less than 45 days would appear to be appropriate. One option would be to establish a uniform notice period for all restructured tariff filings. A second option would be to establish two notice periods, one for restructured service rates that would be higher than the replaced, "old" service rates, and another notice period for restructured service rates that would be lower than the replaced service rates. For example, we could require 15 days' notice for rate "increases," and 7 days' notice for rate "decreases." Parties should comment on the practicality of these suggestions, including how long any revised notice periods should be.

52. We further propose to revise the definition of new services to exclude APPs. As discussed more fully below, we propose defining APPs as services that permit customers to "self-select" an optional discounted rate for a service which continues to be offered to customers. Otherwise, we propose retaining the current definition of new service: any service that expands the range of service offerings available to the consumer. Our rationale in excluding APPs from the definition of new services is to allow such optional discounted offerings of existing services to avoid the more thorough regulatory review given to new services. We believe LEC customers would be protected because the original offering was subject to the normal regulatory review and customers still have that service choice available to them.

53. We seek comment on the regulatory treatment of new services and restructured services under the price cap plan, including comment on the following questions:

Issue 1a: Should we relax the regulatory requirements relating to new services for some or all new services? Will there be any anti-competitive or other negative effects as a result of such modifications to the plan? If a relaxed treatment is appropriate for only certain new services, how should we distinguish between the services eligible for the simplified treatment and those which are not? What are some examples of the services that would fall into each category? How would this distinction be administered? What cost showings, notice, and other regulatory requirements are necessary with respect to the various types of new services to provide the appropriate level of regulatory oversight without hindering the efficient introduction of new services?

Issue 1b: Should we modify the definition of new services to exclude APPs or otherwise?

Issue 1c: Should we modify the definition of restructured services? What, if any, changes should be made with respect to the treatment of restructured services?

c. Alternative Pricing Plans

54. We seek comment on whether to allow optional discounted offerings of services that have been, and continue to be, provided (APPs), establish a new category of tariff filing for such services and subject the introduction of such services to relaxed regulatory treatment. In addition to seeking comment on this proposal, we seek comment on certain other related issues.

55. By way of background, currently there are no special rules governing the provision of APPs by price cap LECs. If a LEC wishes to introduce an optional discounted plan for a service it currently provides, the plan would be treated as a new service under current rules. We currently permit one type of switched access service that would fall within our proposed definition of APP, namely, volume and term discounts on certain transport services when LECs can show a certain level of demand for their expanded interconnection services.[75] In the *Switched Transport Expanded Interconnection Order*, we permitted LECs to offer reasonable volume and term discounts on entrance facilities and interoffice facilities and tandem-switched transport, including pricing that reflects speeds greater than DS3. We noted that as a general matter such discounts should be permitted if they are justified by underlying costs, and are not otherwise unlawful, because they encourage efficiency and full competition.[76] While we found that term discounts were not controversial,[77] some small IXCs were concerned that volume discounts would benefit primarily AT&T.[78] We decided to permit volume and term discounts in certain geographic markets where a certain level of expanded interconnection exists, so that LECs would be able to respond to discount plans offered by other access providers.[79] Specifically, we permitted LECs to offer volume and term discounts in a study area once they were able to show either that (1) 100 DS1-equivalent switched transport cross-connects have been taken by interconnectors in the zone 1 offices in that study area; or (2) an average of 25 DS1-equivalent switched transport cross-connects per zone 1 office in the study area have been taken by interconnectors.[80] In study areas without any zone 1 offices, we permitted volume and term discounts after five DS1

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[75] Volume and term discounts are permitted for special access services without any competitive showing or Part 69 filing. *See Special Access Expanded Interconnection Order*, 7 FCC Rcd at 7458-65.

[76] *Switched Transport Expanded Interconnection Order*, 8 FCC Rcd at 7432-33 (para. 115).

[77] *Id.* at 7434 (para. 116).

[78] *Id.* at 7434 (para. 117).

[79] *Id.*

[80] *Id.* at 7434-35 (para. 118). (See discussion of density-based "zones" in SectionIV.D.3., *supra*).

equivalent cross-connects have been taken in the study area.[81] These volume and term discounts are filed under the "new services" test.

56. When we adopted the *Switched Transport Expanded Interconnection Order*, the problems with respect to headroom arising out of volume and term discount plans or other new services that would fall within our proposed definition of APPs had not yet been brought to our attention. "Headroom" refers to the difference between the PCI and the API for any particular basket of price cap services. We have focused on those issues more recently, however, in the AT&T notice of proposed rulemaking concerning APPs.[82] Specifically, in AT&T's case, optional discount offerings enable it to offer discounts to some residential service ratepayers, while increasing its basic schedule rates for residential service, without any loss of revenues.[83] Under current practice, the headroom on which AT&T predicates its basic schedule increases is based on AT&T's forecasted demand estimates for its promotional offerings. Because these offerings are incorporated into the price cap indexes based on the weighted average demand of the services in the basket, customers of AT&T's basic schedule services may be charged more than they would have been otherwise when AT&T's forecasted demand exceeds actual demand. There is currently no requirement in our rules that AT&T "true up" its demand estimates, nor any requirement to refund charges based on overestimated demand.[84]

57. The *AT&T APP Notice* seeks comment on our proposals for revising AT&T's price cap plan to account for APPs. AT&T would be allowed to file APPs initially outside of price caps on 14 days' notice and without cost support, provided that the APPs are scheduled to expire automatically no later than 90 days after the initial effective date.[85] Because the APPs would be kept outside of price caps during this period, AT&T would not receive headroom "credit" for the APP. AT&T would be permitted to incorporate the APP into its price cap indexes upon the conclusion of this 90-day period, as opposed to the six to eighteen month base period for new services. At the end of the 90-day period, AT&T would be allowed to convert the APP to a permanent offering under price caps, subject to the provisions of Section 61.49 of the Commission's rules.[86] The estimated annual revenue contribution of APPs would be computed by extrapolating actual demand data collected

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[81] *Id.* n.264.

[82] *See* Policy and Rules Concerning Rates for Dominant Carriers, Revisions to Price Cap Rules for AT&T, 10 FCC Rcd 7854 (1995) (*AT&T APP Notice*).

[83] *AT&T APP Notice*, 10 FCC Rcd at 7860.

[84] *AT&T APP Notice*. 10 FCC Rcd at 7860.

[85] *AT&T APP Notice*, 10 FCC Rcd at 7865.

