ACTION: Notice of deletion of the Conklin Dumps site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces the deletion of the Conklin Dumps site from the National Priorities List (NPL). The NPL is codified as Appendix B of 40 CFR Part 300. It is part of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New York have determined that all appropriate Hazardous Substance Response Trust Fund (Fund)-financed responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of New York have determined that remedial actions conducted at the site to date have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: May 2, 1997.

ADDRESSES: Arnold R. Bernas, P.E., Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, NY 10007–1866.

FOR FURTHER INFORMATION CONTACT: Arnold R. Bernas at (212) 637–3964.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Conklin Dumps site, Town of Conklin, New York. The closing date for comments on the Notice of Intent to Delete the site from the NPL was March 12, 1997. EPA did not receive any comments during the comment period; therefore, EPA has not prepared a Responsiveness Summary.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede EPA efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

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

Dated: April 7, 1997.

Jeanne Fox,

Regional Administrator.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

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

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended by removing ''Conklin Dumps'', the site for Conklin, New York.

[FR Doc. 97–10512 Filed 4–24–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 32

[CC Docket No. 93–240; FCC 97–80]

Accounting for Judgments and Other Costs Associated With Litigation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On March 13, 1997, the Commission adopted a Report and Order (''Order'') (FCC 97–80, CCB released March 13, 1997) establishing what accounting rules and ratemaking policies should apply to litigation costs incurred by carriers subject to the Commission's rules.

A fundamental requirement of Title II of the Communications Act of 1934, as amended, is that ''all charges * * * for and in connection with [interstate] communication service, shall be just and reasonable.'' This provision safeguards consumers against rates that are unreasonably high and guarantees carriers that they will not be required to charge rates that are so low as to be confiscatory. Carriers under the Commission's jurisdiction must be allowed to recover the reasonable costs of providing service to ratepayers, including reasonable and prudent expenses and a fair return on investment. This fundamental requirement is unchanged by the Telecommunications Act of 1996.

The Commission has proposed and adopted accounting rules that would: Require carriers to account for adverse antitrust judgments and post-judgment antitrust settlements below the line in Account 7370, a nonoperating account for special charges; defer other antitrust litigation expenses during the pendency of antitrust litigation; and account for the expenses below the line in the event of an adverse judgment of a post-judgment settlement.

EFFECTIVE DATE: May 27, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas David, Attorney/Advisor, Accounting and Audits Division, Common Carrier Bureau, (202) 418–7116.

SUPPLEMENTARY INFORMATION: We conclude that rules are still needed for federal antitrust judgments and settlements that exceed the avoided costs of litigation of the case, but not for litigation expenses. We further conclude that extension of the rules to litigation unrelated to federal antitrust litigation is not warranted at this time.

Regulatory Flexibility Analysis

In the *NPRM* (50 FR 19421, May 8, 1985) Amendment of the Uniform System of Accounts for Class A and Class B Telephone Carriers to Account for Judgments and Other Costs Associated with Antitrust Lawsuits, and Conforming Amendments to the Annual Report Form M, CC Docket No. 85–64, *Notice of Proposed Rulemaking,* 2 FCC Rcd 3241 (1985), the Commission certified that the Regulatory Flexibility Act (RFA) of 1980 did not apply to this rulemaking because the rules it proposed to adopt in this proceeding would not have a significant impact on a substantial number of small businesses. The Commission's RFA in this Report and Order (Accounting for Judgments and Other Costs Associated with Litigation, *Report and Order,* CC Docket No. 93–240, FCC 97–80 (1997)) conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 847 (1996). No comments were received specifically concerning the proposed certification. However, some comments were received generally concerning the impact of the proposed rules on small entities. For the reasons stated below, we certify that the rules adopted herein will not have a significant economic impact on a substantial number of small entities. This certification conforms to the Regulatory Flexibility Act (''RFA''), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA'').

The *NPRM* certified that no regulatory flexibility analysis was required because

the entities affected by the proposed rules were either large corporations, affiliates of such corporations, or were dominant in their field of operations and therefore not small entities. However, the rules we adopt in this *Report and Order* apply to all carriers providing interstate services, some of which may be small entities. Moreover, since the *NPRM,* we have stated that although we still consider small incumbent LECs to be dominant in their field of operations, we now include such companies in our regulatory flexibility analyses. Consequently, we cannot certify that no regulatory flexibility analysis is required for the reasons offered in the Notice.

Nonetheless, we still certify that no regulatory flexibility analysis is necessary here. As the two parties commenting on small entity issues observed, it is unlikely that a substantial number of small LECs will be subject to federal antitrust litigation. Consequently, it does not appear that the rules will affect a substantial number of small entities. Even if a substantial number of small entities were affected by the rules, there would not be a significant economic impact on those entities. These rules govern the accounting treatment of federal antitrust judgments and settlements in excess of the avoid costs of litigation, but not litigation expenses. BellSouth, in commenting on small entity issues, contended that the proposed rule, which would have required all carriers, including small, to accrue litigation costs in a separate account and record them below the line if the carrier lost its legal action, would be unduly burdensome on small LECs. This *Report and Order* does not adopt that proposal, thereby eliminating this concern.

