receiving local calls.[380] ESPs, consequently, typically pay incumbent LECs a flat monthly rate for their connections regardless of the amount of usage they generate. Pacific Bell estimates that calls to Internet-provided services could comprise up to 25 percent of its traffic by the end of the decade.[381] US West projects that 30 percent of all local exchange traffic will be for access to the Internet by the year 2000.[382] The Internet access market is also highly competitive and dynamic, with over 2,000 companies offering Internet access as of mid-1996.[383] It is extremely likely that, had per-minute interstate access rates applied to ESPs over the past 13 years, the Internet and other information services would not have developed to the extent they have today -- and indeed may not have developed commercially at all.

286. For some time, however, incumbent LECs and others have argued that ESPs impose costs on the network that are similar to those imposed by providers of interstate voice telephony, and that ESPs should therefore pay interstate access charges.[384] Several parties made this argument in their comments in response to a petition filed by America's Carriers Telecommunications Association (ACTA) earlier this year.[385] In addition, four BOCs have filed studies in recent months purporting to show that the current pricing structure for Internet access contributes to the congestion of incumbent LEC networks.[386] The BOCs claim that Internet users typically stay on the line far longer than voice users, but that the flat monthly rates Internet service providers pay to incumbent LECs do not cover the additional cost of network upgrades that are required to support such traffic.

287. In response, information service providers argue that the rates they pay to incumbent LECs, combined with the additional revenues from sources such as second lines

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[380] Business line rates often include per-minute usage charges for outgoing calls, but Internet service providers tend to exclusively receive calls from their subscribers.

[381] Pacific Bell Comments in RM 8775 at 11.

[382] US West Comments in RM 8775 at 2-3.

[383] Internet Service Providers Quarterly Directory Summary 1996.

[384] *See, e.g.*, *ESP Exemption Order*, 3 FCC Rcd at 2631.

[385] America's Carriers Telecommunication Association, Provision of Interstate and International Interexchange Telecommunications Service via the "Internet" by Non-Tariffed, Uncertified Entities, Petition for Declaratory Ruling, Special Relief, and Institution of a Rulemaking, RM-8775 (filed Mar. 4, 1996) (*ACTA Petition*). We address other issues raised in ACTA's petition in a separate Order.

[386] Letter from Joseph J. Mulieri, Bell Atlantic, to James D. Schlichting, FCC, June 28, 1996; letter from Kenneth Rust, NYNEX, to James Schlichting, FCC, July 10, 1996; Letter from Glenn Brown, US West, to James Schlichting, FCC, June 28, 1996; Letter from Alan Ciamporcero, Pacific Telesis, to James Schlichting, FCC, July 2, 1996.

installed for Internet usage, more than cover the costs they impose on the network.[387] These parties also argue that the imposition of access charges would stifle growth, investment, and innovation in information services, causing detrimental effects for the economy and U.S. competitiveness.[388] The Network Reliability and Interoperability Council (NRIC), an advisory committee of industry representatives organized to advise the FCC, is also looking into the effects of Internet usage on the public switched telephone network.[389]

288. We tentatively conclude that information service providers should not be required to pay interstate access charges as currently constituted. As we have explained throughout this Notice, the existing access charge system includes non-cost-based rates and inefficient rate structures. We see no reason to extend this regime to an additional class of users, especially given the potentially detrimental effects on the growth of the still-evolving information services industry.[390] Although our original decision in 1983 to treat ESPs as end users rather than carriers was explained as a temporary exemption,[391] we tentatively conclude that the current pricing structure should not be changed so long as the existing access charge system remains in place. The mere fact that providers of information services use incumbent LEC networks to receive calls from their customers does not mean that such providers should be subject to an interstate regulatory system designed for circuit-switched interexchange voice telephony. We seek comment on this tentative conclusion.

289. We recognize that this issue is of special interest to users of the Internet and online services. Therefore, we have established an electronic mailbox at <isp@fcc.gov> for submission of informal comments on the treatment of Internet and other information services.

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[387] *See, e.g.*, Letter from Steve Case, Chief Executive Officer, America Online, Inc., *et al.* to Reed Hundt, Chairman, FCC, Nov. 15, 1996 (*ISP November 15 Letter*), at 2; Letter from Barbara A. Dooley, Executive Director, Commercial Internet eXchange Association, to Reed Hundt, Chairman, FCC, Dec. 19, 1996.

[388] *See, e.g.*, Letter from Gilbert F. Amelio, Chief Executive Officer, Apple, *et al.* to Reed Hundt, Chairman, FCC, Oct. 30, 1996 (*CSPP Letter*).

[389] *See* News Release, "Hundt Asks Network Reliability and Interoperability Council to Monitor Impact of Internet Growth on Public Networks," November 1, 1996. As discussed in Section X, below, our consideration of congestion issues in this proceeding in no way precludes or supersedes the efforts underway by the NRIC.

[390] We also do not address in this proceeding questions about whether some Internet-based services could conceivably be considered "telecommunications" under the 1996 Act. 47 U.S.C. § 153(43).

[391] *Access Charge Reconsideration Order*, 97 FCC 2d at 715. We have, however, decided to leave the current pricing structure in place on multiple occasions. *See, e.g.*, *ESP Exemption Order*, 3 FCC Rcd at 2633; Amendments of Section 64.702 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Dockets No. 89-79 and 87-313, Report and Order & Order on Further Consideration & Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 4524, 4535 (1991) (*Part 69 ONA Order*).

Additional information on this issue is available through our World Wide Web site at <http://www.fcc.gov/isp.html>. We are inviting all parties that file formal paper comments in this proceeding to submit copies of their comments in electronic form, and we intend to make those electronic submissions available for review on the World Wide Web.

290. We invite interested parties to discuss the number of ESPs and Internet service providers, if any, that can be considered "small entities" within the meaning of the Regulatory Flexibility Act, and whether there is any reason to establish different requirements for small ESPs and information service providers.