[86] 47 C.F.R. § 61.49. *See AT&T APP Notice* at 7865-66.

during the 90-day period.[87] AT&T also would be required to file quarterly reports updating the estimated demand amounts during the first 12 months after the APP is incorporated into price caps.[88]

58. AT&T offers APPs to end users on a national basis. The market for access services in which LECs participate is limited geographically relative to the market for interexchange services,[89] and the access customers are generally a relatively small number of interexchange carriers and large end-users in any given market as opposed to the millions of customers for interexchange services. In addition to the differences between AT&T interexchange services and LEC exchange access services, there are also differences among the interstate access services that LECs offer. As a result, our proposals for APPs for AT&T may not be appropriate with respect to LECs, or at least with respect to certain LEC service baskets or services. For example, the proposed rules for AT&T APPs are designed, in part, to address the effects of the headroom created by AT&T's optional service offerings. To the extent that LEC APPs are not likely to generate substantial headroom, because of the LEC price cap basket structure or otherwise, extending the proposed AT&T rules to the LECs may not be appropriate. In addition, we note that LECs currently are required to offer interstate switched access services in accordance with a prescribed rate structure. LECs might seek to offer APPs for switched access services that would lead IXCs to shift their interstate traffic from the current offerings to APPs. We seek comment on whether there is the potential for competitive harm in allowing the LECs to offer APPs that is not present in the interexchange market. There may be other reasons for concluding that it would not be in the public interest to apply to the LECs the rules we have proposed for AT&T.

59. We invite parties to comment on whether we should allow price cap LECs regulatory flexibility to offer other APPs in addition to volume and term discounts currently allowed so long as the LEC continues to offer the standard service offering of which the APP is an optional discounted plan. For this purpose, we would define APPs as services that permit customers to "self-select" an optional discounted rate plan for a service that currently exists and propose considering APPs as a service classification which is distinct from either new services or restructures.[90] In addition, we invite comment on whether we should allow LEC APPs to be introduced pursuant to the same rules we have proposed for AT&T, *i.e.*, on fourteen days' notice and without cost support for up to 90 days. We would allow LECs to convert APPs to permanent offerings under price caps following the submission of tariff revisions complying with our new services test, on not less than 45 days' notice and

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[87] *AT&T APP Notice*, 10 FCC Rcd at 7864.

[88] *AT&T APP Notice*, 10 FCC Rcd at 7866.

[89] We discuss issues related to the relevant geographic market for access services in Section IV.D. of this Notice.

[90] *See AT&T APP Notice*, 10 FCC Rcd at 7862.

accompanied by cost support as required under Section 61.49 of our rules. In addition to these proposals, we also seek comment on whether we should adopt other rules for APPs modeled on those we proposed in the *AT&T APP Notice*.[91] Commenters advocating different approaches to the price cap treatment of LEC APPs should explain the advantages of their proposals. If we do not permit LECs generally to introduce APPs, we invite parties to comment on whether we nevertheless should permit LECs to offer volume and term discounts for switched access services in addition to those currently permitted and, if so, what rules should govern such offerings. We particularly invite proponents of other approaches to discuss how their proposals strike a proper balance between our interest in promoting expeditious and efficient introduction of offerings and the need to ensure appropriate oversight to protect against anti-competitive practices.

60. Allowing the LECs to provide APPs and subjecting them to this relaxed review may encourage a greater variety of offering for consumers, result in at least certain ratepayers and consumers paying lower rates and allow the LECs the opportunity to better respond to the marketplace. Although the review of APPs would be relaxed, because the non-discounted offering remains available to customers, there may be little likelihood of harm to customers. We request comment on the subject of APPs, in particular on the following questions:

Issue 2a: Should we allow LECs to file APPs in addition to the volume and term discounts currently permitted? Under what terms and conditions? How should APPs be defined? Would the introduction of APPs cause any anti-competitive effects? If we permit LECs to offer APPs, what notice, cost support, and other requirements should be applied to those tariff filings? Should the rules be different depending on the particular LEC service basket or services involved and, if so, how? How and when should APPs be integrated into the price cap plan?

Issue 2b: If we do not generally permit LECs to introduce APPs, should we nevertheless permit volume and term discounts for switched access services other than those currently permitted? If so, should we condition such offerings on a showing of competitive presence similar to the conditions adopted in the *Switched Transport Expanded Interconnection Order* or on the other measures of competition discussed in this Second Further Notice in the geographic areas where such competition exists?

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[91] *See AT&T APP Notice,* 10 FCC Rcd at 7862-66.

d. Individual Case Basis Tariffs

61. We have recently seen an increase in the number of individual case basis (ICB) tariff filings. Although ICB tariff filings have some characteristics of contract tariffs, they are generally intended to be precursors to new service offerings. Because this Second Further Notice raises definitional and other regulatory questions relating to the introduction of services, we believe it is advisable to consider ICBs here as well. That will permit us to develop a consistent regulatory framework that allows price cap LECs appropriate flexibility in light of existing market conditions, while protecting against anti-competitive, unreasonably discriminatory or other negative consequences. Accordingly, we make several proposals to further define the treatment of ICB filings.

62. In the past, we have occasionally permitted LECs to file ICB rates. ICB pricing is the practice of developing a price for a particular service or facility in response to each customer request for the service or facility.[92] ICB pricing is usually used for services that the carrier has no experience in providing and that are unlike any existing service, so that the carrier has no basis on which to develop generally available rates. We have also permitted ICB pricing for special construction offerings, which are one-time, non-recurring charges for construction activity on a customer's premises. Each special construction offering can have unique cost characteristics, and thus it may not be reasonable to develop averaged rates for these offerings.

63. We have excluded ICB offerings from price cap regulation, because they are offered on a contract-type basis rather than a generally available basis.[93] We have stated that price cap treatment would have little effect on one-time special construction activity, and so such offerings should be excluded from price cap regulation.[94] We have also concluded that ICB tariffs would continue to be appropriate for services featuring a new technology for which little demand exists, but stated that those services should be treated as new services when the LEC develops generally available averaged rates for them.[95]

64. We established general requirements for ICB rates in the *ECA Tariff Order* and the *ICB Order*.[96] We found that ICB rates were acceptable as an interim measure for certain

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[92] Local Exchange Carriers' Individual Case Basis DS3 Service Offerings, CC Docket No. 88-136, 4 FCC Rcd 8634, 8641 (para. 63) (1989) (*ICB Order*).

[93] *LEC Price Cap Order*, 5 FCC Rcd at 6810 (para. 193).

[94] *Id.*

[95] *Id.*

[96] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, 97 FCC 2d 1082, 1143 (1984) (*ECA Tariff Order*); *ICB Order*.

services, until the carrier has gained sufficient experience in providing the service to develop generally available averaged rates.[97] Specifically, we found that ICB rates would be acceptable only for those services which the carrier has no experience providing, *i.e.*, it must be a service that the carrier has not offered previously, and it must not be "like" any other previously offered service, within the meaning of Section 202 of the Communications Act.[98] The ICB rate must be used only as an interim measure, and the carrier must develop averaged rates within a reasonable period of time.[99] Although we did not state specifically what would be a reasonable period of time in which to develop generally available rates, we did find that five years was an unreasonably long period of time to provide a service on an ICB basis.[100]

65. We specifically propose requiring a LEC seeking to offer a common carrier service, except for special construction, at ICB rates to show in the supporting documentation that the service is so unlike any existing service that the LEC would have no reasonable basis to develop generally available rates. Furthermore, we believe that when a carrier has more than two customers for a common carrier service, or has provided the service for six months or more, it has or should have sufficient experience with the service to develop averaged rates. At that time, we propose that the offering may not be continued as an ICB but must be treated as a new service subject to the new service requirements. We propose that the cost support requirements of Section 61.38, applicable to non-price cap carriers, should apply to the tariff filings establishing ICB rates.[101] We also propose to continue to exclude ICB

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[97] *ICB Order*, 4 FCC Rcd at 8641-42 (paras. 63-64), *quoting ECA Tariff Order*, 97 FCC 2d at 1143.

