TABLE 6 TO SUBPART CCCC.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART CCCC—Continued

Citation	Subject	Applicable to subpart CCCC?
§ 63.7	Performance Testing Requirements	1. § 63.7(a)(1)–(2) and (e)(3) do not apply, instead specified in this subpart. 2. Otherwise, all apply.
§ 63.8	Monitoring Requirements	1. § 63.8(a)(2) is modified by § 63.2163. 2. § 63.8(a)(4) does not apply. 3. For § 63.8(c)(1), requirements for startup, shutdown, and malfunctions apply only to malfunctions, and no report pursuant to § 63.10(d)(5)(i) is required. 4. For § 63.8(d), requirements for startup, shutdown, and malfunctions apply only to malfunctions. 5. § 63.8(c)(4)(i), (c)(5), (e)(5)(ii), and (g)(5), do not apply. 6. § 63.8(c)(4)(ii), (c)(6)–(8), (e)(4), and (g)(1)–(4) do not apply, instead specified in this subpart. 7. Otherwise, all apply.
§ 63.9	Notification Requirements	1. § 63.9(b)(2) does not apply because rule omits requirements for initial notification for sources that start up prior to May 21, 2001 2. § 63.9(f) does not apply. 3. Otherwise, all apply.
§ 63.10	Recordkeeping and Reporting Requirements	1. For § 63.10(b)(2)(i)–(v), (c)(9)–(15), and (d)(5), requirements for startup, shutdown, and malfunctions apply only to malfunctions. 2. § 63.10(b)(2)(vii) and (c)(1)–(6) do not apply, instead specified in this subpart. 3. § 63.10(c)(7)–(8), (d)(3), (e)(2)(ii)–(4), (e)(3)–(4) do not apply. 4. Otherwise, all apply.
§ 63.11	Flares	No.
§ 63.12	Delegation	Yes.
§ 63.13	Addresses	Yes.
§ 63.14	Incorporation by Reference	Yes.
§ 63.15	Availability of Information	Yes.

[FR Doc. 01–12041 Filed 5–18–01; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 96–262; FCC 01–146]

Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, we limit the application of our tariff rules to CLEC access services in order to prevent use of the regulatory process to impose excessive access charges on IXCs and their customers. Under the detariffing regime we adopt, CLEC access rates that are at or below the benchmark that we set will be presumed to be just and reasonable and CLECs may impose them by tariff. Above the benchmark, CLEC access services will be mandatorily detariffed, so CLECs must negotiate higher rates with the IXCs. We also adopt a rural exemption to our benchmark scheme, recognizing that a higher level of access charges is justified for certain CLECs serving truly rural areas. To avoid too great a disruption for competitive carriers, we implement the benchmark in a way that will cause CLEC rates to decrease over time until they reach the rate charged by the incumbent LEC. We also make clear that an IXC's refusal to serve the customers of a CLEC that tariffs access rates within our safe harbor, when the IXC serves ILEC end users in the same area, generally constitutes a violation of the duty of all common carriers to provide service upon reasonable request.

DATES: Effective June 20, 2001.

FOR FURTHER INFORMATION CONTACT: Jeffrey H. Dygert, Common Carrier Bureau, (202) 418–1500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Seventh Report and Order in CC Docket No. 96–262, released on April 27, 2001. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, D.C., 20554.

I. Introduction

1. By this order, we seek to ensure, by the least intrusive means possible, that CLEC access charges are just and reasonable. Specifically, we limit the application of our tariff rules to CLEC access services in order to prevent use of the regulatory process to impose excessive access charges on IXCs and their customers. Previously, certain CLECs have used the tariff system to set access rates that were subject neither to negotiation nor to regulation designed to ensure their reasonableness. These CLECs have then relied on their tariff to demand payment from IXCs for access services that the long distance carriers likely would have declined to purchase at the tariffed rate.

2. Under the detariffing regime we adopt, CLEC access rates that are at or below the benchmark that we set will be presumed to be just and reasonable and CLECs may impose them by tariff. Above the benchmark, CLEC access services will be mandatorily detariffed, so CLECs must negotiate higher rates with the IXCs. During the pendency of negotiations, or if the parties cannot agree, the CLEC must charge the IXC the appropriate benchmark rate. We also adopt a rural exemption to our

benchmark scheme, recognizing that a higher level of access charges is justified for certain CLECs serving truly rural areas. To avoid too great a disruption for competitive carriers, we implement the benchmark in a way that will cause CLEC rates to decrease over time until they reach the rate charged by the incumbent LEC.

3. We also make clear that an IXC's refusal to serve the customers of a CLEC that tariffs access rates within our safe harbor, when the IXC serves ILEC end users in the same area, generally constitutes a violation of the duty of all common carriers to provide service upon reasonable request.

