

transmitting antenna that is an integral part of the device.

(e) Within the 5.15–5.25 GHz band, U–NII devices will be restricted to indoor operations to reduce any potential for harmful interference to co-channel MSS operations.

(f) U–NII devices are subject to the radio frequency radiation exposure requirements specified in §§ 1.1307(b), 2.1091 and 2.1093 of this chapter, as appropriate. All equipment shall be considered to operate in a “general population/uncontrolled” environment. Applications for equipment authorization of devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(g) The frequency stability of the carrier frequency of an intentional radiator operating under this section shall be ±10 ppm over 10 milliseconds. The frequency stability shall be maintained over a temperature variation of –20 degrees to +50 degrees Celsius at normal supply voltage, and over a variation in the primary supply voltage of 85 percent to 115 percent of the rated supply voltage at a temperature of +20 degrees Celsius. For equipment that is capable of operating only from a battery, the frequency stability tests shall be performed using a new battery without any further requirement to vary supply voltage.

[FR Doc. 97–2007 Filed 1–30–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Parts 61 and 69

[CC Docket No. 94–1; FCC 96–488]

Price Cap Performance Review for Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: On September 14, 1995, the Commission adopted a Second Further Notice of Proposed Rulemaking in this docket, seeking comment on how its price cap regulation of local exchange carriers should be revised as the competition faced by those carriers grows. In particular, the Commission sought comment on relaxing the procedural requirements for establishing new rate elements for new switched access services, and eliminating the lower boundaries of the service band indices. In this Third Report and Order, the Commission adopts the rules it proposed. These rule revisions are intended to make it easier for local exchange carriers to introduce new services, and to lower rates.

EFFECTIVE DATE: Effective June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Richard Lerner, Attorney, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1530. For additional information concerning the information collections contained in this Report and Order contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Report and Order adopted December 23, 1996, and released December 24, 1996. The full text of this Report and Order is available for inspection and copying

during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common_Carrier/Notices/fcc96488.wp, or may be purchased from the Commission’s copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037. The Commission released a Second Further Notice of Proposed Rulemaking, CC Docket No. 94–1, Further Notice of Proposed Rulemaking, CC Docket No. 93–124, and Second Further Notice of Proposed Rulemaking CC Docket No. 93–197 (all three published at 60 FR 49539 (September 25, 1995)) (Price Cap Second FNPRM) to seek comment on the rules adopted in the Third Report and Order.

Regulatory Flexibility Analysis: As required by the Regulatory Flexibility Act, the Third Report and Order contains a Final Regulatory Flexibility Analysis which is set forth in Section XI.F of the Third Report and Order. The Commission concluded that the Regulatory Flexibility Act is not applicable because the rules adopted in the Third Report and Order will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act: Public burden for the collection of information is estimated as follows:

OMB Approval Number: None.

Title: Third Report and Order, Price Cap Performance Review for Local Exchange Carriers.

Form No.: N/A.

Type of Review: New collection.

Information collection	Number of respondents	Annual hour burden per response	Total annual burden
Elimination of the lower Service Band Index and Petition to offer new switched access services	13	10	130

Total Annual Burden: 130 hours.
Respondents: Business or other for-profit.
Estimated costs per respondent: \$0.
Needs and Uses: The agency will use the data submission to review Local Exchange Carriers’ proposed new switched access services. Public reporting burden for the collection of information is estimated to average 10 hours per response. Send comments on the agency’s need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated

collection techniques to the Federal Communications Commission, Records Management Branch, Washington, D.C. 20554.
Final Regulatory Flexibility Act Certification
 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. 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. 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”), and Citizens elected price cap regulation. Nonetheless, we certify that the rules adopted herein will not have a significant economic impact

on a substantial number of small entities.

The Regulatory Flexibility Act defines a "small business" to be the same as a "small business concern" under the Small Business Act. 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. 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 holding company level. Entities directly subject to these rule changes are carriers subject to price cap regulation. 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.

We therefore certify that the rules adopted herein will not have a significant economic impact on a substantial number of small entities. 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. The certification will also be published in the Federal Register.

Summary of Report and Order: We conclude that certain revisions to our rules should be made upon issuance of this Order. 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.

A. Lower Service Band Indices

i. Background

1. 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 bands that are set at specified percentages above and below the SBI. 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.

2. 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.

ii. Discussion

3. 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. 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). The lower service band indices do not prohibit below-band tariff filings. Rather, they establish higher cost support requirements for below-band filings, and a presumption that below-cap, within-band tariff filings are lawful.

Based on the comments submitted in response to the Price Cap Second FNPRM, and in light of 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.