[98] *ICB Order*, 4 FCC Rcd at 8642 (para. 66). Services are not "like" within the meaning of Section 202 if they differ in any material functional respect. Ad Hoc Telecommunications Users Committee v. FCC, 680 F.2d 790, 795-96 (D.C. Cir. 1980) (*Ad Hoc*); Western Union v. FCC, 568 F.2d 1012, 1018 (2d Cir. 1977), *cert. denied*, 436 U.S. 944 (1978) (*Western Union*); American Broadcasting Co. v. FCC, 663 F.2d 133 (D.C. Cir. 1980) (*ABC*)); American Trucking Ass'n v. FCC, 377 F.2d 121 (D.C. Cir. 1966), *cert. denied*, 386 U.S. 943 (1967) (*American Trucking*); American Tel. & Tel. Co. (Hi/Lo), 55 FCC 2d 224, 230 (1975), *aff'd mem. sub nom.* Commodity News Services, Inc. v. FCC, 561 F.2d 1021 (D.C. Cir. 1977); MCI Communications Corp. v. FCC, 917 F.2d 30 (D.C. Cir. 1990) (*MCI v. FCC*). Customer perception is a "critical concept" and a "linchpin" of the functional equivalency test. *Ad Hoc*, 680 F.2d at 796.

[99] *ICB Order*, 4 FCC Rcd at 8642.

[100] *ICB Order*, 4 FCC Rcd at 8642 (para. 69).

[101] In the past, the Common Carrier Bureau has rejected ICB tariffs because the LEC failed to comply with Section 61.38. BellSouth Telephone Companies, Revisions to Tariff F.C.C. No. 4, 6 FCC Rcd 373 (Com. Car. Bur. 1991); Southwestern Bell Telephone Co., Revisions to Tariff F.C.C. No. 68, 5 FCC Rcd 5980 (Com. Car. Bur. 1990). In pertinent part, Section 61.38 requires: (1) a study containing a projection of costs for a representative 12 month period, and (2) estimates of the

tariffs from price cap regulation.[102] Finally, we propose to continue to permit LECs to offer special construction on an ICB basis, without requiring averaged rates. We believe that these proposals will allow price cap LECs the flexibility they need to respond promptly to certain specialized needs of customers, while maintaining regulatory review necessary to assure that ICBs are not used in an anti-competitive, unreasonably discriminatory or other manner which is inconsistent with the public interest. Accordingly, we seek comment on our proposals and more generally on the following issues:

Issue 3: Under what conditions, if any, should we permit price cap carriers to establish ICB rates? What showing would enable us to determine that the carrier cannot reasonably be expected to establish generally available averaged rates at the time the common carrier service is introduced? How long should we permit those rates to remain in effect before we require generally available averaged rates? What cost support requirements should apply when the carrier files ICB tariffs, and when the LEC files tariffs establishing generally available averaged rates?

3. Part 69 Waiver Process

66. We propose modifications to the current procedures that price cap LECs must follow in order to establish new rate elements for a new switched access service. We make this proposal in order to encourage LECs to introduce new services and to allow them to do so more expeditiously.

67. By way of background, the Commission promulgated rules in the early 1980s to establish a system of tariffed charges for interstate access services provided by LECs.[103] The access charge rules, which are found in Part 69 of the Commission's Rules,[104] prescribe the service definitions and rate structures for interstate access services provided by the LECs.[105]

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effects of the service on the carrier's traffic and revenues for that representative 12 month period. Section 61.38(b)(2) of the Commission's Rules, 47 C.F.R. § 61.38(b)(2).

[102] *LEC Price Cap Order*, 5 FCC Rcd at 6810 (para. 193).

[103] MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983), *modified on recon.*, 97 FCC 2d 682 (1983), *modified on further recon.*, 97 FCC 2d 834 (1984), *aff'd in principal part and remanded in part*, National Association of Regulatory Utility Commissioners v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985), *modified on further recon.*, 102 FCC 2d 849 (1985).

[104] 47 C.F.R. Part 69.

[105] All LECs are required to comply with the Part 69 rules.

The Part 69 rules prescribe the offering of two basic forms of interstate access services -- "switched access" and "special access."[106] For the switched access services, the Part 69 rules prescribe the elements that must be used in the access tariffs. Part 69 does not prescribe a rate structure for special access services.

68. A LEC that seeks to introduce a rate element for interstate switched access services that is not provided under the Part 69 rate structure rules may request that the Commission grant the LEC a waiver of the rules pursuant to Section 1.3.[107] In the waiver request, the LEC specifies the exact rate elements intended for the service. Under Section 1.3, we are authorized to grant a waiver of our rules "if good cause therefor is shown."[108] As interpreted by the courts, this requires that a petitioner demonstrate that "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."[109]

69. LECs have argued that many new services and technologies do not readily fit the existing Part 69 rate structure requirements, and that the process for obtaining a waiver of the rules to introduce a new rate element is costly, time-consuming, and poses a significant impediment to the development and introduction of new services.[110] In the *First Report and Order*, we indicated that we were not convinced that this proceeding was the appropriate forum in which to conduct a review of the Commission's Part 69 rules and did not anticipate that this Second Further Notice would include a review of the Part 69 rules.[111] We continue to believe that a comprehensive review of our Part 69 rules should appropriately be pursued in a separate proceeding; however, we also believe that the benefits of the changes to the treatment of new services proposed above might be diminished if we did not make some immediate changes to the Part 69 waiver process. We are concerned that we not retain any undue restrictions which might hinder LECs' ability to respond to the marketplace or to introduce new services.

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[106] Switched access services utilize the local exchange switch to interconnect transmission facilities and route traffic. With special access or leased line service, traffic is carried on facilities dedicated to the use of a particular customer, which could be an interexchange carrier or a business user.

[107] A LEC seeking to introduce a rate element not prescribed under the Part 69 rate structure rules for interstate access services may also request that the Commission initiate a proceeding to change our rules.

[108] 47 C.F.R. § 1.3.

[109] Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969).

[110] *See First Report and Order*, para. 398, and pleadings cited therein.

[111] *Id.* at para. 416.

70. We propose to modify Part 69 so that price cap LECs would not be required to seek a waiver of Part 69 each time they want to establish new rate elements for a new switched access service, thus relaxing the regulatory process relating to the introduction of such new services. Our intention is to facilitate the expeditious introduction of new switched access services while insuring that there is adequate protection against anti-competitive actions. Specifically, we propose to eliminate the need for waiver of the Part 69 rules. We further propose to modify Part 69 to permit the introduction of new services based on a public interest finding. Once the Commission determines that the public interest would be served by one price cap LEC establishing new rate elements for a new switched access service, we propose to permit others to introduce new services consistent with that ruling in an expedited fashion. These proposals would apply to the offering of an APP which establishes new rate elements for an existing service, as well as the introduction of a new service.

71. First, we propose amending Part 69 to allow a price cap LEC to file a petition proposing to establish new rate elements for a new switched access service. Rather than meeting the standard required for a waiver of our rules, the LEC would be required to show that the offering would serve the public interest. We seek comment on specific criteria by which to evaluate such a public interest showing. Second, we propose that once the Commission grants the first LEC's petition to establish a new rate element, other price cap LECs would be allowed to submit a certification letter stating an intention to provide the same service and to establish the same rate elements. The certification would include a description of the proposed service and the rate elements to be utilized so that we can analyze the proposed offering. No waiver of our rules would be required, and Part 69 requirements would be deemed satisfied within a short period of time (*e.g.*, 10 days), unless the Bureau concludes within that time that the subsequent LEC's service offering raises issues that were not considered in the original order granting the petition to establish the new rate elements. If the Bureau does not act within the prescribed period of time, authority to establish the rate elements in question would be deemed granted. In the event the Bureau denies certification, we propose requiring the LEC to file a traditional Part 69 waiver petition.

72. Third, we propose permitting the first LEC proposing the new switched access service to provide less specificity in the description of its proposed rate structure than we have required previously. Rather than requiring the LEC to request and be granted authority to establish specific rate elements for a service, we propose permitting it to describe the service to be offered and to describe alternative ways in which the rate elements may be established for the service. The Bureau order granting the petition would specify which types of rate elements would be acceptable for the proposed service.

73. Fourth, if we divide new services into Track 1 and Track 2 categories as discussed previously, we propose to amend Part 69 to relax further the procedures for establishing new rate elements for services that would be eligible for Track 2 new service treatment. Specifically, we would propose permitting a price cap LEC desiring Track 2

treatment for a new service and needing grant of its petition to establish new rate elements for the service (again this would be the first LEC proposing a particular new service) to seek both a determination of Track 2 status and grant of its petition in the same filing and to review the filing under the same expedited procedures that we propose for petitions which seek only a determination of Track 2 status. By consolidating the procedures for obtaining Track 2 treatment and grant of the petition, we believe that we would facilitate the introduction of new services and ease administrative burdens faced by price cap LECs without significant risks of anti-competitive consequences.

74. We seek comment on our proposal, and invite commenters to make other proposals on this subject. Commenters suggesting other approaches should explain how their approaches would still provide an appropriate level of regulatory protection and the ease in which they could be administered.

Issue 4a: Should we eliminate the requirement for, or simplify the process of, obtaining a waiver of Part 69 for new switched access services and, if so, how? What standard should we use in determining whether to grant a petition proposing to establish new rate elements for a switched access service? Would there be any anti-competitive or other negative effects from modifying the current system?

Issue 4b: How should any new procedures with respect to Part 69 waivers be coordinated with the process for determining whether a new service is a Track 1 or Track 2 service as defined in the previous subsection herein if those concepts are adopted?

4. Elimination of Lower Service Band Index Limits and Other Pricing Flexibilities

75. We propose the elimination of the lower service band limits in the price cap plan. We believe this change will result in more efficient pricing, enhance competition, and will not adversely affect ratepayers. We also invite commenters to propose other measures we could take which could promote cost-based pricing, eliminate pricing restrictions, and enhance competition.

76. By way of background, under the price cap plan, a separate PCI applies to each of the four service baskets and separate upper and lower SBI limits apply to each of the categories and subcategories within the traffic sensitive and trunking baskets. Service baskets and bands are methods of restricting pricing flexibility that carriers would otherwise have if the Commission had adopted a theoretically pure price cap system. In a pure price cap system, all services offered by a carrier would be subject to a single price cap, and carriers

would have unlimited ability to migrate individual prices up or down so long as aggregate prices remained below the cap.[112]

77. In the *AT&T Price Cap Order*, we established the price cap plan for AT&T and sought comment on and proposed the LEC price cap plan. We noted there that the proposed LEC price cap plan restricted pricing flexibility more than the baskets and bands we established for AT&T. These greater restrictions were imposed because LEC services were less competitive than interexchange services. We initially proposed setting the pricing bands for service categories in the traffic sensitive and special access (now trunking) baskets at plus or minus 5 percent, to balance the need for regulatory control and rate flexibility.[113] Central to the Commission's decision to impose the lower band limits was its concern that LECs would set prices in an anticompetitive manner.[114] In that decision, however, we sought further comment on whether the lower bands regulation could be relaxed and whether these pricing limits should be set at the same level as AT&T's bands.[115]

78. In the *LEC Price Cap Order*, we established upper and lower limits for service categories in the traffic sensitive and special access service baskets to create a "no-suspend" band within which LECs may move prices up or down five percent on short notice, and with a presumption of lawfulness. Rates that departed from the band were subject to a more challenging tariff review process.[116] No service category banding requirements were imposed on the common line basket or on the interexchange basket.[117]

79. Subsequently, we re-evaluated the service categories and rate bands in a number of orders with the objective of reducing unneeded regulation. For example, in the *Switched Transport Expanded Interconnection Order*, we adopted zone density pricing for switched transport services and expanded the pricing band within each zone to 5 percent up and 10 percent down annually relative to the price cap index applicable to the traffic sensitive service basket without triggering any additional cost justification or advance notice requirements. The weighted average of all rates in the same service category, however, must conform to the pricing bands for that service category. To achieve this goal, we

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[112] *LEC Price Cap Order*, 5 FCC Rcd at 6810 (para. 198).

[113] *AT&T Price Cap Order*, 4 FCC Rcd at 3239 (para. 758). In the *LEC Price Cap Order*, we adopted 5 percent as the upper and lower bounds for the service categories in the special access basket. *LEC Price Cap Order*, 5 FCC Rcd at 6813-14 (paras. 224-26).

[114] *AT&T Price Cap Order*, 4 FCC Rcd at 3239 (para. 758).

[115] *AT&T Price Cap Order*, 4 FCC Rcd at 3239 (para. 758).

[116] *LEC Price Cap Order*, 5 FCC Rcd at 6811 (para 204).

