

remote databases, such as billing information that must be obtained from the line information database (LIDB) used to validate calling cards or for collect calling, or information identifying the designated long-distance carrier of a toll-free 800 service subscriber; and (3) to transmit the information and instructions necessary to provide custom local area signalling services (CLASS features), such as automatic call back and caller ID.⁹⁹ An SS7 network includes several primary components -- signalling points, signal transport links, and dedicated lines used for access to an incumbent LEC's signalling network (signal links).

74. Under the interim transport rate structure, rate-of-return LECs charge IXCs and other access customers a flat-rated charge assessed on a per-line basis for the use of dedicated facilities to connect to the incumbent LECs' signalling networks.¹⁰⁰ This rate element is composed of two subelements: a flat-rated signalling link charge for the dedicated network access line (DNAL), and a flat-rated signalling transfer point (STP) port termination charge. The majority of other SS7 signalling costs are not recovered through SS7 facility-based charges, including those for: (1) switching messages at the local STP; (2) transmitting messages between an STP and the incumbent LEC end office switch or tandem switch; and (3) processing and formulating signal information at an end office or tandem switch. Thus, once the reallocation of SS7 costs included in the TIC is completed, most, if not all, of these costs will presumably be recovered through the local switching charge. In contrast, incumbent LECs typically assess a per-query charge for the retrieval of information and the transmission of the query to and from databases, such as the 800 and LIDB databases.¹⁰¹

75. On March 27, 1996, the Common Carrier Bureau granted Ameritech a waiver to restructure the manner in which it recovers its SS7 costs.¹⁰² The rate structure established by Ameritech pursuant to that waiver recovers costs through four unbundled charges for the various functions performed by SS7 networks: (1) signal link; (2) STP port termination; (3) signal transport; and (4) signal switching.

2. Discussion

76. Modifications Adopted for Price Cap LECs. In the *Access Charge Reform Order*, the Commission decided to continue the existing rate structure for SS7 costs and to permit price cap LECs to adopt the rate structure for SS7 services that we approved in the *Ameritech SS7 Waiver Order*.¹⁰³

77. Applicability to Rate-of-Return LECs. We propose to continue the existing rate structure for SS7 cost recovery by rate-of-return LECs, with an optional structure to reflect Ameritech's SS7 rate structure. We invite comment on this proposal. We also solicit additional, alternative SS7 rate

⁹⁹ See *Ameritech Operating Companies Petition for Waiver of Part 69 of the Commission's Rules to Establish Unbundled Rate Elements for SS7 Signalling*, Order, 11 FCC Rcd 3839, 3841 (Com. Car. Bur. 1996) (*Ameritech SS7 Waiver Order*).

¹⁰⁰ 47 C.F.R. § 69.125. This flat-rated charge is called "dedicated signalling transport" in the Part 69 rules.

¹⁰¹ See, e.g., 47 C.F.R. § 69.120 (defining the LIDB per-query charge).

¹⁰² *Ameritech SS7 Waiver Order*, 11 FCC Rcd at 3839.

¹⁰³ *Access Charge Reform Order*, 12 FCC Rcd at 16089-90 ¶¶ 252-53.

structure proposals for rate-of-return LECs. Any comments on this issue should include an assessment of the expense of requiring rate-of-return LECs to install equipment in their networks for metering SS7 traffic. Would the streamlined waiver petition procedure we propose below be preferable as a means to address alternative SS7 rate structures proposed by rate-of-return LECs?

78. We recognize that some call setup is still performed using in-band, MF signalling, rather than out-of-band signalling systems such as SS7. SS7 signalling may be less prevalent for rate-of-return LECs than for price cap LECs. Any determination we make concerning a SS7 rate structure for rate-of-return LECs could be affected by the extent that rate-of-return LEC networks use SS7. We also ask parties to comment on the need for revisions to the cost allocation rules in Part 69 to accommodate the provision of SS7 signalling in accordance with the provisions of the Ameritech SS7 waiver.