4. We intend to allow CLECs a period of flexibility during which they can conform their business models to the market paradigm that we adopt herein. In addition, these rules should continue to ensure the ubiquity of a fully interconnected telecommunications network that consumers have come to expect. Finally, by ensuring that CLECs do not shift an unjust portion of their costs to interexchange carriers, our actions should help continue the downward trend in long-distance rates for end users.

5. We view the mechanism we adopt today as a means of moving the marketplace for access services closer to a competitive model. Because our tariff benchmark is tied to the incumbent LEC rate, we will re-examine these rates at the close of the period specified in the *CALLS Order,* 65 FR 38684, June 21, 2000. Through a separate further notice of proposed rulemaking, published elsewhere in this issue, we also evaluate the access charge scheme as part of a broader review of inter-carrier compensation.

II. CLEC Switched Access Services

A. The Structure of the Access Service Market

6. It appears that certain CLECs have availed themselves of the tariff system and have refused to enter meaningful negotiations on access rates, choosing instead simply to file a tariff and bind IXCs receiving their access service to the rates therein. Providers of terminating access may be particularly insulated from the effects of competition in the market for access services. The party that actually chooses the terminating access provider does not also pay the provider's access charges and therefore has no incentive to select a provider with low rates. Indeed, end users may have the incentive to choose a CLEC with the highest access rates because greater access revenues likely permit CLECs to offer lower rates to their end users. The record also indicates that CLEC originating access service may also be subject to little competitive pressure, notwithstanding the fact that the IXCs typically have a relationship with the local exchange provider in order to be included on the LEC's list of presubscribed IXCs.

7. CLECs' ability to impose excessive access charges seems attributable to two separate factors. First, although the end user chooses her access provider, she does not pay that provider's access charges. Rather, the access charges are paid by the caller's IXC, which has little practical means of affecting the caller's choice of access provider. Second, the Commission has interpreted section 254(g) to require IXCs geographically to average their rates and thereby to spread the cost of both originating and terminating access over all their end users. Consequently, IXCs have little or no ability to create incentives for their customers to choose CLECs with low access charges. Since the IXCs are effectively unable either to pass through access charges to their end users or to create other incentives for end users to choose LECs with low access rates, the party causing the costs—the end user that chooses the high-priced LEC—has no incentive to minimize costs.

8. We are concerned that, in this environment, permitting CLECs to tariff any rate that they choose may allow some CLECs inappropriately to shift onto the long distance market in general a substantial portion of the CLECs' start-up and network build-out costs. Such cost shifting may promote economically inefficient entry into the local markets and may distort the long distance market.

9. We decline to conclude, in this order, that CLEC access rates, across the board, are unreasonable. Nevertheless, there is ample evidence that the combination of the market's failure to constrain CLEC access rates, our geographic rate averaging rules for IXCs, the absence of effective limits on CLEC rates and the tariff system create an arbitrage opportunity for CLECs to charge unreasonable access rates.

B. Tariff Benchmark Mechanism

10. A substantial majority of commenters strongly oppose the mandatory detariffing of CLEC access services. Apart from their opposition to mandatory detariffing, however, the two sides of the debate have been largely unable to agree about how CLECs should set rates for their switched access services.

11. In their provision of access services, competitive carriers actually serve two distinct customer groups. The first is the IXCs, which purchase access service as an input for the long distance service that they provide to their end-user customers. An equally important group of customers for access services is the end users who benefit from the ability, provided by access service, to place and receive long distance calls. The noteworthy aspect of this second group of access consumers, or beneficiaries, is that, unlike IXCs, they have competitive alternatives in the market in which they purchase CLEC access service.

12. Under the regime we adopt in this order, CLECs will be restricted only in the manner that they recover their costs from those access-service consumers that have no competitive alternative. We implement this restriction on the CLECs' exercise of their monopoly power by establishing a benchmark level at which CLEC access rates will be conclusively presumed to be just and reasonable and at (or below) which they may therefore be tariffed. Above the benchmark, CLECs will be mandatorily detariffed. The benchmark approach has several virtues that recommend it.

13. First, a benchmark provides a bright line rule that permits a simple determination of whether a CLEC's access rates are just and reasonable. Such a bright line approach is particularly desirable given the current legal and practical difficulties involved with comparing CLEC rates to any objective standard of "reasonableness." Second, by permitting CLECs to file access tariffs at or below a benchmark rate, our interim approach continues to allow the carriers on both sides of the access transaction to enjoy the convenience of a tariffed service. Third, adopting a benchmark for tariffed rates allows CLECs the flexibility to obtain additional revenues from alternative sources. They may obtain higher rates through negotiation.