[117] *LEC Price Cap Order*, 5 FCC Rcd at 6811 (paras. 205-06).

created two subindexes in each density zone, one for tandem-switched transport rates and the other for direct trunked transport, entrance facilities, and dedicated signalling transport. Transport services in the aggregate were banded at plus 5 and minus 5 percent at the service category level for direct-trunked transport and entrance facilities or at plus 2 percent and minus 5 percent at the service category level for tandem-switched transport. In addition, LECs were permitted to price within plus 5 percent and minus 10 percent ranges in each density zone.[118]

80. We again examined the service band issue in the *Second Transport Order*.[119] Although the LECs urged us to expand the bands, especially in the presence of competition, we elected to make no changes at that time. We continued to believe that there was insufficient competition to protect the public interest and that the service category bands constrained the LECs' ability to offset rate reductions in some service categories with rate increases in other categories. Because of those concerns, we adopted additional constraints on the LECs' ability to change rate relationships in the trunking basket. Specifically, we placed flat-rated DS3, DS1 and tandem-switched transport in separate service categories or subcategories and applied separate zone bands to each category.[120]

81. In the *First Report and Order* in this proceeding, we considered once again the issue of expanding the service bands and concluded that enlarging the lower service band limits would not greatly increase the risk of successful predation. This conclusion was based in part on the growth in competition that the industry has experienced since the adoption of expanded interconnection for special access and switched transport and in part on the substantial benefits that consumers would realize from lower prices. We noted that the Commission has other mechanisms at its disposal to inhibit predatory pricing, such as the continuing requirement that below-band rate reductions be accompanied by cost support, and the formal complaint process established by Section 208 of the Communications Act. Finally, we noted that permitting LECs greater downward pricing flexibility removes incentives for inefficient entry. As a first step, we modified the five percent lower band limits that apply to most service categories within the traffic sensitive and trunking baskets by expanding them to 10 percent. In addition, we increased the lower pricing band limits that apply to density pricing zones from 10 percent to 15 percent to ensure that LECs continue to have the opportunity to move their rate levels in particular geographic zones toward cost.[121]

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[118] *Switched Transport Expanded Interconnection Order*, 8 FCC Rcd at 7431-32 (paras. 111-12).

[119] *Transport Second Report and Order*, 9 FCC Rcd 615, 629 (para. 32).

[120] *Transport Second Report and Order* at 625, 629 (paras. 21, 32).

[121] *First Report and Order*, para. 411.

82. Although the changes that we imposed in the *First Report and Order* were limited in scope, we indicated a willingness to make additional changes in the price cap rules as competition developed.[122] We pointed out our belief that downward pricing flexibility is in the public interest and stated that we would issue another notice to investigate the conditions that might warrant further relaxation of the lower bands.[123] We have also permitted substantial downward pricing flexibility by allowing below-band rates to take effect.[124]

83. Eliminating the lower service band limits for all service categories in both the traffic sensitive and trunking baskets would increase LEC pricing flexibility and allow price cap LECs to move prices closer to cost. We expect that it might immediately result in lower rates for certain competitive access services. The current price cap plan may inhibit a LEC from lowering its prices to cost in certain instances, because of the administrative burden and length of time it can take for below-band filings to be approved.[125] In those instances, inefficient entry may be encouraged and new or existing LEC competitors have no incentive to price their services at cost. Instead, they will price their service just enough below the LEC price to attract customers. If the lower service band limit were eliminated, the LECs and their competitors will be able to engage in true competition and bring prices down toward cost immediately. The lower service band limits were designed to prevent LECs from lowering their prices below cost in order to thwart competition and then raising them after competitors have been driven from the market. Because they restrict the LECs' ability to raise prices after they have been lowered, the upper service band limit, at five percent above the LEC's new lower rate, and the price cap itself would remain as disincentives to predatory pricing if the lower service band limits were to be eliminated. Additional restrictions on raising rates after rate reductions could further serve as a disincentive to predatory pricing in the absence of lower service band limits. In addition, below cost or predatory prices could still be challenged through a petition against a tariff filing or the formal complaint process. The petitioning or complaining party bears the burden of demonstrating that the challenged prices are below cost, while currently the LEC bears the burden of demonstrating that below-band rate reductions are not below cost. Thus, elimination of lower service bands shifts the burden of proof from the LEC to the petitioner.

84. As we stated, one of the primary reasons for our proposing to eliminate the lower service band limits is to allow price cap LECs to move prices more quickly towards costs in situations where they may be currently inhibited from doing so. As discussed above, moving prices towards economic costs is a key goal as we consider modifications to the price

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[122] *First Report and Order*, para. 412.

[123] *First Report and Order*, para. 408.

[124] *GTE Below-band Investigation*, 10 FCC Rcd 1573.

[125] *See id.*

cap system. Since the establishment of the price cap system, we have made certain changes which may promote this goal, including modifying the principle that prices must be geographically averaged for each study area to allow zone density pricing for certain services. For some services, we have permitted increased downward pricing flexibility in some geographic areas, or zones, to reflect cost differences due to differences in traffic density.[126] For example, we allowed NYNEX to deaverage the residual interconnection charge (RIC) in the New York City metropolitan area and to establish different RICs in each density pricing zone.[127] We invite parties to propose additional pricing flexibilities that would promote the movement of prices towards costs generally. We invite parties specifically to discuss the relationship between downward pricing flexibility and varying costs, demand and other characteristics of different geographic markets such as density zones. Parties should explain how a particular proposal would promote our goals, why it would not have negative competitive effects, and discuss whether this is the appropriate forum for considering the issue. They should also discuss whether the proposal should be allowed regardless of the current level of competition or only upon a showing that certain competitive conditions exists.

85. We solicit comment on the following questions:

Issue 5a: Should we further expand or eliminate the lower service band index limits for all access services? Does there remain a danger of predatory pricing or other anti-competitive practices? Would this additional downward pricing flexibility harm any LEC customers? Would it harm competition?

Issue 5b: Should we place additional limits on the ability of a LEC that decreases prices pursuant to this flexibility to subsequently increase those prices in order to preclude the potential for anti-competitive pricing strategies?

Issue 5c: Are there any other pricing flexibilities which we should adopt to promote cost-based pricing? How would the proposal promote our objectives? Would added flexibilities cause competitive harm? What is the relationship between downward pricing flexibility and the varying cost, demand, and other

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[126] *Special Access Expanded Interconnection Order*; *Switched Transport Expanded Interconnection Order*.

[127] The conditions we placed on this waiver are: (1) NYNEX may not raise any interconnection charge to offset a decrease in another interconnection charge; (2) NYNEX may not, once it lowers an interconnection charge, raise that charge later; and (3) NYNEX may not lower the RIC below a floor equal to the rate element's relative share of tandem switching costs. *NYNEX Universal Service Waiver Order*, 10 FCC Rcd 7445, paras. 54-55.

characteristics of different geographic markets? Should additional pricing flexibilities be considered in this proceeding or in another context?