We therefore certify pursuant to section 605(b) of the RFA that the rules adopted in this order will not have a significant economic impact on a substantial number of small entities. The Commission will publish this certification in the **Federal Register**, and will provide a copy of the certification to the Chief Counsel for Advocacy of the SBA. The Commission will also include the certification in the report to Congress pursuant to the SBREFA.

Report to Congress. The Secretary shall send a copy of this Final Regulatory Flexibility Analysis, along with this *Report and Order,* in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this Final Regulatory Flexibility Analysis shall also be published in the **Federal Register**.

Summary of Report and Order

Historically, the Commission allowed carriers to record litigation expenses in above-the-line accounts and retained the option of disallowing such costs on an *ad hoc* basis in ratemaking proceedings. Litigation tended to arise from contract disputes, tort liability for accidents, or worker's compensation claims, which were viewed as matters arising out of the ordinary course of business. Penalties and fines paid on account of violations of statutes, however, were recorded below the line.

In the 1970's, government and private antitrust litigation involving AT&T and other carriers subject to the Commission's jurisdiction increased substantially. Anticipating the need to determine whether the large sums AT&T spent defending these antitrust suits should be charged to ratepayer or shareholders, the Commission initiated a Notice of Inquiry in 1979 (*Notice of Inquiry* 70 FCC 2d 1961, 1961–62 (1979) to develop a policy of general applicability so that it could avoid having to make this determination in each future rate proceeding. The Commission concluded that tariff and rate case review mechanisms provided suitable fora for identifying and disallowing such costs. Additionally, however, the Commission asked the Telecommunications Industry Advisory Group that was rewriting the Uniform Systems of Accounts for telephone companies whether more detailed accounts or reports for litigation expenses were needed.

The Commission revisited the question after the substantial treble damages antitrust judgment in the *Litton Systems case* (*See Litton Systems, Inc.* v. *American Tel. and Tel. Co.*, 700 F.2d 785 (2d Cir. 1983), *cert denied,* 464 U.S. 1073 (1984) became final against AT&T and its former subsidiaries, the regional Bell operating companies. The Commission ordered AT&T and the regional Bell operating companies to record the *Litton Systems* judgment below-the-line in the nonoperating account used for penalties and fines for violating statutes, and it further ordered that they credit the operating accounts in which they had carried their defense costs and reclassify these costs to the same nonoperating account in which the judgment was to be recorded. Although this was only an accounting change, this change presumptively removed these costs from the ratemaking process. After the Commission denied reconsideration, the carriers sought judicial review of accounting treatment and resulting presumption for their litigation expenses. They did not challenge the treatment of the antitrust judgment or the interest thereon.

The Commission also conducted a rulemaking proceeding to clarify the accounting treatment of litigation costs incurred in both antitrust lawsuits and other lawsuits in which violation of any federal law was alleged (*see* Notice of Proposed Rule Making to Amend Part 31 Uniform System of Accounts for Class A and Class B Telephone Carriers to Account for Judgments and Other Costs Associated with Antitrust Lawsuits, and Conforming Amendments to the Annual Report Form M, CC Docket No. 85–64, *Notice of Proposed Rulemaking,* FCC 85–120 (released May 3, 1985) (*Litigation Costs NPRM*); *Report and Order,* 2 FCC Rcd 3241 (1987) (*Litigation Costs Order*); *recon. in part,* 4 FCC Rcd 4092 (1989) (*Litigation Costs Recon. Order*) (collectively, *Litigation Costs Proceeding*), *vacated and remanded sub nom. Mountain States Tel. and Tel. Co.* v. *FCC,* 939 F.2d 1035 (D.C. Cir. 1991) (*Litigation Costs Decision*). It concluded that payments incurred as a result of adverse antitrust judgments or post-judgment settlements should be recorded below the line in a nonoperating account, but allowed ratemaking recognition of the saved litigation expenses of the suit (*See Litigation Costs Recon. Order,* 4 FCC Rcd at 4097–98). The ongoing costs of defending the litigation would continue to be recorded in an operating account as accrued but would be transferred to a nonoperating account when a judgment adverse to the carrier became final or if a settlement were entered after an adverse judgment. This accounting treatment was extended to litigation costs arising from alleged violations of any federal law. As with the *Litton Accounting Order,* this treatment presumptively removed from the ratemaking process the litigation costs other than certain pre-judgment settlement costs arising from a carrier's violation of antitrust and other federal laws, and shifted to the carriers the burden of showing the reasonableness of including such costs in their revenue requirements. This, too, was challenged.