III. OTHER ISSUES

A. General Support Facilities Costs

1. Background

79. In its *Part 69 Conformance Order*, the Commission amended Part 69 to reapportion, *inter alia*, General Support Facilities (GSF) investment and expenses among the existing access elements, the interexchange category, and the billing and collection category. The GSF investment category includes assets that support other operations, such as land, buildings, vehicles, as well as general purpose computer investment accounted for in USOA Account 2124.¹⁰⁴ Some rate-of-return LECs use general purpose computer equipment to provide nonregulated billing and collection services to IXCs.¹⁰⁵ The costs of providing interstate billing and collection service are not, however, treated as nonregulated in the Part 64 cost allocation process. Instead, nonregulated interstate billing and collection costs are identified through the Part 36 and Part 69 cost allocation process.

80. Section 69.307 of the Commission's rules states that GSF investment is to be allocated among the billing and collection category, the interexchange category, and the access elements based on the amount of Central Office Equipment (COE), Cable and Wire Facilities (CWF), and Information Origination/Termination Equipment (IO/T) investment allocated to each Part 69 category.¹⁰⁶ This rule appears on its face to provide for an allocation of GSF investment to billing and collection. Because

¹⁰⁴ See 47 C.F.R. § 36.111.

¹⁰⁵ In 1986, the Commission found that the market for billing and collection service was sufficiently competitive that it was not necessary to require LECs to provide that service as a tariffed common carrier service. The Commission did not, however, pre-empt state regulation of billing and collection services. See *Detariffing of Billing and Collection Services*, CC Docket No. 85-88, 102 FCC 2d 1150 (1986) (*Billing and Collection Detariffing Order*), *recon. denied*, 1 FCC Rcd 445 (1986). The Commission later decided to treat billing and collection costs as regulated for accounting purposes because it found that such treatment was less likely to misallocate these costs between the interstate and intrastate jurisdictions. *Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities*, Report and Order, CC Docket No. 86-111, 2 FCC Rcd 1298, 1309 (1987).

¹⁰⁶ 47 C.F.R. § 69.307(c).

no COE, CWF, or IO/T investment is allocated to the billing and collection category, no GSF investment, and thus no portion of general purpose computer investment, is allocated to the billing and collection category. Similarly, because expenses related to GSF investment are allocated in the same manner as GSF investment, no GSF expenses (including expenses related to general purpose computers) are allocated to billing and collection. To the extent that rate-of-return LECs' costs are underallocated to the billing and collection category, rate-of-return LECs' regulated services are recovering costs associated with unregulated services through interstate access charges.

2. Discussion

81. Modifications Adopted for Price Cap LECs. In the *GSF Order*, we modified Section 69.307 of our rules to require the use of a general expense allocator to apportion the interstate share of Accounts 2111 (Land), 2121 (Buildings), 2123 (Office equipment), and 2124 (General purpose computers) between: (1) the billing and collection category and (2) all other elements and categories.¹⁰⁷ To determine the amount to be assigned to the billing and collection category, we applied a modified "Big Three Expense Factor" allocator to the interstate investment recorded in these four accounts.¹⁰⁸ In developing the modified allocator, we excluded any account or portion of an account that is itself apportioned based on the apportionment of GSF. Any GSF investment in Account 2110 not allocated to the billing and collection category will be apportioned among the access elements and the interexchange category using the current investment allocator. The interstate portion of Account 6120 (General Support Expenses) will continue to be apportioned among all elements and categories, including billing and collection, based upon the allocation rules contained in section 69.401(a)(2).¹⁰⁹

82. Applicability to Rate-of-Return LECs. We tentatively conclude that we should modify section 69.307 of our rules for rate-of-return LECs to allocate GSF costs related to billing and collection services to the billing and collection category. As with price cap LECs, we propose to use a general allocator to accomplish this GSF reassignment to the billing and collection category. For those rate-of-return LECs that maintain accounts below the summary account level, we propose to apply the same general allocator to the interstate portion of the four accounts to which it was applied for price cap LECs. Because certain small rate-of-return LECs do not maintain accounts below the summary account level, we seek comment on what adjustments, if any we should make to the allocation procedures to reflect this difference. Therefore, it would be helpful if parties would comment on how many rate-of-return LECs use general purpose computers to provide billing and

¹⁰⁷ *Access Charge Reform*, Third Report and Order, CC Docket No. 96-262, 12 FCC Rcd 22430 (1997).

