and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglas insulation, Synthetic fibers.

(Sec. 111(c), Clean Air Act (42 U.S.C. 7411(c))

Dated: April 4, 1985.

Stanley Laskowski,

Acting Regional Administrator.

[FR Doc. 85-9341 Filed 4-18-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 60 and 61

[Docket No. AM707PA; A-3-FRL-2820-1]

Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants; Delegation of Authority of the Commonwealth of Pennsylvania, Department of Environmental Resources

AGENCY: Environmental Protection Agency.

ACTION: Rule related notice.

SUMMARY: Section 111(c) and 112(d) of the Clean Air Act permit EPA to delegate to the States the authority to implement and enforce the standards set out in 40 CFR Part 60 and Part 61, Standards of Performance for New Stationary Sources (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP), respectively. On December 11, 1984, the Commonwealth of Pennsylvania, Department of Environmental Resources requested EPA to delegate to it the authority for additional NSPS and NESHPA source categories. EPA granted the request on January 7, 1985. The Commonwealth now has authority to implement and enforce NSPS regulations for Equipment Leaks of Volatile Organic Compounds (VOC) in Petroleum Refineries (Subpart GGG) and Flexible Vinyl and Urethane Coating and Printing (Subpart FFF), and NESHAP regulations for Equipment Leaks (Fugitive Emission Sources) of Benzene (Subpart J) and Equipment Leaks (Fugitive Emission Sources) (Subpart V).

EFFECTIVE DATE: January 7, 1985.

ADDRESSES: Applications and reports required under all NSPS and NESHAP source categories now being delegated to the Pennsylvania Department of Environmental Resources should be addressed to the Commonwealth of Pennsylvania, Department of Environmental Resources, P.O. Box 2063, Harrisburg, PA 17120, in addition to U.S. EPA, Region III, 841 Chestnut Street, Philadelphia, PA 19107, Attn: Thomas Maslany (3AM20).

Copies of the Notice and accompanying documents are available for inspection during normal business hours at the Pennsylvania DER address given above or at the following offices:

U.S. Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, Pennsylvania 19107, ATTN: Michael Giuranna (3AM11), Telephone: (215) 597-9189

Public Information Reference Unit, Room 2922—EPA Library, U.S. Environmental Protection Agency, 401 M Street, S.W. (Waterside Mall), Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Michael Giuranna of EPA Region III's Air Programs Branch, telephone (215) 597-9189.

SUPPLEMENTARY INFORMATION: The NESHAP program was delegaed to the Department on February 4, 1977 with the stipulation that Authority to enforce subsequent standards would be delegated only if specifically requested. The NSPS program was delegated to the Department on January 16, 1980, with the same stipulation.

On December 11, 1984, the Department requested EPA to delegate to it authority to implement and enforce additional NSPS and NESHAP Standards.

Delegation of the additional standards was made by the following letter on January 7, 1985.

Honorable Nicholas DeBenedictis,
Secretary, Department of Environmental Resources,
P.O. Box 2063,
Harrisburg, Pennsylvania 17120

Dear Mr. DeBenedictis: This is in response to your letter of December 11, 1984, requesting delegation of authority for the Pennsylvania Department of Environmental Resources to enforce New Source Performance Standards (NSPS) for VOC Equipment Leaks in Petroleum Refineries and the Synthetic Organic Chemical Manufacturing Industry (Subpart GGG) and Flexible Vinyl and Urethane Coating and Printing (Subpart FFF), and National Emission Standards for Hazardous Air Pollutants (NESHAP) for Benzene Equipment Leaks (Fugitive Emission Sources) of Volatile Hazardous Air Pollutants (Subpart V).

We have reviewed the pertinent laws, rules and regulations of the Commonwealth of Pennsylvania and have determined that they continue to provide an adequate and effective procedure for implementing and enforcing the NSPS and NESHAP. Therefore, were hereby delegate the authority for the implementation and enforcement of the NSPS and NESHAP regulations to the Commonwealth of Pennsylvania as follows:

Authority for all sources located or to be located in the Commonwealth of Pennsylvania subject to the Standards of Performance for New Stationary Sources for VOC Equipment Leaks in Petroleum Refineries and the Synthetic Organic Chemical Manufacturing Industry (GGG) and Flexible Vinyl and Urethane Coating and Printing (FFF) and National Emission Standards for Hazardous Air Pollutants for Equipment Leaks (Fugitive Emission Sources) of Benzene (J) and Equipment Leaks (Fugitive Emission Sources) of Volatile Hazardous Air Pollutants (V).

This delegation is based upon the conditions given in our June 30, 1983 letter to you which delegated 7 additional NSPS source categories to the Commonwealth of Pennsylvania.

Also, thank you for your request for automatic delegation of NSPS and NESHAP. We are presently reviewing the Commonwealth's rules and regulations to determine if they are adequate. Once our determination is made, we will notify you. If you have any questions, please contact Glenn Hanson, Chief, PA/WV Section at (215) 597-8486.

Sincerely,

Thomas P. Eichler,
Regional Administrator.

Effective immediately, all applications, reports, and other correspondence required under the NSPS for VOC Equipment Leaks in Petroleum Refineries (GGG) and Flexible Vinyl and Urethane Coating and Printing (FFF) and under the NESHAP for Equipment Leaks (Fugitive Emission Sources) of Benzene (J) and Equipment Leaks (Fugitive Emission Sources) (V), should be sent to the Pennsylvania Department of Environmental Resources (address above) in addition to the EPA Region III Office in Philadelphia.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects

40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic fibers.

40 CFR Part 61

Air pollution control.

(Sec. 111(c), and 112(d) Clean Air Act (42 U.S.C.) 7411(c) and 7412(d))

Dated: April 4, 1985.

Stanley Laskowski,

Acting Regional Administrator.

[FR Doc. 85-9342 Filed 4-18-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2650

[Circular No. 2562]

Alaska Native Selections; Amendment Changing the Chargeability of Submerged Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking will amend the provisions of the Alaska Native Selection regulations to change the procedures used for excluding meanderable water bodies from acreage charged against the entitlements of Alaska Native Corporations. This amendment will implement a policy decision of the Secretary of the Interior.

EFFECTIVE DATE: May 20, 1985.

ADDRESS: Any suggestions or inquiries should be sent to: Director (311), Bureau of Land Management, 1800 C Street, NW., Washingotn, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

B. LaVelle Black, (202) 343-6511

or

Robert C. Bruce, (202) 343-8735.

SUPPLEMENTARY INFORMATION: A proposed rulemaking was published in the **Federal Register** on August 7, 1984 (49 FR 31475). The proposed rulemaking invited public comments for 60 days ending on October 9, 1984, with a notice of extension providing for an additional 45 days for public comment being published in the **Federal Register** on October 22, 1984 (49 FR 41266). During the comment period, comments were received from seven sources, two from Native corporations, one from a Native organization, one from a State government, one from a private individual, one from a public interest group and one from a Federal agency. The comments have been carefully reviewed and the action taken on them is discussed below.

Generally, the comments favored the establishment of the new procedures for chargeability of submerged lands provided in the proposed rulemaking. One comment suggested that the proposed rulemaking was defective and invalid because it provided insufficient factual background and explanation. Without adequate information, the public cannot make appropriate comment on the purpose of the proposed rulemaking. This comment went on to suggest that the proposed rulemaking was contrary to public policy and violated specific provisions of the Alaska Native Claims Settlement Act because no environmental impact statement was prepared and the requirements of section 810 of the Alaska National Interest Lands Conservation Act were not followed. After careful review, the comment was not accepted and the final rulemaking adopted the provisions of the proposed rulemaking with only one significant change, the removal of the provision on underselection. The proposed rulemaking stated that it was being issued to implement a change in policy announced by the Secretary of the Interior with the policy statement being explained in the **Federal Register** on December 5, 1983 (48 FR 54483). That policy statement dealt with the issue of submerged lands and their chargeability, an issue that has been the subject of discussion for many years, including policy papers prepared by the Federal-State Land Use Planning Commission. The issue is one that is clearly understood by those that would be affected by its implementation. Further, section 910 of the Alaska National Interest Lands Conservation Act excludes actions, including issuance of regulations, leading to the issuance of conveyances to Alaska Natives or Native Corporations under provisions of the Alaska Native Claims Settlement Act from the preparation or submission of an environmental impact statement. Finally, the provisions of section 810 of the Alaska National Interest Lands Conservation Act are not applicable to conveyances made under the Alaska Native Claims Settlement Act.

One comment suggested that § 2650.5-1(b)(3) of the proposed rulemaking be deleted from the final rulemaking because it was seen as requiring a navigability determination on rivers and lakes smaller than the criterion used in determining whether title passed to the State of Alaska at statehood. This comment was not adopted because the elimination of § 2650.5-1(b)(3) would eliminate all navigability determinations. In addition, the State of Alaska has expressed its support for this provision of the proposed rulemaking, while retaining the right to challenge a decision to convey submerged lands beneath lakes less than 50 acres in size or a river or stream less than 3 chains in width. The elimination of all navigability determinations would eliminate the ability to make navigability determinations in those instances where the State of Alaska challenges a conveyance of submerged lands. The final rulemaking retains § 2650.5-1(b)(3).

Another comment on § 2650.5-(b)(3) interpreted it to permit the conveyance of submerged lands beneath navigable water to a Native Corporation. This section applies only to lands retained in Federal ownership at the time of Statehood and does not pertain to any submerged lands granted to the State in the Submerged Lands Act (67 Stat. 29). Rather than retain Federal ownership to these submerged lands which are primarily sloughs and potholes subject to tidal influence within the boundaries of Native conveyances, the Department of the Interior will excerise its authority under the Alaska Native Claims Settlement Act and convey the lands to the adjoining upland owners.

Two comments recommended changing §§ 2651.4(i) (1) and (2) to allow the withdrawal of lands within the conservation system units for villages that may be underselected. After carefully reviewing the issues raised by the comments and the impact of the provisions of the proposed rulemaking on the question of selection and withdrawal of lands for the Native Corporations, the Department of the Interior has decided to remove the changes made by the proposed rulemaking to §§ 2651.4(i) (1), (2), (3) and (4) in their entirety. This will provide additional time for the Department to thoroughly review and make a decision on the question of what lands should be made available for those corporations that would be underselected as a result of the change in policy on the chargeability of submerged lands and what changes in the selection regulations, if any, will be made.