C. Other Part 69 Revisions

1. Equal Access Network Reconfiguration Costs

291. The court in the *MFJ* required all Bell Operating Companies to provide access service that would enable subscribers to reach their interexchange carrier of choice without dialing additional digits, or in other words, "1+ dialing."[392] GTE was later required by court order to provide to all IXCs, upon bona fide request, exchange access that is equal in type and quality to that provided to AT&T.[393] The Commission later imposed similar "equal access" obligations on independent telephone companies other than GTE.[394]

292. In 1986, the Commission prohibited incumbent LECs from recovering all the costs incurred in converting their networks to equal access at the time they incurred those costs. Instead, LECs were required to amortize those costs over an eight-year period ending on December 31, 1993.[395] Prior to the termination of this amortization period, the Commission adopted price cap regulation for incumbent LECs, and based the initial price cap rates on the access rates in effect as of July 1, 1990, as adjusted for the represcription of the authorized rate of return we adopted in 1990.[396] In the *LEC Price Cap Reconsideration*

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[392] *MFJ*, 552 F.Supp. at 232-33.

[393] United States v. GTE Corporation, 603 F. Supp. 730, 744 (D.D.C. 1984).

[394] MTS and WATS Market Structure, CC Docket No. 78-72, Phase III, 100 FCC 2d 860 (1985), *recon. denied* FCC 86-4, 59 Rad. Reg. 2d 1410 (released Jan. 4, 1986).

[395] *See* Petitions for Recovery of Equal Access and Network Reconfiguration Costs, Memorandum Opinion and Order, 1 FCC Rcd 434, 437 (1986). Later, the Commission permitted incumbent LECs to establish a separate rate element to recover equal access reconfiguration costs. MTS and WATS Market Structure, Amendment of Part 69 of the Commission's Rules for Recovery of Equal Access Costs, CC Docket No. 78-72, Report and Order, 4 FCC Rcd 2104 (1989).

[396] *LEC Price Cap Order*, 5 FCC Rcd at 6816-17.

Order, the Commission declined to extend exogenous treatment to equal access reconfiguration costs because it might give incumbent LECs an artificial incentive to increase their investment in equal access facilities at a time when conversion to equal access was substantially complete.[397] In petitions to reject or suspend the price cap incumbent LECs' 1994 annual access tariffs, AT&T and MCI argued that the incumbent LECs' PCIs should be reduced to reflect the completion of the amortization of equal access costs. The Common Carrier Bureau did not suspend any tariffs for this reason, in part because the Commission decided not to require exogenous cost treatment in the *LEC Price Cap Reconsideration Order*, and in part because the completion of the equal access cost amortization is not listed in section 61.45(d)(1) of our rules as warranting exogenous cost treatment.[398] Later, in the *LEC Price Cap Performance Review*, the Commission considered requiring incumbent LECs to make an exogenous cost decrease to account for the completion of the equal access cost amortization, but found that the record was not adequate in that proceeding to require such an adjustment.[399]

293. We invite comment on whether to require incumbent price cap LECs to make an exogenous cost decrease to one or more of their PCIs to account for the completion of the amortization of equal access network reconfiguration costs on December 31, 1993. Parties supporting an exogenous cost reduction should explain in detail how such an adjustment should be calculated, and to which basket or baskets should the exogenous reduction apply. In addition, we invite interested parties to discuss whether it would be fair to require exogenous cost decreases to account for the completion of the amortization of equal access network reconfiguration costs in light of the fact that the Commission did not permit exogenous cost increases for equal access network reconfiguration costs.[400]

2. Part 69 Allocation Rules

294. We invite comment on relieving incumbent price cap LECs from the application of Part 69, Subparts D and E of our rules, in certain instances. Subparts D and E allocate incumbent LECs' investments and expenses to all the access rate elements. If we adopt a market-based approach to access reform as we discuss in Section V above, and decide to eliminate the rate structure rules, this would appear to eliminate the need for the Part 69 cost

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[397] *LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2666-67.

[398] 1994 Annual Access Tariff Filings, CC Docket No. 94-65, 9 FCC Rcd 3519, 3535-36 (Com. Car. Bur. 1994) (suspending 1994 annual access tariffs filed by Pacific Bell, Nevada Bell, Rochester, and Vista); 1994 Annual Access Tariff Filings, CC Docket No. 94-65, 9 FCC Rcd 3705, 3730-31 (Com. Car. Bur. 1994) (suspending other 1994 annual access tariffs).

[399] *LEC Price Cap Performance Review*, 10 FCC Rcd at 9094.

[400] *LEC Price Cap Performance Review*, 10 FCC Rcd at 9094.

allocation rules. Alternatively, if we adopt a more prescriptive approach to access reform as we discuss in Section VI above, and decide to base some or all their access rates on TSLRIC costs, then it may not be necessary to retain rules for fully distributing costs to different rate elements. We solicit comment on whether there might be any other reason to relieve any price cap LEC from the requirements of Subparts D and E, and if so, what the timing of that relief should be.

3. Other Proposed Part 69 Changes

295. Regardless of whether we adopt any of the proposals discussed in this Notice, we tentatively conclude that a number of provisions in Part 69 warrant revision. These revisions are necessary to conform Part 69 to the 1996 Act, or to update the rules for other reasons. We seek comment below on what these conforming or updating amendments should be. Also, over the years, several incumbent LECs have established access rate elements or subelements pursuant to waiver. We seek comment below on incorporating these rate elements into Part 69.

296. First, we discuss rule revisions necessary to conform Part 69 to the 1996 Act. Section 69.2(hh) of the Commission's rules defines "Telephone Company" in terms of section 3(r) of the 1934 Act. We propose to change this reference to "incumbent LEC" as it is defined in the 1996 Act. Sections 69.4(f) and 69.122, providing for a "contribution charge" that may be assessed on special access and expanded interconnection, appear to be inconsistent with the requirement in section 254 that such carrier contributions be equitable and nondiscriminatory.[401] Accordingly, we propose to delete these two rule sections. We also seek comment on what effect, if any, adoption of this proposal might have on small incumbent LECs or other small businesses. In addition, we invite parties to identify other rules which may be inconsistent with the Act.

297. Second, we seek comment on eliminating Part 69 rules that are no longer effective. For example, in the mid-1980s, we permitted incumbent LECs to recover their equal access conversion costs through a separate rate element. We also required carriers to eliminate any separate equal access charge by January 1, 1994.[402] Therefore, we propose deleting section 69.107, permitting carriers to establish an equal access element, and sections 69.308 and 69.410, which allocate costs to the equal access rate element. We also propose

[401] 47 U.S.C. § 254(b)(4).

