

in the FCC Public Reference Room (Room 230), 1919 M St., N.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Suite 140, 2100 M Street, N.W., Washington, D.C. 20037.

#### Regulatory Flexibility Analysis

We have determined that section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), does not apply to these rules because they do not have a significant economic impact on a substantial number of small entities. The definition of a "small entity" in section 3 of the Small Business Act excludes any business that is dominant in its field of operation. Local exchange carriers do not qualify as small entities because they have a nationwide monopoly on ubiquitous access to the subscribers in their service area. The Commission also has found all exchange carriers to be dominant in its competitive carrier proceeding. See 85 FCC 2d 1, 23-24 (1980). To the extent that small telephone companies will be affected by these rules, we hereby certify that these rules will not have a significant effect on a substantial number of "small entities."

#### Summary of Report and Order

In this Further Notice, we seek comment on a number of possible rule revisions. The first set of rules we consider revising is related to the calculation of the "X-Factor." The productivity factor, or X-Factor, was included in the LEC price cap plan adopted in 1990 to reflect the fact that productivity growth in the telecommunications industry historically was greater than productivity growth in the economy as a whole. This Further Notice invites comments on three alternative X-Factor calculation methods. The first is Total Factor Productivity (TFP). A TFP method would base the X-Factor on the ratio of an index of total outputs to an index of total inputs. The output index would represent the quantities of goods or services produced, and the input index would represent the quantities of goods or services consumed. The second X-Factor calculation method under consideration is the Historical Revenue Method, which would set the X-Factor at the level necessary to reprice cap LECs' access services so that those LECs would earn a rate of return of 11.25 percent. The third X-Factor calculation method under consideration is the Historical Price Method. This is basically the method used by the Commission to set the X-Factor when it

adopted LEC price cap regulation originally in 1990. It would set the X-Factor so that the historical difference between telecommunications price trends and economy-wide price trends will continue in the future.

The Commission invites comment on a number of other X-Factor issues, such as whether the X-Factor should include a consumer productivity dividend. The Commission also seeks comment on the number of X-Factors that should be established in the price cap plan, to reflect the fact that each LEC serves regions with different economic conditions and population densities, and so cannot be reasonably expected to achieve the same level of productivity growth. In addition, this Further Notice solicits comment on whether the Commission should adopt X-Factors that would remain fixed until the next scheduled performance review, as the Commission did in the initial price cap plan. Alternatively, the Commission could adopt X-Factors based on a moving average of past productivity measures, which would be updated on a periodic basis, such as in the annual access tariff filings.

The Commission also seeks comment on whether the sharing mechanism can be eliminated. In the *First Report and Order* in this Docket, 60 FR 19526, Apr. 19, 1995, the Commission found that the sharing requirement blunts the efficiency incentives otherwise created by the price cap plan. Therefore, the Commission tentatively concluded that one of the X-Factors in the long-term price cap plan should have no sharing obligations, and established a goal in the *First Report and Order* to eliminate sharing eventually. Sharing serves three beneficial functions, however: (1) A "backstop" mechanism, in case the X-Factor was substantially in error, or in case a particular LEC's productivity varied substantially from the average; (2) a "flow-through" mechanism, to flow through to customers gains made by carriers in reducing their unit costs in excess of specified levels, as measured by interstate earnings; and (3) a "matching" mechanism, to encourage LECs to choose the X-Factor that most closely matches their actual rate of productivity growth. This Further Notice seeks comment on the extent to which the Commission can establish other mechanisms to replace the functions served by sharing. Specifically, the Commission seeks comment on whether a moving average X-Factor, together with multiple X-Factors, could replace the backstop function and the flow-through function of sharing. To replace the matching function, the Commission could

develop a mechanism to assign an appropriate X-Factor to each LEC. Alternatively, the Commission could permit additional pricing flexibility to LECs electing higher X-Factors.

Finally, the Commission seeks comment on a number of related issues. First, based on the method of calculation of the X-Factor, can the Commission eliminate the separate price cap formula for the common line basket? Second, based on the method of calculation of the X-Factor, would it still be necessary for the Commission to treat some costs as exogenous?

#### Ordering Clauses

Accordingly, it is ordered that notice is hereby given of the rulemaking described above and that comment is sought on these issues.

It is further ordered that pursuant to applicable procedures set forth in § 1.399 and 1.411 *et seq.* of the Commission's rules, 47 CFR 1.399, 1.411 *et seq.*, comments shall be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554 no later than November 27, 1995. Reply comments shall be filed no later than December 27, 1995. To file formally in this proceeding, participants must file an original and four 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 nine copies must be filed. In addition, parties should file two copies of any such pleading with the Tariff Division, Common Carrier Bureau, Room 518, 1919 M Street, NW., Washington, DC 20554, and one copy of any pleadings should be submitted on computer disk to the Industry Analysis Division, Common Carrier Bureau, Room 534, 1919 M Street, NW., Washington, DC 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, NW., Washington, DC 20554.

#### List of Subjects in 47 CFR Part 61

Communications common carriers, Tariffs.

Federal Communications Commission.  
William F. Caton,  
*Acting Secretary.*  
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**47 CFR Part 61****[CC Docket No. 94-1; FCC 95-394]****Price Cap Performance Review for Local Exchange Carriers; Treatment of Video Dialtone Services Under Price Cap Regulation****AGENCY:** Federal Communications Commission.**ACTION:** Further notice of proposed rulemaking.