Two comments recommend for various reasons that the final rulemaking delete § 2651.4(i)(4) of the proposed rulemaking. For the reason cited above, § 2651.4(i)(4) has been deleted by the final rulemaking.

One comment suggested that the final rulemaking remove the reference to section 12(b) of the Alaska Native Claims Settlement Act that appears in § 2651.4(i)(1) of the proposed rulemaking. The comment argued that the reference is not needed because section 14(a) of the Act is the authority for conveying selections made under both 12(a) and (b) of the Act. The final rulemaking has not adopted this suggestion because the final rulemaking

has removed § 2461.4(i)(1) and the comment is no longer applicable.

One comment suggested that the final rulemaking should make mention of the fact that the Natives in the Koniag region are not entitled to additional withdrawals because of the language in section 1427(n) of the Alaska National Interest Lands Conservation Act. This suggestion was not adopted because the final rulemaking is not deemed to need a reference to Koniag, Inc.; the language of the Alaska National Interest Lands Conservation Act is sufficient.

A final comment recommended that the final rulemaking contain language that no newly withdrawn lands could be conveyed until all validly selected lands have been conveyed. The preamble to the proposed rulemaking clearly stated that a village corporation will be required to take patent to all previously validly selected lands. This clear statement of Department of Interior policy makes it unnecessary to add this requirement as a specific provisions of the final rulemaking and the suggestion has not been adopted.

Editorial and grammatical corrections as needed have been made.

The principal author of this final rulemaking is B. LaVelle Black, Alaska Programs Staff, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The change in procedure made by this final rulemaking will allow Alaska Native Corporations to receive larger amounts of upland acreage because it changes the procedures used to exclude water bodies from their selection entitlement. The change will benefit many of the Alaska Native Corporations; however, the change should not have a major economic effect on any of the corporations.

The proposed rulemaking contains no information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 2650

Administrative practice and procedure, Airports, Alaska, Cemeteries, Historic places, Indians—claims, Indians—lands, National forest, National Wildlife Refuge System, Public lands—grants, Public lands—mineral resources.

Under the authority of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 et seq.), Part 2650, Group 2600, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

Leona A. Power,

Acting Assistant Secretary of the Interior.

April 10, 1985.

PART 2650—[AMENDED]

1. Section 2650.0–5 is amended by adding a new paragraph (v) to read:

§ 2650.0–5 Definitions.

* * * * *

(v) "Native corporation" means any Regional Corporation, any Village Corporation, Urban Corporation and any Native Group.

2. Section 2650.5–1 is amended by revising paragraph (b) to read:

§ 2650.5–1 General.

* * * * *

(b) The following procedures shall be used to determine what acreage is not to be charged against Native entitlement:

(1) For any approved plat of survey where meanderable water bodies were not segregated from the survey but were included in the calculation of acreage to be charged against the Native corporation's land entitlement, the chargeable acreage shall, at no cost to the Native corporation, be recalculated to conform to the principles contained in the Bureau of Land Management's *Manual of Surveying Instructions*, 1973, except as modified by this part. Pursuant to such principles, the acreage of meanderable water bodies, as modified by this part, shall not be included in the acreage charged against the Native corporation's land entitlement.

(2) For any plat of survey approved after December 5, 1983, water bodies shall be meandered and segregated from the survey in accordance with the principles contained in the Bureau of Land Management's *Manual of Surveying Instructions*, 1973, as modified by this part, as the basis for determining acreage chargeability.

(3) If title to lands beneath navigable waters, as defined in the Submerged Lands Act, of a lake less than 50 acres in size or a river or stream less than 3 chains in width did not vest in the State on the date of Statehood, such lake, river or stream shall not be meandered and shall be charged against the Native corporation's entitlement.

(4) Any determinations of meanders which may be made pursuant to this subparagraph shall not require monumentation on the ground unless specifically required by law or for good cause in the public interest.

3. Section 2651.4(b) is amended by removing from the second sentence thereof the phrase "or a section in which a body of water comprises more than one-half of the total acreage of a section."

[FR Doc. 85–9560 Filed 4–18–85; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[FCC Docket No. 78–72; Phase III; FCC 85–98]

MTS and WATS Market Structure Policies and Requirements; Report and Order

AGENCY: Federal Communications Commission.

ACTION: Report and Order establishing policies and requirements.

SUMMARY: The Order addresses these issues, which were set forth for comment in our Notice of Proposed Rulemaking in the MTS and WATS Market Structure proceeding, published in the **Federal Register** on January 9, 1983, 48 FR 26632: (a) whether independent telephone companies should implement equal access interconnection projects according to a phased timetable; (b) the appropriate institutional arrangements for the joint planning of interexchange and local distribution networks and national security and emergency preparedness (NSEP) communications; and (c) whether the access tariffs of local exchange carriers should be modified to incorporate details pertaining to technical and operational details of interconnection, and interconnection with non-carriers. This action is taken in recognition of the arguments cited by the parties in this proceeding.

EFFECTIVE DATE: April 19, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond Dujack, (202) 632–9342.

SUPPLEMENTARY INFORMATION:

Report and Order

In the matter of MTS and WATS Market Structure Phase III; Establishment of Physical Connections and Through Routes among Carriers; Establishment of Physical Connections by Carriers with Non-Carrier Communications Facilities; Planning among Carriers for Provision of Interconnected Services, and in Connection with National Defense and Emergency Communications

Services; and Regulations for and in Connection with the Foregoing, CC Docket No. 78-72, Phase III; FCC 85-98.

Adopted: March 1, 1985.
Released: March 19, 1985.

By the Commission.

I. Introduction

1. In this Order, we address the issues raised in our notice of proposed rulemaking in this phase of this docket.[1] In that *Notice*, we observed that our *Access Charge Order* in Phase I of this docket,[2] and the *Modification of Final Judgment* (MFJ), entered on August 24, 1982, by the United States District Court for the District of Columbia,[3] did not address several issues that emanate, in part, from these actions or are otherwise related to the optimal provision of interstate communications services in a competitive environment.

2. These issues are (a) whether the independent telephone companies (ITCs) should be required to implement equal access for interexchange carriers (IXCs) according to a phased approach analogous to that specified for the Bell Operating Companies (BOCs) in the MFJ; (b) what institutional arrangements should replace the role formerly held by the American Telephone and Telegraph Company (AT&T) in the centralized technical and construction planning for (i) interexchange and local distribution networks, and (ii) national security and emergency communications facilities; and (c) whether exchange carriers (BOCs and ITCs) should be required to incorporate into their tariffs the physical, technical, and operational details of interconnection with the facilities of both carriers and non-carriers.

3. With regard to the equal access implementation issues, we find in this Order that the ITCs should be required to implement equal access under certain circumstances and under certain schedules that differ from those set forth in the MFJ. We have defined these in recognition of the differences between the BOC and ITC sectors with respect to (a) the types of markets served; (b) end office switching technologies employed; and (c) the financial resources available to undertake equal access conversions.

4. With regard to the planning issues, we find that (a) general peacetime interconnection planning functions should be implemented through participation of interested parties in the activities of the T-1 Committee, which is sponsored by the Exchange Carriers Standards Association (ECSA) and accredited by the American National Standards Institute (ANSI); and (b) national defense network planning functions should be implemented through the mechanism of the plan proposed by the National Security Telecommunications Advisory Committee.

5. With regard to the tariff issues, we note that, since the release of our *Notice*, the exchange carriers (ECs) have voluntarily implemented the proposals we had set forth concerning the inclusion of interconnection information in their access tariffs, and we adopt those proposals for future tariff filings.

II. Background

A. Implementation of Equal Access by Independents

1. The Commission Proposal and the MFJ

6. In the *Notice*, we proposed "to extend, pursuant to our regulatory authority under the Act, to non-Bell (Independent) telephone carriers interconnection obligations patterned after those which will govern the BOCs under the MFJ * * *" [4] The MFJ establishes the following equal access implementation schedule:

1⅔ years (9/1/85): "equal access shall be offered through end offices of each BOC serving at least one-third of that BOC's exchange acccess lines."[5]

2⅔ years (9/1/86): "upon bona fide request, *every* end office shall offer such [equal] access by Sept. 1, 1986."[6]

7. The MFJ also incorporates a waiver mechanism that allows the BOCs to refuse equal access in cases where such construction may be economically infeasible:

> With respect to access provided through an end office employing switches technologically antecedent to electronic, stored program control switches [*i.e.*, electromechanical switches] or those offices served by switches that characteristically serve fewer than 10,000 access lines, a BOC may not be required to provide equal access through a switch if, upon complaint being made to the Court, the BOC carries the burden of showing that . . . such access is not physically feasible except at costs that clearly outweigh benefits to users of telecommunications services.[7]

This waiver is, apparently, not intended to be permanent. The decree continues: "Any such denial of access under the preceding sentence shall be for the minimum divergence in access necessary, and for the minimum time necessary, to achieve feasibility."[8]

8. In our *Notice*, we recognized that equal access obligations similar to those in the MFJ may not be workable when applied to the ITCs, because of the preponderance of less sophisticated equipment in the ITC sector. We noted, however, that "access to interstate services is required to be offered [by the ITCs] pursuant to access tariffs which are subject to our regulatory review and jurisdiction" and proposed to "utilize such tariffs as an appropriate adminstrative mechanism for addressing unequal interconnection offerings by Independents . . ."[9] We proposed the following timetable:

2-years: For central offices to be equipped with new stored program-controlled (SPC) equipment, access will be provided with capabilities identical to those described below for existing stored-program-controlled central offices.

3-years: For central offices already equipped with SPC, access will be provided "which is equal in all respects, except that the minimum number of digits necessary to reach other than a carrier pre-selected by the subscriber may be utilized until such time as the nationwide numbering plan is changed."[10]

No timetable: For electromechanical central offices: (a) capabilities pertaining to features such as the number of dialing digits must be offered to the extent feasible; (b) where features such as automatic numbering identification (ANI) can be made available to more than one carrier, they should be provided at the same level of capability as specified in the MFJ; and (c) transmission channel quality should be no worse than that provided to the traditional interexchange carrier. Although we did not state that electromechanical exchanges need to be replaced, we did require that "[t]o the extent feasible, such offices shall be modified to offer the capabilities [associated with electronic exchanges]."[11]

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[1] CC Docket No. 78-72, Phase III, Notice of Proposed Rulemaking, 94 FCC 2d 292 (1983) (*Notice*).