¹⁰⁸ The "Big Three Expenses" are the following combined expense groups: Plant Specific Operations Expense (Accounts 6110, 6120, 6210, 6220, 6230, 6310, and 6410), Plant Nonspecific Operations Expenses (Accounts 6510, 6530, and 6540), and Customer Operations Expenses (Accounts 6610 and 6620). The "Big Three Expense Factors" are calculated separately by each LEC as the ratio of (a) the sum of the Big Three Expenses apportioned to each element or category (*e.g.*, the B&C category) to (b) the sum of the combined Big Three Expenses. 47 C.F.R. § 69.2 (e) and (f). Thus, for a given LEC, the numerator in the ratio to be applied to a particular account would be the sum of the amounts allocated by that LEC from each of its Big Three Expenses to its nonregulated B&C category and the denominator would be the sum of its Big Three Expenses. The LEC then uses its Big Three Expense Factor to accomplish various allocations under Part 69. *Id.* at 22432 ¶ 6 n. 8.

¹⁰⁹ *Id.* at 22443-44 ¶ 35.

collection services. We also invite parties to identify any changes that should be made to other access elements as a result of any changes we may make to the GSF allocation procedures. Finally, parties should also address the extent to which these approaches affect large and small rate-of-return LECs differently and how small business entities, including small incumbent LECs and new entrants, will be affected.¹¹⁰

B. Marketing Expenses

1. Background

83. Prior to 1987, incumbent LEC marketing expenses were allocated between the interstate and intrastate jurisdictions on the basis of local and toll revenues. In 1987, a Federal-State Joint Board recommended that interstate access revenues be excluded from the allocation factor used to apportion marketing expenses between the interstate and intrastate jurisdictions because marketing expenses are not incurred in the provision of interstate access services.¹¹¹ The Commission agreed with the Joint Board's recommendation and adopted new procedures that allocated marketing expenses in Account 6610 on the basis of revenues, excluding access revenues.¹¹² In petitions for reconsideration of the Commission's order, several incumbent LECs argued that the revised separations treatment of marketing expenses would result in a significant, nationwide shift of \$475 million in revenue requirements to the intrastate jurisdiction.¹¹³ On reconsideration, the Commission adopted an interim allocation factor for marketing expenses that includes access revenues, pending the outcome of a further inquiry by the Joint Board.¹¹⁴

2. Discussion

84. The Commission concluded in the *Access Charge Reform Order* that price cap LECs' marketing costs that are not related to the sale or advertising of interstate switched access services are not appropriately recovered from IXCs through per-minute interstate switched access charges.¹¹⁵ We concluded that recovering these expenses from end users instead of from IXCs is consistent with principles of cost-causation to the extent that LEC sales and advertising activities are aimed at selling

¹¹⁰ See Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.*

¹¹¹ *Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board*, CC Docket No. 86-297, Recommended Decision and Order, 2 FCC Rcd 2582 (1987) (*Marketing Expense Recommended Decision*).

¹¹² *MTS and WATS Market Structure, Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board*, CC Docket Nos. 78-72, 80-286, and 86-297, Report and Order, 2 FCC Rcd 2639 (1987).

¹¹³ *MTS and WATS Market Structure, Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 78-72, 80-286, and 86-297, Memorandum Opinion and Order on Reconsideration and Supplemental Notice of Proposed Rulemaking, 2 FCC Rcd 5349, 5350 (1987) (*Marketing Expense Reconsideration Order*).

¹¹⁴ *Marketing Expense Reconsideration Order*, 2 FCC Rcd at 5353. See also 47 C.F.R. § 36.372.

