

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of
Policy for Licensing Domestic Satellite Earth
Stations in the Bush Communities of Alaska
IB Docket No. 02-30
RM No. 7246

NOTICE OF PROPOSED RULEMAKING

Adopted: February 11, 2002

Released: February 15, 2002

Comment date: 30 days after publication in the Federal Register
Reply comment date: 45 days after publication in the Federal Register

By the Commission:

I. INTRODUCTION

1. In this Notice, we propose to discontinue the Alaska Bush Earth Station Policy ("Bush Policy"). As generally construed, the Bush Policy precludes installing or operating more than one satellite earth station in any Alaskan Bush community for competitive carriage of interstate Message Telephone Service ("MTS") communications - i.e., ordinary interstate, interexchange toll telephone calls. Because satellite communication has apparently been the only feasible means of interconnecting Bush communities with the public switched telephone network, the Bush Policy has operated as a regulatory entry barrier against facilities-based competition in provision of interstate MTS in the Alaskan Bush. Thus, eliminating the Bush Policy would eliminate a long-standing exception to the Commission's general policy favoring open entry for facilities-based competition in provision of interstate telecommunication services. Allowing facilities-based competition in provision of interstate MTS in Bush communities would facilitate improvement in the quality of service available in Bush communities, promote more efficient delivery of service at lower cost, and reduce incentive for overcharging for use of these facilities.

1 Alaskan Bush communities, as defined for purposes of the policy, are rural Alaskan communities of less than 1,000 residents that are isolated from larger cities by rugged terrain and harsh weather conditions. See, e.g., Policies Governing the Ownership and Operation of Domestic Satellite Earth Stations in the Bush Communities in Alaska, Tentative Decision, 92 FCC 2d 736 (1982), at n.1 and ¶61.

2 I.e., competitive provision of service via the provider's own transmission facilities, as opposed to competitive provision of service by resale of transmission capacity purchased from another carrier.

II. BACKGROUND

A. Evolution of the Bush Policy

2. In 1970, RCA Alaska Communications, Inc., now known as Alascom, Inc. (“Alascom”),³ purchased all of the interexchange telecommunications facilities in Alaska from their sole owner and operator, the United States government, contingent upon regulatory approval. Alascom subsequently obtained authority from the Commission to operate that network, which was entirely comprised of terrestrial facilities, to provide interstate MTS between Alaska and the other states.⁴ Thus, Alascom became the only authorized operator of interexchange facilities in Alaska for carriage of interstate communications. The Commission stressed in granting Alascom this authority, however, that it was not granting Alascom a right to be protected from competition.⁵

3. In 1972, the Commission issued the “*Domsat II*” decision, which established policies for licensing privately-owned satellite facilities to provide communications service within the United States.⁶ The Commission decided in *Domsat II* that satellite licensees should be allowed to provide interstate MTS as well as other communications services.⁷ In doing so, however, the Commission did not sanction competition in provision of MTS, which was then provided on a monopoly basis under a uniform rate scheme throughout the United States by a consortium of carriers that pooled and redistributed their MTS revenues pursuant to contractual arrangements.⁸ Having decided that rates charged for satellite-linked interstate MTS calls originating or terminating in Alaska, Hawaii, or Puerto Rico should be integrated into the uniform interstate MTS rate scheme, the Commission said that “the nationwide [MTS] cost averaging structure ... should not be burdened with [satellite-facilities] costs that are greater than necessary” to handle such calls.⁹ In an order addressing petitions for reconsideration of *Domsat II*, the Commission reiterated its concern about unnecessary costs and said that it would not allow any carrier to construct “duplicate” satellite facilities to provide interstate MTS to Alaskan customers in areas where satellite-based MTS was already being provided by another carrier.¹⁰

4. In 1974, Alascom submitted a comprehensive plan for implementing satellite services in Alaska over a six-year period. The plan included a proposal to install small earth stations to establish interexchange connections to all communities with populations of 25 or more where long-distance telephone service had previously been unavailable. Alascom accordingly filed license applications for earth stations in 100 Bush communities. Arguing that Alascom’s plan was inadequate, officials representing the State of Alaska filed license applications requesting authority for the State to operate

³ Alascom is now a subsidiary of AT&T. See *Application of Alascom, Inc., AT&T Corporation and Pacific Telecom, Inc.*, Order and Authorization, 11 FCC Rcd 732 (1995).