C. Level and Structure of the Tariff Benchmark

14. In setting the level of our benchmark, we seek, to the extent possible, to mimic the actions of a competitive marketplace, in which new entrants typically price their product at or below the level of the incumbent provider. We conclude that the benchmark rate, above which a CLEC may not tariff, should eventually be equivalent to the switched access rate of the incumbent provider operating in the CLEC's service area. We do not, however, immediately set the benchmark rate at the competing ILEC rate because such a flash cut likely would be unduly detrimental to the competitive carriers that have not

previously been held to the regulatory standards imposed on ILECs. Our benchmark mechanism, with certain exceptions, will permit CLECs initially to tariff rates for their switched access service of up to 2.5 cents per minute, or the rate charged by the competing incumbent LEC, whichever is higher. For those carriers competing with ILECs that have tariffed rates below the benchmark (generally, the Bell operating companies), the benchmark rate will decline over the course of three years until it reaches the competing ILEC's rate. For at least one additional year, CLECs will be permitted to continue to tariff this rate, even if we decide to move other access traffic to a bill-and-keep regime. We also adopt rules to ensure that no CLEC avails itself of our benchmark scheme to *increase* its access rates, and we adopt a separate benchmark for certain firms operating in rural areas.

15. In determining the initial level for the safe harbor rates which may be imposed by tariff, we use current CLEC rates as a starting point for analysis because, as noted, we lack an established framework for translating CLEC costs into access rates. By analyzing the IXC data on actual amounts billed and actual minutes of use, we can calculate composite access rates and largely avoid the problems that arise from the fact that CLEC rate structures vary widely and that many rely, in part, on flat-rated, or distance-sensitive, charges. Taken together, the IXC submissions show a range of 0.4 cents to 9.5 cents per minute for CLEC-provided switched access service. From the underlying, individual CLEC data, we have determined the average, weighted by minutes of use, for tariffed access rates.

16. It is important that the benchmark, though within this range, also move CLEC access charges appreciably closer to the competing ILEC rate. Accordingly, setting the initial benchmark toward the lower end of the range appears to be justified. Based on our review of the universe and concentration of tariffed access rates being charged to these three IXCs, we conclude that—again, subject to certain exceptions that we discuss—our safe harbor for CLEC tariffed access rates will begin at 2.5 cents. This rate is within the current range of rates, but represents an appreciable reduction in the tariffed rate for many CLECs.

17. We draw additional support for this initial benchmark level from a consensus solution submitted by parties on both sides of the present dispute. In comments to the *Safe Harbor Public Notice,* 65 FR 77545, December 12, 2000, the Association for Local Telecommunications Services (ALTS) filed a proposed resolution, negotiated with WorldCom, suggesting, in relevant part, that a benchmark of 2.5 cents per minute for CLEC tariffed access rates would be a reasonable one in at least some markets. It appears that this rate is acceptable to a substantial number of CLECs, although it represents a significant reduction in access rates.

18. On the effective date of the rules we promulgate today, CLECs will be permitted (subject to a rural exemption discussed) to tariff their access rates, for those areas where they have previously offered service, at either the benchmark of 2.5 cents per minute, or the rate of the corresponding incumbent carrier in the study area of the relevant end-user customer, whichever is higher. One year after the effective date of these rules, the benchmark rate will drop from 2.5 to 1.8 cents per minute, or the ILEC rate, whichever is higher. On the second anniversary of the rules' effective date, the rate will drop to 1.2 cents per minute, or the ILEC rate, whichever is higher. Finally, three years after the rules become effective, the benchmark figure will drop to the switched access rate of the competing ILEC. It will remain at that level through the rule's fourth year. We conclude that such a transition period is appropriate because, as discussed, we are concerned about the effects of a flash-cut to the ILEC rate.

19. By moving CLEC tariffs to the "rate of the competing ILEC" we do not intend to restrict CLECs to tariffing solely the per-minute rate that a particular ILEC charges for its switched, interstate access service. We intend to permit CLECs to receive revenues equivalent to those the ILECs receive *from IXCs,* whether they are expressed as per-minute or flat-rate charges. For example, CLECs shall be permitted to set their tariffed rates so that they receive revenues equivalent to those that the ILECs receive through the presubscribed interexchange carrier charge (PICC), to the extent that it survives in the wake of our *CALLS Order.* This does not entitle CLECs to build into their tariffed per-minute access rates a component representing the subscriber line charge (SLC) that ILECs impose on their end users, or any other charges that ILECs recover from parties other than the IXCs to which they provide access service.