[402] 47 C.F.R. § 69.4(d).

removing section 69.4(d),[403] and in its place creating a new section 69.3(e)(12) to read as follows: "Such a tariff shall not contain any separate carrier's carrier tariff charges for an Equal Access element." Finally, we would remove the reference to section 69.308 in section 69.309, and the reference to section 69.410 in section 69.411. Similarly, the transitions in section 69.205 have been completed, and so we propose deleting that section. We invite comment on whether there are any other similar rules in Part 69 that are no longer effective, or duplicate other rules, and so could be deleted without changing any current Part 69 requirements. Finally, we invite comment on our tentative conclusion that eliminating such rules would not affect any requirements currently placed on small telecommunications providers or any other small businesses.

298. Similarly, section 69.103 of our rules requires incumbent LECs to establish a separate rate element for costs associated with lines terminating at "limited pay telephones," which are pay telephones designed to provide access to only one interexchange carrier.[404] Section 276 of the Act provides statutory requirements governing pay telephones that we recently implemented.[405] In light of the new payphone compensation procedures, we seek comment on whether section 69.103 of our rules serves any ongoing purpose, or whether we should eliminate section 69.103, and the rules allocating costs to this rate element,[406] from our rules.

299. Lastly, several incumbent LECs provide service using rate elements created pursuant to waiver, and we seek comment on incorporating those waivers into Part 69. For example, in 1994, the Common Carrier Bureau granted several waivers of Part 69 to permit incumbent LECs to establish rate elements for 500 access service.[407] In 1990, the Bureau granted several incumbent LECs waivers of Part 69 to establish rate elements for electronic

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[403] Section 69.4(d) provides as follows: "For the period June 1, 1988 through December 31, 1993, all telephone companies may implement a separate carrier's carrier tariff charge for an Equal Access element. Effective January 1, 1994, all telephone companies shall eliminate separate carrier's carrier tariff charges for an Equal Access element."

[404] 47 C.F.R. § 69.103.

[405] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, CC Docket No. 96-128, FCC 96-388 (rel. Sep. 20, 1996), *recon.*, FCC 96-439 (rel. Nov. 8, 1996).

[406] *See, e.g.*, 47 C.F.R. §§ 69.303(a), 69.304(c), 69.307(c), 69.406(a)(9).

[407] Ameritech Operating Companies, *et al.*, Petitions for Waiver of Sections 69.4(b) and 69.106 of Part 69 of the Commission's Rules, 9 FCC Rcd 7873 (Com. Car. Bur. 1994).

white pages service.[408] Also, in 1985, the Bureau granted incumbent LECs waivers of section 69.109 to create a subelement within the Information rate element to recover costs they could show were not incurred in the provision of interstate directory assistance.[409] In this Notice, we seek comment on codifying these waivers as access rate elements or subelements in Part 69. We also seek comment on whether to incorporate any other rate elements created pursuant to waiver into the Commission's rules. Commenters supporting these rule revisions should also specify any revisions to Part 69, Subparts D and E, needed to allocate the proper costs to these rate elements.

IX. THIRD REPORT AND ORDER

300. We conclude that certain revisions to our rules should be made upon issuance of this Order.[410] These changes include eliminating the price caps lower service band indices, and substantially easing the requirements necessary for the introduction of new services. We make these adjustments in order to remove obstacles to lower access prices, and allow incumbent LECs to recover their costs in a manner consistent with the way that costs are incurred. Moreover, we believe that these changes will not adversely affect the development of a competitive marketplace.[411]

A. Lower Service Band Indices

1. Background

301. Our price cap rules divide incumbent LEC services among four baskets, with each basket being subject to a separate price cap index (PCI). Selected categories of services within the trunking and traffic-sensitive baskets are also subject to individual SBIs. Each tariff year the carrier must establish, for each such group of services, new upper and lower

[408] *See, e.g.*, Ameritech, Petition for Waiver for Electronic Directory Assistance, 5 FCC Rcd 7120 (Com. Car. Bur. 1990); BellSouth, Petition for Waiver for Electronic Directory Assistance, 5 FCC Rcd 7121 (Com. Car. Bur. 1990); NYNEX, Petition for Waiver for Electronic Directory Assistance, 5 FCC Rcd 7122 (Com. Car. Bur. 1990); US West Communications, Inc., Petition for Waiver of Part 69 of the Commission's Rules To Provide Electronic White Pages Service, 5 FCC Rcd 5526 (Com. Car. Bur. 1990).

[409] Petitions for Waiver Concerning 1985 Annual Access Tariff Filings, Mimeo No. 5007 (Com. Car. Bur., rel. June 7, 1985) at paras. 72-77.

[410] Additional rate structure proposals to be implemented at this time are discussed in Section III, *supra*.

[411] In this Section, the terms "Comments" and Replies" refer to comment and replies filed in response to the *Price Cap Second FNPRM*, as listed in Appendix A.

bands that are set at specified percentages above and below the SBI.[412] Price changes are presumptively lawful if the API for the basket is at or below the PCI, and the prices for each category of services within the basket are within the established pricing bands. Most categories of services are currently subject to lower bands that limit the annual price reductions for those categories to ten percent, relative to the percentage change in the PCI for that basket, such as the service categories in the traffic-sensitive and trunking baskets other than the TIC. Where incumbent LECs are permitted to deaverage rates, as when an expanded interconnection cross-connect for special access or transport service has been taken in a LEC study area, annual price reductions within any zone of the service category are limited to fifteen percent, although price reductions for the service category as a whole cannot go down by more than 10 percent.

302. In the *Price Cap Second FNPRM*, we proposed eliminating the lower pricing bands for service categories to permit incumbent LECs to reduce prices to any level above average variable cost. We tentatively concluded that the price cap indices and upper service band limits would continue to inhibit predatory pricing effectively.[413]

2. Comments

303. Incumbent LECs commenting on this proposal were generally supportive, arguing that it would not harm customers (who would pay lower rates) and could result in more efficient pricing, with prices moving closer to the costs of providing access services.[414] These incumbent LECs also dismissed the idea that increased downward pricing flexibility could result in successful predatory pricing to eliminate actual or potential competitors in access markets, especially because the price cap basket and band caps limit an incumbent LEC's ability to raise other rates to compensate for below-cost pricing of particular services.[415] Incumbent LEC competitors or potential competitors opposed the proposals, contending, among other things, that increased downward pricing flexibility for incumbent price cap LECs is not in the public interest; would encourage predatory pricing; would result in anti-competitive cost-shifting; and may result in the incumbent LECs imposing a price

[412] There are no upper or lower service band limits imposed on services in the common line and interexchange price cap baskets.

[413] *Price Cap Second FNPRM*, 11 FCC Rcd at 893-97.