⁴ *RCA Alaska Communications, Inc.*, Memorandum Opinion and Order, 22 FCC 2d 200 (1970).

⁵ *Id.* at ¶10.

⁶ *Establishment of Domestic Communications-Satellite Facilities By Non-Governmental Entities*, Second Report and Order, 35 FCC 2d 844 (1972).

⁷ *Id.* at ¶7.

⁸ Although the Commission indicated in *Domsat II* that it did not intend to sanction *competitive* provision of MTS via satellite, it did not maintain that there should be only one domestic MTS satellite carrier. See *id.* at ¶39. In that respect, *Domsat II* was consistent with the status quo. Many different carriers were providing MTS via terrestrial facilities – but on a non-competitive, sole-source basis, so that customers in any given area could obtain MTS from only one provider.

⁹ *Id.* at ¶39.

¹⁰ *Establishment of Domestic Communications-Satellite Facilities By Non-Governmental Entities*, Memorandum Opinion and Order, 38 FCC 2d 665 (1972), at ¶75 and n.29 (“*Domsat II Reconsideration Order*”).

earth stations of its own to provide interexchange services for the Bush communities that Alascom was proposing to serve.

5. In a decision released in 1975, the Commission held that the two sets of Bush earth-station applications were mutually exclusive because the proposed facilities would be “duplicative.”¹¹ The Commission maintained that it would not serve the public interest to authorize construction of two interexchange earth stations in a Bush community because a single earth station would suffice to handle all calls placed to or from any such community. The Commission said that it would initiate a further proceeding to decide whether to grant Bush earth-station licenses to Alascom or to the State. The State withdrew its applications before the Commission opened the further proceeding, but local exchange carriers filed applications for MTS earth stations in 35 of the Bush communities that Alascom was proposing to serve. The Commission granted Alascom’s unopposed applications for earth stations in the other 65 Bush communities but withheld disposition of the “duplicative” applications.¹²

6. Concurrently with these events, the Commission began to reconsider its regulatory policies pertaining to MTS. In 1978, it instituted the *MTS-WATS Market Structure* proceeding to determine whether it would better serve the public interest to open the interstate MTS market to competition.¹³ In initial comments filed in that proceeding, Alascom asked the Commission to issue a clarifying statement that it would not change the policy stated in the *Domsat II Reconsideration Order, supra*, regarding “duplicative” earth stations in Alaska. In response, the Commission held that it could not rely on the *Domsat II Reconsideration Order* as justification for barring competitive provision of MTS via satellite facilities in Alaska, because it had not stated reasons there for concluding that such competition would disserve the public interest.¹⁴

7. In 1980, the Commission decided to allow multiple providers to offer competitive interstate interexchange services in the contiguous states and Hawaii.¹⁵ The Commission concluded that experience with an increasingly competitive domestic telecommunication industry and the record amassed in the proceeding supported a presumption that facilities-based and resale MTS competition would produce substantial benefits – improved efficiency, provision of service at lower cost, improved responsiveness to customers’ needs, and more rapid and efficient response to technological innovation – without causing

¹¹ *RCA Global Communications, Inc., et al.*, Memorandum Opinion, Order, and Authorization, 56 FCC 2d 660 (1975) (“1975 Mutual Exclusivity Order”).

¹² See *Policies Governing the Ownership and Operation of Domestic Satellite Earth Stations in the Bush Communities in Alaska*, Tentative Decision, 92 FCC 2d 736 (1982), at ¶¶ 9-10.