20. A number of CLEC commenters urge the Commission not to set the benchmark at "the ILEC rate" because they claim that CLECs structure their service offerings differently than ILECs. We seek to preserve the flexibility which CLECs currently enjoy in setting their access rates. Thus, in contrast to our regulation of incumbent LECs, our benchmark rate for CLEC switched access does not require any particular rate elements or rate structure; for example, it does not dictate whether a CLEC must use flat-rate charges or per-minute charges, so long as the composite rate does not exceed the benchmark. Rather it is based on a per-minute cap for all interstate switched access service charges. In this regard, there are certain basic services that make up interstate switched access service offered by most carriers. Switched access service typically entails a connection between the caller and the local switch, a connection between the LEC switch and the serving wire center (often referred to as "interoffice transport"), and an entrance facility which connects the serving wire center and the long distance company's point of presence. Using traditional ILEC nomenclature, it appears that most CLECs seek compensation for the same basic elements, however precisely named common line charges; local switching; and transport. The only requirement is that the aggregate charge for these services, however described in their tariffs, cannot exceed our benchmark. In addition, by permitting CLECs to decide whether to tariff within the safe harbor or to negotiate terms for their services, we allow CLECs additional flexibility in setting their rates and the amount that they receive for their access services.

21. We will apply the benchmark for both originating and terminating access charges. That is, it will apply to tariffs for both categories of service, including to toll-free, 8YY traffic, and will decline toward the rate of the competing ILEC for each category of service. We note, however, that shortly before the issuance of this order, AT&T raised questions regarding the application of our benchmark to originating 8YY traffic generated by CLEC customers. Because these issues arose so late in the proceeding, and because of the sparse record on them, we decline to do as AT&T suggests and immediately detariff this category of CLEC services above the rate of the competing ILEC. Instead, in this order, we solicit comment on the issues AT&T has raised so that we may decide them on an adequately developed record.

22. Our benchmark mechanism may create the possibility for carriers with lower rates to raise their rates to the benchmark. We seek to avoid this result, which could have the consequence of *increasing* the amount that IXCs pay for some CLECs' access service. This, in turn, would again allow these CLECs to

shift a portion of their costs onto the long distance market generally. Accordingly, we further restrict the tariff benchmark that may be charged to a particular IXC by tariff to the lower of: (1) The 2.5 figure, declining as discussed, or (2) the lowest rate that a CLEC has tariffed for access, during the 6 months immediately preceding the effective date of these rules. Any rate above this level (unless it is still below the competing ILEC's rate) will be conclusively deemed to be unreasonable in any proceeding challenging the rate. Additionally, we expect that our benchmark rule will have no effect on negotiated contracts, under which CLECs have chosen to charge even more favorable access rates to particular IXCs. Rather, these contracts will remain in place and the participating IXCs will continue to be entitled to any lower access rates for which they provide.

23. We also find that it is prudent to permit CLECs to tariff the benchmark rate for their access services only in the markets where they have operations that are actually serving end-user customers on the effective date of these rules. We intend the declining benchmark scheme to wean competitive carriers off of their dependence on tariffed, supra-ILEC access rates without the disruption of a flash-cut to the prevailing market rate. We therefore think it important to ensure that this transitional mechanism serves that purpose, rather than presenting CLECs with the opportunity to enter additional markets in a potentially inefficient manner through reliance on tariffed access rates above those of the competing ILEC. Accordingly, we restrict the availability of the transitional benchmark rate to those metropolitan statistical areas (MSAs) in which CLECs are actually serving end users on the effective date of these rules. In MSAs where they begin serving end users *after* the effective date of these rules, we permit CLECs to tariff rates only equivalent to those of the competing ILEC; they will have to achieve rates above this level by negotiation.

D. Safe Harbor Rates for Rural CLECs

24. Limiting CLECs to the higher of the benchmark rate or the access rate of its ILEC competitor could prove rather harsh for some of the small number of CLECs that operate in rural areas. The difficulty would likely arise for those CLECs that operate in a rural area served by a price-cap incumbent with state-wide operations. Our rules require such ILECs to geographically average their access rates. During the course of this proceeding, we became concerned that tying the access rates of rural CLECs to those of such non-rural ILECs could unfairly disadvantage CLECs that lacked urban operations with which they could similarly subsidize their service to rural areas.

1. Whether To Create a Rural Exemption

25. We conclude that the record supports the creation of a rural exemption to permit rural CLECs competing with non-rural ILECs to charge access rates above those charged by the competing ILEC. First, we note that such a device is consistent with the Commission's obligations, under section 254(d)(3) of the Act and section 706 of the 1996 Act, to encourage the deployment to rural areas of the infrastructure necessary to support advanced telecommunications services and of the services themselves. The record indicates that CLECs often are more likely to deploy in rural areas the new facilities capable of supporting advanced calling features and advanced telecommunications services than are non-rural ILECs, which are more likely first to deploy such facilities in their more concentrated, urban markets. Given the role that CLECs appear likely to play in bringing the benefits of new technologies to rural areas, we are reluctant to limit unnecessarily their spread by restricting them to the access rates of non-rural ILECs.