[2] *MTS and WATS Market Structure*, CC Docket No. 78-72, Phase I, 93 FCC 2d 241 (1983) (*Access Charge Order*), *modified on reconsideration*, 97 FCC 2d 682 (1983) *further modified on reconsideration*, 97 FCC 2d 834 (1984) *aff'd in part, remanded in part, Nat'l Assn. of Regulatory Comm'rs v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *petition for cert. denied* 53 U.S.L.W. 3583, 3595 (U.S. February 19, 1985) (No. 84-95) (*Naruc v. FCC*).

[3] *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom., Maryland v. United States*, 460 U.S. 1001 (1983).

[4] *Notice*, 94 FCC 2d at 304. We further stated that "we believe it most appropriate, in view of our statutory mandate to promote the development of efficient and broadly available service on a nationwide basis, to ensure the establishment of a 'blueprint' [similar to that of the MFJ] for interconnection to the Independents' facilities."

[5] MFJ, App. B, at para. A.1.

[6] *Id.* (emphasis supplied).

[7] *Id.* at para. A.3.

[8] *Id.*

[9] *Notice*, 94 FCC 2d at 306.

[10] *Id.* at 307.

[11] *Id.*

2. GTE Consent Decree

9. On May 4, 1983, the GTE Corporation and the Department of Justice (DOJ) filed a Proposed Final Judgment (PFJ), with the United States District Court for the District of Columbia, to resolve an antitrust action brought by DOJ challenging the acquisition by GTE of the IXC, Sprint, which was a subsidiary of the Southern Pacific Corporation. A major feature of the PFJ was a plan for the provision of non-discriminatory equal access to interstate communications facilities by the subscribers of the GTE Operating Companies (GTOCs). In an Opinion issued on December 13, 1984,[12] the Court found the PFJ to be in the public interest and stated that the PFJ would be approved provided that the parties agreed to certain modifications relating to the specific criteria that would be observed if enforcement of the decree were being sought by the Department of Justice. The parties concurred, and a Consent Decree (CD) was entered on December 21, 1984. The CD sets forth the following phased-in equal access implementation timetable, which is closely modeled after the approach of the MFJ, but is adjusted for the specific characteristics of the GTOC end offices and exchange areas.[13]

1½ years (1/1/85): End offices containing 1-ESS and stored program controlled switches other than those specified below (*i.e.*, GTD-5, 1-EAX, and 2-EAX).

3½ years (1/1/87): End offices equipped with GTD-5 switches.

4 years (9/1/87): End offices equipped with 1-EAX and 2-EAX. In addition, two-thirds of all GTOC subscriber lines must be provided with equal access. (This proportion may be decreased to the extent that unforeseen circumstances, including the performance failure of non-affiliated providers of hardware and software, prevent this conversion from taking place.)

7½ years (12/31/90): All offices with greater than 10,000 access lines (except where changing circumstances make implementation economically infeasible).

10. In addition to the waivers cited in the timetable, the CD addresses the unique problems of electromechanical switches, which comprise a considerably larger percentage of end office switching equipment of the GTOC system than in the BOC end offices. No step-by-step offices need provide equal access, provided that a trunk-side connection for IXCs is offered at *all* GTOC offices, including those equipped with step-by-step equipment, "unless such access is not physically possible except at costs that clearly outweigh potential benefits to users of telecommunications services. . . ."[14]

B. Joint Planning

1. The Commission Proposal

11. We tentatively concluded in the *Notice* that the scope of any joint planning should be limited to the specification of technical parameters and compatibility criteria at the point of interconnection between an exchange carrier and IXCs, customer premises equipment, or private communications facilities. We proposed that such planning be carried out by the Exchange Carriers Association (ECA) and that the membership criteria be those set forth in our *Access Charge Order* for the ECA. IXCs as well as this Commission would, therefore, be excluded. We noted that:

> it is our tentative belief that this Commission should be assigned responsibilities and functions regarding the joint planning activities of the association (ECA) which are designed to ensure that the association does not operate in a manner which frustrates the goals and policies which we are establishing. This result can be achieved without requiring that this Commission be given membership on the association.[15]

We than asked for comments on our proposals as well as upon alternative suggestions regarding scope of planning, institutional arrangements, and the composition of the membership of any joint planning body.

2. Formation of Exchange Carriers Standards Association

12. On May 24, 1983, a pre-organizational meeting of exchange carriers (ECs) was held in Atlanta, Georgia, under the auspices of the Washington Legislative Council of Telecommunications (an *ad hoc* group formed by the carriers to deal with post-divestiture problems). At this meeting, a substantial portion of the spectrum of exchange carriers was represented by attendees from the United States Independent Telephone Association (now the United States Telephone Association or "USTA", the seven Bell regional holding companies, GTE, United Telecom, and various independent telephone holding companies and operating companies. As a result of this and subsequent meetings, the Exchange Carriers Standards Association (ECSA) was created, and incorporated in September 1983, in the State of New York, as a not-for-profit corporation. ECSA then became a party in this proceeding and filed, in its comments, an alternative to our proposal for the implementation of the joint planning function.

C. Tariff Issues

13. We proposed that the interstate access tariffs of the ECs formally reflect the responsibilities of these carriers to provide equal access and interconnect their facilities with IXCs and other access customers. We specifically proposed that tariffs filed by ECA and the individual ECs should include language providing for (a) interconnection with non-carriers (private networks and CPE); (b) interconnection with resellers; (c) the incorporation of the provisions of Part 68 of the Commission's Rules (CPE interconnection standards); and (d) certain technical and operational details of the ECs' offerings.

III. Implementation of Equal Access by Independents

A. Positions of Parties

14. Twenty-four parties filed comments or reply comments (or both) on the various issues associated with equal access implementation requirements for the ITC sector. Pleadings were filed on behalf of IXCs (nine parties);[16] ITCs (seven parties);[17] equipment manufacturers (two parties);[18] user groups (two parties);[19] and state and federal government agencies (four parties).[20]

15. In general, the OCCs argue for an implementation of equal access that is as immediate and as comprehensive as possible in order that they may compete more effectively with AT&T. Business user groups and equipment manufacturers also seek expeditious implementation of equal access. The former, as large consumers of

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[12] *United States v. GTE Corp.*, Civ. Action No. 83-1298 (D.D.C., December 13, 1984) (*GTE Opinion*).

[13] CD, App. B at para. A.(1). A starting date of May 4, 1983 (the proposed date of entry) was used in calculating the elapsed time to the specific completion dates (in parentheses) set forth in the CD. The results are rounded to the nearest half-year. At the time the PFJ was filed, GTE committed itself to following the schedule set forth therein even though approval of the Court had not yet been issued. If a bona fide request for equal access interconnection is received from an IXC, the GTOC must implement interconnection within no more than 12 months. Otherwise the time limits in the schedule must be observed.

[14] CD, *Id.*, App. B at para. A.4.

[15] *Notice*, 94 FCC 2d at 317-18.

[16] AT&T, GTE-Sprint, ITT-COINS, MCI, SBS, Western Union, Allnet, General Communications Inc., and U.S. Telephone. IXCs other than AT&T are referred to in this Order as "other common carriers" (OCCs).

[17] Centel, GTE Service Co., Rochester Telephone Co., Rural Telephone Coalition, Southern New England Telephone Co., USTA, and United Telephone System.

[18] CCIA and ITEC Inc.

[19] ICA and American Petroleum Institute.

[20] DOJ, Kentucky Public Service Commission, Public Service Commission of Wisconsin, and the Rural Electrification Administration.

interexchange telecommunication services, seek to minimize their communications costs. The latter seek to compete more effectively in markets for customer premises equipment and equipment related to switching and transmission applications.

16. The ITCs generally support the proposal that they be required to implement equal access. They tend, however, to support temporizing measures such as (a) the imposition of such a requirement only if there has been a demand for equal access services from an IXC; and (b) the opportunity to deviate, when indicated, from the timetable proposed on our *Notice*. Some ITCs propose that exchanges serving less than 10,000 access lines should be granted a waiver of equal access conversion requirements as outlined in the GTE CD. *See* para. 9, *supra*.

1. Proposed Timetable

17. Eighteen parties have commented upon the proposed timetable. Three parties find that the timetable is reasonable [21] and four argue that the timetable is too long.[22] The latter take the position that existing technology will permit acceleration of our proposed schedule. Two, Public Service Commission of Wisconsin (Wisconsin) and Kentucky Public Service Commission (Kentucky), essentially argue that there should be no timetable at all. AT&T and Centel claim that the timetable is too short and propose a five-year implementation deadline. AT&T further proposes (a) that the Commission take steps to facilitate the processing of waiver requests; and (b) that there be an exemption for end offices serving less than 10,000 lines. Centel states that there may be central office conversion problems due to the diversity of suppliers, some of whom may be no longer in business. Similar arguments are extended to the case of end offices using electromechanical equipment.

18. Six parties from the ITC sector,[23] and the Rural Electrification Administration (REA), suggest that timetables should be flexible, stating, generally, that since there is a considerable variability among existing SPC exchanges, the three-year implementation schedule might not be universally appropriate and implementation might be better scheduled on a less formal basis. REA claims that the equipment necessary to accomplish equal interconnection at end offices of small rural companies (which typically contain electromechanical switches) is not readily available and urges that this Commission postpone the requirement that local carriers prepare for equal interconnection at such offices until the necessary technology becomes available or, alternatively, consider requiring equal access interconnection at an access tandem only.

19. With regard to the conversion of existing SPC offices, USTA states that ITCs are unable to obtain definitive information from their equipment manufacturers regarding their ability to upgrade a given piece of SPC equipment. USTA claims that this inability stems, in part, from a lack of defined technical specifications regarding the exact nature of equal access. Further, USTA states, not all SPC switches are convertible to equal access because of their design. Under these circumstances, it might be necessary to retire such switches prematurely, which, from USTA's viewpoint, would be an unreasonable disturbance of an orderly and economically efficient process for deriving maximum benefit from existing equipment. USTA also recommends that the Commission modify its proposal that all new SPC switches ordered after the effective date of any Commission order in this proceeeding have the capability of offering equal access to one requiring that actual conversion need not occur unless and until an IXC requests equal access and agrees to the resulting tariff changes. Rochester Telephone Company (Rochester) concurs with USTA and other parties in claiming that not all SPC switches may be convertible.

