and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 17, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 24, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(159)(v)(E), revising paragraph (c)(184) introductory text, and adding paragraphs (c)(184)(i)(B)(9), and (c) (222)(i)(A)(2) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(159) * * *

(v) * * *

(E) Previously approved on July 12, 1990 and now deleted without replacement for implementation in the Antelope Valley Air Pollution Control District Rules 1105 and 1117.

* * * * *

(184) New and amended regulations for the following APCDs were submitted on May 13, 1991, by the Governor's designee.

(i) * * *

(B) * * *

(9) Previously approved on August 11, 1992 and now deleted without replacement for implementation in the Antelope Valley Air Pollution Control District Rule 1123.

* * * * *

(222) * * *

(i) * * *

(A) * * *

(*2*) Previously approved on July 14, 1995 and now deleted without replacement for implementation in the Antelope Valley Air Pollution Control District Rule 1115.

* * * * *

3. Section 52.222 is being amended by adding paragraphs (a)(6) and (b)(4) to read as follows:

§ 52.222 Negative declarations.

(a) * * *

(6) Antelope Valley Air Pollution Control District.

(i) Motor Vehicle Assembly Line Coating Operations submitted on January 12, 1999 and adopted on November 18, 1997.

(ii) Refinery Process Turnarounds submitted on February 16, 1999 and adopted on November 18, 1997.

(iii) Marine Vessel Coating Operations, Marine Tank Vessel Operations, and Thermal Enhanced Oil Recovery Wells submitted on June 23, 1998 and adopted on January 20, 1998.

* * * * *

(4) Antelope Valley Air Pollution Control District.

(i) Boilers and Process Heaters In Petroleum Refineries submitted on May 13, 1999 and adopted on April 21, 1998.

(ii) Cement Kilns and Glass Melting Furnaces submitted on July 23, 1999 and adopted on March 16, 1999.

* * * * *

[FR Doc. 00–11996 Filed 5–16–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CS Docket No. 97–98; FCC 00–116]

Rules and Policies Governing Pole Attachments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addresses issues raised in the Notice of Proposed Rulemaking relating to the formula used to calculate maximum just and reasonable rates utilities may charge for pole attachments made to a pole, duct, conduit or right-of-way pursuant. This document amends the formula so that it reflects the Commission's current accounting rules that apply to local exchange carriers; clarifies the treatment of accumulated depreciation attributable to removal costs to eliminate negative results; and adopts a conduit methodology for determining the maximum just and reasonable rates utilities may charge cable systems and telecommunications carriers for their use of conduit systems.

DATES: Effective June 16, 2000, except for §§ 1.1404 and 1.1409, which contain information collection requirements that have not been approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date of these sections. Written comments by the public on any new and/or modified information collection requirements should be submitted on or before July 17, 2000.

ADDRESSES: A copy of any comments on the information collection requirements contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Kathleen Costello at (202) 418–7200 or via the Internet at kcostell@fcc.gov, or Cheryl King at (202) 418–2284 or via the Internet at cking@fcc.gov. For additional information concerning the information collection requirements contained herein, contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, CS Dkt. No. 97–98, FCC 00–116, adopted March 29, 2000; released April 3, 2000. The full text of the Commission's Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters, 445 12th Street, SW, Washington DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via Internet at http://www.fcc.gov/csb/.

Paperwork Reduction Act

The requirements adopted in the *Report and Order* have been analyzed with respect to the Paperwork Reduction Act of 1995 (''1995 Act'') and found to impose no new but some modified information collection requirements on utilities. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in the *Report and Order,* as required by the 1995 Act. Public comments are due July 17, 2000. Comments should address: (a) whether the 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.

OMB Approval Number: 3060–0392.

Title: 47 CFR 1 Subpart J—Pole Attachment Complaint Procedures.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 1,381.

Estimated Time Per Response: .5–35 hours.

Frequency of Response: On occasion.

Total Annual Burden to Respondents: 3,047 hours.

Synopsis of the Report and Order

I. Introduction

1. The *Report and Order (''Report and Order*'') addresses issues raised *in Amendment of Rules and Policies Governing Pole Attachments, Notice of Proposed Rulemaking,* CS Docket No. 97–98, 62 FR 18074 (''NPRM'') relating to the maximum just and reasonable rates utilities may charge for ''pole attachments'' made to a pole, duct, conduit or right-of-way. Generally, the commenters represent the interests of one of the following three categories: (1) Electric utilities; (2) cable operators; and (3) telecommunications carriers. In the *Report and Order,* we adopt amended rules.

II. Background

2. Section 224 of the Communications Act (''Pole Attachment Act'') grants the Commission authority to regulate the rates, terms, and conditions governing pole attachments and requires that such rates, terms and conditions be just and reasonable. The Commission is also authorized to adopt procedures necessary to hear and to resolve complaints concerning such rates, terms, and conditions. Beginning in 1978, the Commission developed a methodology to determine the maximum allowable pole attachment rate under section 224(d)(1), (the ''Cable Formula''), in Adoption of Rules for the Regulation of Cable Television Pole Attachments, First Report and Order, CC Docket No. 78–144 (''First Report and Order''); Second Report and Order (''Second Report and Order''); and Memorandum and Order (''Third Order''), implementing a cost methodology premised on historical or embedded costs. In 1987, the Commission amended and clarified the methodology for determining rates in Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles, CC Docket No. 86–212, 52 FR 31769, August 24, 1987 (''Pole Attachment Order'').

3. Revisions to the Cable Formula and the formula for pole attachment rates in conduit systems adopted in the *Report and Order* will apply to attachments made by cable systems and telecommunications carriers, until the new rules for attachments by telecommunications carriers providing telecommunications services established under the Telecommunications Report and Order, CS Docket No. 97–151, FCC 98–20, 63 FR 12013, March 12, 1998, become effective in 2001. After February 8, 2001, the Cable Formula for poles and the formula adopted for use of conduit systems adopted in the *Report and Order,* will continue to apply to pole attachments used by a cable television system, as long as the pole attachment is not also used to provide telecommunications services.

III. Pricing Methodologies

1. Modification of the Cable Formula

4. The Commission has employed historical costs in Cable Formula calculations since the passage of the Pole Attachment Act in 1978. Further, the United States Supreme Court has upheld the application of an historical cost methodology for determining pole attachment rates. The continued use of a clear rate formula by the Commission is essential to encourage parties to negotiate for pole attachment rates, terms and conditions. The continued use of historical costs accomplishes key objectives of assuring, to both the utility and the attaching parties, just and reasonable rates; establishes accountability for prior cost recoveries; and accords with generally accepted accounting principles.

2. Gross Versus Net Book Costs

5. The Cable Formula incorporates net figures for the calculation of maximum pole attachment rates. We compute the carrying charge elements for maintenance, depreciation and administrative expenses, as well as for return on investment and taxes, using net book costs. For example, the net cost of a bare pole component is derived from the gross investment in poles less accumulated depreciation and accumulated deferred income taxes. The important goal is to ensure that like figures are used, whether net or gross and if both parties to a pole attachment complaint agree, the pole attachment rates may be computed using gross book costs. We will continue to use net figures in the Cable Formula. However, as in the past, when all parties to a complaint agree, we will allow the use of gross book costs.