26. We are persuaded by the CLEC comments indicating that they experience much higher costs, particularly loop costs, when serving a rural area with a diffuse customer base than they do when serving a more concentrated urban or suburban area. The CLECs argue that, lacking the lower-cost urban operations that non-rural ILECs can use to subsidize their rural operations, the CLECs should be permitted to charge more for access service, as do the small rural incumbents that charge the National Exchange Carrier Association (NECA) schedule rates. We note in this regard that a rural exemption will also create parity between the rural CLECs competing with NECA carriers and those competing with non-rural ILECs.

27. In adopting the rural exemption, we reject the characterization of the exemption as an implicit subsidy of rural CLEC operations. It is true that an exemption scheme will permit rural CLECs to charge IXCs more for access to their end-user customers than was charged by the non-rural ILECs from whom the CLECs captured their customers. The exemption we adopt today merely deprives IXCs of the implicit subsidy for access to certain rural customers that has arisen from the fact that non-rural ILECs average their access rates across their state-wide study areas.

28. Our level of comfort in creating a rural exemption is markedly increased by the fact that the record indicates it likely will apply to a small number of carriers serving a tiny portion of the nation's access lines. The Rural Independent Competitive Alliance (RICA) asserts that, fewer than 100,000 access lines are served by carriers falling in the definition that it proffers for a rural CLEC.

29. We reject AT&T's argument that CLECs must rely solely on the *CALLS Order's* interstate access support when entering the territories of non-rural ILECs. This interstate access support mechanism is portable, but that does not necessarily indicate that it fully reflects the costs (above those recovered through ILEC access rates) that a rural CLEC would encounter in serving customers in the high-cost areas for which the subsidy is available.

30. We are also skeptical of AT&T's assertions about the incentives that would flow from a rural exemption. First, AT&T argues that the exemption would "create perverse incentives for uneconomic competitive entry by CLECs in any "rural" areas in which it might be applicable." It appears from the record that both AT&T and Sprint have routinely been paying for CLEC access billed at the rate charged by the competing incumbent. If AT&T were accurate in its projection about higher access rates spurring a rash of uneconomic market entry in rural areas, such uneconomic entry should already have occurred in the territories of the rural incumbent carriers that charge the higher NECA rates. However, the record fails to indicate such a trend.

31. We thus conclude that the record supports the creation of a rural exemption to the benchmark scheme that we adopt for CLEC access charges. Under this exemption, a CLEC that is operating in a rural area, as defined, and that is competing against a non-rural ILEC may tariff access rates equivalent to those of NECA carriers.

2. Carriers Eligible for Rural Exemption

32. Administrative simplicity is an important consideration in our choice of a way to define rural CLECs. Thus, we conclude that the availability of the exemption (and the higher access rates that come with it) should be determined based on the CLEC's entire service area, not on a subscriber-by-subscriber basis. Similarly, we are concerned that the definition rely on objectively available information that will not require extensive calculation or analysis by either carriers or this Commission.

33. We conclude that the rural exemption to our benchmark limitation on access charges will be available for a CLEC competing with a non-rural ILEC, where no portion of the CLEC's service area falls within any incorporated place of 50,000 inhabitants or more, based on the most recently available population statistics of the Census Bureau or an urbanized area, as defined by the Census Bureau. Thus, if any portion of a CLEC's access traffic originates from or terminates to end users located within either of these two types of areas, the carrier will be ineligible for the rural exemption to our benchmark rule. Relying on information that is readily and publicly available, this definition excludes from the exemption those CLECs operating within reasonably dense areas that are not typically considered to be rural. It does not, however, exclude from eligibility entire counties that border high population areas, as would a definition based on MSAs.

34. Sprint has raised the issue of how best to ensure that the rural exemption does not create the potential for abuse and that it is restricted to CLECs that are serving rural end users. Thus, Sprint is concerned about the potential for competitive carriers, with some qualifying end users, creating two separate operating entities so that the one serving rural end users could tariff the higher access rate permitted under the exemption. While we want to forestall that strategy for exploiting our rule, we also realize that certain incumbents with urban (or non-rural) operations may choose to enter adjacent rural markets as a competitive carrier. To the extent that such carriers provide the benefit of competition in rural markets, their non-qualifying incumbent operations should not operate entirely to deny them the benefit of the rural exemption. Accordingly, we decline Sprint's invitation to examine all of the subsidiary operations of a holding company in order to determine the applicability of the rural exemption. We expect that we will be able to address, on a case-by-case basis, the improper exploitation of our rule—such as a competitive carrier's splitting itself into two subsidiaries to qualify, in part, for the exemption rates where it would not otherwise do so.