20. Six parties cite potential problems with the conversion of electromechanical offices.[24] The Rural Telephone Coalition (RTC) urges that ITCs be given the option of refusing to implement equal access at such offices, and in any event, that such equipment not be prematurely retired absent a demand for equal access interconnection.

21. GTE Service Corp. compares our implementation proposals to those of the CD in which it had participated, stating that the equal access upgrading requirements of our *Notice* are more burdensome than those set forth in the CD.[25] GTE Service Corp. urges that the principles of the CD be adopted by the Commission and notes that together the MFJ and CD apply to the provision of equal access to 90 percent of the total, nationwide access lines.

2. Implementation on Demand only

22. The *Notice* did not condition an ITC's obligation to convert to equal access in accordance with our timetables on there being a demand for such interconnection from an IXC. Ten parties have suggested that equal access conversions not be required until a demand from an IXC has been received. The sectors represented are ITCs (six parties);[26] IXC (one party);[27] equipment manufacturing (one party);[28] and state and federal agencies (two parties).[29]

23. The ITCs cite the possibility that if they are required to implement equal access, even in the absence of an IXC demand for such services, they may be required to carry a larger cost burden without a sufficient offset in additional revenues from toll service. REA claims that most REA-financed systems will never receive an interconnection request, but these systems could, nevertheless, incur a conservatively estimated total of $367 million in equal access implementation costs if the conversion of all Class 5 offices were required. As an alternative, REA suggests equal access interconnection only be required at higher level offices until Class 5 implementation becomes more feasible.[30]

3. Exemptions for End Offices Serving Less than 10,000 Lines

24. Establishing exemptions for end offices serving less than 10,000 access lines, although not proposed in the *Notice*, is embodied, with variations, in both the MFJ and CD.[31] Five parties support the concept,[32] arguing generally that (a) central office equipment in such exchanges is likely to be electromechanical; (b) demand for equal access interconnection to exchange facilities from OCCs is likely to be low; and (c) therefore, the costs of conversion would likely exceed any benefits derived from increased revenues. RTC proposes that rural exchange carriers be

[21] General Communications Inc., MCI, and International Communications Association.

[22] SBS, Western Union, U.S. Telephone Inc., and ITEC Inc.

[23] Rochester Telephone Co., GTE Service Co., Rural Telephone Coalition, Southern New England Telephone Co., United Telephone System, Inc., and USTA.

[24] AT&T, Centel, United Telephone System, Rural Telephone Coalition, DOJ, and REA.

[25] At the time that the GTE comments were filed, the PFJ had not been approved by the Court. Subsequent to that filing, the Court approved the PFJ (subject to some suggested additions), which contained those requirements to which GTE has referred. *See* para. 9, *supra*.

[26] USTA, Rural Telephone Coalition, GTE Service Co., SNETCO, United Telephone System and Centel.

[27] MCI.

[28] U.S. Telephone Inc.

[29] Kentucky PSC an REA.

[30] *See* also para. 42, *infra*.

[31] *See* paras. 7 and 10, *supra*.

[32] AT&T, USTA, GTE Service Co., RTCs, Western Union.

subjected to no greater obligations than those imposed upon GTE by the CD. It accordingly suggests a blanket exemption for end offices serving fewer than 10,000 lines. GTE implicitly supports a 10,000 line exemption in proposing that the terms of its CD be extended to other carriers. USTA, on the other hand, claims that the 10,000 lines threshold should be higher, but does not propose a specific level.

25. A blanket 10,000 lines exemption is opposed by some parties. The International Communications Association (ICA), a user group, prefers that individual justifications for an exemption be proposed by ITCs wishing an exemption. DOJ opposes a blanket exemption, preferring an implementation schedule that takes all factors into account, such as new techniques for remote digital switching.

B. Discussion

1. Summary of the Record

26. There is general agreement among all sectors that the implementation of equal access by the ITCs is desirable. With respect to the manner in which such access is to be achieved, however, there is a well delineated schism between two groups. The first group (ITCs, AT&T, state regulatory commissions, and REA) generally argues that our proposed timetables would be too stringent in many cases if they were applied uniformly to the entire ITC sector. A more liberal compliance policy, embodying certain deviations on a case-by-case basis, is suggested. Members of the second group (OCCs, user organizations, and equipment manufacturers) either agree with our timetable concept or think that it should be accelerated.

27. Those who find our proposals for ITCs too rigorous argue that we should relax those requirements by (a) adopting a liberal policy for waivers of the implementation timetable; (b) requiring the implementation of equal access only upon a bona fide demand by an IXC; (c) exempting end offices serving less than 10,000 lines; and (d) exempting end offices using electromechanical equipment.[33]

28. Those who approve our proposed schedule, or seek to accelerate it, and those who would discourage various waivers and exemptions, make the following claims: (a) technology is available that would allow reconfigurations of non-conforming offices to be implemented in accordance with our proposed timetable; (b) the implementation of equal access at BOC tandems or at those of the larger ITCs will permit our schedule to be met or accelerated; and (c) extensive deviations from our proposed schedule (including those resulting from the adoption of an implementation-on-demand policy) will constrain the economic activities of the IXCs,[34] equipment manufacturers, and users.

2. Differences between BOCs and ITCs

29. The parties seeking flexibility in our approach to implementing equal access by the ITC sector have argued that it is not as feasible to apply a uniform implementation timetable to the ITCs as it is to the BOCs. RTC points to a number of fundamental differences between the BOCs and ITCs. Prior to the AT&T reorganization, the implementation of exchange area communications, including the design of end offices, was performed on behalf of the BOCs by the AT&T General Departments, the Bell Laboratories, and Western Electric. Under this system, many important functions were performed on a centralized basis such as: system engineering, equipment design, equipment manufacturing, equipment procurement, accceptance testing, and installation planning.

30. As a consequence, the predominant proportion of BOC central office equipment is of Western Electric design, and its characteristics are well documented. Further, although there is a considerable range in the type of switching equipment in the various BOC end offices, from step-by-step electromechanical equipment to advanced SPC equipment, the preponderance of BOC service is offered in high or moderate population density areas, and the majority of its access lines are served by a relatively small number of SPC designs. Such uniformity, as characterized by markets served and equipment employed, is clearly not the case among the ITCs.

(a) *Markets Served by ITCs*

31. With regard to markets served, the ITC sector is characterized by an industry structure in which the operating companies of a few holding companies provide the vast preponderance of service. In seeking the appropriate policy for equal access implementation in this sector, it is useful to undertake a quantitative assessment of the ITC industry in order to evaluate its place in the overall telecommunications environment in the United States. Figure 1 provides a comparison of the BOCs and the ITCs in terms of the number of access lines served.

32. As of December 31, 1983, there were 111.3 million access lines in the United States. Of these, 89 million (80 percent) were served by the 22 BOCs. The ITC sector, consisting of 1431 operating companies, served the remaining 22.3 million lines (or 20 percent). Of these independent lines, however, the vast majority are served by but a small proportion of these 1431 operating companies.

33. As shown in Fig. 1, the 18 GTOCs serve 44 percent of the ITC access lines, and that these companies, in combination with the 22 BOCs, serve 89 percent of the total U.S. access lines. Furthermore, the largest eleven ITCs (including GTE) serve, in combination with the BOCs, approximately 99 percent of the U.S. telephone access lines.[35]

FIGURE 1.—ACCESS LINES SERVED BY BOCS AND LARGER INDEPENDENTS[1]

	Number of OC's	Number of lines (millions)	Pct U.S. lines (cum)	Pct independent lines (cum)
BOC's	22	89	80.0	
Independents:				
GTE	18	9.9	88.8	44
United Tel	20	3.0	91.5	58
Continental Tel	39	2.1	93.4	67
SNETCO	1	1.6	94.9	74
CENTEL	14	1.2	96.0	80
AllTel	1	.85	96.7	84
Cincinnati Bell	1	.69	97.3	87
PRTC	1	.50	97.8	89
Rochester Tel	1	.44	98.2	91
Lincoln Tel	1	.20	98.4	92
Century Tel	35	.20	98.6	93
Total (BOC's)	22	89.0		
Total (ITC's)	132	[2]20.7		
Total (BOC + ITC)	154	109.7		

[1] Sources: USTA, *PhoneFacts, 84*. USITA, *Holding Company Report*, May 1983.

[2] Includes only the access lines of the 132 operating companies of the first 11 ITCs (ranked by annual revenues) listed in *PhoneFacts, 84*. The remaining approximately 1,300 ITCs service approximately 1.6 million lines or approximately 1% of the nationwide total.

[33] Rochester has suggested that the forced conversion of such offices would lead, in many cases, to premature equipment retirements and argues that this Commission should preempt state regulation over the depreciation practices of connecting carriers to ensure that investment in existing equipment is fully depreciated upon its replacement. This issue is not properly before us in this proceeding; consequently, we will not address it further in this Order.

[34] Some IXCs have claimed that if equal access were implemented in a given area absent a demand for such service, an IXC might be more likely to seek to provide service there than if it were required to go through a formal procedure of filing requests for equal access conversion with the EC.

[35] As shown in Fig. 1, these eleven entities comprise five holding companies, which control 126 operating companies, and six individually owned companies. Thus, a total of 148 operating companies (22 BOCs and 126 ITC operating companies) serve 99 percent of the U.S. access lines.

34. The remaining ITCs, 1309 operating companies, serve only one percent of the total access lines in the U.S., although the comprise 91 percent of the ITCs. Thus, the average number of lines served by each of these 1309 companies is approximately 1,300. Approximately 1,200 of these companies serve less than 10,000 lines.[36]

35. It thus becomes apparent that it may be feasible to adopt a policy of prescribing a set of relatively uniform equal access implementation procedures, applicable to only a small segment of the ITC industry, that would result in the provision of equal access to the overwhelming majority of the ITC subscribers.

(b) *Switching Equipment of the ITCs*

36. Several parties associated with the ITC sector have argued that our proposed implementation plan, insofar as it applies to SPC switches, should not be uniformly applied because of the wide variety of SPC equipment that is now in place and that is available for future installation by the ITCs. They have also argued that it would be inappropriate to prescribe either the conversion of existing electromechanical equipment or its retirement.