IV. Armis Uniform System of Accounts

6. Our Automated Reporting Management Information System (''ARMIS'') Report 43–02 Uniform System of Accounts (''USOA'') contains the financial operating results of a local exchange carrier's telecommunications operations for every Part 32 account. We affirm the use of Part 32 Uniform System of Accounts for local exchange carriers, as reported to ARMIS, in determining various components of the Cable Formula. These specific accounts are discussed in the *Report and Order* relating to various aspects of the Cable Formula.

V. Formula for Determining Attachment Rates for Poles

7. The Commission uses the following Cable Formula in disputed cases to set rates to be charged by utilities for attachments on poles:

$$\text{Maximum Rate} = \frac{\text{Space Occupied}}{\text{Total Usable Space}} \times \text{Cost of a Bare Pole} \times \text{Carrying Charge Rate}$$

A. Percentage of Total Usable Space Occupied

8. The presumptions used in the Cable Formula have been repeatedly affirmed since the enactment of the Pole Attachment Act. We again decline to modify the well established presumptions leading to 7.4% as the percentage of usable space occupied by a pole attachment.

1. Safety Space

9. Because the electric supply cable precludes other attachments from occupying the safety space, which would otherwise be usable space, the safety space is effectively usable space occupied by the supply cable. So long as their crews make the installation, the electric utilities are not limited by the National Electrical Safety Code in what equipment or cables they may attach in the safety space. Accordingly, we reject the electric utilities' arguments to reduce the presumptive usable space of 13.5 feet by 40 inches.

2. Minimum Ground Clearance

10. The Commission established that a presumptive average 18 feet of the pole space is reserved for ground clearance. The 18 foot presumption is not dictated by the National Electric Safety Code, but is an average to be used in the estimation of total usable space. In the Usable Space Order, we determined that the selection of the 18 foot figure reflected various elements such as differing pole heights, as well as National Electrical Safety Code standards that vary depending on the physical environment of the pole. Factors used to determine the National Electrical Safety Code standard of minimum ground clearance, include whether the wires or cables cross over railroad tracks, roads, or driveways and the amount of voltage transferred through the cables. The rebuttable nature of the usable space presumption allows for the use of a different minimum ground clearance when necessary to improve the accuracy of the calculations. Presumptions were adopted to encourage expeditious response to complaint information requests. We have not been persuaded that a departure from our well established presumption of an average minimum ground clearance of 18 feet is warranted.

3. 30 Foot Poles

11. The record confirms the prevalent use of 30 foot poles and reflects that exclusion of such poles from the Cable Formula calculations could distort the resulting rate by excluding a significant portion of local exchange carrier plant investment from the rate calculation. We conclude that a distorted inventory of poles would be reflected if utilities were allowed to ''opt out'' or exclude their poles of 30 feet or less when calculating their pole attachment rates.

4. Weight and Wind Load Factors

12. The current method for allotting space to a pole attachment accounts directly for the wind load factor. The weight load factor is considered when deciding whether a stronger pole is necessary as part of make-ready work. Many of these factors are included in accounts in the maintenance element of the carrying charge rate. For electric utility owned poles, which report data for regulatory purposes to the Federal Energy Regulatory Commission (''FERC''), FERC Account 593 includes pole related expenses for overhead lines and allows for the recovery of the cost of labor, materials used and expenses incurred in the maintenance of overhead distribution facilities. The Commission's ARMIS rules for local exchange carrier accounting provide for the recovery of damages and pole related expenses caused by storms or other casualties. The complete costs of the physical attachments of an attaching entity are normally paid to the pole line owner as a condition of attachment, addressing such factors as weight, wind load and safety space. These make-ready costs have been fully recovered.

B. Cost of a Bare Pole

1. Local Exchange Carrier Pole Owner Formula Methodology

13. We adopt the following formula to determine the net cost of a bare pole for local exchange carrier pole owners:

$$\text{Net Cost of a Bare Pole (LEC)} = 0.95 \times \frac{\text{Account 2411} - \text{Accumulated Depreciation (Account 3100)(Poles)} - \text{Accumulated Deferred Income Taxes (Account 4100 + 4340)(Poles)}}{\text{Number of Poles}}$$

14. In this formula Accumulated Depreciation (Poles) and Accumulated Deferred Income Taxes (Poles) are derived from composite Part 32 accounts attributable to poles. Specifically, Accumulated Depreciation (Poles) represents the share of Part 32 Account 3100 (Accumulated Depreciation) that corresponds to Account 2411, and Accumulated Deferred Income Taxes (Poles) represents the shares of Part 32 Accounts 4100 (Net Current Deferred Operating Income Taxes) and 4340 (Net Noncurrent Deferred Operating Income Taxes) that correspond to Account 2411.

2. Electric Utility Pole Owner Formula Methodology

15. We affirm the following formula to determine the net cost of a bare pole for electric utilities:

$$\text{Net Cost of a Bare Pole (Electric)} = 0.85 \times \frac{\text{Account 364} - \text{Accumulated Depreciation (Poles)(Account 108)} - \text{Accumulated Deferred Income Taxes (Poles)(Account 109)}}{\text{Number of Poles}}$$

16. Under this formula, Accumulated Depreciation (Poles) represents the share of FERC Account 108 (Accumulated provision for depreciation of electric utility plant (Major only) a composite account that is required to be maintained on a subsidiary basis, that corresponds to Account 364 (Poles, Towers, and Fixtures). Similarly, Accumulated Deferred Income Taxes represents the share of composite FERC Account 190 (Accumulated deferred income taxes) that corresponds to Account 364. An adjustment to a utilty's net pole investment (15% for electric utilities and 5% for local exchange carriers) is necessary to eliminate the investment in crossarms and other non-pole related items.

3. Total Number of Poles

17. We have previously concluded that poles of 30 feet or less should be included in calculations of the Cable Formula in our discussion about pole height and the usable space presumption. Based on our review of the record in this proceeding, we also conclude that poles of 30 feet or less should therefore be included in the inventory of the total number of poles owned or used, jointly-owned or solely-owned, by a utility. The exclusion of these poles would result in a distorted and inaccurate pole inventory resulting in an unjust and unreasonable pole attachment rate because they are being used by the utility for their business services and by cable operators and telecommunications carriers to provide their respective services.

C. Carrying Charge Rate (Poles)

18. The carrying charge rate reflects those costs incurred by the utility in owning and maintaining poles regardless of the presence of pole attachments. The elements of the carrying charge rate are: administrative, maintenance, depreciation, taxes and cost of capital (rate of return). The carrying charge rate factor of the Cable Formula is calculated as follows:

$$\text{Carrying Charge Rate} = \text{Administrative} + \text{Maintenance} + \text{Depreciation} + \text{Taxes} + \text{Return}$$

To calculate the carrying charge rate, the Commission developed a formula that relates each of these elements to a pole owner's net pole investment. Full Cable Formulas, with all components, elements and accounts used to determine a maximum just and reasonable rate for pole attachments to electric and local exchange carrier utility poles and conduit, are included in the appendices to the *Report and Order*.