35. Our definition for rural CLECs closely resembles the first major division of the Act's definition for rural telephone companies. It departs from the remaining three major divisions of the definition either because they would be administratively burdensome, or because they would be overly inclusive or irrational when applied solely to CLECs. Our definition adopts 50,000, rather than 10,000, as the population cut-off for incorporated places because we are concerned that, without the statute's remaining three portions of the definition as a way for a company to attain rural status, the 10,000-person threshold would be unduly restrictive and deny the exemption to companies operating in areas that would generally be viewed as rural.

36. This exemption will permit a CLEC to tariff access rates above the competing ILEC's only when the competing ILEC has broad-based operations that include concentrated, urban areas that allow it to subsidize its rural operations and therefore charge an artificially low rate for access to its rural customers. We conclude that the most effective and objective means of accomplishing this is to allow the rural exemption only to those CLECs that are competing with price-cap ILECs that do not qualify as ''rural telephone companies'' under the Act's definition. Those CLECs competing with carriers that qualify as rural under the Act's definition are excluded from the rural exemption and are therefore limited, under the rule we announced, to tariffing access rates equal only to those of the competing ILEC.

3. Rate for Exemption Carriers

37. The final question with respect to the rural exemption is what the access service benchmark is for those carriers that qualify. We adopt the NECA tariff for switched access service as the standard that is the most appropriately reflective of the considerations that should go into pricing the access service of rural CLECs. Accordingly, qualifying rural CLECs may tariff rates at the level of those in the NECA access tariff, assuming the highest rate band for local switching and the transport interconnection charge, *minus* the tariff's carrier common line (CCL) charge if the competing ILEC is subject to our *CALLS Order.* Above this benchmark, rural CLECs will be mandatorily detariffed in their provision of access services.

38. We adopt the NECA access rate because it is tariffed on a regular basis and is routinely updated to reflect factors relevant to pricing rural carriers' access service. We choose the highest rate bands for the two variable rate elements because the opportunity to tariff those rates will most effectively spur the development of local-service competition in the nation's rural markets and because the burden created by choosing the highest rate will be relatively minor, owing to the small number of carriers involved. We deny rural CLECs the NECA tariff's CCL charge when they compete with a *CALLS* ILEC because the price-cap LECs' CCL charge has been largely eliminated through implementation of higher subscriber line charge (SLC) caps and the multi-line business PICC. CLECs competing with *CALLS* ILECs are free to build into their end-user rates a component approximately equivalent to (or slightly below) the ILEC's SLC, as well as assessing IXCs a multi-line business PICC. These potential revenue sources obviate the need for a CCL charge, which NECA carriers use to recover loop costs that cannot be recovered because of their lower SLC caps and the absence of PICCs.

E. Forbearance Analysis for Rates Above the Benchmark

39. Section 10 of the Act requires, *inter alia,* that the Commission forbear from applying any regulation or provision of the Act to telecommunications carriers or telecommunications services, or classes thereof, if the Commission determines that certain statutory conditions are satisfied. Because section 10 permits us to exercise our forbearance authority with respect to classes of services, we conduct a forbearance analysis only for those CLEC interstate access services for which the aggregate charges exceed our benchmark. For this class of services, we conclude that the section 10 forbearance criteria are satisfied; accordingly, we must take action pursuant to the terms of this statute.

40. Under the first criterion for forbearance, we examine whether our tariff filing requirements for CLEC interstate access services priced above the benchmark are necessary to ensure that rates for these services are just and reasonable and not unreasonably discriminatory. We conclude they are not. As noted, CLECs are positioned to wield market power with respect to access service. Requiring CLECs to negotiate with their IXC customers in order to obtain access rates above the benchmark will limit the CLECs' ability to exercise this market power and unilaterally impose rates above the level that we have found to be presumptively reasonable.

41. We are not persuaded by CLEC commenters that contend they will be unable to negotiate agreements with IXCs because IXCs wield significant market power in the purchase of access services. We find these claims of IXC monopsony power unsupported in the record. We note that three major IXCs are purchasers in the market for access services, and numerous smaller players also purchase LEC access services.

Moreover, we note that our tariff rules were historically intended to protect purchasers of services from monopoly providers, not to protect sellers from monopsony purchasing power. We conclude that other remedies, like those under the antitrust laws, are available to protect CLECs from the exploitation of any monopsony power that IXCs may possess.

42. Under the second forbearance criterion, we must determine whether tariffing of CLEC access charges above the benchmark is necessary to protect consumers. Requiring negotiation of access rates above the benchmark will provide greater assurance that the rates are just and reasonable and will likely prevent CLECs from using long distance ratepayers to subsidize their operational and build-out expenses. It is possible that the reduction of CLEC access revenue caused by the benchmark scheme will increase the rates CLECs charge their end users. However, all CLEC end users have competitive alternative service providers, in the form of regulated incumbents. We are therefore not concerned that any increase in CLEC end-user rates will unduly harm consumers. To the extent that this provision requires us to examine the effect on the IXC consumers of CLEC access services, mandatory detariffing likely will protect that group by removing the CLEC's ability unilaterally to impose excessive rates through the tariff process.