37. USTA claims that the following problems arise from the diversity of SPC equipment: (a) not all manufacturers may be willing to upgrade their equipment even if it is upgradeable; (b) not all switches are equally upgradeable; and (c) some switches may not be upgradeable at all. With regard to electromechanical switches, and SPC switches that are not feasibly convertible, USTA proposes that we consider equal terminating access as a less costly alternative.

38. Rochester suggests that not all existing SPC installations may be convertible within the 3-year period proposed in the *Notice*. Rochester points out that it has SPC equipment manufactured by Northern Telecom, Automatic Electric, Nippon Electric, and Western Electric. It claims that it does not know whether any of the manufacturers "would supply necessary software modifications within three years, or whether they intend to offer these modifications at all." [37]

39. RTC claims that it cannot comment exhaustively upon our proposal because no comprehensive tabulation of the central office equipment of rural telephone companies has been made. RTC points out that existing analog SPC equipment is memory-limited and is no longer being manufactured.[38]

40. With regard to digital SPC equipment, RTC states that 10 to 15 percent of REA central offices are so equipped, but that some of the manufacturers are no longer in business. RTC claims that in any event *generic* specifications for the conversion of digital equipment can be completed in three years, but that specific conversion may take longer. RTC therefore proposes that manufacturers be given three years in which to develop generic specifications and that actual implementation times be negotiated on a case-by-case basis.

41. RTC notes that the conversion of electromechanical equipment can present considerable problems to the REA companies. RTC states that approximately 80 to 85 percent of REA equipment is step-by-step and that another 5 percent is crossbar. Further, RTC states that 90 to 95 percent of the step-by-step equipment, which was manufactured by Stromberg, is no longer being produced by that company.

42. REA also addresses the problem of conversion of its predominantly electromechanical offices. It states that no manufacturer has produced equipment that could effect such a conversion, but acknowledges that "[o]ne manufacturer, ITEC, has equipment on the drawing boards which could accomplish equal interconnection at the Class 5 step office." [39] REA cautions, however, that conversion estimates would be in the $60,000 to $75,000 range per end office. Finally, REA provides an estimate of $367.5 million as the cost of equal access implementation for all REA-financed systems. This estimate is based on the assumption that 5,000 step end offices would be converted, at $70,000 per office, and that 700 digital offices would be converted at $25,000 per office.

3. *Equal Access Implementation Plan* [40]

(a) *General Considerations*

43. It is evident from the record that the ITC sector evidences a degree of diversity that we do not observe among the BOCs. The BOCs comprise 22 operating companies, which, because of their common ownership and management for many years, have virtually identical categories of end office switching technology. Further, the BOCs serve 80 percent of the total access lines in the United States from this relatively homogeneous configuration.The ITC sector is clearly different. Some 1431 operating companies serve 20 percent of the nation's access lines. Among these companies, the GTE system of 18 operating companies accounts for 44 percent of the ITC access line—or 9 percent of the nation's access lines. A mere 132 of the 1431 ITCs serve over 90 percent of the ITC access lines.

44. With regard to switching equipment, the relatively small proportion of SPC equipment in ITC end offices is provided by a multiplicity of manufacturers, not all of whom have continued to manufacture or service the products they have sold. The preponderance of ITC switching equipment is of the electromechanical type, and apparently, the successful conversion of such switches by off-the-shelf equipment has not yet been demonstrated. Given these factors, it is likely that an implementation timetable similar to that of the MFJ would be inappropriate if imposed on the ITCs.

45. We must also take into account that GTE has committed itself to following the schedule set forth in the CD and that, consequently, the commitments already undertaken by the BOCs and the GTOCs will pace the implementation of equal access for approximately 89 percent of the nation's access lines. We need, therefore, only adopt a policy applicable to, and appropriate for, the remaining 1413 ITCs, which serve the remaining 11 percent of access lines.

46. We could consider the CD as a paradigm for application to the non-GTE ITCs. The timetable in the CD for the conversion of existing SPC end offices embodies, however, references to the specific types of equipment of specific manufacturers that are known to be installed in GTE end offices. But based on the record in this proceeding, it appears that many different types of equipment (in addition to those specified in the CD) are deployed in the non-GTE ITC end offices. Furthermore, GTE is a substantially larger company than most other ITCs with greater access to the necessary capital to implement an equal access conversion schedule. Finally, there is no reason to assume that the timetable GTE agreed to

[36] *See PhoneFacts' 84.*

[37] Rochester Comments at 5.

[38] Analog SPC as discussed by RTC apparently consists of SPC common control equipment coupled with an analog switching matrix. A digital SPC switch would use time division multiplex techniques to perform the switching function.

[39] REA Comments at 5.

[40] We set out in the *Notice* the basis of our jurisdiction to establish an equal access implementation plan for ITCs. *See, Notice* 94 FCC 2d at 300-304. No party has challenged our authority in this regard.

in the CD to settle an antitrust challenge to its acquisition of Sprint is necessarily appropriate for other ITCs.

47. We shall, therefore, establish an implementation schedule that recognizes the following characteristics of the non-GTE sector, which distinguish it from both GTE and the BOCs: (a) the variability in installed SPC equipment types; (b) the predominance of electromechanical equipment; (c) the existence of more severe constraints on capital spending; and (d) the likelihood that demand for equal access service, by customers and OCCs alike, will be less.[41] In so doing, we shall impose time limits in those cases where the end office is equipped with SPC switching and a reasonable request for equal access services exists. Finally, we shall recognize the existence of problems that may be imposed by capital constraints, and the non-standardization of installed SPC equipment, by adopting an exception mechanism.

(b) *Specific Requirements*

48. *End Offices Equipped with SPC Switches:* End offices equipped with SPC switches must be converted to offer exchange access services that are equal in type and quality to that offered to AT&T, within three years of the receipt of a reasonable request [42] for equal access services from any OCC. Absent such a request, end offices should be converted as soon as practicable, according to a schedule and a degree of implementation that reflect the capital constraints of the operating company and the market and other business conditions in the area served by the end office.

49. *End Offices Equipped with Electromechanical Switches:* Whether or not a reasonable request for equal access is presented, end offices equipped with electromechanical switches will not be required to be converted to equal access according to a specified timetable. Rather, these end offices should be converted as soon as practicable according to the guidelines we have set forth in para. 60, *infra*.

50. *Exception Mechanisms:* An ITC receiving a reasonable request for equal access interconnection at an SPC-equipped end office may apply to this Commission for a waiver of the three-year timetable, or of the requirement for the provision of certain specific equal access features, if it can demonstrate that such a timetable, or the provision of such access features, is not feasible except at costs that clearly outweigh potential benefits to users of telecommunications services.

(c) *Equal Access Features*

51. In para. 48, *supra*, we require that SPC-equipped end offices, upon receiving a reasonable request from an OCC, "be converted to offer access service that is equal in type and quality to that offered to AT&T. . . ." In order to give more explicit guidance to those ITCs affected by this requirement, we shall attempt to describe further the concepts "exchange access services" and "equal in type and quality."

52. The MFJ defines "exchange access" as "the provision of exchange services for the purpose of originating or terminating interexchange telecommunications." [43] It then defines "exchange access services" to include, but not be limited to, the following activities or functions of an EC in the provision of exchange access: "the provision of network control signalling, answer supervision, automatic calling number identification, carrier access codes, directory services, testing and maintenance of facilities and the provision of information necessary to bill customers."[44]

53. Potential operational inequalities in subscriber signalling (due to technological limitations, and to constraints imposed by the existing interstate numbering plan) are also addressed. The following requirements are imposed: (a) the option of preselecting an IXC, through which originating traffic may be routed without the use of an access code, shall be offered.[45] (b) access signalling to reach carriers that are not so preselected must be provided with the minimum number of digits; and (c) upon revision of the nationwide numbering plan to require additional signalling digits, all IXCs shall be accessed with the same number of digits.[46]

54. The MFJ also sets forth a non-quantitative definition of equality as it pertains to certain technical parameters of the EC network. "Such [equal access] connections, at the option of the interchange carrier, shall deliver traffic with signal quality and characteristics equal to that provided similar traffic of AT&T, including equal probability of blocking, based on reasonable traffic estimates supplied by each interexchange carrier." [47]

55. In subsequent Motions for Partial Reconsideration, and Reconsideration and Clarification (of the MFJ), the BOCs indicated their concern with an appropriate definition of "equality." In addressing this issue, the Court summarized the BOCs claims that exact duplication is infeasible:

> The [BOCs] assert that technical deviations will be so slight as to be imperceptible to all customers, whether of voice or data [and that they] had urged the Court to accept a definition of 'equal access' as access whose 'overall quality in a particular area is equal within a reasonable range which is applicable to all carriers' and to reject a more stringent definition which would demand access that yields identical technical quality (*i.e.*, identical values for loss, noise, and echo, and identical possibility of blocking). . . . *The Court accepts the Operating Companies' definition and will not insist on absolute technical equality.*[48]

56. The GTE CD also uses "equal in type and quality" as the criterion for measuring the efficacy of equal access implementation. As in the MFJ, the CD sets forth a partial list of features identical to those in the MFJ, and avoids a quantitative definition of "equal in type and quality." [49] Further, in the *GTE Opinion*, the Court lists the features of

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[41] We have noted in paras. 33–34, *supra*, that 1309 (or 91 percent) of the ITCs serve less than one percent of nationwide access lines and that the average number of lines served by these ITCs is approximately 1,300. The typical non-GTE ITC is, therefore, a relative small company serving a rather small market, usually in a rural area. As a consequence, the factors (c) and (d) cited in this paragraph are likely to obtain for the majority of non-GTE ITCs.

[42] Sec. 201(a) of the Communications Act of 1934, as amended, states, "it shall be the duty of every common carrier engaged in interstate or foreign communications . . . to furnish such communications service upon reasonable request therefor . . ." but does not attempt to further define "reasonable." Neither shall we, in this Order, prescribe the elements of a "reasonable request" for equal access services from unconverted ITC end offices, but shall leave these arrangements to be developed in the tariff process. Tariff provisions the ITCs already have on file concerning ordering of access services and facilities may prove adequate for establishing the elements of such a request. To the extent that ITCs do not view these provisions as adequate for this purpose, they are free to make tariff filings setting out particular terms and conditions that will apply to such requests. We note that both the MFJ and the CD condition the obligation of an EC to convert certain end offices to equal access on there being a "bona fide request" to do so, but neither decree attempts to define such a request. Furthermore, prior to full conversion, the features set forth in para. 60, *infra*, should be offered to the extent feasible.