1. The Administrative Element

19. The following formula is adopted to determine the administrative element of the carrying charge rate of the Cable Formula for local exchange carrier pole owners:

$$\text{Administrative Element} = \frac{\text{Administrative and General (Accounts 6710 + 6720)}}{\text{Gross Plant Investment (Account 2001)} - \text{Accumulated Depreciation (Account 3100)} - \text{Accumulated Deferred Taxes, Plant (Accounts 4100 \& 4340)}}$$

2. The Maintenance Element

a. LEC ARMIS Part 32 Account 6411

20. Account 6411 includes the rents paid by the local exchange carrier to electric utilities for the local exchange carrier's use of the electric utility's poles for the local exchange carrier's own core business. Inclusion of the local exchange carrier's rental fees paid to the electric utility in the Cable Formula would result in the electric utility being paid twice. These fees will be deducted from the total amount reported to Account 6411.

b. Electric Utility FERC Account 590

21. We reject our tentative conclusion that some portion of FERC Account 590 should be included in the maintenance element for electric utilities. We believe that any increased accuracy that would be derived from including the minute percentage of pole related expenses that may be included in Account 590, is outweighed by the complexity of arriving at an appropriate and equitable percentage of the expenses.

3. The Depreciation Element

22. We redefine Net Pole Investment for Local Exchange Carriers as:

$$\text{Net Pole Investment} = \text{Gross Pole Investment (Account 2411)} - \text{Accumulated Depreciation on (Poles) (Account 3100)} - \text{Accumulated Deferred Income Taxes (Poles) (Accounts 4100 \& 4340)}$$

where Accumulated Depreciation (Poles) includes only that portion of Account 3100 which arises from the depreciation of Account 2411. The portion of Accumulated Depreciation (Poles) attributable to removal costs shall be treated as an offset to gross removal costs when calculating future net salvage value. This allows a proper matching of depreciation and corresponding sources, and provides an accurate basis for calculating investment returns.

4. The Taxes Element

23. The taxes element of the carrying charge rate for local exchange carrier pole owners is calculated under the following formula:

$$\text{Tax Element} = \frac{\text{Operating Taxes (Accounts 7200)}}{\text{Gross Plant Investment (Account 2001)} - \text{Accumulated Depreciation (Account 3100)} - \text{Accumulated Deferred Taxes (Plant, Accounts 4100 \& 4340)}}$$

Although a one to one matching of tax elements from Part 31 to Part 32 may not be achievable in all instances, we believe the proposed tax element formula will provide reasonable results in an expeditious manner.

5. The Rate of Return Element

24. The rate of return element is currently taken from the rate of return authorized for the utilities' intrastate services, but many states are moving

away from this type of regulation. The Commission has adopted an annual rate of return for the interstate access services of local exchange carriers of 11.25%. We affirm the continued use of the rate of return authorized by the state for intrastate services of the utility, when available; however, we will use, as a default rate of return for utilities when a state authorized rate is not available, the rate of return set by the Commission for local exchange carriers as it is modified from time to time, covering the appropriate period in the rate dispute.

VI. Formula for Determining Conduit Attachment Rates

25. Conduits are structures that provide physical protection for cables and allow new cables to be added inexpensively along a route, without having to dig up the landscape, streets and other structures in the community each time a new cable is installed. A collection of conduits, together with their supporting infrastructure, constitutes a conduit system. A conduit consists of one or more ducts, which are the enclosures that carry the cables. Often, when cable system or telecommunications carriers' cables are placed in a duct, three or more inner ducts are inserted into the duct allowing ''one duct to be treated more like conduit.'' Congress authorized the Commission to regulate rates, terms, and conditions for pole attachments in ducts and conduits under section 224 which states:

> * * * a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the * * * total duct or conduit capacity, which is occupied by the pole attachment, by the sum of the operating expenses and actual capital costs of the utility attributable to the entire * * * duct [or] conduit.

1. Conduit Formula Methodology

26. We believe it is appropriate to use system-wide data for establishing the maximum rate for use of a conduit. Necessary data is available in underlying records filed by electric utilities to support claims in sworn FERC submissions, and only in rare instances would a utility lack detailed information because it has no records. Where such records do not exist, other sources of information may be used. Electric utilities have demonstrated their ability to calculate a rate by applying the formula. Although the conduits which comprise a conduit system may vary widely from urban to suburban or rural locales, we will use the system-wide historical cost of the conduit in the formula.

2. Factors of the Conduit Formula

27. The first factor of the formula, Conduit Capacity, is determined using the following variables: The Number of Inner Ducts placed in the duct (if there are no inner ducts the value would be presumed to be two, reflecting the rebuttable presumption that not more than half of a duct is occupied); and the Number of Ducts in the conduit system (which does not include collapsed or otherwise damaged ducts that are not repairable). This is presumed to be the average number of ducts per conduit for the system.

28. The second factor of the formula, Net Linear Cost of Conduit, is determined using the following additional variables: Net Conduit Investment (gross conduit investment less the accumulated depreciation and accumulated deferred taxes); and System Duct Length, the length of all ducts in the system, minus the length of collapsed ducts and the length of ducts that for other reasons are physically unable to contain cable. The System Duct Length may be arrived at in one of three ways: First, it may be obtained from available records. Second, the length of the conduit in the system may be multiplied by an estimated average number of ducts per conduit. Third, the length of all ducts in the system is the sum of the products of the length of each conduit times the number of ducts in that conduit.

29. Calculation of the maximum rate may be simplified by using the presumptions and using the Net Linear Cost of a Conduit for the second term in the formula. The formula is:

$$\text{Maximum Rate (System - Wide)} = \underbrace{\frac{1/2\ \text{Duct}}{\text{Avg. No. of Ducts}}}_{\text{[Percentage of Conduit Capacity]}} \times \underbrace{\frac{\text{Net Conduit Investment}}{\text{System Conduit Length}}}_{\text{[Net Linear Cost of a Conduit]}} \times \text{Carrying Charge Rate}$$

a. Percentage of Total Capacity Occupied

i. Total Duct or Conduit Capacity

30. The total capacity of a duct or conduit is the entire volume of available capacity in the conduit system. All costs associated with the construction of the conduit system are considered in determining the cost of this total capacity. We will not allow capacity designated for maintenance, future business plans, or municipal set-asides to be subtracted from the total duct or conduit capacity. The record supports our finding that capacity in a duct or conduit that is usable for any of these purposes is part of the total duct or conduit capacity.

ii. Occupied Capacity, the Half-Duct Presumption

31. Presumptions are used in the Cable Formula to expedite the calculations of a just and reasonable rate so that complicated surveys, accounting and calculations may be avoided. We retain the half-duct rebuttable presumption that an attachment occupies a maximum of one half of a duct. Communications cables may, and often do, share a duct. The National Electrical Safety Code requires that, where electric supply cables share a duct with communications cables, the cables be maintained by the utility. The capacity is available to other communications cables and is, therefore, not occupied.