**SUMMARY:** On October 20, 1994, the Commission adopted a Memorandum Opinion and Order concluding that the basic video dialtone offerings of local exchange carriers (LECs) would be subject to the existing price cap rules. In the order, the Commission stated it would initiate a rulemaking proceeding on whether to create a separate price cap basket for LEC video dialtone service. On February 7, 1995 the Commission issued a notice of proposed rulemaking in this docket seeking comment on whether to establish a separate price cap basket for LEC video dialtone service. In a companion order adopted today the Commission established a separate price cap basket for video dialtone and required LECs to segregate video dialtone costs and revenues from those for telephony service for purposes of sharing and the low-end adjustment once LEC provision of video dialtone exceeds a *de minimis* threshold. In the Order, the Commission also declined to establish sharing and low end-adjustments for the video dialtone basket for LECs exceeding the threshold. The Order initiated this Further Notice to obtain comment on the specific level for the *de minimis* threshold as well as on the procedures for allocating costs to the video dialtone basket for purposes of sharing and the low-end adjustment once a LEC has exceeded the threshold.

**DATES:** Comments must be submitted on or before October 27, 1995. Reply Comments must be submitted on or before November 17, 1995.

**ADDRESSES:** Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Claudia Pabo, Policy and Program Planning Division, Common Carrier Bureau, (202) 418-1595, or Cheryl Lynn Schneider, Tariff Division, Common Carrier Bureau, (202) 418-1530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Third Further Notice of Proposed Rulemaking adopted September 14, 1995, and released September 21, 1995. The full text of the Commission's decision is

available for public inspection and copying during normal business hours in the FCC Public Reference Room (Room 230), 1919 M St., NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Suite 140, 2100 M Street, NW., Washington, DC 20037.

**Regulatory Flexibility Analysis**

We have determined that section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), does not apply to these proposed rules because they do not have a significant economic impact on a substantial number of small entities, as defined by section 301(3) of the Regulatory Flexibility Act. Carriers subject to price cap regulation for local exchange access services affected by the rule amendments adopted in this Order generally are large corporations or affiliates of such corporations.

**Summary of Further Notice of Proposed Rulemaking**

Having concluded that video dialtone costs and revenues should be segregated from those for telephony service for purposes of sharing and the low-end adjustment once LEC provision of video dialtone exceeds a *de minimis* threshold, we seek comment on the following proposals and invite parties to suggest alternate sources for the threshold data, and different procedures for setting the threshold. We also invite interested parties to suggest alternative methods for allocating costs to the video dialtone basket once the LEC exceeded the threshold.

We propose basing the *de minimis* threshold on the data carriers are currently required to submit under Responsible Accounting Officer (RAO) Letter 25. In RAO Letter 25, the Accounting and Audits Division of the Common Carrier Bureau required LECs to maintain subsidiary records by USOA accounts for all wholly dedicated and shared investments, expense and revenue related to providing video dialtone service. Using the RAO Letter 25 data, the threshold could be set at the amount of dedicated video dialtone investment that would reduce the LEC overall rate of return by a specified amount, such 10 or 25 basis points, for example.

We also need to specify a method or factor to be used in Part 69 for allocating video dialtone costs to the video dialtone basket for purposes of sharing and the low-end adjustment once the threshold has been passed in the case of LECs that select an X-Factor with sharing and a low end adjustment for

telephony. We could allocate costs to the video dialtone basket using the approach in the new services test applied in the tariff review process for setting video dialtone rates. Under this approach, if somewhat different cost allocation methodologies are used for a single LEC due, for example, to differences in technology for various video dialtone systems, we propose to weight the application of the different cost allocation methodologies in some manner. For example, use of the different cost allocation methodologies could be weighted based on video dialtone investment for the relevant systems. As an alternative to use of the new services costs allocation methodology, we seek comment on whether we should adopt a fixed cost allocation factor, such as a specified percentage, and, if so, what level of allocator we should use. Parties advocating the use of a fixed allocator should explain the basis for their proposal and the public interest goals that would be advanced by use of such an allocator. We also ask interested parties to address the implications of allocating costs to the video dialtone basket on a basis different than that used to set video dialtone rates.

**Ordering Clauses**

It is ordered that, pursuant to sections 1, 4, 201-205, 215, and 218 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201-205, 215, 218, a third further notice of proposed rulemaking is hereby adopted and that comment is sought on the issues contained therein. Interested parties may file comments on or before October 27, 1995, and reply comments on or before November 17, 1995.

It is further ordered that to file formally in this proceeding, parties must file an original and four copies of all comments, reply comments, and supporting comments. If parties want each Commissioner to receive a personal copy of their comments, parties must file an original plus nine copies. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Service, Inc., Room 246, 1919 M Street, NW., Washington, DC 20037. Parties should also send one copy of any documents filed in this proceeding to Ms. Janice Myles, Policy and Program Planning Division, Common Carrier Bureau, Room 544, 1919 M Street NW., Washington, DC 20554. Comments and

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reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC 20554.

List of Subjects in 47 CFR Part 61

Communications common carriers,  
Reporting and recordkeeping  
requirements.

Federal Communications Commission.

William F. Caton,

*Acting Secretary.*

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