[43] MFJ at Sec. IV. F.

[44] *Id.*

[45] ITCs who will offer equal access should be aware that the FCC is examining the reasonableness of the routing by some local exchange carriers) of the default interLATA traffic of non-preselecting subscribers to AT&T. *See*, Memorandum Opinion and Order on Reconsideration, CC Docket No. 85–89, paras. 17–23 (February 25, 1985).

[46] *Id.* at Appendix B.2.

[47] *Id.*

[48] U.S. v. Western Electric Co., 569 F. Supp. at 1062, 1063 (1983) (MFJ Reconsideration) (emphasis added).

[49] *See* MFJ, Appendix B, and CD, Appendix B.

equal access that, GTE had stated, would be applicable to the GTOCs:

> The features of full equal access are: (1) dialing parity; (2) rotary dial access; (3) network control signalling; (4) answer supervision; (5) automatic calling number identification; (6) carrier access code; (7) directory services; (8) testing and maintenance of facilities; (9) provision of information necessary to bill customers; and (10) presubscription. * * * [50]

57. We see no reason to attempt to refine the concepts "exchange access services" and "equal in type and quality" to an extent exceeding that delineated in the MFJ and CD. With regard to the features of equal access service described in those decrees, we recognize that there will be considerable variation from end office to end office in the ITC sector in the types of exchange access services that are currently being offered to AT&T. We only require that such services be offered to OCCs to the extent that they are made available to AT&T, and consider the lists of features quoted above to be illustrative of the types of services that will generally have to be provided on an equal access basis once an end office is converted. By so doing, we anticipate that any new construction requirements will be in the realm of technological feasibility for any given ITC, since the required features are already being provided AT&T.

58. With regard to the definition of "equal in type and quality," we recognize that a definition of equality that is overly quantitative and microscopic in detail is impractical. Even AT&T's connections to ITC facilities vary in technical quality (with regard to impulse noise, error rates, distortions, and blocking probabilities) from end office to end office, and even within an end office. We concur with the District Court in its *MFJ Reconsideration* opinion that technical standards based upon the perceptions of customers are appropriate and that "absolute technical equality" need not be achieved.[51]

59. Therefore, subject to the caveats just discussed, we endorse the features of equal access services that have been set forth in the MFJ and CD as being equally valid in their application to the services we are requiring the ITCs to implement in this Order.[52] For further clarification, we reiterate the following requirements set out in the *Notice* for the conversion of existing SPC-controlled end offices, which were generally patterned after the MFJ:

> Programming of existing stored program controlled central offices shall be modified, during a three-year period * * *, to support access to the services of all interexchange carriers which is equal in all respects, except that the minimum number of digits necessary to reach other than a carrier pre-selected by the subscriber may be utilized until such time as the nationwide numbering plan is changed. At such time as the central office modification is completed, existing subscribers shall be given an option to pre-select a specific interexchange carrier which is interconnected with the exchange, and no additional digits shall be required for the subscriber to reach the services of that carrier. Thereafter, new subscribers shall be given this choice at the time when service is initially arranged. In both cases, the selection may subsequently be changed by the subscriber at his or her option.[53]

60. With regard to electromechanically-equipped end offices, we also proposed, and now adopt, the following, less stringent criteria for the provision of access:

> To the extent feasible, such offices shall be modified to offer the capabilities identified * * * [with regard to the conversion of SPC-equipped exchanges] utilizing techniques such as interconnection on a tandem basis where common equipment is capable of supporting such operation. If ANI (automatic number identification) capabilities or subscriber billing capabilities are capable of being made available to more than one interexchange carrier, to the extent the same is requested by such carriers they shall be made available in the same manner as is specified in the MFJ. If preselection of a particular carrier that might be accessed without dialing additional digits is not possible because of inflexibility of the electromechanical switching facilities, at minimum the exchange carrier must make available seven digit local telephone number access, with facilities and capabilities no worse than those provided in connection with PBX trunk service by the carrier. The carrier must make available transmission capabilities * * * which are no worse than those provided the traditional interexchange service provider accessing its office, and it shall provide access, to the extent possible, that uses the minimum number of accessing digits, and that makes possible access from rotary dial equipment to the services of each interexchange carrier.[54]

(d) *Rationale for Conclusions*

61. We have decided to impose these specific equal access implementation requirements in recognition of the differences between (a) the non-GTE independents and (b) GTE and the BOCs, which we have discussed above.[55] These differences reside primarily in the types of switching equipment used, the markets served, and the financial resources available to most non-GTE ITCs.

62. Accordingy, we have retained the recommendation (as set forth in the *Notice*) regarding the exemption of end offices equipped with electromechanical switches. We have not imposed a timetable upon such end offices (whether or not a request for service is presented) in consideration of the financial burdens they would be likely to encounter.[56] Our new requirements differ from those set forth in the *Notice* in two respects: (a) conversion of end offices equipped with SPC switches need not be implemented absent the presentation of a reasonable request (in which case the three-year deadline proposed in the *Notice* will apply); and (b) the two year deadline for the conversion of end offices to be equipped with new SPC, which was proposed in the *Notice*, will no longer be applicable.

63. We have concluded that the unconditional timetables proposed in the *Notice* for SPC end offices would not be in the public interest. Given the heterogeneity of the SPC equipment now installed in ITC end offices, an unconditional requirement for conversion to equal access could prove excessively expensive in those cases where the demand for conversion is nonexistent, or small. And, in light of the types of markets served by most ITCs, it is not necessarily the case that OCCs will be anxious to serve ITC exchange areas with equal access services. Accordingly, we shall require conversion only upon presentation of a reasonable request for service.

64. In retaining a three-year deadline for the conversion of SPC-equipped end offices, we have balanced the claims of those parties who state that three years or more could be required to convert a specific type of equipment or configuration, with the recognition that some of the larger non-GTE ITCs may have relatively sophisticated equipment that can be converted in less than three

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[50] *GTE Opinion, supra* note 12, at 30 N. 55.

[51] *See* para. 55, *supra*.

[52] Nothing in this Order prejudges any issue now pending before this Commission arising from the type of equal access provided by the BOCs or GTOCs, or limits the ability of any person to seek relief from the Commission predicated upon an alleged failure of a BOC or GTOC to provide other interexchange carriers with access equal to that provided AT&T.

[53] Notice, 94 FCC 2d at 306.

[54] Id.

[55] *See* paras. 29–47, *Supra*.

[56] Some of the parties have urged that 10,000 lines per end office be used as a threshold criterion for determining whether an end office should be exempted. Since SPC equipment that is feasibly convertible to equal access applications can be used in end offices serving fewer than 10,000 lines, we find that exemption on the basis of switch technology, rather than the number of lines served is a more useful criterion. In any event, it is likely that most end offices serving fewer than 10,000 lines use electromechnical, and not SPC, switching equipment, and thus would not be subject to the conversion timetable specified in this Order.

years. The CD acknowledges that such differences exist within the GTE sector and does, indeed, impose different timetables, which comport with the relative degrees of sophistication of the SPC switches that are known to exist among the GTOCs.[57]

65. Since the distribution of specific SPC switch types among the non-CTE ITCs is not known with any degree of precision, we cannot make equipment-based distinctions in an implementation timetable for these companies. In those cases where the three-year timetable would impose a serious hardship upon an ITC, the exception mechanism we have set forth in para. 50, *supra*, will be available. Conversely, there may be instances (such as end offices equipped with switching equipment for which the generic software and other equal access conversion facilities are available off the shelf) where the three-year deadline is unnecessarily long. In particular, the availability of generic software for equal access will be quite likely in those instances where newer SPC equipment is being voluntarily installed as a replacement for electromechanical equipment.[58] In such cases, the ITC should endeavor to make the necessary conversions earlier than three years following a reasonable request.[59]

IV. Carrier Planning for Interconnected Services and NSEP Communications Services

A. Positions of Parties

66. Thirty-six (36) parties have filed comments or reply comments (or both) on the proposed range of questions set out for discussion in the **NOTICE** on joint planning. Pleadings were filed on behalf of IXCs (eleven parties);[60] ITCs (eight parties);[61] equipment manufacturers (seven parties);[62] user groups (three parties);[63] and state and federal agencies and public associations (eight parties).[64]

67. The general consensus of commenters is to favor an institutional arrangement for technical planning that is based on voluntary participation and a broad membership spectrum, in order to minimize potential antitrust concerns. AT&T argues, for example, that "by not committing to adopt the standards they develop, standards-makers lessen the possibility that they will stumble into a contract or a conspiracy in restraint of trade." [65] MCI, IBM, and Centel support this view. DOJ, while emphasizing that Commission sponsorship of joint planning does not create any antitrust law immunity, states that "properly structured and narrowly focused joint ventures for dealing with matters such as interconnection standards are usually consistent with the antitrust laws." [66]

68. Most parties (including DOJ) take the position that a planning mechanism built around the Exchange Carriers Association (ECA), which was proposed in our *Notice*, is too narrow in its membership responsibilities and focus. Instead, they support the proposal of the Exchange Carrier Standards Association (ECSA) wherein joint planning (limited to the specification of the technical and physical characteristics of the interface between EC and IXC facilities) would be implemented through the voluntary participation of interested parties in the activities of the ECSA-sponsored T–1 Committee, which has been accredited by the American National Standards Institute (ANSI).[67] Most parties also oppose a requirement of Commission membership or oversight with regard to the activities of the T–1 Committee.

69. Those parties responding to the issues of national security and emergency planning (NSEP), [68] favor maximum use of the existing National Coordinating Mechanism (NCM), adopted by the industry under the authority of the President and the Secretary of Defense in response to Executive Order No. 12382 (dated Sept. 13, 1982).

B. Discussion

1. Authority of Commission To Require Limited Joint Planning

70. We concluded in the *Notice* that we have ample authority under the Communications Act to impose joint planning requirements to the extent we find necessary to carry out the purposes of the Act and our communications policy goals.[69] Most parties fully support this conclusion, and none mounts any substantial challenge to it. We therefore reiterate our conclusion that limited joint planning, as described below, for ensuring the just and reasonable administration of interconnection arrangement is well within our authority to require.

2. Standards for Limited Joint Planning

71. In the *Notice* we proposed that joint technical planning among carriers be limited to establishing performance and physical parameters at the EC/IXC interface only, under a mechanism built about the ECA. We further stated that:

> It is our tentative belief that this Commission should be assigned responsibilities and functions regarding the joint planning activities of the association which are designed to ensure that the association does not operate in a manner which frustrates the goals and policies which we are establishing. This result can be achieved without requiring that this Commission be given membership on the association.[70]

We cited previous examples of successful joint planning, stating:

> Forms of joint action by carriers, in some cases under this Commission's sponsorship, and in many cases by the carriers themselves, have historically proved necessary in telecommunications to achieve important objectives: developing of industry-wide technical standards, operating principles, administrative procedures, and maintenance procedures; informal resolution of service and maintenance disputes which may arise where there is divided responsibility for elements of a joint through service; development of standby procedures and facilities to support extraordinary communications requirements (*e.g.*, NSEP communications); and development of appropriate forecasting and circuit requirements amalgamation procedures to facilitate planning for construction of new facilities with relatively long "lead" times.[71]

72. We recognized in the *Notice* that limited joint planning poses potential risks related to the diminution of

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[57] *See* para. 9, *Supra*.

[58] Even where no OCC has requested interconnection services, the replacement of electromechanical equipment with an SPC digital switch can be economically advantageous where significant savings in maintenance and other operating expenses are achieved.

[59] For such end offices, we see no reason why the District Court's admonition in the CD should not also govern the actions of ITCs: "Since the decree requires [the GTOCs] to offer equal access 'as promptly as possible' * * *, they are required to advance the implementation of equal access if the necessary software and hardware become available sooner than anticipated." *GTE Opinion*, supra note 12, at 34 n. 61.

[60] AT&T; GTE Sprint; ITT-Coins; MCI; SBS; Western Union; Allnet; U.S. Telephone; American Satellite Company; TRT-Telecom; RCA-Americom.

[61] Centel; Rochester; Southern New England (SNETCO); USTA; United Telephone System; Mid-Rivers Telephone Coop and North Pittsburgh Telco; GTE Sprint.

[62] U.S. Telecom Suppliers Association; IDCMA; IBM; Northern Telecom; Telephone and Data System Inc.; Ericsson, Inc.

[63] ICA; American Petroleum Institute; Ad Hoc Telecom User Committee.

[64] DOJ; PSC of Wisconsin; ANSI; Anchorage Telephone Utility; ECSA; Secretary of Defense; DCA; U.S. Activities Board & Standards; IEEE.

[65] AT&T Comments at 31.

[66] DOJ Comments at 31.

[67] Accreditation of the T–1 Committee by ANSI became effective on Sept. 20, 1984.

[68] The parties commenting on NSEP include AT&T, ECSA, Mid-Rivers Telephone Coop and North Pittsburgh Telco., Secretary of Defense, DCA, Telephone and Data Systems Inc., USTA, PSC of Wisconsin.

[69] *See Notice*, 94 FCC 2d at 314–16.

[70] *Id.* at 317.

[71] Id. at 311.

innovation and competition, and that the decision to adopt such a policy necessarily entails a balancing of these risks and the advantages of joint planning cited in para. 71, *supra*. The comments and replies of the parties are largely in agreement that the structural mechanisms for limited joint planning proposed by ECSA would significantly reduce the risks of such planning, while substantially preserving its advantages.[72] Thus, we find no reason to alter our tentative conclusion in the *Notice* that "the advantages to be gained from joint planning, as well as the short-term dangers posed by disruptions in this planning, outweigh the potential risks involved and point toward the conclusion that joint planning under the aegis of this Commission will serve the public interest."[73]

73. With regard to NSEP functions, some new forms of planning among carriers will be required. AT&T, in the past, had taken a leading role in planning the participation of the telephone industry in NSEP communications. Implementation of the MFJ now requires the creation of new institutional arrangements for developing administrative mechanisms and maintaining emergency communications capabilities.

74. In this Order, we approve two joint planning mechanisms: (a) the ECSA-sponsored and ANSI-accredited T-1 Committee, and (b) the NCM to accomplish the technical planning associated with provision of NSEP communications.[74] We intend to minimize the imposition of additional regulatory rules or standards. While recognizing that experience may require future responses from the Commission, we accept today both the T-1 and NCM planning entities as responsive to our statutory responsibilities.

3. Structure for Limited Joint Planning for EC/IXC Interconnection

75. The record in this proceeding indicates that the parties are uniformly supportive of replacing our proposed joint planning mechanism with that proposed by ECSA. The voluntary membership of the T-1 Committee would, according to the parties, specifically address the concerns raised in our *Notice* by providing a forum in which the interests of all entities concerned with the development of technical standards would be heard and addressed.

76. In addressing the ECSA proposals, the parties provide sufficient arguments to demonstrate that a planning mechanism based upon the T-1 Committee structure (with its broad membership base) would minimize the potential for anticompetitive abuses resident in the ECA-based structure, which had been proposed in the *Notice*. The T-1 Committee includes and encourages the fullest industry representation of equipment manufacturers, IXCs, and other users of exchange access service as participants.[75]

77. The agendas of the T-1 Committee will be developed by its members and, therefore, should be responsive to their needs for administration of interconnection procedures, technical standards for provision of interconnection, design and operational standards relating to interconnection equipment and systems, and related administrative and maintenance procedures. The primary purposes of this limited joint planning coordination should be to make adjustments to interconnection processes on an ongoing basis in order to achieve operational efficiency, to promote nationwide compatibility, and to anticipate future needs and problems so that adjustments can be planned.

78. Based on our review of the structure, membership, functions, and procedures of the ESCA-sponsored and ANSI-accredited T-1 Committee, we find that is an appropriate organization for developing voluntary technical interconnection standards.[76] As described by ESCA, the T-1 Committee will have the following characteristics: (1) it will focus on developing "standards at the point of interconnection for 'external' interface with interexchange carriers, customer premises equipment, and information vendors";[77] (2) it will "examine physical, electrical, mechanical, and functional characteristics of external interface standards and will establish the minimum standards to ensure proper interconnectivity and interoperability of services and equipment";[78] (3) its membership "will be open to all parties with a direct and material interest in the formulation of interconnection standards, without dominance by any single interest."[79] The Commission will not participate as a member of the T-1 Committee. The proposed T-1 Committee mechanism, with its open and voluntary membership requirements, appears to satisfy our concerns regarding the full participation in joint planning by affected parties and the exposure of joint planning operations to public scrutiny. We shall, however, monitor the industry standard setting process and, if necessary, provide regulatory review.

79. Furthermore, we have concluded that the interconnection coordination activities and the organizational structure for limited technical planning that we approve in this Order are consistent with the antitrust laws. The parties discuss limited joint planning in terms of providing an association or procedural mechanism that would safeguard against the possibility of anticompetitive abuses by eliminating or reducing opportunities for restraint of trade, price-fixing, market allocation and other exclusionary practices. They generally suggest that an appropriate joint planning association would require broad representation to minimize antitrust concerns and refer to the structural and procedural safeguards of the T-1 Committee, which, they emphasize, are in accord with antitrust policies, and are responsive to the Commission's antitrust concerns.[80] Additionally, IBM, GTE (Sprint), ITT (COINS) and Western Union, encourage the Commission to participate and maintain regulatory oversight responsibilities. ANSI points to *Revised*

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[72] ECSA summarizes its structural philosophy as follows: "Limited joint planning under the auspices of the ECSA-sponsored and ANSI-accredited T-1 Committee, which has the responsibility for interconnection standards formulation, is open to all parties with a direct and material interest in that process and activity, without dominance by any single interest." ECSA Comments at 11. The T-1 Committee membership will be voluntary and will be open to all who may be concerned. *See* notes 75, 79, *infra*.

[73] *Notice*, 94 FCC 2d at 314.

[74] *See Id.* at 299.

[75] The composition of the T-1 Committee membership, as of Oct. 9, 1984, was: ECs (88); IXCs and resellers (19); manufacturers and vendors (17); users and general (37); interests from U.S. and Canada (15). Source: *Fiscal Year 1984, Report of Directors, ECSA*, Oct. 9, 1984.

[76] ESCA Comments, Appendix II, Exhibit A, (Procedures for the T-1 Committee of the Exchange Carrier Standards Association) at 1.

[77] ESCA Comments at 13.

[78] *Id.* at 14.

[79] *Id.* at 11. Exhibit A of the ESCA By-Laws cites the following entities as having direct and material interests: "(i) exchange carriers; (ii) interexchange carriers; (iii) relevant equipment manufacturers; (iv) vendors of relevant products; (v) state and federal regulatory agencies; (vi) the United States Department of Defense; (vii) user groups; (viii) professional technical organizations; and (ix) other groups that have a general interest in the exchange carrier industry." Exhibit A at 1.

[80] *See* Comments of Rural Telephone Coalition, SNETCO, Rochester Telephone Co., USTA, American Satellite Co., TDS, Centel, United Telephone System, ECSA, IEEE, USAB, ANSI, MCI, USTA, Northern Telecom Inc., U.S. Telephone Inc., Utilities Telecommunications Council, TRT, API, Association of Data Communications Users, and IBM.

Circular A–119, October 27, 1982, which directs government agencies to adopt voluntary standards that are consistent with statutory obligations and goals. Mid-Rivers Telephone Cooperative, Inc., North Pittsburgh Tel. Co., and the PSC of Wisconsin submit that direct Commission regulatory involvement in the interconnection process is unnecessary and that an ESCA/ANSI accredited organization is fully consistent with antitrust principles and policies. DOJ asserts that:

> properly structured and narrowly focused joint ventures for dealing with matters such as interconnection standards are usually consistent with the antitrust laws. Care must be taken, however, that the joint venture does not overflow into areas where innovation and diversity should continue unabated. . . . The various exchange carriers should be able to experiment with new interconnection arrangements and to adopt particular system designs that best meet the demands of their customers (the interexchange carriers) and of their subscribers within the overall framework of a compatible and efficient network. . . . [S]o long as compliance is voluntary, the exchange carriers will be free to act on their own incentive to subscribe only to those standards which actually enhance the efficiency of their networks.[81]

80. It has been our intent in fashioning the structure necessary to achieve limited joint planning to assign to the association, functions which are important for the provision of efficient planning but which will not create a basis for anticompetitive conduct. It also should be noted that, although it is true that competition is an important factor which should be given weight in the administration of the Act, this Commission also is required by the public interest standards of the Act to consider factors other than competition, such as the efficiency of the communications network, the provision of reliable service to the public, and the future needs of carriers and users. In sum, we believe that our endorsement of the joint planning procedures outlined in this Order is consistent with our responsibility under the Act, and that use of such procedures will not raise antitrust issues. Accordingly, we approve the T–1 Committee as the instrument for implementing the limited joint planning approach proposed in the Notice and endorsed by the industry.