32. Some cable operators assert that even the application of the half duct methodology will result in rates that are unreasonably high in light of current iner duct technology. The term inner duct generally refers to small diameter (1″ or 1½″) pipe or tubing placed inside a conventional duct to allow the installation of multiple wires or cables, and use of inner duct is a common practice. The half duct presumption is rebuttable, and the presence of inner duct is adequate rebuttal, and we have made direct provision in the formula for that contingency. Where inner-duct is installed, either by the attacher or in a previous installation, the maximum rate will be reduced in proportion to the fraction of the duct occupied. That fraction will be one divided by the number of inner ducts in the duct, using

the default presumption of capacity occupied of one-half duct, or the actual percentage of capacity occupied.

3. Net Linear Cost of Conduit

33. To arrive at a system investment for use in the conduit formula we identify the net linear cost of the conduit system. To accomplish this, the utility must first establish the Net Conduit Investment as discussed below.

a. Net Conduit Investment

34. The conduit formula requires the determination of the utility's net linear cost of its conduit system (''Net Conduit Investment''), calculated as follows:

$$\text{Net Conduit Investment} = \text{Gross Conduit Investment (ARMIS Account 2441/ FERC Account 366)} - \text{Accumulated Depreciation (Conduit)} - \text{Accumulated Deferred Taxes (Conduit)}$$

35. Where Gross Conduit Investment for the local exchange carrier consists of Part 32 Account 2441. For the electric utility, Gross Conduit Investment is reflected in FERC Part 101 Account 366. For local exchange carriers, Accumulated Depreciation (Conduit) represents the share of ARMIS Account 3100 that corresponds to Account 2441. For electric utilities, Accumulated Depreciation (Conduit) represents the share of FERC Account 108 that corresponds to Gross Conduit Investment valuations included in Account 366.

36. The formula for calculation of the Accumulated Deferred Income Taxes (conduit) is:

$$\text{Accumulated Deferred Income Taxes (Conduit)} = \frac{\text{Gross Conduit Investment}}{\text{Total Gross Plant}} \times \text{Total Accumulated Deferred Income Taxes}$$

Total Accumulated Deferred Income Taxes for electric utilities are based on FERC Account 190. Because the local exchange carrier conduit owner keeps conduit specific data for its accumulated deferred income taxes, we will allow a local exchange carrier to use that data in the rate calculation, as long as it is readily available.

b. System Duct Length

37. The denominator for the Net Linear Cost of Conduit element within the formula is based on duct length. The net cost data is available from FERC reports and, although electric utilities are not required to report the linear footage of conduit deployed, they routinely produce linear footage data during state conduit rate proceedings. Electric utility corporate or engineering departments have records on installed plant. Moreover, when a utility is unable to obtain the requisite data, information from other sources may be used. A determination of the total length of duct and conduit in the system can be made with a precision comparable to that reached in determining the number of poles owned by the utility. The utility must, however, specify the method used for computing the duct length and must disclose this information to all attachers upon request.

4. Carrying Charge Rate (Conduit)

38. The elements of the carrying charge rate are: Administrative, maintenance, depreciation, taxes and rate of return. The Cable Formula and all components, elements and accounts used to calculate a maximum rate for use of electric and local exchange carrier utility conduit systems are discussed in the *Report and Order.* To calculate the carrying charge rate, the Commission developed a formula that relates each of these elements to a utility's net plant investment appropriate to the location of the pole attachment (*e.g.,* poles, conduit system, right-of-way). That formula is:

$$\text{Carrying Charge Rate} = \text{Administrative} + \text{Maintenance} + \text{Depreciation} + \text{Taxes} + \text{Rate of Return}$$

39. The administrative, taxes, and rate of return elements will be the same for use in a formula for pole attachments in conduits and rights-of-way as on poles. The maintenance and depreciation elements, with the accounts and methodologies specific to conduits, are delineated in the *Report and Order.*

a. Maintenance Element

40. For purposes of the calculation of the maintenance element, the denominator is the net conduit investment which equals the sum of gross investment, minus accumulated depreciation related to conduit systems, minus accumulated deferred income taxes related to conduit systems.

i. Conduit Owned by a Local Exchange Carrier

41. We use the following formula to determine the maintenance carrying charge rate element for underground conduit systems owned by a local exchange carrier.

$$\text{Maintenance Element} = \frac{\text{Account 6441}}{\underbrace{\text{Account 2441} - \text{Accumulated Depreciation, conduit} - \text{Accumulated Deferred Income Taxes}}_{\text{[Net Conduit Investment]}}}$$

ii. Electric Utility Owned Conduit

42. The formula and FERC accounts used for the maintenance element of the carrying charge rate for electric utility conduit owners is as follows:

$$\text{Maintenance Element} = \frac{\text{Account 594 (Maintenance of Underground Lines)}}{\left[\begin{array}{c}\text{Investment in}\\ \text{Accounts 366, 367, \& 369}\end{array}\right] - \left[\begin{array}{c}\text{Depreciation Related to}\\ \text{Accounts 366, 367, \& 369}\end{array}\right] - \left[\begin{array}{c}\text{Deferred Income Taxes Related to}\\ \text{Accounts 366, 367, \& 369}\end{array}\right]}$$

b. Depreciation Element

43. We adopt our proposed formula, as modified, using LEC ARMIS Account 2441 and electric utility FERC Account 366 for the Gross Conduit Investment in calculating the depreciation element, as follows:

$$\text{Depreciation Element} = \frac{\text{Gross Conduit Investment (ARMIS Account 2441/FERC Accounts 366)}}{\text{Net Conduit Investment}} \times \text{Depreciation Rate for Conduit}$$

VII. Final Regulatory Flexibility Act Analysis

44. As required by the Regulatory Flexibility Act (''RFA''), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the Notice of Proposed Rulemaking, CS Docket No. 97–98, 62 FR 18074 (''NPRM''). The Commission sought written public comment on the proposals in the NPRM including comment on the IRFA. The comments received are discussed below. This present Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.

1. Need for, and Objectives of, the Report and Order

45. In 1987, the Commission adopted its current pole attachment formula for calculating the maximum just and reasonable rates utilities may charge cable systems for pole attachments. Since then the Commission replaced its accounting system for telephone companies, creating Part 32. This created a need to advise telephone companies about how the new system should be used in the pole attachment formula. The Telecommunications Act of 1996 made pole attachment rules applicable to telecommunications providers. The existing pole attachment formula applies to them until February 8, 2001. This gave rise to a need to ensure that the pole attachments rules would appropriately accommodate these new attachers. The use of conduit by cable systems and had not yet been addressed in detail by the Commission. This needs to be done in light of the anticipated number of new attachers whose entry into the marketplace the Commission wishes to facilitate. We recognize that a significant number of new attachers might be small businesses.