¹¹⁵ *Access Charge Reform Order*, 12 FCC Rcd at 16121 ¶ 319.

retail services to end users, and not at selling switched access services to IXCs.¹¹⁶ Accordingly, pending a recommendation by the Joint Board on a new method of apportioning marketing costs between the intrastate and interstate jurisdictions, the Commission directed price cap LECs to recover marketing expenses allocated to the interstate jurisdiction from end users on a per-line basis.¹¹⁷

85. Specifically, price cap LECs are to recover the revenues related to the Account 6610 marketing expenses by increasing the SLCs for multi-line business and non-primary residential lines, subject to the SLC ceilings.¹¹⁸ To the extent the SLC ceilings prevent full recovery of these amounts, price cap LECs were required to recover marketing costs through equal increases on the PICCs for non-primary residential and multi-line business lines, subject to the PCCC ceilings.¹¹⁹ In the event the PCCC ceilings prevent full recovery of these expenses, any residual marketing expenses may be recovered through per-minute charges on originating access service, subject to the ceiling placed on originating minutes.¹²⁰ Finally, to the extent price cap LECs cannot recover their remaining marketing expenses through per-minute charges on originating access, any residual may be recovered through per-minute charges on terminating access service.¹²¹ To the extent marketing expenses will be recovered through the SLC, they shall not be included in the base factor portion or considered common line revenues.¹²²

86. We tentatively conclude that, for the reasons set forth for price cap LECs in the *Access Charge Reform Order*, rate-of-return LECs' marketing costs should be recovered through the common line recovery mechanism. We seek comment on this conclusion and ask parties to propose a mechanism comparable to the separate basket created for price cap LECs that will remove marketing expenses from access charges assessed by rate-of-return LECs. Any proposal we adopt will require changes to our Part 69 cost allocation rules. We therefore invite parties to provide language for an amendment to our Part 69 cost allocation rules that affect the recovery of these marketing expenses through the common line cost recovery mechanism discussed above.

C. Special Access

1. Background

87. As a result of the new rules adopted in the *Access Charge Reform Order*, certain multi-line businesses will be paying higher SLCs than they did previously. Similarly, as the PICCs are phased

¹¹⁶ *Id.*, 12 FCC Rcd at 16121 ¶ 320.

¹¹⁷ *Id.*, 12 FCC Rcd at 16121 ¶ 319.

¹¹⁸ Price cap LECs were permitted to recover these expenses after performing the appropriate downward exogenous adjustments to the PCIs in the common line, traffic sensitive, and trunking baskets. *Access Charge Reform Order*, 12 FCC Rcd at 16122-16123 ¶ 324.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

in, IXCs initially will be required to pay higher PICCs for a multi-line business end-user compared to the PICC paid for a primary residential end user or a single-line business end-user. In contrast, users of special access do not pay a SLC. Furthermore, under special access, IXCs do not incur the same local access charges that are incurred by end users using switched access. In light of the most recent changes to the charges incurred by multi-line businesses, including the higher SLC and the new multi-line business PICC, the Commission noted in the *Access Charge Reform Order, Further Notice of Proposed Rulemaking (FNPRM)* that it may be cost effective for some multi-line businesses that are currently using switched access to purchase instead special access lines.¹²³

88. In the *FNPRM*, we tentatively concluded that we should permit price cap LECs to assess a PICC on special access lines to recover revenues for the common line basket.¹²⁴ The special access PICC would be no higher than the PICC that an incumbent LEC could charge for a multi-line business line, and the special access PICC would not recover TIC or marketing expenses.¹²⁵ We noted that this proposal would be temporary in nature and would be phased out as the single-line PICC is phased in. We tentatively concluded that allowing LECs to impose such special access PICCs would be necessary to facilitate the transition from current per minute CCL charges to the flat-rate PICC.¹²⁶

89. Parties responding to our *FNPRM* unanimously opposed assessing PICCs on special access lines.¹²⁷ Several of these parties argued that concerns that PICCs assessed on multi-line business lines will lead to migration from switched access to special access are unfounded.¹²⁸ Others argued that migration might be a problem but that special access PICCs are not the solution.¹²⁹

2. Discussion

90. We invite parties to comment on whether, if we apply a PICC to special access services offered by price cap LECs, we should apply a PICC to special access services offered by rate-of-return LECs. Parties should comment on the impact of PICCs on special access lines if, as projected by NECA and USTA, the PICCs on rate-of-return LECs' multi-line business lines remain in place for a considerably longer time than they do for price cap LECs'.¹³⁰ To the extent parties advocate assessing PICCs on special access lines, we seek comment on how special access connections should be counted

¹²³ *Access Charge Reform*, CC Docket No. 96-262, Further Notice of Proposed Rulemaking, 12 FCC Rcd 15982, 16154 ¶ 401(1997) (*FNPRM*).