¹³ *MTS-WATS Market Structure*, Notice of Inquiry and Proposed Rulemaking, 67 FCC 2d 757 (1978). The rulemaking was precipitated by the “*Execunet I*” decision, *MCI Telecommunications Corp. v. FCC*, 561 F.2d 365 (D.C. Cir. 1977), which held that the FCC had erred in forbidding use of authorized private-line facilities to provide a service equivalent to MTS, because it had never previously determined that preservation of the MTS monopoly was in the public interest.

¹⁴ *MTS and WATS Market Structure*, Memorandum Opinion and Order, 75 FCC 2d 644 (1980). The Commission reaffirmed the disavowal in a later order in the *MTS-WATS* proceeding, adding that

to argue that the Commission considered the possibilities of competition in the MTS-WATS market and rejected it [in *Domsat II* or the *Domsat II* reconsideration order] is to impute to the Commission precognition that it clearly did not possess. The Commission ... merely recognized the existing de facto monopoly and cannot be said to have created a sole-source policy based on a reasoned analysis of the public interest ramifications of competitive supply.

Second Report and Order, 92 FCC 2d 787 (1982), at ¶38.

¹⁵ *MTS and WATS Market Structure*, Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking, 81 FCC 2d 177 (1980), at ¶24.

significant adverse effects.¹⁶ The Commission reserved final judgment, pending receipt of further comments from Alascom, as to whether the open-entry policy should apply to provision of service between Alaska and the other states. It said, however, that it saw no reason for concluding that MTS competition would not be equally beneficial in the Alaskan submarket and that it would not refrain from applying the open-entry policy to Alaska unless it were shown with “clear and convincing” evidence that an exception was required in order to avoid harm of a sort that the Communications Act was designed to prevent.¹⁷

8. Later that year, the Commission adopted a Notice of Proposed Rulemaking regarding authorizations for earth stations in Alaska Bush communities.¹⁸ Relying on the holding in the *1975 Mutual Exclusivity Order* that “duplicative” Bush earth stations would not serve the public interest, the Commission proposed to adopt a rule that would bar consideration of an application for an MTS earth station in a Bush community unless the applicant were certified by the Alaska Public Utilities Commission (“Alaska Commission”) to provide local exchange service to that community.¹⁹ The purpose of the proposed rule, the Commission said, was to avoid duplication of facilities for providing “essential public message service” to Bush communities and establish a basis for resolving the licensing controversy between Alascom and the local exchange carriers that had filed applications for earth stations in the same Bush communities.²⁰

9. In 1982, in a further decision in the *MTS-WATS Market Structure* proceeding, the Commission concluded that it would serve the public interest to allow other carriers to compete with Alascom in providing interstate MTS in Alaska, either as resellers or with separately-constructed facilities of their own.²¹ Because the cost of interconnecting Bush communities was very high relative to the number of people residing in those communities,²² the Commission acknowledged that it might be economically infeasible for more than one carrier to install interexchange facilities in a Bush community.²³ Therefore, the Commission said that it would review carefully any application for authority to provide competitive MTS in a Bush community through separate facilities to determine whether such “duplicative entry” would serve the public interest.²⁴ The Commission expressly declined to adopt a policy precluding grant of such applications, however, because it recognized that the possibility that new entrants might be allowed to provide MTS in Bush communities through separate facilities would establish an incentive for Alascom to provide Bush inter-exchange service more efficiently.²⁵ The

¹⁶ *Id.* at ¶104.

¹⁷ *Id.* at ¶113.

¹⁸ *Policies Governing the Ownership and Operation of Domestic Satellite Earth Stations in the Bush Communities in Alaska*, Notice of Proposed Rulemaking, 81 FCC 2d 304.

¹⁹ *Id.* at ¶9 and n.14. The Commission proposed to grant one-term waivers of the proposed eligibility restriction in cases where the Alaska Commission had not certified anyone to provide local exchange service in the community in question or where the certified local exchange carrier was unwilling to apply for authority to construct and operate an MTS earth station. *Id.* at ¶¶ 39 and 40.

²⁰ *Id.* at ¶¶ 37 and 49.

²¹ *MTS-WATS Market Structure Inquiry*, Second Report and Order, 92 FCC 2d 787 at ¶¶ 157-164.

