles) of the U.S.-Canadian border. A filing window for Channel 296A Livingston Manor, NY, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATE: Effective March 17, 2000.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99-10, adopted January 19, 2000, and released February 1, 2000. The full text of this Commission decision is available for

inspection and copying during normal business hours in the FCC Reference Center (Room 239), 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Livingston Manor, Channel 296A.

Federal Communications Commission.

John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00-3632 Filed 2-15-00; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00-120; MM Docket No. 99-44; RM-9469]

Radio Broadcasting Services; Stanfield, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document grants the petition for reconsideration filed by Luella Hoskins against our action in the *Report and Order*, 64 FR 41899, August 2, 1999, which dismissed her petition to allot Channel 241C3 to Stanfield, OR, for failure to file a statement of continuing interest. This document also allots Channel 241C3 to Stanfield, OR, as the community's first local aural service. Channel 241C3 can be allotted to Stanfield in compliance with the Commission's minimum distance separation requirements with a site restriction of 17.3 kilometers (10.7 miles) southwest, at coordinates 45-40-40 NL; 119-23-01 WL, to avoid a short-spacing to Station KNLN, Channel 239C, Walla Walla, WA, and to Station KRCW,

Channel 242C2, Royal City, WA. A filing window for Channel 241C3 at Stanfield, OR, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective March 17, 2000.

FOR FURTHER INFORMATION CONTACT:

Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 99-44, adopted January 12, 2000, and released February 1, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Stanfield, Channel 241C3.

Federal Communications Commission.

John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00-3636 Filed 2-15-00; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00-187; MM Docket No. 99-305; RM-9537]

Radio Broadcasting Services; Albion, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document rescinds the *Report and Order* in MM Docket No.