¹²⁴ *Id.*, 12 FCC Rcd at 16155 ¶ 403.

¹²⁵ *Id.*

¹²⁶ *Id.* at ¶ 404.

¹²⁷ *See, e.g.*, Sprint Comments at 2; Ad Hoc Comments at 8-15; America Online Comments at 8-9; AT&T Comments at 5.

¹²⁸ *See, e.g.*, Sprint Comments at 2; Ad Hoc Comments at 8-15; AT&T Comments at 6; America Online Comments at 8-9.

¹²⁹ *See, e.g.*, BA/NYNEX Comments at 1-4, Reply at 1; USTA Comments at 1-2; MCI Comments at 7.

¹³⁰ *See* Section II.B above.

for purposes of assessing a "per line" PICC. Parties should also address the extent to which our proposal affects large and small LECs differently and how small business entities, including small incumbent LECs and new entrants, will be affected.¹³¹

D. Part 69 Cost Allocation Rules

91. Under the Part 36 separations rules, certain costs of the incumbent LEC network are assigned to the interstate jurisdiction.¹³² For rate-of-return LECs, the Part 69 cost allocation rules allocate these interstate costs among the various access and interexchange services.¹³³

92. Throughout this notice, we request comment on the need for changes to our cost allocation rules in conjunction with specific proposals to revise certain rate structure provisions of the Part 69 rules. We now ask whether we should make any other modifications at this time to our cost allocation rules for rate-of-return LECs to accommodate any of those changes, or to update the rules in other respects. Parties making such suggestions should be specific about the reasons the change is needed and include proposed language for revising the cost allocation rules.

E. Modification of New Services Requirement

93. Rate-of-return LECs currently must file a petition pursuant to Section 1.3 of the Commission's rules to request a Part 69 waiver for the establishment of one or more new switched access rate elements to accommodate a new service offering to switched access customers.¹³⁴ Courts have interpreted the good cause showing specified in Section 1.3 to require petitioners to demonstrate that special circumstances justify a departure from the general rule and that such a deviation will serve the public interest.¹³⁵

94. Prior to adoption of the *Access Charge Reform Order*, we streamlined the Part 69 waiver process for a price cap LEC wishing to offer a new service.¹³⁶ This procedure significantly expedites the prior waiver process pursuant to Section 1.3, and became effective on June 30, 1997.¹³⁷ Under Section 69.4(g), a price cap LEC must file a petition that demonstrates one of two criteria: (1) that another LEC has previously obtained approval to establish identical rate elements and that the original petition did not rely upon a competitive showing as part of its public interest justification, or (2) that the new rate elements would serve the public interest.

¹³¹ See Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.*

¹³² See 47 C.F.R. Part 36.

¹³³ See 47 C.F.R. Part 69.

¹³⁴ 47 C.F.R. § 1.3.

¹³⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); *Thomas Radio v. FCC*, 716 F.2d 921 (D.C. Cir. 1983); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

¹³⁶ *Price Cap Performance Review for Local Exchange Carriers*, Third Report and Order, 11 FCC Rcd 21354, 21490 ¶¶ 309-310 (1996).

¹³⁷ See 47 C.F.R. § 69.4(g).

95. We tentatively conclude that we should adopt the streamlined petition provisions of Section 69.4(g) for rate-of-return LECs. We request comment on this tentative conclusion. In addition, we request suggestions as to any manner in which the procedures or standards of Section 69.4(g) should be modified for rate-of-return LECs. Parties should comment, for instance, on whether a showing of prior approval should be limited to petitions granted to other rate-of-return LECs.

IV. PROCEDURAL ISSUES

A. *Ex Parte* Presentations

96. This Notice of Proposed Rulemaking is a permit-but-disclose proceeding and is subject to the permit-but-disclose requirements under Section 1.1206(b) of the rules, 47 C.F.R. § 1206(b), as revised. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.¹³⁸ Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b), as well.