²² Alascom’s alleged cost of providing MTS in Alaskan Bush communities was \$32,618 per telephone per year, whereas the average annual per-telephone cost of providing MTS in the United States as whole was only \$296. *Id.* at ¶148.

²³ *Id.* at ¶149. The Commission surmised that competing carriers would prefer to provide MTS in the Bush through resale of interexchange capacity purchased from Alascom.

²⁴ *Id.* at ¶149.

²⁵ *Id.*

Commission said, moreover, that even if it were clear that open interstate MTS entry could have a detrimental impact on service to Bush communities, it would not necessarily follow that competition should be restricted, as there might be better ways of protecting the public interest.²⁶

10. Nevertheless, in the *Bush Earth Station* proceeding the Commission reaffirmed the holding of the 1975 *Mutual Exclusivity Ruling* that “duplicative” earth stations in the Alaska Bush would not serve the public interest.²⁷ Rather than choosing between competing applications, the Commission issued joint licenses to Alascom and the local exchange carriers that had also filed applications for MTS earth stations in 35 Bush communities, authorizing operation of a single station in each community.²⁸ With respect to future cases, the Commission said that it would continue to issue joint licenses when applications for separate MTS earth stations in a Bush community were filed by an interexchange carrier and a local exchange carrier, and, more generally, that “we currently contemplate [authorizing] only one MTS earth station in a Bush village.”

B. Subsequent Developments

11. In 1990, General Communications, Inc. (“GCI”) filed a petition asking the Commission to initiate a rulemaking to consider revising or eliminating the Bush Policy.²⁹ GCI was providing facilities-based interstate MTS to customers in the non-Bush areas of Alaska. GCI said in its rulemaking petition that it intended to provide interstate and intrastate MTS via its own satellite facilities to all the Bush communities then served by Alascom, if permitted to do so by the Commission and the Alaska Commission. GCI asserted that its planned Bush satellite network would incorporate advanced technology that would enable it to provide better quality service at lower rates than subscribers were currently paying.

12. The Alaska Commission, which had not previously allowed any intrastate MTS competition, subsequently adopted an intrastate open-entry policy for Alaska’s main population centers but decided to continue to bar facilities-based intrastate MTS competition in the Bush. It accordingly adopted a regulation that prohibited interexchange carriers from installing facilities to carry intrastate MTS calls to or from any Bush community where another carrier was already providing such service.³⁰ The restriction on intrastate use affected the potential feasibility of facilities-based *interstate* competition in the Bush. A

²⁶ *Id.* at ¶162.

²⁷ *Policies Governing the Ownership and Operation of Domestic Satellite Earth Stations in the Bush Communities in Alaska*, Tentative Decision, 92 FCC 2d 736 (1982), at ¶59 and n.12; Final Decision, 96 FCC 2d 522 (1984), at ¶¶ 3, 24, and 40.

²⁸ The Commission conditioned the grant of joint license authority on compliance with a requirement to negotiate division of facilities ownership, division of operational responsibility, and terms of payment for asset interests to be assigned from Alascom to the exchange carriers. The Commission also included a condition requiring the parties to submit to binding arbitration of issues that they could not resolve through negotiation. *Id.* at ¶45.

²⁹ Petition for Rulemaking filed January 10, 1990, RM-7246. AT&T filed a statement in support of the petition, and Alascom, Inc. and United Utilities, Inc. filed comments in opposition. The State of Alaska and the Alaska Commission also filed comments on the petition.