46. The objectives of the rules adopted herein are consistent with Congressional intent to provide a clear methodology to determine just and reasonable pole attachment rates in a manner that uses publicly available and verifiable data whenever possible. The objectives of the rules adopted herein change the formula methodology used to determine a just and reasonable pole attachment rate to reflect the present Part 32 accounting system for telephone companies that replaced the former Part 31 rules in 1988. Finally, the objectives of the rules adopted herein are to identify a conduit methodology that will determine the maximum just and reasonable rates utilities may charge cable operators and telecommunications carriers for pole attachments to conduit systems. Although our rules do not differentiate between large and small businesses, our use of presumptions and publicly available data in our methodology ensures that small businesses will not be discouraged from seeking recourse with the Commission against the imposition of unreasonable pole attachment rates.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

47. Small Cable Business Association (''SCBA'') filed comments in response to the IRFA contained in the NPRM, and, to the extent they are relevant to the issues in this proceeding, we incorporate them herein by reference. SCBA claims in its IRFA comments that, because of the statutory exclusion of cooperatives from the definition of utility, section 224 does not minimize market entry barriers for small cable operators. According to SCBA, the IRFA in the NPRM fails to consider this issue. SCBA claims that small cable systems will be particularly hurt by the statutory exemption of cooperatives from the definition of utility because small cable systems often operate in rural areas and therefore necessarily attach their plant to rural telephone and electric cooperatives. In its Reply to the SCBA's comments, the National Telephone Cooperative Association responded that '' * * * the exemption [of cooperatives from section] 224 does not deprive SCBA members of available legal remedies in connection with pole attachment agreements negotiated with exempt electric or telephone cooperatives.'' We note that the SCBA does not appear to be claiming that our rules will disproportionately burden small cable systems, but that where our rules do not apply, small cable system operators will be disproportionately harmed. Because the exemption for cooperatives was set forth by Congress clearly in section 224(a)(1), the Commission is left no discretion to address SCBA's concerns in this regard. In general comments, the National Cable Television Association (''NCTA'') acknowledged that:

> The benefits [of the Commission's current pole attachment regulatory regime] are most vivid in the case of small cable operators. Small operators are peculiarly vulnerable to pole rent overcharges, because of the nature of their service areas. The Commission has recognized that small systems serve areas that are far less densely populated areas than the areas served by large operators. A small rural operator might serve half of the homes along a road with only 20 homes per mile, but might need 30 poles to reach those 10 subscribers. A pole rent increase creates an enormous push on [cable] rates, and frequently makes rural line extensions uneconomical. These same small operators are often the very parties without the budgets to litigate expensive document-intensive rate cases.

The NCTA's comments recognize that the Commission's chosen methodology does not excessively burden small businesses.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

48. The RFA generally defines a ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term small business concern 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) satisfies any additional criteria established by the Small Business Administration (''SBA''). For many of the entities described below, the SBA has defined small business categories through Standard Industrial Classification (''SIC'') codes.

a. Utilities

49. Many of the decisions and rules adopted herein may have a significant effect on a substantial number of utility companies. Section 224 defines a ''utility'' as ''any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.'' The SBA has provided the Commission with a list of utility firms which may be effected by this rulemaking. Based upon the SBA's list, the Commission concludes that all of the following types of utility firms may be affected by the Commission's implementation of section 224.

(1) Electric Utilities (SIC 4911, 4931 & 4939)

50. Electric Services (SIC 4911). The SBA has developed a definition for small electric utility firms. The Census Bureau reports that a total of 1379 electric utilities were in operation for at least one year at the end of 1992. According to SBA, a small electric utility is an entity whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reports that 447 of the 1379 firms listed had total revenues below five million dollars.

51. Electric and Other Services Combined (SIC 4931). The SBA has classified this entity as a utility whose business is less than 95% electric in combination with some other type of service. The Census Bureau reports that a total of 135 such firms were in operation for at least one year at the end of 1992. The SBA's definition of a small electric and other services combined utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 45 of the 135 firms listed had total revenues below five million dollars.

52. Combination Utilities, Not Elsewhere Classified (SIC 4939). The SBA defines this utility as providing a combination of electric, gas, and other services which are not otherwise classified. The Census Bureau reports that a total of 79 such utilities were in operation for at least one year at the end of 1992. According to SBA's definition, a small combination utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 63 of the 79 firms listed had total revenues below five million dollars.

(2) Gas Production and Distribution (SIC 4922, 4923, 4924, 4925 & 4932)

53. Natural Gas Transmission (SIC 4922). The SBA's definition of a natural gas transmitter is an entity that is engaged in the transmission and storage of natural gas. The Census Bureau reports that a total of 144 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small natural gas transmitter is an entity whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 70 of the 144 firms listed had total revenues below five million dollars.

54. Natural Gas Transmission and Distribution (SIC 4923). The SBA has classified this entity as a utility that transmits and distributes natural gas for sale. The Census Bureau reports that a total of 126 such entities were in operation for at least one year at the end of 1992. The SBA's definition of a small natural gas transmitter and distributor is a firm whose gross revenues did not exceed five million dollars. The Census Bureau reported that 43 of the 126 firms listed had total revenues below five million dollars.

55. Natural Gas Distribution (SIC 4924). The SBA defines a natural gas distributor as an entity that distributes natural gas for sale. The Census Bureau reports that a total of 478 such firms were in operation for at least one year at the end of 1992. According to the SBA, a small natural gas distributor is an entity whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 267 of the 478 firms listed had total revenues below five million dollars.

56. Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Distribution (SIC 4925). The SBA has classified this entity as a utility that engages in the manufacturing and/or distribution of the sale of gas. These mixtures may include natural gas. The Census Bureau reports that a total of 43 such firms were in operation for at least one year at the end of 1992. The SBA's definition of a small mixed, manufactured or liquefied petroleum gas producer or distributor is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 31 of the 43 firms listed had total revenues below five million dollars.

57. Gas and Other Services Combined (SIC 4932). The SBA has classified this entity as a gas company whose business is less than 95% gas, in combination with other services. The Census Bureau reports that a total of 43 such firms were in operation for at least one year at the end of 1992. According to the SBA, a small gas and other services combined utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 24 of the 43 firms listed had total revenues below five million dollars.

(3) Water Supply (SIC 4941)

58. The SBA defines a water utility as a firm who distributes and sells water for domestic, commercial and industrial use. The Census Bureau reports that a total of 3,169 water utilities were in operation for at least one year at the end of 1992. According to SBA's definition, a small water utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 3065 of the 3169 firms listed had total revenues below five million dollars.

(4) Sanitary Systems (SIC 4952, 4953 & 4959)

59. Sewerage Systems (SIC 4952). The SBA defines a sewage firm as a utility whose business is the collection and disposal of waste using sewage systems. The Census Bureau reports that a total of 410 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small sewerage system is a firm whose gross revenues did not exceed five million dollars. The Census Bureau reported that 369 of the 410 firms listed had total revenues below five million dollars.