5. Revision of Baskets

86. The price cap plan divides services among four service baskets, each subject to its own price cap.[128] The four service baskets are common line, traffic sensitive, trunking and interexchange.[129] Within the traffic sensitive and trunking baskets, services are grouped into separate service categories.[130] Price changes within service categories are constrained by the upper and lower service band indexes.[131] The assignment of services to price cap baskets and bands is intended to replicate the effect of competition.[132] Services with common characteristics, for example, similar levels of competition, are grouped within a single basket. A carrier is prevented from subsidizing price decreases for services in one basket with increases in another, because changes in prices within one basket do not affect computation of the API and PCI in other baskets.[133]

87. In the *LEC Price Cap Order*, we divided services among baskets according to the then-existing interstate access structure set forth in Part 69 of the Commission's Rules.[134] In the *Second Transport Order*, we realigned the division of services among baskets by combining transport and special access services into the newly-created trunking basket. The Commission decided to "mov[e] transport services out of the traffic sensitive basket and into a basket with special access services . . . [to] prevent the LECs from offsetting rate reductions for transport services subject to competition with rate increases for switching and other traffic sensitive services, which [were] subject to much less competition" at that time.[135]

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[128] *LEC Price Cap Order*, 5 FCC Rcd at 6811.

[129] Section 61.42(d) of the Commission's Rules, 47 C.F.R. § 61.42(d). We have also solicited comment on whether to establish a separate price cap basket for video dialtone services. *Further Notice*, 10 FCC Rcd at 3147-49.

[130] Section 61.42(e) of the Commission's Rules, 47 C.F.R. § 61.42(e).

[131] Section 61.47 of the Commission's Rules, 47 C.F.R. § 61.47.

[132] *Notice*, 9 FCC Rcd at 1694.

[133] *Id.*

[134] *LEC Price Cap Order*, 5 FCC Rcd at 6788.

[135] *Transport Second Report and Order*, 9 FCC Rcd at 622.

88. In the initial *Notice*, we sought comment on whether we should revise the basket structure both as a baseline and as a transition issue.[136] In its comments, USTA proposed four baskets organized to allow for the grouping of rates for equivalent functions: transport, switching, "public policy,"[137] and "other."[138] Most LECs generally supported USTA's proposal.[139] NYNEX noted that with the recent formation of the trunking basket, the Commission's current baskets adequately group services by functionality. It suggested retaining them with minor revisions and renaming them with the names suggested by USTA.[140] Pac Bell supported USTA's proposal and stated that ultimately there should be only two baskets: one basket for services subject to explicit and implicit subsidies, and the other for services that are subject to high elasticities of supply and demand, but are not fully competitive. Services offered in competitive markets would be removed from price cap regulation altogether.[141] Other commenters supported maintaining the current composition of baskets.[142]

89. In the *First Report and Order*, we noted that the rate of development of competition is likely to differ for each of the price cap baskets, and that it will remain important to avoid grouping services with different levels of competition in the same basket.[143] Because the baskets were established to prevent LECs from raising prices for non-competitive services to recoup lost revenues due to price decreases for competitive services, we concluded that modifications to price cap baskets and bands may be necessary as competition develops in local telephone markets.[144] The record in Phase I of Docket No. 94-1 did not provide sufficient information on the state of competition to support making any immediate changes in the composition of baskets.[145]

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[136] *Notice*, 9 FCC Rcd at 1695, 1705-06.

[137] USTA's proposed public policy basket would include the special access surcharge, end user common line charge, and the carrier common line charge (or any substitute recovery mechanism). USTA Comments at 68.

[138] USTA Comments at 66-72; *see also First Report and Order*, para. 380.

[139] *See First Report and Order*, para. 381.

[140] NYNEX Comments at 23-27.

[141] Pac Bell Comments at 102.

[142] *See First Report and Order*, para. 382.

[143] *Id.*, para. 414.

[144] *Id.*

[145] *Id.*

90. We seek comment on whether the development of competition for particular services requires adjustment to the current basket structure and whether and how the basket structure should be changed as competition continues to emerge. For example, we seek comment on the kinds of changes in market circumstances that might be identified now as triggers for future revisions to the basket structure. We seek comment on whether we should plan to make changes to the basket structure on an industry-wide basis, in this or future rulemakings, or on a case-by-case basis as competitive circumstances change for individual price cap LECs. Commenters should also address under what circumstances, if any, multiple baskets could be eliminated. For example, if sharing were eliminated, thereby diminishing LEC incentives to manipulate their rate of return, and entry barriers come down, including unbundling of the local loop, would there be a continuing need for multiple baskets?

91. In addition, parties should comment on the need to create one or more new baskets to accommodate LEC entry into new services that may not be subject to competition. For example, the expanded interconnection virtual and physical collocation tariffs have until now been held out of price caps. We seek comment on whether there are circumstances, now or in the future, that would justify bringing these services into price caps.

92. We solicit comment on this issue, particularly the following questions:

Issue 6a: Would any revisions to the price cap baskets serve our goals in this proceeding? If so, explain how they would serve those goals. Would there be any adverse effects on end-users or competition?

Issue 6b: Under what circumstances should the price cap baskets be revised? Can revisions be planned to take place automatically on achievement of particular milestones or must they be done on an individual basis or after a periodic review? If they can be planned to take place on achievement of particular milestones, what should those milestones be? Should any individual review of the basket structure be done as part of a rulemaking proceeding? Are there any other procedures that would be appropriate?

Issue 6c: As competition develops at different rates for different services within different geographic markets, should different basket structures be established for a particular LEC or within a particular study area or even within a smaller geographic area?

6. Consolidation of Service Categories

93. Consolidation of service categories would allow a LEC more pricing flexibility. We created separate service categories in the price cap plan to group together services with high cross-elasticities of demand. This limits the LECs' ability to offset rate decreases for more competitive services with rate increases for less competitive services.[146] If services have high cross elasticities and are competitive with one another, then they can be included in the same service category without creating an incentive for the LECs to lower the price of one service and raise the price of another.

94. We invite commenters to suggest service category consolidations that they believe would be appropriate and would not result in competitive harm. For example, USTA, in an ex parte statement filed in Phase I of the performance review proceeding, advocated eliminating the DS1 and DS3 subcategories.[147] Comments should address whether the services proposed to be grouped in the same category share similar demand characteristics, and whether there is any reason to anticipate that LECs would adjust their prices in a way that would harm competition or otherwise not be in the public interest. We note, however, that if we eliminate lower service band index limits as proposed earlier in this Second Further Notice, consolidation of service categories would not provide any additional downward pricing flexibility, but instead would provide additional upward pricing flexibility by creating "headroom" for services that are in the same service category with services for which the LECs have lowered their rates.

95. Combining service categories would entail adjusting the relevant SBIs. For example, when we combined the transport services with special access services to create the trunking basket, we based the upper and lower bands on the weighted average of the pre-existing upper and lower bands for special access services and the five percent upper and lower bands for the flat-rated transport services.[148]

Issue 7a: Would any service category consolidations serve our goals in this proceeding? If so, explain how they would serve those goals. Would there be any adverse effects on end-users or competition?

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[146] *LEC Price Cap Order*, 5 FCC Rcd at 6811 (para. 203); *BNA Order*, 8 FCC Rcd at 4483 (para. 24).

[147] *Ex Parte* Letter from USTA, Attachment 2 at 2 (filed Jan. 18, 1995)(*January 18 Letter*); *see also First Report and Order*, para. 386. We stated in the *First Report and Order* that we believed that it would be premature on the record that we had before us at that time to modify the structure of the LEC price cap baskets. *First Report and Order*, para. 412.

[148] *Transport Second Report and Order*, 9 FCC Rcd at 631-632 (paras. 35-36).

Issue 7b: Under what circumstances can consolidation of service categories occur?

Issue 7c: If service categories are combined, how should the relevant SBIs and the SBI upper and lower limits be adjusted?

7. Further Notice of Proposed Rulemaking in CC Docket No. 93-124

a. Operator Services

96. In 1993 we initiated a rulemaking proceeding in which we proposed that a new service category be created in the traffic sensitive basket for certain operator services (*Operator Services Notice*),[149] specifically, operator transfer service and line status verification. Operator transfer service (also known as "0-" transfer) is provided when a LEC operator receives a "0-" call from a party seeking to place an interLATA call and the LEC operator transfers that call directly to the interexchange carrier (IXC) selected by that party. Line status verification (also know as busy line - verification) is provided when a LEC operator checks, on behalf of an IXC operator, whether a particular access line is either "busy" or out-of-service. The LEC operator, after determining that a line is "busy," may also interrupt that line for emergency purposes (known as busy line - interrupt).[150]

97. Since the *Operator Services Notice* was released, we have created other new categories, including billing name and address (BNA) in the traffic sensitive basket[151] and signalling for tandem switching in the trunking basket.[152] BNA is the name and address provided to a LEC by each of its local exchange customers to which the LEC directs its bills for its services. Provision of BNA by a LEC to one of its IXC customers is a communications common carrier service which must be provided under tariff.[153] Signalling for tandem switching is the provision of signalling information necessary for tandem switching from LEC equal access end offices to a tandem switching provider.[154]

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[149] *See* Treatment of Operator Services Under Price Cap Regulation, CC Docket No. 93-124, Notice of Proposed Rulemaking, 8 FCC Rcd 3655 (1993) (*Operator Services Notice).*

[150] *See Operator Services Notice*, 8 FCC Rcd 3655 n.1.

[151] *BNA Order*, 8 FCC Rcd 4478 (1993) (*BNA Order*); *modified on recon.* 8 FCC Rcd 6393; *further modified on recon.*, 8 FCC Rcd 8798.

[152] Expanded Interconnection with Local Telephone Company Facilities, Transport Phase II, Third Report and Order, 9 FCC Rcd 2718 (1994)(*Expanded Interconnection Third Report and Order*).

[153] *Second BNA Reconsideration Order*, 8 FCC Rcd at 8798.

[154] *Expanded Interconnection Third Report and Order*, 9 FCC Rcd 2718.

98. We now seek comment whether operator services should be in its own service category or combined with any others. We hereby incorporate the *Operator Services Notice* and the record created in response to that notice into this proceeding. Commenters, however, should update their remarks in the *Operator Services* docket to address whether operator services can be consolidated with any other recently established service categories.

Issue 8: Should operator services be placed in its own service category in the traffic sensitive basket or combined with another new or pre-existing service category?

b. Call Completion Services

99. In the *Operator Services Notice* discussed above, we sought comment on the price cap treatment of two particular operator services.[155] Since 1993, when we developed the record in that proceeding, several LECs have begun to provide more general "call completion" services, such as, for example, automated handling of calling card, third party, or collect calls, or live operator assistance.[156] As a result, we have not developed a record on the proper price cap treatment of call completion services. For purposes of this Notice, we will refer to these services as "operator-related call completion services."

100. These services are distinguishable from another service developed since 1993, also referred to as "call completion" service, in which the carrier completes the call for the end user immediately after providing directory assistance.[157] We have not developed a record on the proper price cap treatment of these call completion services either. For purposes of this Notice, we will refer to these services as "directory assistance-related call completion services."

101. We believe that both operator-related and directory assistance call completion services are properly placed in the traffic-sensitive basket. We also believe that operator-related call completion services are subject to more competition than operator transfer service

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[155] *See Operator Services Notice*, 8 FCC Rcd 3655.

[156] LECs have established a separate rate element for these services, established pursuant to waiver. *See* Bell Atlantic Telephone Companies, Southwestern Bell Telephone Company, Petitions for Waiver of Section 69.4(b) of the Commission's Rules, 9 FCC Rcd 7868 (Com. Car. Bur. 1994); BellSouth Telecommunications, Inc. Petition for Waiver of Section 69.4(b) of the Commission's Rules, 10 FCC Rcd 3312 (Com. Car. Bur. 1995); NYNEX Telephone Companies, Petition for Waiver of Section 69.4(b) of the Commission's Rules, 10 FCC Rcd 4593 (Com. Car. Bur. 1995).

[157] *See* Ameritech Operating Companies, 10 FCC Rcd 4559 (Com. Car. Bur. 1995). Ameritech sought a waiver of Part 69 to establish a subelement within the information rate element for this service. The Bureau denied this petition, but granted Ameritech a waiver to establish a new separate rate element outside any existing rate element for this service.

and line status verification, because they may be provided by any operator service provider (OSP). Accordingly, placing these services in the same service category as operator transfer service and line status verification may not be appropriate. On the other hand, directory assistance-related call completion services do not seem likely to be competitive, because access to current directory listings would seem to be necessary to provide this service.

102. Accordingly, we seek comment on the following issues:

Issue 9a: What is the proper price cap treatment of operator-related call completion services?

Issue 9b: What is the proper price cap treatment of directory assistance-related call completion services?

8. General Issues

103. We propose that price cap LECs generally at this time be afforded the relaxed regulatory treatment for the introduction of service offerings and allowed to utilize the pricing flexibilities discussed in this Section IV.B. We request that parties comment on this question:

Issue 10a: As to each proposed relaxation of regulation and pricing flexibility, should LECs be permitted to take advantage of the regulatory relief and pricing flexibility at this time or should they first have to make a showing that a certain level of competition exists before being able to use it? If a showing should be required, what should the showing be and why?

104. We propose that LECs be permitted to take advantage of any or all of the relief and flexibilities proposed in this Section IV.B. at their discretion. All of our proposals are designed to encourage the expeditious introduction of new services and give LECs increased flexibility to reduce rates. We do not believe that the cumulative effect will cause competitive harm. We request that parties comment on the following:

Issue 10b: What is the relationship between the various regulatory relief and pricing flexibilities we have proposed and should any restrictions be placed on the ability of a LEC to take advantage of one type of relief or flexibility in combination with another? Should some relief be granted only after successful implementation of other forms of relief, or are there other sequencing concerns we should consider?