³⁰ *Regulations Governing the Market Structure for Intrastate Interexchange Telecommunications Service*, 10 APUC 407 (1990). The Alaska Commission based the decision to retain the intrastate Bush entry barrier on findings that 1) a single carrier could provide the satellite interexchange channels needed to interconnect a Bush community at much lower per-channel cost than two carriers using separate facilities; 2) the additional per-channel cost of redundant Bush facilities would probably be passed on to ratepayers; 3) GCI’s proposed network would rely on technology that had not been tested in actual use; and 4) by reducing Alascom’s traffic load, competitive provision of interexchange facilities in the Bush would reduce subsidization of intrastate MTS in Alaska from revenues collected from subscribers in other states pursuant to a Joint Service Agreement between Alascom and AT&T. The Joint Service Agreement was later terminated, however, in compliance with the decision cited in n.34, *supra*.

carrier barred from generating intrastate revenue from Bush facilities would be at a severe disadvantage in any attempt to enter into facilities-based competition with Alascom in provision of interstate MTS in the Bush, because Alascom could earn both intrastate and interstate revenue from its own Bush operations.

13. In 1995, the Alaska Commission granted a temporary waiver to GCI, allowing it to install earth stations in 50 Bush communities and operate them to provide intrastate MTS in competition with Alascom on an experimental basis. GCI asked the Commission for a concurrent waiver of the Bush Policy so that the experimental facilities could be used for both interstate and intrastate MTS. GCI said that it would renew its request for a rulemaking to consider repeal of the Bush Policy if the demonstration project proved commercially successful. The International Bureau granted GCI's request for partial waiver, to run concurrently with the Alaska Commission's waiver, and said that any change in the Bush Policy would be effected in a separate proceeding with opportunity for public comment.³¹ GCI constructed earth stations in 50 Bush communities and has since been using them to provide interstate and intrastate MTS pursuant to its temporary authorizations. In other Bush communities, however, interexchange connection is still provided exclusively by Alascom via its own earth station or through an earth station jointly licensed to Alascom and a local exchange carrier.

14. In 1998, GCI filed a Petition for Preemption urging the Commission to rule that the Alaska Commission's regulation barring use of separate interexchange facilities in Bush communities for provision of intrastate MTS in competition with Alascom (Title 3, Section 52.355 of the Alaska Administrative Code) contrary to Section 253(a) of the Communications Act and was therefore null and void.³² The Alaska Commission subsequently repealed Section 52.355.³³ In a letter to the Commission dated November 13, 2001, GCI reported that the repeal was administratively final and therefore requested dismissal of its Petition for Preemption. GCI pointed out, however, that the Commission's Bush Policy remains in force and repeated its request that the Commission initiate a rulemaking to consider repealing it.³⁴

³¹ *Petition of General Communications, Inc. for a Partial Waiver of the Bush Earth Station Policy*, Memorandum Opinion and Order, 11 FCC Rcd 2535 (Int'l Bur. 1996). The Bureau rejected arguments that the Policy should not be waived unless it were shown that the Bush communities could "support" more than one MTS carrier, commenting that:

A partial waiver provides [an] ... opportunity for the marketplace, not the State of Alaska or the Commission, to determine who should serve certain Bush communities. The residents themselves are in the best position to determine which carrier best suits their particular needs. If the market is a natural monopoly and GCI is ... unsuccessful ... it is GCI that will bear the economic consequences. [I]f the project ... is successful, the needs of Bush community residents will have been served.

Id. at ¶6.

³² Section 253(a), 47 U.S.C. § 253(a), enacted as part of the Telecommunications Act of 1996, declares that "[n]o State ... regulation ... may prohibit or have the effect of prohibiting ... provi[sion of] any interstate or intrastate telecommunication service." Paragraph (d) of Section 253 delegates authority to the FCC to issue preemption decrees barring enforcement of state regulations enacted in violation of Section 253(a).

³³ *Consideration of the Reform of Intrastate Interexchange Telecommunications Market Structure and Regulations in Alaska*, Docket R-98-1, Order No. 6 (RCA, Nov. 20, 2000). The Alaska Public Utilities Commission was reconstituted as "The Regulatory Commission of Alaska" prior to issuing the decision.

³⁴ The Common Carrier Bureau granted GCI's dismissal motion. *General Communication, Inc., Petition for Preemption Pursuant to Section 253 of the Communications Act of 1934*, DA-01-2761 (Policy & Program Planning Div., CC Bur., rel. Dec. 3, 2001). Last year Alascom and its parent company, AT&T, jointly filed a petition asking for repeal of the Bush Policy as one aspect of a bundle of requested changes in regulatory policy pertaining to provision of interstate service in Alaska. See "Petition for Elimination of Conditions" filed on March 3, 2000 in CC Docket No. 00-46. GCI filed comments in support of the request for elimination of the Bush Policy but argued

(continued...)