B. Paperwork Reduction Act

97. This notice contains either proposed or modified information collections. On April 1, 1997, the Office of Management and Budget (OMB) approved many of our proposed information collection requirements in accordance with the Paperwork Reduction Act.¹³⁹ The OMB made one recommendation, suggesting that we try "to minimize the number of new filings that firms must create in order to be compliant with the rules adopted . . . allowing firms to use many of the filings they must create in order to demonstrate that they meet the Telecommunications Act of 1996 requirements for provision of inter-LATA services within their operating regions." The Commission will consider carefully whether the number of required new filings can be minimized by relying to the greatest extent possible on those filings referenced by OMB in its approval. In addition, we request specific suggestions of other methods to minimize the number of required new filings.

98. As part of our continuing effort to reduce paperwork burdens, we invite the general public and OMB to take this opportunity to comment on any additional information collections contained in this notice, not previously approved by OMB, 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 notice; OMB comments are due 60 days from the date of publication of this notice 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.

¹³⁸ See 47 C.F.R. § 1.1206(b)(2), as revised.

¹³⁹ Notice of Office of Management and Budget Action, OMB No. 3060-0760 (Apr. 1, 1997). On June 12, 1997, OMB approved additional information collections adopted pursuant to the *Access Charge Reform Order*. Notice of Office of Management and Budget Action, OMB No. 3060-0760 (June 12, 1997).

C. Initial Regulatory Flexibility Act Analysis

99. As required by the Regulatory Flexibility Act (RFA),¹⁴⁰ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the proposals suggested in this Notice of Proposed Rulemaking. Written public comments are requested on the IRFA. Comments and reply comments must be identified by a separate and distinct heading as responses to the IRFA and must be filed on or before July 17 or August 17, 1998 respectively. Parties should address the extent to which our proposals affect large and small incumbent rate-of-return LECs differently and how small business entities, including small incumbent LECs and new entrants, will be affected. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this Notice of Proposed Rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.¹⁴¹ In addition, the Notice of Proposed Rulemaking and IRFA (or summaries thereof) will be published in the Federal Register.¹⁴²

100. Need for, and Objectives of, the Proposed Rules. The Commission's access charge rules for rate-of-return LECs were adopted at a time when interstate access and local exchange services were offered on a monopoly basis. We seek to revise the Commission's access charge rules for LECs subject to rate-of-return regulation to make the rules consistent with the pro-competitive, deregulatory policies contemplated by the Telecommunications Act of 1996. In the 1997 *Access Charge Reform Order*,¹⁴³ we focused on setting in motion the forces of competition and deregulation in local markets served by incumbent local exchange carriers subject to price cap regulation. In this Notice, we propose to modify our rate structure requirements, to the extent possible, to permit rate-of-return LECs to recover costs in a manner that more accurately reflects the way those costs are incurred, identify implicit subsidies, and reduce subsidies by recovering more costs from the cost causer, thereby sending more accurate pricing signals to both consumers and competitors, and facilitating the transformation from a regulated to a competitive marketplace. Specifically, we propose to reduce usage-sensitive interstate access charges by diminishing local loop and other non-traffic sensitive costs and directing rate-of-return LECs to recover those non-traffic sensitive costs through more economically efficient, flat-rated charges.

101. Legal Basis. The proposed action is authorized by Sections 1-4, 201-205, 251, 254, 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 251, 254, 303(r) and 403.

102. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply. The Regulatory Flexibility Act directs agencies to provide a description of and an estimate, where feasible, of the number of small entities that may be affected by proposed rules, if

¹⁴⁰ See 5 U.S.C. § 603. The RFA, 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

¹⁴¹ See 5 U.S.C. § 603(a).