60. Refuse Systems (SIC 4953). The SBA defines a firm in the business of refuse as an establishment whose

business is the collection and disposal of refuse ''by processing or destruction or in the operation of incinerators, waste treatment plants, landfills, or other sites for disposal of such materials.'' The Census Bureau reports that a total of 2287 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small refuse system is a firm whose gross revenues did not exceed six million dollars. The Census Bureau reported that 1908 of the 2287 firms listed had total revenues below six million dollars.

61. Sanitary Services, Not Elsewhere Classified (SIC 4959). The SBA defines these firms as engaged in sanitary services. The Census Bureau reports that a total of 1214 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small sanitary service firms gross revenues did not exceed five million dollars. The Census Bureau reported that 1173 of the 1214 firms listed had total revenues below five million dollars.

(5) Steam and Air Conditioning Supply (SIC 4961)

62. The SBA defines a steam and air conditioning supply utility as a firm who produces and/or sells steam and heated or cooled air. The Census Bureau reports that a total of 55 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a steam and air conditioning supply utility is a firm whose gross revenues did not exceed nine million dollars. The Census Bureau reported that 30 of the 55 firms listed had total revenues below nine million dollars.

(6) Irrigation Systems (SIC 4971)

63. The SBA defines irrigation systems as firms who operate water supply systems for the purpose of irrigation. The Census Bureau reports that a total of 297 firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small irrigation service is a firm whose gross revenues did not exceed five million dollars. The Census Bureau reported that 286 of the 297 firms listed had total revenues below five million dollars.

b. Telephone Companies (SIC 4813)

64. Many of the decisions and rules adopted herein may have a significant effect on a substantial number of small telephone companies. The SBA has defined a small business for SIC code 4813 (Telephone Communications, except Radiotelephone) to be a small entity when it has no more than 1500 employees. The Census Bureau reports that, at the end of 1992, there were 3497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers (''LECs''), interexchange carriers (''IXCs''), competitive access providers (''CAPs''), cellular carriers, mobile service carriers, operator service providers, pay telephone operators, personal communications service (''PCS'') providers, covered SMR providers and resellers. Some of those 3497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' We therefore conclude that fewer than 3497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the *Report and Order.* Below, we estimate the potential number of small entity telephone service firms or small incumbent LEC's that may be affected by the rules adopted herein in this service category.

(1) Wireline Carriers and Service Providers

65. The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that, there were 2321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1500 persons. Of the 2321 non-radiotelephone companies listed by the Census Bureau, 2295 were reported to have fewer than 1000 employees. Thus, at least 2295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs, or small entities based on these employment statistics. Although some of these carriers are likely not independently owned and operated, we 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 SBA's definition. Consequently, we estimate that there are fewer than 2295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions or rules adopted in the *Report and Order.*

(2) Local Exchange Carriers

66. Neither the Commission nor SBA has developed a definition of small providers of local exchange services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of LECs nationwide appears to be the data that the Commission publishes annually in its Telecommunications Industry Revenue report, regarding the Telecommunications Relay Service (''TRS''). According to ''TRS Worksheet'' data released in November 1997, there are 1371 companies reporting that they categorize themselves as LECs. Although some of these carriers are likely not independently owned and operated, or have more than 1500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1371 small incumbent LECs that may be affected by the rules adopted herein.

(3) Interexchange Carriers

67. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with TRS. According to our most recent data, 143 companies reported that they were engaged in the provision of interexchange services. Although some of these carriers are likely not independently owned and operated, or have more than 1500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 143 small entity IXCs that may be affected by the decisions and rules adopted in the *Report and Order.*

(4) Competitive Access Providers

68. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of

CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 109 companies reported that they were engaged in the provision of competitive access services. Although some of these carriers are likely not independently owned and operated, or have more than 1500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 109 small entity CAPs that may be affected by the decisions and rules adopted herein.

(5) Cellular Service Carriers

69. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4812). The most reliable source of information regarding the number of cellular service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. The TRS Worksheet places cellular licensees and Personal Communications Service (''PCS'') licensees in one group. According to the most recent data, there are 804 carriers reporting that they categorize themselves as either PCS or cellular carriers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1500 employees, we are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 804 small entity cellular service carriers that may be affected by the decisions and rules adopted in the *Report and Order.*

(6) Mobile Service Carriers

70. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 172 companies reported that they were engaged in the provision of mobile services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under SBA's definition. Consequently, we estimate that there are fewer than 172 small entity mobile service carriers that may be affected by the decisions and rules adopted in the *Report and Order.*

(7) Broadband Personal Communications Services (''PCS'') Licensees

71. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions has been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auction. A total of 93 small and very small business bidders won approximately 40% of the 1479 licenses for Blocks D, E, and F. However, licenses for blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules. We note that the TRS Worksheet data track PCS licensees in the reporting category ''Cellular or Personal Communications Service Carrier.'' As noted supra in the paragraph regarding cellular carriers, according to the most recent data, there are 804 carriers reporting that they place themselves in this category.

(8) Specialized Mobile Radio (''SMR'') Licensees

72. Pursuant to 47 CFR 90.814(b)(1) and 90.912(b)(1), the Commission has defined small entity in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a small entity in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The rules adopted in the *Report and Order* may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. We assume, for purposes of this FRFA, that all of the extended implementation authorizations may be held by small entities which may be affected by the decisions and rules adopted in the *Report and Order.* We note that the TRS Worksheet data track SMR licensees in the reporting category ''Paging and Other Mobile Carriers.'' According to the most recent data, there are 172 carriers, including SMR carriers, reporting that they place themselves in this category.

73. In April 1997, the Commission held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders that qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of 900 MHz geographic area SMR licensees affected by the rules adopted in the *Report and Order* includes these 60 small entities. In December 1997, the Commission also held auctions for the 525 licenses for the upper 200 channels in the 800 MHz SMR band. There were 10 winning bidders that qualified as small entities in that auction. Based on this information, we conclude that the number of geographic area SMR licensees that may be affected by the rules adopted in the *Report and Order* also includes these 10 small entities. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1000 employees and that no reliable estimate

of the number of prospective 800 MHz licensees for the lower 230 channels can be made, we conclude, for purposes of this FRFA, that some or all of the licenses could conceivably be awarded to small entities that may be affected by the decisions and rules adopted in the *Report and Order.*

(9) Resellers

74. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies (SIC 4812 and 4813). The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 339 companies reported that they were engaged in the resale of telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 339 small entity resellers that may be affected by the decisions and rules adopted in the *Report and Order.*

c. Wireless (Radiotelephone) Carriers (SIC 4812)

75. Pursuant to the terms of the 1996 Act, wireless carriers are entitled to affix their equipment to utility poles with rates consistent with the Commission's rules discussed herein. SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business radiotelephone company is one employing no more than 1500 persons. The Census Bureau also reported that 1164 of those radiotelephone companies had fewer than 1000 employees. Thus, even if all of the remaining 12 companies had more than 1500 employees, there would still be 1164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although some of these carriers are likely not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1164 small entity radiotelephone companies that may be affected by the rules adopted herein.

d. Cable System Operators (SIC 4841)

76. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than $11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1423 such cable and other pay television services generating less than $11 million in revenue.

77. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company,'' is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1439 cable systems that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable systems. Consequently, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules adopted in the *Report and Order.*

78. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable systems serving 617,000 subscribers or less totals 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable systems under the definition in the Communications Act.

e. Municipalities

79. The term ''small governmental jurisdiction'' is defined as ''governments of * * * districts, with a population of less than 50,000.'' There are 85,006 governmental entities in the United States. This number includes such entities as states, counties, cities, utility districts and school districts. We note that section 224 specifically excludes any utility which is cooperatively organized, or any person owned by the Federal Government or any State. For this reason, we believe that section 224 will have minimal if any affect upon small municipalities. Further, there are 18 states and the District of Columbia that regulate pole attachments pursuant to section 224(c)(1). Of the 85,006 governmental entities, 38,978 are counties, cities and towns. The remainder are primarily utility districts, school districts, and states. Of the 38,978 counties, cities and towns, 37,566 or 96%, have populations of fewer than 50,000.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

80. The rules adopted in the *Report and Order* may require a change in certain recordkeeping requirements for conduit systems. A utility will now have to maintain specific records relating to the number of linear meters, or feet, of conduit for the purpose of determining the net cost of conduit and the amount of conduit linear measurement in which a pole attachment exists. Although this requirement affects both large and small businesses equally, we believe that through the use of presumptions, specific accounts and publicly available data in our methodology, we have avoided a more extensive regulatory scheme which might have burdened small entities. We conclude that our rules will not disproportionately burden small entities.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

81. Section 703 of the 1996 Act amended section 224 in several important ways to provide access to and rate regulation for pole attachments by cable operators and telecommunications carriers in order that they might compete in the market place to provide their respective services. The 1996 Act established a pole attachment rate methodology for telecommunications carriers that would not become effective

until February 8, 2001. Until that time, pole attachments by telecommunications carriers will be regulated in the same manner as pole attachment rates for cable operators under section 224(d). Prior to the 1996 Act, access to pole attachments was available only to cable operators and only under their franchise pursuant to section 621. With the legislative expansion of access and rate regulation, small entities have greater opportunity to develop the infrastructure necessary to compete in the cable and telecommunications marketplaces. We have been mindful to maintain simplicity whenever possible, and to provide methodologies consistent with availability to publicly verifiable data. In the NPRM, we sought comment to re-evaluate the formula methodologies used or proposed, to update our rules for accounting used in the formulas, and to provide a methodology for determining just and reasonable rates for pole attachments in conduit.

82. In accordance with the RFA, the Commission has endeavored to minimize significant impact on small entities. To minimize the burden on utility pole owners, including those that qualify as small entities, and to promote certainty and efficiency in determining the pole attachment rate for cable operators and telecommunications carriers, we have maintained our formula presumptions, including our one-foot presumption of space occupied by a pole attachment, and the presumptive amount of usable space on a pole. We have adopted a conduit methodology based on publicly available data and a half-duct presumption of capacity occupied by a pole attachment in a conduit system, to simplify the process of determining a just and reasonable pole attachment rate and to provide certainty for small entities preparing to enter the competitive marketplace. We have formalized the use of part 32 accounting for LECs. We have consolidated all formula elements, and accounts specified for use in the formulas, in this one document in order to provide ease of application by all parties.

83. Report to Congress: The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). A copy of the *Report and Order* and this FRFA (or summary thereof) will also be published in the **Federal Register**, see 5 U.S.C. 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Paperwork Reduction Act of 1995 Analysis

84. The requirements adopted in the *Report and Order* have been analyzed with respect to the Paperwork Reduction Act of 1995 (the ''1995 Act'') and found to impose modified information collection requirements on the public. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to take this opportunity to comment on the information collection requirements contained in the *Report and Order*, as required by the 1995 Act. Public comments are due July 17, 2000. Comments should address: (1) 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; (2) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

85. As stated above, written comments by the public on the modified information collection requirements are due July 17, 2000. Comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 12th Street, SW, Washington DC 20554, or via the Internet at jboley@fcc.gov. For additional information on the information collection requirements, contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

IX. Ordering Clauses

86. Pursuant to sections 1, 4(i), 224 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 224 and 303(r), the Commission's rules are hereby amended as set forth in the Rule Changes.

87. Section 1.1402 of the Commission's rules, as amended in the Rule Changes, will become effective June 16, 2000. Sections 1.1404 and 1.1409, as amended in the Rule Changes, contain information collection requirements that have not been approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date of these sections.

88. The Commission's Office of Media Relations, Reference Operations Division, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 1

Administrative practice and procedures, Cable television, Communications common carriers, Conduit, Pole attachments, Poles, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 is revised to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Amend § 1.1402 to revise paragraphs (c), (i), (j) and (l) and add paragraph (n) to read as follows:

§ 1.1402 Definitions.

* * * * *

(c) With respect to poles, the term *usable space* means the space on a utility pole above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment, and which includes space occupied by the utility. With respect to conduit, the term *usable space* means capacity within a conduit system which is available, or which could, with reasonable effort and expense, be made available, for the purpose of installing wires, cable and associated equipment for telecommunications or cable services, and which includes capacity occupied by the utility.

* * * * *

(i) The term *conduit* means a structure containing one or more ducts, usually placed in the ground, in which cables or wires may be installed.

(j) The term *conduit* system means a collection of one or more conduits together with their supporting infrastructure.

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(l) With respect to poles, the term *unusable space* means the space on a utility pole below the usable space, including the amount required to set the depth of the pole.

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(n) The term *inner-duct* means a duct-like raceway smaller than a duct that is inserted into a duct so that the duct may carry multiple wires or cables.

3. Amend § 1.1404 to remove paragraph (k), and redesignate paragraphs (l), (m), and (n) as (k), (l), and (m), respectively; and revise paragraphs (g), (h), and the third sentence of paragraph (j) to read as follows:

§ 1.1404 Complaint.

* * * * *

(g) For attachments to poles, where it is claimed that either a rate is unjust or unreasonable, or a term or condition is unjust or unreasonable and examination of such term or condition requires review of the associated rate, the complaint shall provide data and information in support of said claim.

(1) The data and information shall include, where applicable:

(i) The gross investment by the utility for pole lines;

(ii) The investment in crossarms and other items which do not reflect the cost of owning and maintaining poles, if available;

(iii) The depreciation reserve from the gross pole line investment;

(iv) The depreciation reserve from the investment in crossarms and other items which do not reflect the cost of owning and maintaining poles, if available;

(v) The total number of poles:

(A) Owned; and

(B) Controlled or used by the utility. If any of these poles are jointly owned, the complaint shall specify the number of such jointly owned poles and the percentage of each joint pole or the number of equivalent poles owned by the subject utility;

(vi) The total number of poles which are the subject of the complaint;

(vii) The number of poles included in paragraph (g)(i)(vi) of this section that are controlled or used by the utility through lease between the utility and other owner(s), and the annual amounts paid by the utility for such rental;

(viii) The number of poles included in paragraph (g)(i)(vi) of this section that are owned by the utility and that are leased to other users by the utility, and the annual amounts paid to the utility for such rental;

(ix) The annual carrying charges attributable to the cost of owning a pole. These charges may be expressed as a percentage of the net pole investment. With its pleading, the utility shall file a copy of the latest decision of the state regulatory body or state court which determines the treatment of accumulated deferred taxes if it is at issue in the proceeding and shall note the section which specifically determines the treatment and amount of accumulated deferred taxes.