III. DISCUSSION

15. The Bush Policy is an isolated exception to the Commission's interstate MTS open-entry policy. The Commission said in the *MTS-WATS Market Structure* proceeding that it would not create an Alaskan exception to that policy unless it were shown with "clear and convincing" evidence that such an exception was necessary to avoid significant harm to the public interest.³⁵ No such showing has ever been made. Rather, the Commission adopted the restrictive Bush Policy on the basis of a finding that applications for "duplicative" Bush earth stations were mutually exclusive. The finding was made before the advent of MTS competition, and was based on a regulatory policy designed to prevent monopoly carriers from building unneeded facilities in order to obtain larger disbursements from pooled MTS revenues at the expense of other carriers and ratepayers. We see no reason to continue to prevent non-dominant carriers from investing in facilities at their own expense to compete with a carrier with an established facilities monopoly.

16. We believe that in the current environment – particularly now that the Alaska Commission has eliminated the parallel intrastate entry barrier – it is time to remove the remaining barrier against facilities-based interstate MTS competition in Bush Alaska. We expect that facilities-based competition in the provision of interstate MTS in Bush communities will produce public interest benefits of the same kind that the Commission envisioned when it adopted the general open-entry policy for the interstate MTS market, that the Bureau envisioned when granting GCI's waiver request, and that the Alaska Commission envisioned when it repealed Section 52.355. As the Commission observed in the *MTS-WATS Second Report and Order*,³⁶ moreover, even the mere possibility of facilities-based competition would establish an incentive for Alascom to operate more efficiently. The potential for such competition would also tend to deter Alascom from overcharging for use of its facilities to provide interstate MTS to subscribers in Bush communities or to complete calls to Bush residents from subscribers in other states.³⁷

17. We invite comment from interested members of the public on our proposal to eliminate the Bush Policy. Any commenter advocating retention of the Policy should demonstrate with clear and convincing evidence that allowing installation and operation of Bush earth stations for facilities-based interstate MTS competition would result in impairment of the quality of service, reduction of the availability of service, or increased cost burdens for ratepayers.³⁸

IV. CONCLUSION

18. Accordingly, we propose to abolish the Alaska Bush Policy. This will eliminate a significant

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against granting the other relief that the petitioners were requesting. "Opposition of General Communication, Inc." filed April 17, 2000.

³⁵ *MTS-WATS Report and Third Supplemental Notice*, 81 FCC 2d 177 at ¶112.

³⁶ 92 FCC 2d 787 at ¶149.

³⁷ That Alascom might overcharge other carriers for use of monopoly Bush facilities has been a subject of continuing regulatory concern. See *Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico, and the Virgin Islands*, Final Recommended Decision, 9 FCC Rcd 2197 ¶¶ 53-68 (Jt. Board 1993); *Alascom, Inc., Cost Allocation Plan for the Separation of Bush and Non-Bush Costs*, Order, 10 FCC Rcd 4963 (CC Bur. 1995); *Alascom, Inc., Memorandum Opinion and Order on Reconsideration and Order Approving Cost Allocation Plan*, 12 FCC Rcd 1991 (CC Bur. 1997), *app. for review pending*.

³⁸ See *Integration of Rates and Services*, 9 FCC Rcd 3023 at ¶1. In the event such a showing were made, it would be necessary to consider whether detrimental effects could be averted by some regulatory means other than restricting competition. See *MTS-WATS Market Structure*, 92 FCC 2d 787 ¶162.

regulatory entry barrier to facilities-based competition in provision of interstate MTS service, advancing a deregulatory process begun two decades ago that has proven enormously beneficial to the general public.