[414] *See, e.g.*, Ameritech Comments at 20-21; BellSouth Comments at 29-30; Cincinnati Bell Comments at 10; USTA Comments at 31-32.

[415] USTA Comments at 5-6.

squeeze on new entrants.[416] Time Warner argued that "[e]limination of the lower band restrictions would be appropriate in only those few limited circumstances where LECs can and have demonstrated that true competition exists."[417]

304. In their comments, IXCs such as AT&T and MCI argued that we should not remove this regulatory constraint from incumbent LECs unless certain conditions were met.[418] MCI insisted that incumbent LECs first must be required to lower their access rates to economic costs.[419] AT&T supported that the proposal to eliminate the lower SBI limits, but contended that, without sufficient safeguards, elimination of lower SBI limits could result in cross-subsidization and predatory pricing. It therefore proposed that incumbent LECs be required to exclude any price reductions beyond the existing lower limits from its API calculation. According to AT&T, this would enable incumbent LECs to compensate for price reductions with price increases for other services in the same basket only up to the preexisting lower SBI limits of a band, but ensure that they cannot compensate for price decreases that are below the current SBI lower limits.[420] Second, it recommended that the Commission reduce the upper SBI limit from five percent to one percent for any service category or subcategory in which an incumbent LEC makes price reductions below the former SBI limit.[421]

3. Discussion

305. We find that removing the lower service band indices would be in the public interest, and we therefore eliminate them. As set forth in the *Price Cap Second FNPRM*, we find that this will lead to lower prices, particularly as competition emerges and puts pressure on incumbent LECs to charge rates that are related to the underlying costs of providing exchange access services. We believe that the current PCI and upper SBIs adequately control predatory pricing, and that we do not need AT&T's conditions for eliminating the lower SBIs to address predation. If an incumbent LEC lowers its prices in one year, the upper SBIs prevent the incumbent LEC from immediately raising its rates back to its previous levels.[422]

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[416] *See, e.g.*, Time Warner Comments at 21-22; Association for Local Telecommunications Services Comments at 7-12; Sprint Telecommunications Venture Comments at 6-8.

[417] Time Warner Comments at 22.

[418] *See, e.g.*, AT&T Comments at 38-45; MCI Comments at 20-21.

[419] MCI Comments at 21.

[420] Ad Hoc also favors this approach. Ad Hoc Comments at 18-19.

[421] AT&T Comments at 38-45.

[422] NYNEX Telephone Companies Annual Access Tariff Filings, Requests for Waiver, Memorandum Opinion and Order, 11 FCC Rcd 5448, 5454 (Com. Car. Bur. 1995).

In addition, we remain skeptical that incumbent LECs in this context successfully could engage in predatory pricing (lowering prices to eliminate competitors and then raising prices to above-competitive levels).[423] The lower service band indices do not prohibit below-band tariff filings. Rather, they establish higher cost support requirements for below-band filings,[424] and a presumption that below-cap, within-band tariff filings are lawful.[425] Based on the comments submitted in response to the *Price Cap Second FNPRM*, and in light of the our continuing skepticism about the potential for an incumbent LEC to engage successfully in predatory pricing, we conclude that the presumption of lawfulness that we have applied to within-band tariff filings can now be extended to all rate decreases.

306. We also find that AT&T's suggested conditions are not necessary to limit the "headroom" an incumbent LEC might create by lowering certain access rates within a basket.[426] We are retaining the SBI upper bands. Those upper bands constrain the incumbent price cap LECs' ability to use headroom to increase rates for any particular access service beyond specified percentages. This decision is consistent with our current treatment of below-band filings, which are included in the calculation of an incumbent LEC's API.[427] In addition, in this Notice, we invite comment on two alternative approaches to access reform. Regardless of which approach we adopt, access reform should result in incumbent LECs' access rates moving closer to forward-looking economic cost, and so would limit the extent to which an incumbent LEC could take advantage of any headroom that may be created by lowering certain access rates.

B. Waiver Requirement for Introduction of New Services

1. Background

307. In the *Price Cap Second FNPRM*, we noted that many incumbent LECs have argued that new services and technologies often do not fit the existing Part 69 rate structure requirements, and that obtaining a waiver to introduce a new rate element is costly, time-

[423] *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 589 (1986).

[424] *LEC Price Cap Order*, 5 FCC Rcd at 6824.

[425] *LEC Price Cap Order*, 5 FCC Rcd at 6822.

[426] "Headroom" refers to the difference between the PCI and API for any particular price cap basket. *See Price Cap Second FNPRM*, 11 FCC Rcd at 885.

[427] 47 C.F.R. § 61.46.

consuming, and poses a significant impediment to the introduction of new services.[428] Because we found that our rules may unnecessarily hinder the introduction of new services, we proposed to eliminate the current Part 69 requirement that incumbent price cap LECs seek a waiver each time they want to establish new rate elements for a new switched access service.[429] Specifically, we proposed to modify Part 69 to permit an incumbent price cap LEC to introduce a new service by filing a petition for the new service based on a public interest standard. We further proposed that after the first incumbent LEC had satisfied the public interest requirement for establishing new rate elements for a new switched access service, other incumbent price cap LECs could introduce identical new services, and their petitions would be reviewed in an expedited fashion (*i.e.*, within ten days).

2. Comments

308. Although incumbent LEC commenters generally supported these proposals, some argued that the proposals did not go far enough in removing undue restrictions on the introduction of new services.[430] NYNEX and SNET, for example, argued that the introduction of new service elements should be presumed lawful, and the introduction of new switched access rate elements should not be subject to any stricter review than is accorded special access elements.[431] Several other commenters, including IXCs and some incumbent LEC competitors, opposed the Commission's proposed revisions to the Part 69 waiver process.[432] MCI argued that the Commission should develop clear and precise guidelines for obtaining a

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[428] *Price Cap Second FNPRM*, 11 FCC Rcd at 891 (citing *LEC Price Cap Performance Review Order*, 10 FCC Rcd at 9135, and pleadings cited therein).

[429] The waiver request must specify the exact rate elements intended for the service and must show that "good cause" exists for grant of the waiver *See* 47 C.F.R. § 1.3. To show "good cause," a petitioner must demonstrate that "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *See* 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).