4. 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. 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. In addition, in this NPRM, 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

i. Background

5. 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-consuming, and poses a significant impediment to the introduction of new services. 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. 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).

ii. Discussion

6. 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.

7. 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. In such cases, an incumbent LEC must file its own petition seeking approval for a new rate element.

Ordering Clauses

8. *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 June 30, 1997. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

9. *It is further ordered* that Parts 61 and 69 of the Commission's rules, 47 CFR Parts 61 and 69 are amended as set forth below.

List of Subjects

47 CFR Part 61

Communications common carriers, Reporting and recordkeeping requirements, Tariffs.

47 CFR Part 69

Access charges, Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations, Parts 61 and 69, are amended as follows:

PART 61—TARIFFS

1. The authority citation for Part 61 continues to read as follows:

Authority: Secs. 1, 4(i), 4(j), 201–205, and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201–205, and 403, unless otherwise noted.

2. Section 61.47 is amended by revising paragraphs (e), (g)(1), (g)(2), (g)(4), and (h)(2) and by removing paragraph (g)(6) to read as follows:

§ 61.47 Adjustments to the SBI; pricing bands.

* * * * *

(e) Pricing bands shall be established each tariff year for each service category and subcategory within a basket. Except as provided in paragraphs (f), (g), and (h) of this section, each band shall limit the pricing flexibility of the service category or subcategory, as reflected in the SBI, to an annual increase of five percent, relative to the percentage change in the PCI for that basket, measured from the levels in effect on the last day of the preceding tariff year. For local exchange carriers subject to price caps as that term is defined in § 61.3(x), there shall be no lower pricing band for any service category or subcategory.

* * * * *

(g)(1) *Local Exchange Carriers—Service Categories and Subcategories.* Local exchange carriers subject to price cap regulation as that term is defined in § 61.3(x) shall use the methodology set forth in paragraphs (a) through (d) of this section to calculate two separate subindexes: One for the DS1 services offered by such carriers and the other for the DS3 services offered by such

carriers. The annual pricing flexibility for each of these two subindexes shall be limited to an annual increase of five percent, relative to the percentage change in the PCI for the special access services basket, measured from the last day of the preceding tariff year. There shall be no lower pricing band for these two subindexes.

(2) The upper pricing band for the tandem-switched transport service category shall limit the annual upward pricing flexibility for this service category, as reflected in its SBI, to two percent, relative to the percentage change in the PCI for the trunking basket, measured from the levels in effect on the last day of the preceding tariff year. There shall be no lower pricing band for the tandem-switched transport service category.

* * * * *

(4) Local exchange carriers subject to price cap regulation as that term is defined in § 61.3(x) shall use the methodology set forth in paragraphs (a) through (d) of this section to calculate a separate subindex for the 800 data base vertical features offered by such carriers. The annual pricing flexibility for this subindex shall be limited to an annual increase of five percent, relative to the percentage change in the PCI for the traffic sensitive basket, measured from the last day of the preceding tariff year. There shall be no lower pricing band for this subindex.

* * * * *

(h) * * *

(2) The annual pricing flexibility for each of the subindexes specified in paragraph (h)(1) of this section shall be limited to an annual increase of five percent, relative to the percentage change in the PCI for the trunking basket, measured from the levels in effect on the last day of the preceding tariff year. There shall be no lower pricing band for these subindexes.

§ 61.49 [Amended]

3. Section 61.49 is amended by removing paragraph (d) and redesignating paragraphs (e) through (k) as paragraphs (d) through (j).

PART 69—ACCESS CHARGES

4. The authority citation for Part 69 continues to read as follows:

Authority: Sec. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1077, 1094, as amended; 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

5. Section 69.4 is amended by adding paragraph (g) to read as follows:

§ 69.4 Charges to be filed.

* * * * *

(g)(1) Local exchange carriers subject to price cap regulation as that term is defined in § 61.3(x) of this chapter may establish one or more switched access rate elements for a new service within the meaning of § 61.42(g) of this chapter, upon approval of a petition demonstrating that:

(i) The establishment of the new rate element or elements would be in the public interest; or

(ii) Another local exchange carrier has previously obtained permission to establish one or more rate elements identical to those proposed in the petition to offer the identical service; and the original petition did not rely upon a competitive showing as part of the public interest justification.

(2) The Chief, Common Carrier Bureau shall issue a Public Notice of the filing of a petition under paragraph (g)(1)(ii) of this section. Parties may file comments in response to such a petition within seven days of the Public Notice. The local exchange carrier shall have authority to introduce new rate elements under paragraph (g)(1)(ii) of this section, after the expiration of ten days from issuance of the Public Notice, unless the Chief, Common Carrier Bureau informs the LEC that the LEC has not demonstrated that its new service meets the standards of paragraph (g)(1)(ii) of this section. The incumbent LEC may then file one subsequent petition for authorization of that service under paragraph (g)(1)(ii) of this section.