V. PROCEDURAL MATTERS

A. Ex Parte Presentations

21. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in Commission rules.³⁹

B. Initial Regulatory Flexibility Analysis

22. The Regulatory Flexibility Act of 1980, as amended, (“RFA”)⁴⁰ requires preparation of an Initial Regulatory Flexibility Analysis (“IRFA”) for notice and comment rulemaking proceedings, unless the agency certifies that the proposed rules would not have significant economic impact on “a substantial number” of “small entities.”⁴¹ The RFA generally defines “small entity” as having the same meaning as the term “small business concern” under the Small Business Act⁴² – *i.e.*, a business firm that: (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). Such analysis or certification need only address the impact on small businesses that would be directly regulated under the proposed rules.⁴³

23. In this Notice of Proposed Rulemaking, the Commission proposes to repeal a regulatory policy that prevents companies from obtaining licenses to operate earth stations in rural Alaska that would carry telephone calls between users in certain Alaskan communities and users in other states if such service is already available in those communities via facilities provided by an established carrier. Because this proposed policy change would not impose any regulatory burden, we certify that it would not have a significant direct impact on a substantial number of small businesses. Anyone who believes that the proposal discussed in this Notice requires additional RFA analysis may raise that contention in comments filed pursuant to the procedure specified in the next paragraph, labelling the discussion on point as “RFA Comments.” The Commission will send a copy of this Notice of Proposed Rulemaking, including this initial certification, to the Chief Counsel for Advocacy of the Small Business Administration. A copy will also be published in the Federal Register. *See* 5 U.S.C. § 605(b).

C. Deadlines and Instructions for Filing Comments

24. Members of the public may file comments on the Further Notice of Proposed Rule Making pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, 47 C.F.R. §§ 1.415 and 1.419, on or before 30 days after the date of publication in the Federal Register. Reply comments are due 45 days after the date of publication in the Federal Register. Interested parties may file comments by using the

³⁹ *See* 47 C.F.R. § 1.1206.

⁴⁰ 5 U.S.C. § 601 *et seq.*

⁴¹ 5 U.S.C. § 605(b).

⁴² 15 U.S.C. § 632.

⁴³ *Mid-Tex Electric Cooperative, Inc. v. FERC*, 773 F.2d 327, 342-43 (D.C. Cir. 1985).

Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.⁴⁴ The Commission will consider all relevant and timely comments prior to taking final action in this proceeding. To file formally, interested persons must file an original and four copies of all comments, reply comments, and supporting comments. Those who want each Commissioner to receive a personal copy of their comments should file an original plus nine copies. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Persons not filing via ECFS are encouraged to file a copy of all pleadings on a 3.5-inch diskette in Word 97 format.

25. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Interested persons may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, send an e-mail to ecfs@fcc.gov, including 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.

26. Those filing paper comments must submit an original and four copies of each filing. All filings must be sent to the Commission's Acting Secretary, William F. Caton, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

27. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, S.W., Washington, D.C. 20554. Comments are also available on the ECFS, at https://gullfoss2.fcc.gov/cgi-bin/websql/prod/ecfs/comsrch_v2.hts.

28. *Additional Information.* For further information concerning this rulemaking proceeding contact: William Bell at (202) 418-0741, internet: bbell@fcc.gov, International Bureau, Federal Communications Commission, Washington, DC 20554.

VI. ORDERING CLAUSES

29. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 7(a), 301, 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 154(j), 157(a), 301, 303(f), 303(g), and 303(r), GCI's Petition for Rulemaking filed on January 10, 1990 **IS GRANTED** and this *Notice of Proposed Rulemaking* **IS ADOPTED**.

30. **IT IS FURTHER ORDERED** that the Commission's Consumer Information Bureau, Reference Information Center, **SHALL SEND** a copy of this *Notice of Proposed Rulemaking* to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton

⁴⁴ See *Electronic Filing of Documents in Rulemaking Proceedings*, Memorandum Opinion and Order, 13 FCC Rcd 21,517 (1998); *Electronic Filing of Documents in Rulemaking Proceedings*, Report and Order, 13 FCC Rcd 11,322 (1998).

Acting Secretary