[430] *E.g.*, Ad Hoc Comments at 17 (agrees with the Commission's proposal to allow LECs seeking to offer new switched access services to bypass the Part 69 waiver process and instead file a petition showing that the new service would serve the public interest); Ameritech Comments at 2 (states that no separate waiver or finding should be required for the introduction of new switched access rate elements); Cincinnati Bell Comments at 8-9; Pacific Bell and Nevada Bell Comments at 10, 18 (argues that no waivers of the rules should be required with respect to new services).

[431] NYNEX Comments at 17; SNET Comments at 9-11.

[432] *E.g.*, Comcast Comments at 28; MCI Comments at 15-18; MFS Reply at 4; Teleport Reply at 18-20.

waiver, and that an incumbent LEC seeking to deviate from the established Part 69 tariff structure bears the burden of showing that its alternative better serves the public interest.[433]

3. Discussion

309. We conclude that the relaxed procedures for introducing new switched access services that we set forth in the *Price Cap Second FNPRM* will further the public interest, and we therefore adopt them. We find that requiring an incumbent LEC to file a waiver to introduce a new rate element imposes a costly, time-consuming, and unnecessary burden on incumbent LECs, and significantly impedes the introduction of new services. Also, we believe that delaying implementation would not assist in the development of a competitive marketplace. We therefore amend Part 69 so that an incumbent LEC may introduce a new service by filing a petition for the new service based on a public interest standard.

310. We also amend Part 69 so that after the first incumbent LEC has satisfied the public interest requirement for establishing new rate elements for a new switched access service, another incumbent price cap LEC can file a petition seeking authority to introduce identical rate elements for an identical new service, and its petition will be reviewed within ten days of the release of a Public Notice. Parties may file comments in response to such a petition within seven days of the Public Notice. The incumbent LEC shall have authority to introduce these new rate elements after expiration of the ten-day period, unless the Common Carrier Bureau has informed the LEC that the LEC has not demonstrated that its new service qualifies as a "me-too" service. The incumbent LEC may then file one subsequent new petition for "me-too" authorization for that service or may file a public interest petition seeking to introduce that service. An incumbent LEC may not seek expedited review based on our public interest authorization of a new service based on a competitive showing, such as was the case with the NYNEX USPP and Ameritech Customers First waivers.[434] In such cases, an incumbent LEC must file its own petition seeking approval for a new rate element.

X. NOTICE OF INQUIRY ON IMPLICATIONS OF INFORMATION SERVICE AND INTERNET USAGE

311. In Section VIII.B, above, we tentatively concluded that information service providers should not be subject to interstate access charges as currently constituted. However, the development of the Internet and other information services raise many critical

[433] MCI Comments at 15-18; MCI Reply at 2-4.

[434] The NYNEX Telephone Companies Petition for Waiver, Transition Plan to Preserve Universal Service in a Competitive Environment, Memorandum Opinion and Order, 10 FCC Rcd 7445 (1995); Ameritech Operating Companies, Petition for a Declaratory Ruling and Related Waivers to Establish a New Regulatory Model for the Ameritech Region, Order, FCC 96-58 (rel. Feb. 15, 1996).

questions that go beyond the interstate access charge system that is the subject of this proceeding. Ultimately, these questions concern no less than the future of the public switched telephone network in a world of digitalization and growing importance of data technologies. Our existing rules have been designed for traditional circuit-switched voice networks, and thus may hinder the development of emerging packet-switched data networks. To avoid this result, we must identify what FCC policies would best facilitate the development of the high-bandwidth data networks of the future, while preserving efficient incentives for investment and innovation in the underlying voice network. In particular, better empirical data are needed before we can make informed judgments in this area.

312. We ask whether, after we complete reform of access charges as contemplated in this proceeding, we should consider any additional actions relating to interstate information services and the Internet. We therefore initiate this Notice of Inquiry, with a separate pleading cycle, to address these issues. Based on the record in response to this Notice of Inquiry, and the decisions we make in the Access Reform Report and Order, we will determine whether to make proposals in this area in a subsequent Notice of Proposed Rulemaking.

313. Many of the concerns now being raised about switch congestion caused by Internet usage arise because virtually all residential users today connect to the Internet -- a packet-switched data network -- through incumbent LEC switching facilities designed for circuit-switched voice calls. The end-to-end dedicated channels created by circuit switches are unnecessary and even inefficient when used to connect an end user to an ISP. We seek comment on how our rules can most effectively create incentives for the deployment of services and facilities to allow more efficient transport of data traffic to and from end users. We invite parties to identify means of addressing the congestion concerns raised by incumbent LECs, for example by deploying hardware to route data traffic around incumbent LEC switches, or by installing new high-bandwidth access technologies such as asymmetric digital subscriber line (ADSL) or wireless solutions.

314. We seek comment on what regulatory barriers -- at either the state or federal level -- might prevent provision of alternate network access arrangements for information service providers, or might create artificial disincentives against use of such arrangements when they become available. Should we consider using our forbearance or preemption authority to avoid results that would hamper the deployment of new technologies? We also seek comment on how the matters before us in our *Local Competition* and *Universal Service* proceedings affect information service providers and raise issues that we need to address in this proceeding.

315. We seek comment on the effects of the current system on network usage, incumbent LEC cost-recovery, and the development of the information services marketplace. We are disinclined to take actions that would stifle, rather than enhance, the development of

the Internet, or similar packet-switched networks. We encourage commenters to provide data on the characteristics of information service usage and its effects on the network.[435] We are also particularly interested in data on the incumbent LECs' costs directly related to ESPs' use of the PSTN, on incumbent LECs' revenues attributable to ESP traffic (including second phone line revenue), and in a comparison of what PSTN services ESPs desire, as opposed to what they currently have access to. We seek comment on administrative and technical issues that may arise either under continued operation of the current system or as modified by this proceeding. In particular, we seek comment on jurisdictional, metering, and billing questions, given the difficulty of applying jurisdictional divisions or time-sensitive rates to packet-switched networks such as the Internet.[436]

316. The current division in our rules between basic and enhanced services may not accurately capture the types of companies that provide information services today, and the manner in which these companies use incumbent LEC facilities. There are many kinds of information services, with different usage patterns and effects on the network. For example, arguments about network congestion caused by long hold-time calls would not seem to apply to information services such as telemessaging or credit card validation. We seek comment on whether we should distinguish between different categories of information or enhanced services. In addition, several companies now provide software that allows a voice conversation to be conducted over the Internet.[437] Such "Internet telephony" allows what appears to be a basic service -- voice transmission -- to take place over a packet-switched interactive data network that we have traditionally considered to be an enhanced service. We seek comment on how new services such as Internet telephony, as well as real-time streaming audio and video services over the Internet, should affect our analysis.[438]

317. We seek comment as to whether the issues raised in this Notice of Inquiry should be addressed in any existing proceeding, or a new proceeding. As discussed in Section VIII, above, the Network Reliability and Interoperability Council (NRIC) is also currently evaluating the effects of Internet usage on the voice network. We do not intend for this proceeding to in any way supersede the NRIC's efforts, and we believe that the NRIC's recommendations will complement the record we develop here. Ultimately, a full and open debate about the relationship of information services to the public switched network will benefit all parties. We also strongly encourage interested parties among incumbent LECs and

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[435] *See NARUC October 23 Letter* at 4.