(x) The rate of return authorized for the utility for intrastate service. With its pleading, the utility shall file a copy of the latest decision of the state regulatory body or state court which establishes this authorized rate of return if the rate of return is at issue in the proceeding and shall note the section which specifically establishes this authorized rate and whether the decision is subject to further proceedings before the state regulatory body or a court. In the absence of a state authorized rate of return, the rate of return set by the Commission for local exchange carriers shall be used as a default rate of return;

(xi) The average amount of usable space per pole for those poles used for pole attachments (13.5 feet may be in lieu of actual measurement, but may be rebutted);

(xii) The average amount of unusable space per pole for those poles used for pole attachments (a 24 foot presumption may be used in lieu of actual measurement, but the presumption may be rebutted); and

(xiii) Reimbursements received from CATV operators and telecommunications carriers for non-recurring costs.

(2) Data and information should be based upon historical or original cost methodology, insofar as possible. Data should be derived from ARMIS, FERC 1, or other reports filed with state or federal regulatory agencies (identify source). Calculations made in connection with these figures should be provided to the complainant. The complainant shall also specify any other information and argument relied upon to attempt to establish that a rate, term, or condition is not just and reasonable.

(h) With respect to attachments within a duct or conduit system, where it is claimed that either a rate is unjust or unreasonable, or a term or condition is unjust or unreasonable and examination of such term or condition requires review of the associated rate, the complaint shall provide data and information in support of said claim.

(1) The data and information shall include, where applicable:

(i) The gross investment by the utility for conduit;

(ii) The accumulated depreciation from the gross conduit investment;

(iii) The system duct length or system conduit length and the method used to determine it;

(iv) The length of the conduit subject to the complaint;

(v) The number of ducts in the conduit subject to the complaint;

(vi) The number of inner-ducts in the duct occupied, if any. If there are no inner-ducts, the attachment is presumed to occupy one-half duct.

(vii) The annual carrying charges attributable to the cost of owning conduit. These charges may be expressed as a percentage of the net linear cost of a conduit. With its pleading, the utility shall file a copy of the latest decision of the state regulatory body or state court which determines the treatment of accumulated deferred taxes if it is at issue in the proceeding and shall note the section which specifically determines the treatment and amount of accumulated deferred taxes.

(viii) The rate of return authorized for the utility for intrastate service. With its pleading, the utility shall file a copy of the latest decision of the state regulatory body or state court which establishes this authorized rate of return if the rate of return is at issue in the proceeding and shall note the section which specifically establishes this authorized rate and whether the decision is subject to further proceedings before the state regulatory body or a court. In the absence of a state authorized rate of return, the rate of return set by the Commission for local exchange carriers shall be used as a default rate of return; and

(ix) Reimbursements received by utilities from CATV operators and telecommunications carriers for non-recurring costs.

(2) Data and information should be based upon historical or original cost methodology, insofar as possible. Data should be derived from ARMIS, FERC 1, or other reports filed with state or federal regulatory agencies (identify source). Calculations made in connection with these figures should be provided to the complainant. The complainant shall also specify any other information and argument relied upon to attempt to establish that a rate, term, or condition is not just and reasonable.

* * * * *

(j) * * * A utility must supply a cable television operator or telecommunications carrier the information required in paragraph (g), (h) or (i) of this section, as applicable, along with the supporting pages from its ARMIS, FERC Form 1, or other report to a regulatory body, within 30 days of the request by the cable television operator or telecommunications carrier. * * *

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4. Amend § 1.1409 by redesignating paragraph (e)(3) as paragraph (e)(4); and revise paragraphs (e)(1) and (f), and add new paragraph (e)(3) to read as follows:

§ 1.1409 Commission consideration of the complaint.

* * * * *

(e) * * *

(1) The following formula shall apply to attachments to poles by cable operators providing cable services. This formula shall also apply to attachments to poles by any telecommunications carrier (to the extent such carrier is not a party to a pole attachment agreement) or cable operator providing telecommunications services until February 8, 2001:

$$\text{Maximum Rate} = \frac{\text{Space Occupied by Attachment}}{\text{Total Usable Space}} \times \text{Net Cost of a Bare Pole} \times \text{Carrying Charge Rate}$$

* * * * *

(3) The following formula shall apply to attachments to conduit by cable operators providing cable services. This formula shall also apply to attachments to conduit by any telecommunications carrier (to the extent such carrier is not a party to a pole attachment agreement) or cable operator providing telecommunications services until February 8, 2001:

$$\text{Maximum Rate} = \underbrace{\left[\frac{1}{\text{Number of Ducts}} \times \frac{1 \text{ Duct}}{\text{No. of Inner Ducts}}\right]}_{\text{(Percentage of Conduit Capacity)}} \times \underbrace{\left[\text{No. of Ducts} \times \frac{\text{Net Conduit Investment}}{\text{System Duct Length}}\right]}_{\text{(Net Linear Cost of a Conduit)}} \times \text{Carrying Charge Rate}$$

If no inner-duct is installed the fraction, ''1 Duct divided by the No. of Inner-Ducts'' is presumed to be ½.

* * * * *

(f) Paragraphs (e)(2) and (e)(4) of this section shall become effective February 8, 2001 (*i.e.,* five years after the effective date of the Telecommunications Act of 1996). Any increase in the rates for pole attachments that results from the adoption of such regulations shall be phased in over a period of five years beginning on the effective date of such regulations in equal annual increments. The five-year phase-in is to apply to rate increases only. Rate reductions are to be implemented immediately. The determination of any rate increase shall be based on data currently available at the time of the calculation of the rate increase.

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[FR Doc. 00–11911 Filed 5–16–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 991223347–9347; I.D. 042600B]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: This document clarifies tables 2,3,4, and 5 for Pacific Coast groundfish species and trip limits that were published in the **Federal Register** on May 4, 2000.

DATES: Effective 0001 hours local time May 1, 2000 (May 16, 2000 for the ''B'' platoon), unless modified, superseded or rescinded, until the effective date of the 2001 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Katherine King or Yvonne deReynier, Northwest Region, NMFS, 206–526–6140.

SUPPLEMENTARY INFORMATION: On May 4, 2000, at 65 FR 25881, NMFS announced changes to trip limits in the Pacific Coast groundfish fishery. Tables 2, 3, 4, and 5 are being republished in a logical and readable format.

In Section IV, tables 2, 3, 4, and 5 are republished as follows:

BILLING CODE 3510–22–F