[FR Doc. 97-2143 Filed 1-30-97; 8:45 am]

BILLING CODE 6712-01-P

47 CFR Part 73

[MM Docket No. 96-10; RM-8738, RM-8799, RM-8800, RM-8801]

Radio Broadcasting Services; Ada, Ardmore, and Comanche, OK, and Blue Ridge, Bridgeport, Eastland, Farmersville, Flower Mound, Greenville, Henderson, Jacksboro, Mineola, Mt. Enterprise, Sherman and Tatum, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Hunt Broadcasting, Inc., substitutes Channel 244C for Channel 244A at Sherman, Texas, reallots Channel 244C to Flower Mound, and modifies the license of Station KIKM to specify operation on Channel 244C at Flower Mound. At the request of Dean Broadcasting, Inc., the Commission substitutes Channel 262A for Channel 260C3 at Henderson, Texas, reallots

Channel 262A to Tatum, Texas, and modifies the license of Station KGRI to specify operation on Channel 262A at Tatum. See 61 FR 6335, February 20, 1996. To accommodate these reallotments, we are substituting channels and modifying authorizations at seven communities. Specifically, we are substituting Channel 236A for Channel 244A at Eastland, Texas, and modifying the Station KVMX license to specify operation on Channel 236A. We are substituting Channel 299A for Channel 252A at Jacksboro, Texas, and modifying the Station KAIH construction permit to specify operation on Channel 299A. We are substituting Channel 252A for Channel 244A at Bridgeport, Texas, and modifying the Station KBOC license to specify operation on Channel 252A. We are substituting Channel 246A for Channel 245C2 at Comanche, Oklahoma, and modifying the Station KDDQ license to specify operation on Channel 246A. We are substituting Channel 253A for Channel 243A at Ardmore, Oklahoma, and modifying the Station KRXZ license to specify operation on Channel 253A. We are substituting Channel 257A for Channel 244A at Ada, Oklahoma, and modifying the Station KADA license to specify operation on Channel 257A. We are substituting Channel 260A for Channel 244A at Mineola, Texas, and modifying the Station KMOO license to specify operation on Channel 260A. We are allotting Channel 221A to Farmersville, Texas, and Channel 260A to Mt. Enterprise, Texas. Finally, we are dismissing a request by Thomas S. Desmond for a Channel 260A allotment at Blue Ridge, Texas, a request by Greenville Broadcasting for a Channel 260C3 allotment at Greenville, Texas, and a request by Galen O. Gilbert for a Channel 260C3 allotment at Farmersville, Texas. The reference coordinates for the Channel 236A allotment at Eastland, Texas, are 32-28-34 and 98-50-20. The reference coordinates for the Channel 299A allotment at Jacksboro, Texas, are 33-14-14 and 98-09-43. The reference coordinates for the Channel 252A allotment at Bridgeport, Texas, are 33-13-28 and 97-47-51. The reference coordinates for the Channel 246A allotment at Comanche, Oklahoma, are 34-27-24 and 97-55-07. The reference coordinates for the Channel 253A allotment at Ardmore, Oklahoma, are 34-14-15 and 97-06-45. The reference coordinates for the Channel 257A allotment at Ada, Oklahoma, are 34-42-31 and 96-44-24. The reference coordinates for the Channel 244C allotment at Flower Mound, Texas, are

33-23-12 and 97-33-57. The reference coordinates for the Channel 221A allotment at Farmersville, Texas, are 33-16-21 and 96-21-14. The reference coordinates for the Channel 260A allotment at Mineola, Texas, are 32-45-04 and 95-33-18. The reference coordinates for the Channel 262A allotment at Tatum, Texas, are 32-13-35 and 94-33-11. The reference coordinates for the Channel 260A allotment at Mt. Enterprise, Texas, are 31-55-06 and 94-40-54. With this action, the proceeding is terminated.

DATES: Effective March 3, 1997. The window period for filing application for the Channel 221A allotment at Farmersville, Texas, and the Channel 260A allotment at Mt. Enterprise, Texas, will open on March 3, 1997, and close on April 3, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418-2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket No. 96-10, adopted December 13, 1996, and released January 17, 1997. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 244A and adding Channel 257A at Ada.

3. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Channel 253A at Ardmore.

4. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 244A, removing Channel 245C2, and adding Channel 246A at Comanche.

5. Section 73.202(b), the Table of FM Allotments under Texas, is amended by