[436] *See ISP November 15 Letter* at 2.

[437] *ACTA Petition* at 3.

[438] We plan to address the legal questions about Internet telephony raised in the *ACTA Petition*, and broader issues about the continued viability of our basic/enhanced dichotomy, in separate proceedings.

ESPs to work together to identify which technological solutions hold the greatest promise in carrying Internet traffic most efficiently and with the least adverse price impact on consumers.

318. As discussed in Section VIII, above, we have established an electronic mailbox at <isp@fcc.gov> for submission of informal comments on the treatment of Internet and other information services, and we have made additional information available through our World Wide Web site at <http://www.fcc.gov/isp.html>.

XI. PROCEDURAL ISSUES

A. *Ex Parte* Presentations

319. This is a non-restricted notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, 1.1206.

B. Paperwork Reduction Act

320. This NPRM contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

C. Initial Regulatory Flexibility Act Analysis

321. Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the Notice, including the initial regulatory flexibility analysis, to be sent to the

Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

322. Reason for action. The Telecommunications Act of 1996 requires incumbent LECs to offer interconnection and unbundled elements on an unbundled basis, and imposes a duty to establish reciprocal compensation arrangements for the transport and termination of calls. The Commission's access charge rules were adopted at a time when interstate access and local exchange services were offered on a monopoly basis, and in many cases are inconsistent with the competitive market envisioned by the 1996 Act.

323. Objectives. To revise the Commission's access charge rules to make them consistent with the Telecommunications Act of 1996.

324. Legal Basis. The proposed action is supported by Sections 4(i), 4(j), 201-205, 251, 252, 253, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201-205, 251, 252, 253, 403.

325. Description, potential impact and number of small entities affected. For purposes of this Notice, the Regulatory Flexibility Act defines a "small business" to be the same as a "small business concern" under the Small Business Act (SBA), 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities.[439] Under the SBA, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.[440] The Small Business Administration has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1500 employees.[441]

326. *Total Number of Telephone Companies Affected.* With the exceptions of the proposals under consideration in Sections III.D, III.E, VII.A, and VIII.C of this Notice, the proposals in this Notice, if adopted, would affect all LECs that are regulated by the Commission's price cap rules. Currently, 13 incumbent LECs are subject to price cap

[439] *See* 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632).

[440] 15 U.S.C. § 632. *See, e.g.,* Brown Transport Truckload, Inc., v. Southern Wipers, Inc., 176 B.R. 82 (N.D. Ga. 1994).

[441] 13 C.F.R. § 121.201.

regulation. We tentatively conclude that all price cap carriers have more than 1500 employees and therefore are not small entities.

327. The proposals under consideration in Sections III.B, III.D, III.E, VII.A., and VIII.C of this Notice, if adopted, would affect all incumbent LECs regulated by the Commission. The United States Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3497 firms engaged in providing telephone service, as defined therein, for at least one year.[442] This number contains a variety of different categories of carriers, including incumbent LECs, IXCs, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not independently owned or operated.[443]

328. Because the small incumbent LECs that would be subject to these rules are either dominant in their field of operations or are not independently owned and operated, consistent with our prior practice, they are excluded from the definition of "small entity" and "small business concerns."[444] Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small incumbent LECs.[445] Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this analysis and use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by SBA as "small business concerns."

329. *Local Exchange Carriers.* Neither the Commission nor the Small Business Administration has developed a definition of small providers of local exchange service. The closest applicable definition under Small Business Administration rules is for telephone telecommunications companies other than radiotelephone (wireless) companies.[446] The most reliable source of information regarding the number of incumbent LECs nationwide appears to be the data that we collect annually in the provision of Telecommunications Relay Service (TRS). According to our most recent data, 1347 companies reported that they were engaged

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[442] United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities, Establishment and Firm Size*, at Firm Size 1-123 (1995) (*1992 Census*).

[443] 15 U.S.C. § 632(a)(1).

[444] *See Local Competition Order* at paras. 1328-1330, 1342.

[445] *See id.* para. 1342.

[446] Standard Industrial Classification (SIC) Code 4813.

in the provision of local exchange service.[447] Although it seems certain that some of these carriers are not independently owned or operated, or have fewer than 1500 employees, we are unable at this time to estimate with greater precision the number of incumbent LECs that would qualify as small business concerns under the Small Business Administration's definition. Consequently, we estimate that there are fewer than 1347 small incumbent LECs that may be affected by the proposals in this Notice. We seek comment on this estimate.

330. Under the new competitive provisions of the 1996 Act, however, there could be a number of new LECs entering the local exchange market that would be considered small businesses. In Section VIII.A of this Notice, we seek comment on whether to apply certain of the regulations applicable to incumbent LECs to new entrant LECs. Thus, it is possible that new entrants will be affected by our actions in this proceeding.

331. *Enhanced Service Providers.* In Section VIII.B of this Notice, we seek comment on whether to continue to exempt enhanced service providers (ESPs) from any requirement to pay access charges. Because we are not contemplating imposing any new regulatory requirement on ESPs, we conclude that the Regulatory Flexibility Act does not require us to consider the effects of these proposed rules on ESPs that would fit the definition of small entity. If we modify the "ESP Exemption," we will consider the effect on small ESPs at that time. We seek comment on this tentative conclusion.

332. Reporting, record keeping and other compliance requirements. It is not clear whether, on balance, all proposals in this Notice would increase or decrease incumbent LECs' administrative burdens.

333. With respect to all incumbent LECs, we believe that the reforms to rate structure that we propose in Section III would require at least one, and possibly several additional filings, but otherwise should not affect their administrative burdens. We expect that the proposal we make in Section VII relating to the allocation of universal service support to the interstate revenue requirement could increase their administrative burdens. We expect that some of the Part 69 revisions that we propose in Section VIII would reduce, others increase, and the remainder have no effect on their administrative burdens.

334. With regard to incumbent price cap LECs, we expect the changes to the existing local switching rate structure that we propose in Section III would require an initial additional filing, but otherwise would have no effect on their administrative burdens. As to the proposals in Section V, to the extent that a carrier chooses to avail itself of the additional reforms, it will need to file a petition demonstrating that it has met the trigger, and make an initial tariff filing. Otherwise, most of the proposed reforms in Section V would reduce or

[447] Federal Communications Commission, Common Carrier Bureau, Industry Analysis Division, *Telecommunications Industry Revenue: TRS Fund Worksheet Data*, Table 21 (Feb. 1996).

have no effect on its administrative burdens. We expect that some of our proposals in Section VI of this Notice, if adopted, would increase the administrative burdens placed on incumbent LECs. We expect that the other proposals in Section VI of this Notice would have no effect on their administrative burdens. We expect that the proposal to continue regulating terminating access charges in Section VIII would have no effect on the administrative burden placed on incumbent price cap LECs.

335. In Section II, we address the likelihood that many, if not all, new entrants would be considered "domestic nondominant carriers," whose tariff filings would be governed by Sections 61.20 through 61.23 of our rules, 47 C.F.R. §§ 61.20-23, unless they are exempted from some or all of those requirements. We are unable to estimate the number of times these incumbent LECs would file tariffs annually, but it could vary from none to 20 or more. Nor are we able to estimate how extensive each tariff filing, on average, would be. If these new entrants are not exempted from any tariff filing requirements, then we estimate that, on average, it would take approximately two hours per page for the incumbent LEC to prepare each tariff filing, at a cost of $80 per hour in professional level and support staff salaries. If these carriers are exempted from some or all the regulations applicable to incumbent LECs, then the administrative burdens imposed on such carriers would be less. In Section V, we ask whether a market share test to measure the level of competition may impose a reporting requirement on new entrants. We expect that the proposal in Section VIII to regulate terminating access charges for new entrants would increase the administrative burden placed on incumbent price cap LECs. Compliance with these requests may require the use of engineering, technical, operational, accounting, billing, and legal skills.

336. Federal rules which overlap, duplicate or conflict with this proposal. None.

337. Any significant alternatives minimizing impact on small entities and consistent with stated objectives. In Section II of this Notice, we seek comment on whether to exempt new entrant LECs from some or all of the regulations applicable to incumbent LECs. Thus, new entrants that may also be small entities may or may not become subject to any new requirements. In any case, new entrants will become subject to no more requirements than those imposed on incumbent LECs. However, we recognize that new entrants may have different business or operational concerns compared to incumbent LECs. In Sections II.A, III.B, III.E, V.A, V.C, VII.A, and VII.B, we have sought comment on how a number of proposals would affect small entities. These proposals could have varying positive or negative impacts on small entities. We are unable to ascertain, at this time, what the significant economic impact would be on small entities as defined by the SBA. We seek comment on these proposals and urge that parties support their comments with specific evidence and analysis.

D. Notice of Proposed Rulemaking Comment Filing Dates

338. Pursuant to applicable procedures set forth in Section 1.399 and 1.411 *et seq.* of the Commission's Rules, 47 C.F.R. Sections 1.399, 1.411 *et seq.*, interested parties may file comments with the Secretary, Federal Communications Commission, Washington D.C. 20554 no later than **January 27, 1997**. Interested parties my file replies no later than **February 13, 1997.** To file formally in this proceeding, participants must file an original and twelve copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus 16 copies must be filed. In addition, parties should file two copies of any such pleading with the Competitive Pricing Division, Common Carrier Bureau, Room 518, 1919 M Street, N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington D.C. 20554.

339. Parties submitting diskettes should submit them along with their formal filings to the Office of the Secretary. Submissions should be on a 3.5 inch diskette formatted in an DOS PC compatible form. The document should be saved in to WordPerfect 5.1 for Windows format. The diskette should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comment), Docket number, and date of submission.

340. You may also file informal comments electronically via e-mail <access@fcc.gov>. Only one copy of electronically-filed comments must be submitted. You must put the docket number of this proceeding in the subject line (see the caption at the beginning of this Notice, or in the body of the text if by Internet). You must note whether an electronic submission is an exact copy of formal comments on the subject line. You also must include your full name and Postal Service mailing address in your submission.

341. In order to facilitate review of comments and replies, by both parties and Commission staff, we require that comments be no longer than **100** pages, and that replies be no longer than **50** pages. Comments and replies must also comply with Section 1.49 and all other applicable sections of the Commission's Rules. We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and replies. Comments and replies must also clearly identify the specific portion of this Notice of Proposed Rulemaking to which a particular comment or set of comments is responsive. If a portion of a party's comments does not fall under a particular topic listed in the Table of Contents of this Notice, such comments must be included in a clearly labelled section at the beginning or end of the filing. Parties may not file more than a total of **ten** pages of *ex parte* submissions, excluding cover letters. This **ten** page limit does not include the following: (1) written *ex parte* statements made solely to disclose an oral *ex parte* contact; (2) written material submitted at the time of an oral presentation that provides a brief outline

of the presentation; (3) written material filed in response to direct requests from Commission staff; or (4) any proposed rule language. *Ex parte* filings in excess of this limit will not be considered part of the record in this proceeding.

342. Written comments by the public on the proposed and/or modified information collections are due **January 27, 1997.** Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

E. Notice of Inquiry Comment Filing Dates

343. Pursuant to applicable procedures set forth in Section 1.399 and 1.411 *et seq.* of the Commission's Rules, 47 C.F.R. Sections 1.399, 1.411 *et seq.*, interested parties may file comments with the Secretary, Federal Communications Commission, Washington D.C. 20554 no later than **February 21, 1997**. Interested parties my file replies no later than **March 24, 1997**. Comments and replies must comply with Section 1.49 and all other applicable sections of the Commission's Rules. To file formally in this proceeding, participants must file an original and twelve copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus 16 copies must be filed. In addition, parties should file two copies of any such pleading with the Competitive Pricing Division, Common Carrier Bureau, Room 518, 1919 M Street, N.W., Washington, D.C. 20554. We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and replies. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington D.C. 20554.

344. Parties submitting diskettes should submit them along with their formal filings to the Office of the Secretary. Submissions should be on a 3.5 inch diskette formatted in an DOS PC compatible form. The document should be saved in to WordPerfect 5.1 for Windows format. The diskette should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comment), Docket number, and date of submission.