¹⁴² See *id.*

¹⁴³ *Access Charge Reform Order*, 12 FCC Rcd at 15982.

adopted.¹⁴⁴ The Regulatory Flexibility Act generally defines the term "small entity" as having the same meaning as the term "small business."¹⁴⁵ The term "small business" has the same meaning as the term "small business concern" under the Small Business Act (SBA).¹⁴⁶ 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 Small Business Administration.¹⁴⁷

103. Because the small rate-of-return 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."¹⁴⁸ Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small rate-of-return LECs.¹⁴⁹ Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small rate-of-return LECs within this analysis and use the term "small incumbent rate-of-return LECs" to refer to any rate-of-return LECs that arguably might be defined by SBA as "small business concerns,"¹⁵⁰ including consideration of any adverse impact of the rules we adopt and consideration of alternatives that may reduce adverse impacts on such entities.¹⁵¹

104. The Small Business Administration has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be small telecommunications entities when they have no more than 1,500 employees at the holding company level.¹⁵² We invite interested parties to discuss the number of telecommunications providers, if any, that can be considered "small entities" within the meaning of the Regulatory Flexibility Act, and

¹⁴⁴ 5 U.S.C. § 603(b)(3).

¹⁴⁵ 5 U.S.C. § 601(6).

¹⁴⁶ See 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the Regulatory Flexibility Act, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3). The Small Business Administration definition, therefore, is used unless the Commission has developed one or more definitions that are appropriate to its activities.

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

¹⁴⁸ See *Local Competition Order*, 11 FCC Rcd at 16144-45 ¶¶ 1327-30.

¹⁴⁹ See *id.*, 11 FCC Rcd at 16150 ¶ 1342.

¹⁵⁰ See 13 C.F.R. § 121.210 (SIC 4813). See also Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987).

¹⁵¹ Since the time of the Commission's 1996 decision in the *Local Competition Order*, 11 FCC Rcd at 16144-45, 61 FR 45476 (August 29, 1996), the Commission has consistently addressed in its regulatory flexibility analyses the impact of its rules on incumbent LECs.

¹⁵² 13 C.F.R. § 121.201.

whether there is any reason to establish different requirements for small telecommunication providers. Below, we discuss the total estimated number of telephone companies falling within these categories and the number of small businesses in each category, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

105. The most reliable source of information regarding the total numbers of certain common carriers nationwide appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS).¹⁵³ According to data in the most recent report, there are 3,459 interstate carriers.¹⁵⁴ These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.¹⁵⁵

106. Telephone Companies Affected. The United States Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone service, as defined therein, for at least one year.¹⁵⁶ This number contains a variety of different categories of carriers, including incumbent LECs, interexchange carriers (IXCs), competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, personal communication service (PCS) providers, covered specialized mobile radio (SMR) providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small rate-of-return incumbent LECs because they are not independently owned or operated.¹⁵⁷ For example, a PCS provider that is affiliated with an IXC having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent rate-of-return LECs because some of them are not independently owned or operated.

107. Wireline Carriers and Service Providers Affected. The Small Business Administration has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. According to the Small Business Administration's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.¹⁵⁸ The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.¹⁵⁹ All but 26 of the 2,321 non-radiotelephone

¹⁵³ FCC, *Telecommunications Industry Revenue: TRS Fund Worksheet Data, Figure 2 (Number of Carriers Paying Into the TRS Fund by Type of Carrier) (Nov. 1997) (Telecommunications Industry Revenue)*.

¹⁵⁴ *Id.*

¹⁵⁵ See 13 CFR § 121.201, SIC code 4813.

¹⁵⁶ 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*).

¹⁵⁷ See generally 15 U.S.C. § 632(a)(1).

¹⁵⁸ 13 C.F.R. § 121.201, SIC Code 4812.

¹⁵⁹ *1992 Census, supra*, at Firm Size 1-123.

companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small rate-of-return LECs. We do not have data on the number of carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the Small Business Administration's definition. Consequently, we estimate that there are fewer than 2,295 small telephone communications companies other than radiotelephone companies that may be affected by the proposed rules, if adopted.

108. Incumbent Local Exchange Carriers Affected. Neither the Commission nor the Small Business Administration has developed a definition of small providers of local exchange service.¹⁶⁰ The most reliable source of information regarding the number of incumbent LECs nationwide appears to be the report that we compiled from the 1997 Telecommunications Relay Service (TRS) Fund worksheets and the Universal Service Fund (USF) worksheets of September, 1997. According to our most recent data, 1,376 companies that provided interstate telecommunications service as of June 30, 1997 reported that they were engaged in the provision of local exchange service.¹⁶¹ Although it seems certain that some of these carriers are not independently owned or operated, have more than 1,500 employees, or are subject to price cap regulation, we are unable at this time to estimate with greater precision the number of rate-of-return LECs that would qualify as small business concerns under the Small Business Administration's definition. Consequently, we estimate that there are fewer than 1,376 small rate-of-return LECs that may be affected by the proposals in this notice, if adopted. We seek comment on this estimate.