4. Joint Planning for NSEP Communications Capabilities

81. A number of parties have addressed the concerns we have raised regarding the proper coordinating mechanism to ensure continuity of emergency communications bearing upon national defense and emergency preparedness. The Commission recognizes the need for planning among carriers to create administrative mechanisms and standby capabilities to support such communications. We concur with the parties that we should adopt the industry's response to Executive Order No. 12382 (dated Sept. 13, 1982), which directs the National Communications System, headed by the Secretary of Defense, to develop a post-divestiture NSEP plan.[82]

82. The general agreement among parties to form the NCM, composed of government and industry representatives who will jointly provide communications capabilities and ensure continuity of national facilities during emergency conditions, also resolves the issues raised in the Notice [83] regarding antitrust concerns. The DOJ has accepted the NCM plan.[84] The carriers and the government agencies assigned responsibility for NSEP have acted to plan and implement NSEP communications mechanisms that will meet national requirements. As in the case of the T–1 Committee activities, described in paras. 75–78, *supra*, we will continue to monitor the NSEP planning process and, as necessary, provide regulatory review and approval of whatever executive coordinating actions are taken in response to Executive Order 12382.[85]

V. Tariff Requirements

A. Positions of Parties

83. In the *Notice* we requested that parties consider what level of information on interconnection should be included in ECs' access tariffs. The consensus of the commenters is that the Commission should limit its tariff filing requirements to the provision of basic technical interconnection information and reject unnecessarily rigid rules that would only necessitate frequent waiver requests, especially in the case of small and rural companies. AT&T gives examples of "practical" tariff inclusions, such as identifying whether an interconnection is a trunk-side or line-side arrangement, what signalling methods are available, and whether seven digits or fewer are required of the customer.[86] Many parties state that complex, technical details of multi-featured services in tariffs would be unnecessary and burdensome. This material, commenters suggest, would be of marginal usefulness, and especially since there are other sources or references for such data.[87] MCI suggests that to avoid confusion either a general or specific reference to Part 68 in the tariffs should be required.[88] SNETCO states that tariffs should only reference physical, technical, and operational aspects of interconnection.[89]

B. Discussion

84. In the *Notice*, we noted that a variety of federal tariff-related interconnection policies governing ECs have traditionally been manifested in AT&T's interstate tariffs, to which all ECs concurred for the joint provision of interstate service. However, as competition for interstate service continues to evolve, such a pattern of concurrence may no longer be common. To prevent confusion to the public, we proposed that the ECs' interconnection practices be reflected in their interstate exchange access tariffs, noting that such a requirement would impose minimal (if any) burden on such carriers, as they were obliged to file (or to concur in) access tariffs in any event.

85. Our proposals in this area were necessary because it was unclear whether any EC tariffs (or tariffs in which ECs would concur) for interstate service would continue to manifest these carriers' interconnection practices pursuant to our long-standing interconnection orders. Since that time, however, the ECs have implemented our proposals and have included (or referenced) in their interstate exchange access tariffs language comparable to the interconnection-related language in AT&T's pre-divestiture interstate tariffs. Thus, this is not a controversial matter. But, to ensure that there is no confusion in the future, we shall make final our tentative conclusion in the *Notice* that ECs' interconnection practices, as prescribed by this Commission, must be reflected in their interstate exchange access tariffs.[90]

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[81] DOJ Comments at 31, 34, 35.

[82] AT&T, ECSA, Mid-Rivers Telephone Corp., North Pittsburgh Telco, Telephone and Data Systems, Inc. DOJ, USTA, ICA, PSC of Wisconsin, Secretary of Defense.

[83] See *Notice*, 94 FCC 2d at 321–322.

[84] Letter from Assistant Attorney General, Antitrust Division, U.S. Department of Justice, to Manager, National Communications System, dated June 1, 1983.

[85] While we today provide a framework for NSEP planning, we are not now specifying in detail the types of planning that will be required, nor the voluntary and regulatory administrative and other mechanisms that may prove necessary to carry out such planning. We will leave the development of resolution of such issues, in the first instance, to the NCM planning group we approve in this Order. *See Notice*, 94 FCC 2d at 299.

[86] AT&T Comments at 58.

[87] PSC of Wisconsin, Southern New England Telephone Co. (SNETCO), AT&T, Rural Telephone Coalition.

[88] MCI Comments at 19.

[89] SNETCO Comments at 7.

[90] *See* also, Access and Divestiture Related Tariffs, 97 FCC 2d at 1111 (1984).

86. A related issue raised in the *Notice*, namely, whether we should require that the BOCs treat resellers no differently from facilities-based IXCs with respect to access number coding, has subsequently become moot. At that time, it was contemplated that 10XX coding, which is capable of supporting access to no more than 100 IXCs, would be used for access to the services of non-predesignated carriers. Since there are more than 100 resellers, the supply of available codes could have been rapidly exhausted. Since the BOCs have since revised their plans to utilize 10XXX coding and will make such codes available to resellers and facilities-based carriers alike, we do not anticipate exhaustion of access codes in the foreseeable future. Accordingly, in light of the implementation of this expanded code space, we need make no determination on this issue.

VI. Regulatory Flexibility Certification

87. In the *Notice*, we invited interested parties to comment upon our initial regulatory flexibility analysis. We stated our legal authority for taking action in this proceeding, and noted that "the policy objectives of the Regulatory Flexibility Act are also encompassed in Sections 2(b) and 203(a) of the Communications Act of 1934, the provisions of which are intended to relieve many small telephone companies from various reporting and other requirements established in the Communications Act."

88. We hereby certify that the Regulatory Flexibility Act is not applicable to small telephone companies, as defined, because they are monopolies in their own service areas. The Act incorporates the definition of a "small business" in Section 3 of the Small Business Act as the definition of a "small entity." The latter definition excludes any business that is dominant in its field of operation. ECs, even small ones, enjoy a dominant monopoly position in their local service area. Moreover, the actions we are taking in this proceeding with respect to (a) the implementation of equal access, and (b) the modification of tariffs to reflect equal access interconnection, are designed that the interests of small telephone companies are protected—by recognizing their unique financial status *vis a vis* that of the BOCs and the larger independent telephone holding companies.

VII. Ordering Clauses

89. Accordingly, it is ordered That, pursuant to Sections 4(i), 4(j), 201–205, 213, 218, 220, and 403 of the Communications Act of 1934, 47 U.S.C. § § 154(i), 154(j), 201–205, 213, 218, 220, and 403, the policies, rules, and requirements set forth herein are adopted.

90. It is further ordered, That the Secretary shall cause this Order to be published in the **Federal Register**.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-9532 Filed 4-18-85; 8:45 am]

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47 CFR Part 67

Interpretation Letter Regarding Jurisdictional Separations

AGENCY: Federal Communications Commission.

ACTION: Interpretation Letter.

SUMMARY: Under delegated authority, the Common Carrier Bureau, in response to a request by New England Telephone has provided an interpretation of Part 67 of the FCC Rules and Regulations. The issue concerns the jurisdictional separation of state income taxes and the interpretation is intended to clarify the apportionment procedures in § 67.412 of the Rules.

FOR FURTHER INFORMATION CONTACT: Arthur S. Leahy, Common Carrier Bureau, (202) 634–1743.

William J. Tricarico,

Secretary, Federal Communications Commission.

April 9, 1985.

Mr. James E. Riley,

Division Manager, Depreciation and Separations, New England Telephone, 99 High Street, Room 1004, Boston, Massachusetts 02110

Dear Mr. Riley: This letter is in response to your letter of March 8, 1985 in which you requested clarification of section 67.412 of the *FCC Rules and Regulations*. Specifically, you requested information regarding the proper allocation of the state income tax (SIT).

Paragraph 67.412(d) of the *FCC Rules and Regulations* indicates that the net income tax attributable to all operations is to be apportioned among the operations on the basis of the approximate net taxable income applicable to each of the operations. As noted in your letter, New England Telephone has historically interpreted "operations" to mean Company rather than state specific operations, whereas the May 30, 1984, decision of the Maine Public Utility Commission interprets the word "operations" to mean Maine operations only.

The Maine PUC proposed method of allocating SIT to interstate would require that the New England Telephone Company continue to use company taxable income allocated to Maine as the basis for SIT, but apportion the tax to interstate on the basis of net taxable income applicable to each of the operations specific to Maine. We concur with the Maine PUC interpretation of section 67.412 of the Separations Manual. In section 67.412 the word "operations" is interpreted to mean state specific operations rather than company operations in order to be consistent with the method used in calculating SIT. Since the SIT is a directly assignable cost, it can be used for allocation in the separations process. In contrast, the method of allocating SIT that has been employed by New England Telephone fails to make use of the prior estimate of the Maine SIT cost. The attachment to this letter shows the jurisdictional allocation procedure for SIT proposed by the Maine PUC and with which we concur.

We do not anticipate any significant impact on telephone rates as a result of using the Maine PUC alternative method of allocating SIT to interstate. The New England Telephone submission indicates that the use of the alternative method would result in a $.4 million increase in interstate expense in the state of Maine based upon 1984 data. In addition, the proposed alternative method would result in a $1 million increase in interstate expense for the state of New Hampshire. These increases would be more than offset by the indicated $1.8 million decrease in interstate expense for the state of Massachusetts.

If you have any questions concerning this response, please contact Arthur Leahy on (202) 634–1743.

Sincerely,

Gerald P. Vaughan

Chief, Accounting and Audits Division.

Attachment.—Maine PUC Proposed Method of Allocating SIT to Interstate

Maine Interstate Taxable Income
  divided by
Maine Total Taxable Income
  equals
Interstate Allocation Ratio
  ×
SIT
  equals
SIT Allocated to Interstate

[FR Doc. 85-9527 Filed 4-18-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

Implementation of BC Docket No. 80-90 To Increase the Availability of FM Broadcast Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action adds a new attribute under the comparative hearing criterion of securing the best practicable service which would enhance the "integration" proposal of daytime-only AM licensees that apply for FM