345. You may also file informal comments electronically via e-mail <isp@fcc.gov>, or via the World Wide Web. Information on how to file electronically is available at <http://www.fcc.gov/isp.html>. Only one copy of electronically-filed comments must be

submitted. If you are using e-mail, you must put the docket number of this proceeding in the subject line (see the caption at the beginning of this Notice), and you also must note in the subject line if an electronic submission is an exact copy of formal comments. You also must include your full name and Postal Service mailing address in your submission.

F. Final Regulatory Flexibility Act Certification

346. In the *Price Cap Second FNPRM*, we certified that the Regulatory Flexibility Act did not apply to this rulemaking proceeding because none of the rule amendments under consideration would have a significant economic impact on a substantial number of small entities.[448] We concluded that the proposed rules would apply only to carriers subject to price cap regulation for local exchange access, and such carriers are generally large corporations or affiliates of such corporations.[449] No comments were received concerning the proposed certification. Since our initial certification, certain changes occurred. The Regulatory Flexibility Act was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),[450] and Citizens elected price cap regulation.[451] Nonetheless, we certify that the rules adopted herein will not have a significant economic impact on a substantial number of small entities.[452]

347. The Regulatory Flexibility Act defines a "small business" to be the same as a "small business concern" under the Small Business Act.[453] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration.[454] Section 121.201 of the Small Business Administration regulations defines a small telecommunications entity in SIC code 4813 (Telephone Companies Except Radio Telephone) as any entity with 1,500 or fewer employees at the

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[448] *See* 5 U.S.C. § 605(b).

[449] *Price Cap Second FNPRM*, 11 FCC Rcd at 936.

[450] 5 U.S.C. §§ 601-611. SBREFA was enacted as Subtitle II of the Contract With America Advancement Act of 1996 ("CWAAA"), Pub. L. No. 104-121, 110 Stat. 847 (1996).

[451] Citizens Telecommunications Companies, Transmittal No. 30, filed April 2, 1996. Citizens is the only incumbent LEC that has changed from rate-of-return regulation to price cap regulation since the *Price Cap Second FNPRM*.

[452] 5 U.S.C. § 605(b).

[453] *Id.* at § 601(6), adopting 15 U.S.C. § 632(a)(1).

[454] 15 U.S.C. § 632. *See, e.g.*, Brown Transport Truckload, Inc. v. Southern Wipers, Inc., 176 B.R. 82 (N.D. Ga. 1994).

holding company level.[455] Entities directly subject to these rule changes are carriers subject to price cap regulation.[456] These entities, including the newest carrier subject to price cap regulation, Citizens, are generally large corporations that have more than 1,500 employees, or they are either dominant in their fields of operations or are not independently owned or operated. Thus, they are not "small entities" as defined by the Small Business Act.[457]

348. We therefore certify that the rules adopted herein will not have a significant economic impact on a substantial number of small entities.[458] The Commission shall provide a copy of this certification to the Chief Counsel for Advocacy of the Small Business Administration, and include it in the report to Congress pursuant to the SBREFA.[459] The certification will also be published in the Federal Register.[460]

XII. ORDERING CLAUSES

349. Accordingly, IT IS ORDERED, pursuant to Sections 1-4, 10, 201-205, 251, 254, 303(r), and 410(a) of the Communications Act of 1934, as amended, and Section 601 of the Telecommunications Act of 1996, 47 U.S.C. §§ 10, 151-154, 201-205, 224, 251, 254, 303(r) 410(a), and 601, that NOTICE IS HEREBY GIVEN OF the rulemaking described above and that COMMENT IS SOUGHT on these issues.

350. IT IS FURTHER ORDERED, pursuant to Sections 1-4, 10, 201-205, 251, 254, and 303(r) of the Communications Act of 1934, as amended, and Section 601 of the Telecommunications Act of 1996, 47 U.S.C. §§ 10, 151-154, 201-205, 224, 251, 254, 303(r) and 601, that NOTICE IS HEREBY GIVEN OF the inquiry described above and that COMMENT IS SOUGHT on these issues.

351. IT IS FURTHER ORDERED that, pursuant to Sections 1-4, 201-205, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, and 303(r) that the THIRD REPORT AND ORDER IS ADOPTED, effective 60 days after publication of a summary in the Federal Register. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

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[455] 13 C.F.R. § 121.201.

[456] *See* n. 83, *supra*.

[457] 15 U.S.C. § 632(a)(1).

[458] 5 U.S.C. § 605(b).

[459] 5 U.S.C. § 801(a)(1)(A).

[460] 5 U.S.C. § 605(b).

352. IT IS FURTHER ORDERED that Parts 61 and 69 of the Commission's rules, 47 C.F.R. Parts 61 and 69 ARE AMENDED as set forth in Appendix B.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A
Parties Filing Pleadings

I. Pleadings in CC Docket No. 95-72 (*ISDN SLC NPRM*)

Comments

America Online Incorporated; CompuServe Incorporated; GE Information Services, Inc.; Prodigy Services Company (America Online)
American Petroleum Institute
Ameritech
AT&T Corp. (AT&T)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Telecommunications, Inc. (BellSouth)
Cable & Wireless, Inc. (Cable & Wireless)
California Bankers' Clearing House Association, MasterCard International Incorporated, the New York Clearing House Association, and Securities Industry Association (California Bankers' Clearing House)
Center for Democracy and Technology
Cincinnati Bell Telephone (Cincinnati Bell)
Commercial Internet eXchange Association (CIX)
Communications Managers Association (CMA)
Consumer Project on Technology
GTE Service Corporation (GTE)
Information Technology Industry Council (ITIC)
MCI Telecommunications Corporation (MCI)
Microsoft Corporation (Microsoft)
National Information Infrastructure Working Group
National Public Radio, Inc. (National Public Radio)
National Telephone Cooperative Association (NTCA)
Northern Arkansas Telephone Company, Inc. (Northern Arkansas Telephone Company)
NYNEX Telephone Companies (NYNEX)
Pacific Bell and Nevada Bell (Pacific Bell)
Public Utility Commission of Texas
Rochester Telephone Corp.
Roseville Telephone Company (Roseville)
Rural Telephone Coalition
Southwestern Bell Telephone Company (Southwestern Bell)
Sprint Corporation (Sprint)
Tele-Communications Association (TCA)
Tennessee Public Service Commission