105. The downward pricing flexibilities provided by our proposals in this Second Further Notice are designed to stimulate the movement of rates for services closer to the

costs of those services. We recognize, however, that there may be a concern that LECs might utilize these flexibilities to temporarily decrease prices to drive competitors out of the market or discourage entry and then subsequently raise those prices. We therefore propose additional limits on subsequent upward pricing to preclude this type of anticompetitive behavior. Although rate increases under our existing regulations for most service categories and subcategories are limited to five percent by the upper SBI limit, we propose, with respect to any service category or subcategory in which a LEC makes price reductions pursuant to the pricing flexibilities in this Second Further Notice, that the LEC be subject to a one percent upper SBI limit. This would insure that rate reductions undertaken pursuant to the flexibilities provided in this Second Further Notice are more or less permanent.

Issue 10c: Should we impose new limits on subsequent upward pricing flexibility after a price has been reduced? If so, what should those limits be? If such limits are unnecessary, explain why they are not needed to protect consumers and to insure a competitive marketplace.

C. Measures of Competition for Regulatory Relief

1. Introduction

106. In the preceding section of this Second Further Notice, we solicit comment on several proposals to relax our requirements relating to the introduction of service offerings, afford price cap LECs certain additional pricing flexibility within the LEC price cap plan and certain other matters, and whether some or all could be implemented immediately. We are aware that parties may recommend providing this relaxed regulatory treatment only after a LEC has demonstrated that it has begun to face a higher level of competition, or has taken certain steps to remove barriers to competitive entry. We expect that such a demonstration of competitive circumstances would be a lower hurdle to meet than the substantial competition test discussed in Section V for streamlining, and would focus primarily on removal of barriers to competition. In this section, we propose to examine the existence of competitive circumstances within a given geographic and product market in terms of barriers to competitive entry in the market. We tentatively conclude that lowering entry barriers is the most appropriate mechanism for conditioning additional price cap flexibilities because additional flexibilities within the price cap framework are forms of regulatory relief that are intended to allow the LECs to respond to emerging competition, and in some cases that allow efficient competition to occur. In contrast, we propose later in this notice to remove services from price caps altogether once we have evidence of a certain level of actual competition for those services. We believe that in those cases in which pricing flexibility or other regulatory relief is predicated on some demonstration of competitive circumstances, the demonstration should be related to the type of regulatory relief that is being sought. Also, the relief should leave intact the regulation that is necessary to limit or prevent anti-competitive pricing practices. Clearly, some competitive criteria are more relevant to some kinds of regulatory

relief than to others. Parties recommending requiring a demonstration prior to a particular grant of pricing flexibility or other regulatory relief should explain why that particular regulation is necessary to limit or prevent cross-subsidization, predatory pricing or other anticompetitive behavior.

2. Removal of Barriers to Local Competition

107. We could predicate the granting of relaxed regulatory treatment or additional pricing flexibility on a demonstration that certain barriers to competitive entry into the local services market have been removed. Basing relaxed regulatory treatment and additional pricing flexibility on the elimination of entry barriers can serve as a mechanism for encouraging LECs to open their markets to local competition.

108. Some parties in the first phase of CC Docket No. 94-1 and in other contexts have developed lists of criteria that they believe provide reasonable indicators that barriers to entry into the market for local service have been lowered sufficiently to warrant some kind of regulatory relief.[158] These "competitive checklists" contain many of the same criteria. Some criteria common to most, if not all, of these checklists are as follows:[159]

a. competing providers of local switched telephone service have been authorized and have become operational;
b. local loops and switches have been unbundled, *i.e.*, a LEC's competitors may obtain access to the local loop directly, without purchasing local switching or other services;
c. intrastate expanded interconnection is available through tariff or contract (physical or virtual collocation);
d. service provider number portability is available, *i.e.*, end users are able to switch local service providers and retain their current telephone number;
e. compensation arrangements have been established for the LEC and its competitors to complete telephone calls originated on the other carrier's networks;
f. competitors have access to directory assistance, 911, and other databases;

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[158] *See NYNEX March 3 Proposal* at 4; S. Rep. No. 104-23, 104th Cong., 1st Sess. (Mar. 30, 1995), regarding S.652, at Section 251(b); Anne K. Bingaman, Assistant Attorney General for the Antitrust Division for the Department of Justice, speech before the National Press Club on Feb. 28, 1995; Discussion paper of Ray Marshall, former Secretary of Labor, presented at the University of Texas at Austin in May 1994. A copy of this speech and discussion paper will be placed in the docket file for this proceeding at the time this Second Further Notice is released.

[159] Most of these criteria are also contained in pending legislation. H.R. 1555, 104th Cong., 1st Sess. (1995); S. 652, 104th Cong., 1st Sess. (1995).

g. intra-LATA toll dialing parity is implemented, *i.e.*, consumers are able to place calls dialing the same number of digits when using any local service provider; and

h. competitors have implemented or announced plans to collocate, or otherwise deploy facilities, and serve customers in wire centers (or other geographic areas) that account for a significant portion of the incumbent LEC's business lines or interstate access revenues.[160]

109. We note that while some barriers may be directly under the incumbent's control, others are the result of state regulations or statutes. Nonetheless, eliminating state-imposed entry barriers may be necessary to ensure that our proposed modifications to the price cap plan promote competition.

110. We invite comment on basing grants of additional regulatory relief and pricing flexibility on some "competitive checklist" in general. We also seek comment on what items should be included in the checklist to be used for particular grants of regulatory relief and pricing flexibility. Although we do not intend in this proceeding to decide, for example, whether or how local loops should be "unbundled" or how local number portability should be achieved,[161] we are interested in the views of the parties whether the removal of any particular barriers to entry would be truly essential to facilitate competition before we can make any of the proposed changes in LEC price cap regulation. Conversely, we ask parties to address whether the elimination of all barriers to entry would in itself be sufficient to move prices toward cost in the interstate access market. In addition, we seek comment on the relationship between exogenous and endogenous barriers to entry in a price cap LEC's market and the LEC's ability to enter its competitors' or its customers' markets. Finally, we invite commenters to propose any other tests that reasonably could be used as a trigger for the relaxed regulatory measures we propose. For example, some parties have suggested that local bottlenecks to access services can be eliminated by having LECs separate the bottleneck facilities from the provision of access services and offer the unbundled loop elements to competitors at "wholesale" rates. Access services would be offered to end-users only through a subsidiary or affiliate of the LEC, purchasing the loop facilities at the same wholesale rate as competitors. The plan recently implemented in Rochester is one model of such an approach,[162] and we seek comment on this approach for markets other than Rochester.

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[160] This particular measure is one of near-term supply elasticity or addressability, but may be an indicator that entry barriers have been removed.

[161] Telephone Number Portability, Notice of Proposed Rulemaking, CC Docket No. 95-116, FCC 95-284 (released: July 13, 1995).

[162] *Rochester Telephone Corp. Order.*