43. The third forbearance criterion requires that we determine whether mandatory detariffing of CLEC access services priced above the benchmark is consistent with the public interest and, in particular, whether it will promote competitive market conditions. We conclude, as discussed, that adopting mandatory detariffing for access rates in excess of the safe harbor limit will subject to negotiation between two willing parties any access services offered at a rate above the benchmark. The negotiation-driven approach that we adopt will provide a better mechanism for IXCs to control costs, since they will not be subject to tariffs with unilaterally established rates at excessive levels. In addition, our benchmark system, with its presumption that qualifying rates are reasonable, will provide greater certainty for CLECs that they will receive full compensation for the access services that they provide. By limiting a CLEC's ability to shift its start-up costs onto the long-distance market, our benchmark approach will restrict market entry to the efficient providers. Accordingly, mandatory detariffing of CLEC access services above the benchmark fulfills all three of the criteria for forbearance.

III. Interconnection Obligations

44. Although we have created a safe harbor for CLEC access rates, within which they will be presumed to be just and reasonable, the question remains of whether and under what circumstances an IXC can decline to provide service to the end users of a CLEC.

A. Interconnection and Sections 201 and 251

45. Sections 201(a) and 251(a)(1) do not expressly require IXCs to accept traffic from, and terminate traffic to, all CLECs, regardless of their access rates. The Commission has previously found that a section 251(a)(1) duty to interconnect, directly or indirectly, is central to the Communications Act and achieves important policy objectives. However, the Commission construed the statute to require only the physical linking of networks, not to impose obligations relating to the transport and termination of traffic. Section 201 empowers the Commission, after a hearing and a determination of the public interest, to order the physical connection of networks and to establish routes and charges for certain communications. This also falls short of creating the blanket duty that the CLECs seek to impose on the IXCs to accept all access service, regardless of the rate at which it is offered. Certainly, we have made no finding that the public interest dictates such broad acceptance of access service, whatever its price. Nevertheless, we conclude that section 201(a) places certain limitations on an IXC's ability to refuse CLEC access service.

46. We agree that universal connectivity is an important policy goal that our rules should continue to promote. The public has come to value and expect the ubiquity of the nation's telecommunications network. Accordingly, any solution to the current problem that allows IXCs unilaterally and without restriction to refuse to terminate calls or indiscriminately to pick and choose which traffic they will deliver would result in substantial confusion for consumers, would fundamentally disrupt the workings of the public switched telephone network, and would harm universal service.

47. We therefore conclude that an IXC that refuses to provide service to an end user of a CLEC charging rates within the safe harbor, while serving the customers of other LECs within the same geographic area, would violate section 201(a). That section imposes on common carriers the obligation to furnish communication service ''upon reasonable request therefor.'' As set out above, we will conclusively presume that a CLEC's access rates are reasonable if they fall at or below the benchmark that we establish herein. When an IXC's end-user customer attempts to place a call either from or to a local access line, that customer makes a request for communication service—from the originating LEC, the IXC and the terminating LEC. When that customer attempts to call from and/or to an access line served by a CLEC with presumptively reasonable rates, that request for communications service is a reasonable one that the IXC may not refuse without running afoul of section 201(a). This obligation may be enforced through a section 208 complaint before the Commission.

B. Section 214 and Discontinuance of Service

48. Section 214 of the Communications Act and 63.71 of the Commission's rules govern an IXC's withdrawal of service. Section 214 of the Communications Act provides, in relevant part, that ''[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby.'' In light of the solution we adopt herein, we need not address the application of either section 214 or our rule 63.17.

49. We conclude that it would be a violation of section 201(a) for an IXC to refuse CLEC access service, either terminating or originating, where the CLEC has tariffed access rates within our safe harbor and, in the case of originating access, where the IXC is already providing service to other members in the same geographical area. Since section 201(a) already prohibits such a withdrawal of service, we need not address the question of whether section 214 applies to an IXC that finds itself in that position.

50. The remaining possible scenario to which section 214 might apply is that in which a CLEC wishes to charge access rates above our benchmark and an IXC will not agree to pay them. Under the rules we adopt today, a CLEC must charge the benchmark rate during the pendency of negotiations or if the parties cannot agree to a rate in excess of the benchmark. In either case, since the benchmark rate is conclusively presumed reasonable, an IXC cannot refuse to provide service to an end user served by the CLEC without violating

section 201. Here again, we need not address the applicability of section 214.

IV. Procedural Matters

A. Paperwork Reduction Act

51. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose new or modified reporting and/or recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and/or recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the PRA, and will go into effect upon announcement in the **Federal Register** of OMB approval.

B. Final Regulatory Flexibility Analysis

52. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Pricing *Flexibility Order and Further Notice,* 64 FR 51280, September 22, 1999. The Commission sought written comments on the proposals in the *Pricing Flexibility Order and Further Notice,* including the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this order conforms to the RFA, as amended.

1. Need for, and Objectives of, the Proposed Action

53. With this order, we address a number of interrelated issues concerning charges for interstate switched access services provided by competitive local exchange carriers (CLECs) and the obligations of interexchange carriers (IXCs) to exchange access traffic with CLECs. In so doing, we seek to ensure, by the least intrusive means possible, that CLEC access charges are just and reasonable. We also seek to reduce regulatory arbitrage opportunities that previously have existed with respect to tariffed CLEC access services. This order is designed to spur more efficient local competition and to avoid disrupting the development of competition in the local telecommunications market.

54. We accomplish these goals by revising our tariff rules more closely to align tariffed CLEC access rates with those of the incumbent LECs. Under the detariffing regime we adopt, CLEC access rates that are at or below the benchmark that we set will be presumed to be just and reasonable and CLECs may impose them by tariff. Above the benchmark, CLEC access services will be mandatorily detariffed, so CLECs must negotiate higher rates with the IXCs. However, to avoid too great a disruption for competitive carriers (many of which may fall within the SBA's definition of a small entity), we implement this approach in a way that will cause CLEC tariffs to ramp down over time until they reach the level tariffed by the incumbent LEC. This mechanism will mimic the operation of the marketplace, as competitive LECs ultimately will have tariffed rates at or below the prevailing market price. At the same time, this approach maintains the ability of CLECs to negotiate access service arrangements with IXCs at any mutually agreed upon rate. In this order, we also make clear that an IXC's refusal to serve the customers of a CLEC that tariffs access rates within our safe harbor constitutes a violation of the duty of all common carriers to provide service upon reasonable request.

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

55. In the *Pricing Flexibility Order and Further Notice,* we sought comment on various, alternative proposals to prevent CLECs from charging unreasonable rates for their switched access services. In the IRFA, we tentatively concluded that the proposed rule changes would have no effect on the administrative burdens of competitive LECs because they would have no additional filing requirement. In response to the Further Notice, we received comments from more than 40 parties and held a series of ex parte meetings addressing these issues. Among those parties, only ALLTEL and the Rural Independent Competitive Alliance (RICA) commented specifically on the IRFA.

56. We disagree with ALLTEL's contention that the Commission's IRFA was incomplete. ALLTEL argues that the Commission, in the IRFA, did not adequately address proposals in the Further Notice that might affect originating access and ''open-end'' access services; the potential burden on CLECs to modify their tariffs or to eliminate those tariffs and negotiate individual contracts; and potential burdens on other carriers, such as ILECs (which, ALLTEL asserts, might have to modify their tariffs and perform cost studies). To the contrary, for several different reasons, we conclude that the IRFA gave adequate notice of our proposals to address CLEC access service. First, we chose to discuss, in the IRFA, the primary proposals set out in the Notice, though we sought comment in the Notice on a number of variations to those primary proposals. Thus, while the IRFA only expressly mentions proposals to address terminating access, it includes cross-references to the text of the Further Notice, which discusses all variations of the Commission's proposals. Moreover, we observe that the Further Notice and the IRFA were sufficient to generate a very sizable record, including comments from many competitive LECs that likely would be considered small businesses under the closest applicable SBA definition. The IRFA provided sufficient information so that the public could react to the Commission's proposals in an informed manner.

57. Second, with respect to the administrative burdens associated with our proposals in the Further Notice, we have reconsidered our tentative conclusion to adopt mandatory detariffing. We note that many commenters, large and small, oppose the Commission's proposal to adopt mandatory detariffing for all CLEC access services. These commenters, like ALLTEL, argue that while mandatory detariffing would reduce burdens associated with filing tariffs, it would increase administrative burdens overall by imposing greater transaction costs on CLECs and IXCs. Having received these almost unanimous comments, we conclude that we should not adopt our proposal to implement mandatory detariffing, at this time. Rather, we only adopt mandatory detariffing to the extent that a CLEC chooses to charge a rate that exceeds our defined benchmark. Under this approach, CLECs and IXCs—both large and small— will be able to continue to enjoy the benefits of a tariffed service.

58. Similarly, we take into account RICA's assertion that mandatory detariffing, as proposed, might cause particular hardship for CLECs operating in rural areas. Again, we have factored these comments into our decision to adopt a benchmark system, pursuant to which CLECs will continue to be permitted to file tariffs for their switched access services. Thus, we believe that our approach adequately addresses the concerns of these CLEC commenters. