

of section 272(f)(1) can also be read as requiring a state-by-state sunset, thus avoiding anomalous results under section 271.

5. After a careful review of other closely related provisions of the Act, its underlying purposes, and its legislative history, the Commission concludes that section 272(f)(1) is most reasonably interpreted as providing for a state-by-state sunset of the section 272 separate affiliate and related requirements. A state-by-state sunset parallels the state-by-state authorization process provided for in section 271 and is consistent with the definition of a BOC contained in the Act. A state-by-state sunset also avoids the anomalous results under section 271(d)(3)(B) and the statutory definition of a BOC that are produced by application of a BOC-by-BOC or region-wide sunset.

Final Regulatory Flexibility Analysis

6. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

7. In the NPRM in this proceeding (67 FR 42211, June 21, 2002), the Commission certified that none of the proposals, if adopted, would have a significant economic impact on a substantial number of small entities because the issues under consideration in this proceeding directly affect only the BOCs and their affiliates, which do not qualify as small entities under the Regulatory Flexibility Act (RFA). The NPRM stated that none of the BOCs is a small entity because each BOC is an affiliate of a Regional Holding Company (RHC) and all of the BOCs or their RHCs have more than 1,500 employees under the applicable SBA size standard. The NPRM also stated that insofar as this proceeding applies to other BOC or RHC affiliates, those affiliates are controlled by the BOCs or by the RHC and thus are not "independently owned and

operated" entities for purposes of the RFA. Furthermore, comment was requested on this initial certification, and no party addressed this issue. Therefore we certify that the requirements of this Order will not have a significant economic impact on a substantial number of small entities.

8. The Commission will send a copy of this Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**.

Final Paperwork Reduction Act Analysis

9. This Memorandum Opinion and Order does not contain information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will not be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA.

Ordering Clauses

10. Accordingly, pursuant to the authority contained in sections 1, 2, 4(i)-(j), 201-205, 218-220, 251, 271, 272, 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154 (i)-(j), 201-205, 218-220, 251, 271, 272, 303(r) and 403, this Order IS ADOPTED.

11. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. 03-3068 Filed 2-6-03; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 90-571; FCC 02-269]

Telecommunications Relay Services and the Americans With Disabilities Act of 1990

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document eliminates the requirement that common carriers provide coin sent-paid

telecommunications relay service (TRS) from payphones on the grounds that it is currently technologically infeasible to provide coin sent-paid relay service through payphones. This document requires common carriers to provide local payphone calls made through TRS centers to TRS users on a cost-free basis. This document requires TRS providers to accept credit and calling cards and third party collect billing for toll calls from payphones. This document, also, encourages specific outreach and education programs to inform TRS users of their options when placing calls from payphones.

DATES: Effective March 10, 2003 except § 64.604(c)(3) of the Commission's rules which contain information collection(s) requirements shall become effective following approval by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT:

Janet Sievert, of the Consumer & Governmental Affairs Bureau at (202) 418-1362 (voice), (202) 418-1398 (TTY), or e-mail jsievert@fcc.gov. For additional information concerning the information collections contained in this *Fifth Report and Order*, contact Judy Boley at (202) 418-0214, or via the Internet at jboleay@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fifth Report and Order* on coin sent-paid TRS, adopted September 17, 2002, and released October 25, 2002. Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail qualexint@aol.com. Copies of this document in other alternative formats (computer diskette, large print, and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau at (202) 418-7426 (voice), (202) 418-7365 (TTY), or e-mail bmillin@fcc.gov. This *Fifth Report and Order* can also be downloaded in Text and ASCII formats at: <http://www.fcc.gov/cgb/dro>.

Synopsis

In this *Fifth Report and Order*, the Commission eliminates the requirement that common carriers provide coin sent-paid toll TRS calls from payphones. The Americans with Disabilities Act (ADA) requires the Commission to establish functional requirements, guidelines, and operational procedures for TRS, and to establish minimum standards for carriers' provisioning of TRS. To achieve functional equivalence to telephone services available to voice users, Congress directed, among other things, that the Commission prohibit TRS providers from "failing to fulfill the obligations of common carriers by refusing calls" 47 U.S.C. 225(d)(1)(E). In the *First Report and Order* on TRS, 56 FR 36729, August 1, 1991, the Commission interpreted this mandate to require TRS providers to handle "any type of call normally provided by common carriers," and placed the burden of proving the infeasibility of handling a particular type of call on the carriers, 6 FCC Rcd 4657 (1991). The Commission interpreted "any type of call" to include coin sent-paid calls, which are calls made by depositing coins in a coin-operated public payphone, 6 FCC Rcd at 4661 n.18. Subsequent concerns about the technical difficulties associated with handling coin sent-paid calls through TRS centers, however, resulted in multiple suspensions of the mandate for TRS providers to handle these types of calls. The Commission issued the first of these suspensions in 1993; the current suspension remains in effect until publication of the final rules adopted in this *Fifth Report and Order*. Because no current technological solution to the coin sent-paid toll TRS issue appears feasible, this *Fifth Report and Order* eliminates the coin-sent paid toll TRS requirement affirms that credit and calling cards may be used to bill toll TRS calls made from a payphone, and encourages specific outreach and education programs to inform TRS users of their options when placing calls from payphones. Because we conclude that it is infeasible to provide coin sent-paid toll relay service through payphones at this time, and the coin sent-paid functionality is not necessary to achieve functional equivalence, carriers need not provide coin sent-paid toll TRS calls from payphones. As proposed in the *Coin Sent-Paid Further Notice*, this *Fifth Report and Order* mandates that local payphone calls made to and through TRS centers be provided by common carriers on a cost-free basis. This *Fifth Report and Order* also encourages specific outreach and education

programs to inform TRS users of their options when placing TRS calls from payphones. Finally, the *Fifth Report and Order* mandates carriers via the Industry Team to submit a report on these outreach and education efforts to the Commission twelve months after publication of this *Fifth Report and Order* in the **Federal Register**. The report will facilitate the Commission's efforts to ensure that TRS consumers have the information they need to complete local as well as toll TRS calls from payphones.

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), see 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 *et. Seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA) Pub. L. 104-121, Title II, 110 Stat. 847 (1996), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Telecommunications Relay Service and the Americans with Disabilities Act of 1990, *Second Further Notice of Proposed Rulemaking*. Telecommunications Relay Services and the Americans with Disabilities Act of 1990, *Second Further Notice of Proposed Rulemaking*, 16 FCC Rcd 5803 (2001), 66 FR 18059, April 5, 2001, including comment on the IRFA. The Commission sought written public comment on the proposals in the *Second Further Notice of Proposed Rulemaking*, including comment on the IRFA. The comments received discussed only the general recommendations, not the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. See 5 U.S.C. 604.

1. Need for, and Objective of This Fifth Report and Order

This proceeding was generally initiated to address the requirement that telecommunications relay services (TRS) users have access to telephone services using payphones that are functionally equivalent to those available to persons without hearing or speech disabilities. Our specific concern was to address the inability to make coin sent-paid local and toll TRS calls from payphones. Because no technological solution to the coin sent-paid issue appeared imminent, the Commission issued the *Second Further Notice of Proposed Rulemaking* to further develop the record with the goal of determining the best plan to make the full range of payphone services available to TRS users. This *Fifth Report and Order* addresses the means by which persons with hearing and speech

disabilities will be able to make calls from payphones and eliminates the requirement that carriers be capable of providing coin sent-paid toll TRS calls.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

No comments were filed in response to the IRFA in this proceeding. No comments on the NPRM were received concerning the small business issues. The Commission has nonetheless considered any potential significant economic impact of the rules on small entities, and as discussed in Section 5, *Infra*, has concluded that the rules adopted impose no significant economic burden on small businesses.

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

The RFA directs agencies to provide a description of and, where feasible, and estimate of the number of small entities that may be affected by the rules adopted herein. 5 U.S.C. 604(2)(3). The RFA defines the term "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 5 U.S.C. 601(3), 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, established one or more definitions of such term which are appropriated to the activities of the agency and published such definition(s) in the **Federal Register**." 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.

Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by these rules. The most reliable source of information available at this time regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, is data the Commission publishes annually in its *Telecommunications Provider Locator Report*, regarding FCC Form 499-A.

FCC, Common Carrier Bureau, Industry Analysis Division, *Telecommunications Provider Locator*, Tables 1–2 (November 2001) (*Provider Locator*).

TRS Providers. Neither the Commission nor the SBA has developed a definition of “small entity” specifically applicable to providers of telecommunications relay services (TRS). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The SBA defines such establishments to be small businesses when they have no more than 1,500 employees. According to the FCC’s most recent data, there are approximately 10 interstate TRS providers, which consist of interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. Approximately five or fewer of these entities are small businesses. See National Association for State Relay Administration (NASRA) Statistics. The FCC notes that these providers include several large interexchange carriers and incumbent local exchange carriers. North American Industry Classification System (NAICS) code 513310. Some of these large carriers may only provide TRS service in a small area but they nevertheless are not small business entities. MCI, for example, provides relay service in approximately only 3 states, but is not a small business. Consequently, the FCC estimates that there are fewer than 5 small TRS providers that may be affected by the proposed rules, if adopted.

Payphone Providers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of pay telephone operators nationwide of which we are aware appears to be the data that we collect annually in connection with the *Telecommunications Provider Locator Report*. According to our most recent data, 936 companies reported that they were engaged in the provision of pay telephone services. Provider Locator at Table 1. 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 pay telephone operators that would qualify as small business concerns under SBA’s definition. Consequently, we estimate that there are fewer than 936 small

entity pay telephone operators that may be affected by this *Fifth Report and Order*.

Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) 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. *1992 Census*. According to the 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 2,321 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 local exchange carriers (LECs). The FCC does not have data specifying the number of these carriers that are not independently owned and operated, and thus 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 the SBA’s definition. Consequently, the FCC estimates that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small incumbent LECs. NAICS code 513310.

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.” 15 U.S.C. 632. 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). The Small Business Act contains a definition of “small business concerns,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). 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, CC Docket, 96–98, First Report and Order, 11 FCC Rcd 15499, 16144–45 (1996). 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 determination in other, non-RFA contexts. NAICS code 513310.

4. Description of Project Reporting, Recordkeeping and Other Compliance Requirements

The rules require carriers to submit a one-time report, twelve months after publication of this *Fifth Report and Order* in the **Federal Register**, detailing the steps they have taken to comply with the consumer requirements contained herein. Any additional costs incurred as a result of this proceeding should be nominal because the entities affected, including any small businesses, have been in compliance with the *Alternative Plan Order*, and because the reporting requirements is a one-time requirement.

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

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c)(1) through (c)(4).

For the following reasons, no steps need to be taken to minimize the economic impact on small businesses or to consider alternatives to minimize the economic impact on small businesses. First, the requirements in this *Fifth Report and Order* will have minimal impact on small entities because they require actions already being undertaken under the *Alternative Plan*. In this sense, the requirements merely formalize such actions. These actions are as follows: (1) Providing free local calling to a TRS provider from payphones; and (2) submitting a one-time report, to the Commission, 12 months after final rules are adopted in this proceeding regarding the steps that

have been taken to comply with the consumer education recommendations contained in the Report and Order.

Second, although this *Fifth Report and Order* recommends an extensive consumer outreach program, the program is only recommended, not required. Therefore, we conclude that the action taken herein should not adversely affect any small entities. Furthermore, this action aids all affected entities, including small businesses, as states and carriers consider such costs when entering into their contracts and determining their general overhead expenses.

6. Report to Congress

The Commission will send a copy of the *Fifth Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. See 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Fifth Report and Order* including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Fifth Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

Paperwork Reduction Act of 1995 Analysis

This *Fifth Report and Order* contains new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA) Pub. L. 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public and other Federal agencies are invited to comment on the new or modified information collections(s) contained in this proceeding.

Ordering Clauses

Accordingly, *it is ordered* that, pursuant to the authority contained in sections 4(i), 225 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 225 and 303, this Report and Order is adopted, and part 64 of the Commission's rules is amended and shall be effective March 10, 2003.

It is further ordered that the information collection(s) contained in the Report and Order shall become effective following approval by the Office of Management and Budget in the **Federal Register** announcing the effective date for those sections.

It is further ordered that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of

this *Fifth Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Reporting and recordkeeping requirements, Telecommunications. Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for Part 64 is amended to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

2. Section 64.604 is amended by revising paragraph (a)(3) to read as follows:

§ 64.604 Mandatory Minimum Standards.

* * * * *

(a) * * *

(3) *Types of Calls*—Consistent with the obligations of telecommunications carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services. Relay services shall be capable of handling any type of call normally provided by telecommunications carriers unless the Commission determines that it is not technically feasible to do so. Relay service providers have the burden of proving the infeasibility of handling any type of call. Relay service providers are permitted to decline to complete a call because credit authorization is denied.

* * * * *

[FR Doc. 03-3069 Filed 2-6-03; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF ENERGY

48 CFR Parts 923, 936 and 970

RIN 1991-AB47

Acquisition Regulation: Affirmative Procurement Program—Acquisition of Products Containing Recovered Materials

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to further implement Executive Order 13101, *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition*, dated September 14, 1998. On June 6, 2000, the Federal Acquisition Regulation (FAR) was amended to implement the Executive Order by a final rule published in the **Federal Register**. Today's amendment to the DEAR is necessary to supplement the FAR regarding agency policy applicable to DOE's facility management contractors.

EFFECTIVE DATE: March 10, 2003.

FOR FURTHER INFORMATION CONTACT:

Richard Langston, U.S. Department of Energy, Office of Procurement and Assistance Management, ME-61, 1000 Independence Avenue, SW., Washington, DC 20585 at (202) 586-8247, or via e-mail at richard.langston@pr.doe.gov.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion of Public Comments
- III. Section-by-Section Analysis
- IV. Procedural Requirements
 - A. Review Under Executive Order 12866
 - B. Review Under Executive Order 12988
 - C. Review Under the Regulatory Flexibility Act
 - D. Review Under the Paperwork Reduction Act
 - E. Review Under the National Environmental Policy Act
 - F. Review Under Executive Order 13132
 - G. Review Under the Unfunded Mandates Reform Act of 1995
 - H. Review Under the Treasury and General Government Appropriations Act, 1999
 - I. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996
 - J. Review Under Executive Order 13211
 - K. Approval by the Office of the Secretary of Energy

I. Background

This action follows a Notice of Proposed Rulemaking published in the **Federal Register** on November 30, 2000 (65 FR 71292). The public comment period for the notice ended January 2, 2001. The purpose of this rule is to provide additional guidance regarding Executive Order 13101, dated September 14, 1998 (63 FR 49641), entitled *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition*, which superseded Executive Order 12873 dated October 20, 1993, entitled *Federal Acquisition, Recycling, and Waste Prevention*. Among the changes made by this rule is the revision of the clause at section 970.5223-2 of the DEAR to