The Court of Appeals for the District of Columbia Circuit vacated both Commission orders on the same day and remanded each case for further proceedings. In *Litton Accounting Appeal,* the court was not persuaded that the illegality of the underlying carrier conduct was a sufficient reason, by itself, for exclusion of the litigation defense expenses from ratemaking and admonished the Commission to scrutinize the reasonableness of the expenses with ''a wider and more

discriminating focus.'' The court also found that the Commission's policy was not sufficiently explained.

In *Litigation Costs Decision,* (939 F.2d at 1042), the court remanded the Commission's *Litigation Costs Proceeding* because: (1) The Commission did not adequately justify application of the rules to violations of federal law other than antitrust law; and (2) the Commission did not sufficiently consider the probable effects of its rule on the companies' incentives to either settle or litigate lawsuits. The court also stated that the Commission had failed to explain why its reclassification of litigation costs was not retroactive ratemaking. Although the court vacated the Commission's orders, it specifically acknowledged the Commission's ''special responsibility * * * regarding the competitive behavior of the common carriers subject to its oversight.'' In discussing the accounting treatment for antitrust judgments, the court stated that the Commission may disallow any expense incurred as a result of carrier conduct that cannot reasonably be expected to benefit ratepayer and that the Commission acted reasonably in aligning the presumption against recovery with the majority of antitrust cases in which consumers do not benefit from the conduct occasioning liability. The court found no fault with the Commission's treatment of either adverse antitrust judgments or pre-judgment settlements in antitrust cases, although it faulted the Commission for failing to consider the possible perverse incentives arising from its asymmetric treatment of post-judgment settlements, which ultimately could also increase the amount recoverable from ratepayer. The court agreed that the same rationale that the Commission used in determining that an ILEC could not recover an antitrust judgment also applies with respect to litigation expenses because the reasonableness of the underlying conduct, not the defense of the conduct, determines whether the expense is reasonable.

In this proceeding, the Commission has concluded that its rules should require that adverse antitrust judgments be accounted for below-the-line in Account 7370. This would include any associated interest and awards of attorneys fees to adversaries. Fines and penalties have always been accounted for below-the-line, and this practice will continue. The Commission has also concluded that settlement costs paid by carriers to resolve antitrust litigation should be accounted for below-the-line in Account 7370, but it modified its proposal to allow carriers to recover in ratemaking the saved litigation expenses of both pre- and post-judgment settlements entered before any adjudication of anticompetitive misconduct becomes final. The Commission has also concluded it should change how we treated the costs of defending antitrust litigation. In the previous rulemaking, it allowed litigation expenses associated with an adverse judgment or a post-judgment settlement to be recorded above-the-line but made them subject to ''recapture.'' This recapture doctrine created a presumption that these expenses would be excluded from a carrier's revenue requirements (*See Depreciation Simplification NPRM,* 8 FCC Rcd at 6656). In the present rulemaking, the Commission altered the presumption to provide that these costs may continue to be recorded above the line in operating accounts. Finally, the Commission has concluded that the record before us provides insufficient basis for changing the current accounting treatment of alleged or adjudicated violations of state or federal laws other than federal antitrust laws. This means that only costs related to judgments or settlements in lawsuits stemming from violations of federal antitrust laws will be recorded below-the-line (*See Second Litigation Costs Order*) (Docket No. 93–240, FCC 97–80 at ¶¶ 18). With regard to settlements of such lawsuits, there will be a presumption that carriers can recover the portion of the settlement that represents the avoidable costs of litigation, provided that the carrier makes the required showing (*See Second Litigation Costs Order* at ¶¶ 45–46).

Ordering Clauses

Accordingly, pursuant to Sections 1, 4(i), 219, 220 and 221(c) and 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 219, 220, Part 32 of the Rules *is revised.*

It is Further Ordered that, pursuant to Sections 1, 4(i), 220, and 221(c) and 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 220, and 221(c), Part 32 of the Commission's Rules and Regulations, is amended as shown below.

List of Subjects in 47 CFR Part 32

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

Rule Changes

Part 32 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 32 continues to read as follows:

Authority: 47 U.S.C. 154.

2. Section 32.7370 is amended by revising paragraph (d) to read as follows:

§ 32.7370 Special charges.

* * * * *

(d) Penalties and fines paid on account of violations of statutes. This account shall also include penalties and fines paid on account of violations of U.S. antitrust statutes, including judgments and payments in settlement of civil and criminal suits alleging such violations; and

* * * * *

[FR Doc. 97–10718 Filed 4–24–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 95–155; FCC 97–123]

Toll Free Service Access Codes

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On April 11, 1997, the Commission released a Second Report and Order adopting various measures related to toll free service access codes. The Second Report and Order is intended to ensure the fair, efficient, and orderly allocation of toll free numbers.

EFFECTIVE DATE: May 27, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Erin Duffy, Attorney, Network Services Division, Common Carrier Bureau, (202) 418–2340.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Second Report and Order in the matter of Toll Free Service Access Codes, FCC 97–123, adopted April 4, 1997, and released