109. Interexchange Carriers. Neither the Commission nor the Small Business Administration has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under the Small Business Administration rules is for telephone communications companies other than radiotelephone (wireless) companies.¹⁶² According to the most recent *Telecommunications Industry Revenue* data, 143 carriers reported that they were engaged in the provision of interexchange services.¹⁶³ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of interexchange carriers (IXCs) that would qualify as small business concerns under the Small Business Administration's definition. Consequently, we estimate that there are fewer than 143 small entity IXCs that may be affected by the proposed rules, if adopted.

110. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements. It is not clear whether, on balance, proposals in this notice would increase or decrease

¹⁶⁰ The closest applicable definition under Small Business Administration rules is for telephone telecommunications companies other than radiotelephone (wireless) companies. Standard Industrial Classification (SIC) Code 4813.

¹⁶¹ Federal Communications Commission, Common Carrier Bureau, Industry Analysis Division, *Carrier Locator: Interstate Service Providers*, Figure 1 (Nov. 1997).

¹⁶² 13 CFR § 121.201, SIC code 4813.

¹⁶³ *Telecommunications Industry Revenue*, Figure 2.

incumbent rate-of-return LECs' administrative burdens. With respect to rate-of-return LECs, we believe that the rate structure reforms that we propose in Sections II and III would require at least one, and possibly several, additional filings, and may reduce some administrative burdens. For example, if we adopt the streamlined petition provisions of 47 C.F.R. § 69.4(g) for introduction of new services by rate-of-return LECs, we expect that this would decrease some administrative burdens of rate-of-return LECs.

111. If the rule revisions we propose are adopted, we estimate that these rate-of-return LECs would make one tariff filing to bring their access charges into compliance with the revised rules. We are unable to estimate how extensive each tariff filing would be, on average. We estimate that, on average, it would take approximately two hours per page for the rate-of-return LEC to prepare each tariff filing, at a cost of \$35 per hour in professional level and support staff salaries. If we decide to require the filing of a cost study for determining local switching costs attributable to line-side ports and to trunk-side ports, these rate-of-return LECs would file one cost study. We estimate that, on average, it would take approximately 400 hours for the rate-of-return LEC to prepare a cost study, at a cost of \$30 per hour in professional level and support staff salaries. Compliance with these tariff and cost study requirements may compel the use of engineering, technical, operational, accounting, billing, and legal skills.

112. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered. In Sections II and III, for the subscriber line charge, the carrier common line charge, non-traffic sensitive switching costs, the transport interconnection charge, a special access PICC, and general purpose computer costs, 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, including small rate-of-return LECs and new entrants. We seek comment on these proposals and urge that parties support their comments with specific evidence and analysis.

113. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules. None.

D. Notice of Proposed Rulemaking Comment Filing Dates and Procedures

114. 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 **July 17, 1998**. Interested parties may file replies no later than **August 17, 1998**. 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 must 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.

115. Parties submitting diskettes should submit them along with their formal filings to the Commission's 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 into 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.

116. Parties may also file informal comments electronically via e-mail <rateofreturn@fcc.gov>. Only one copy of electronically-filed comments must be submitted. The docket number of this proceeding must appear in the subject line, CC Docket No. 98-77. The subject line must also disclose whether an electronic submission is an exact copy of formal comments. Your full name and U.S. Postal Service mailing address must be included in your submission.

117. Comments and replies must 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 submission.

118. Written comments and reply comments by the public on the proposed and/or modified information collections are due July 17 or August 17, 1998 respectively. 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 the 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 must be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and must be submitted 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.

V. ORDERING CLAUSES

119. Accordingly, IT IS ORDERED, pursuant to Sections 1-4, 201-205, 251, 254, 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 251, 254, 303(r) and 403, that NOTICE IS HEREBY GIVEN of the rulemaking described above and that COMMENT IS SOUGHT on these issues.

120. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary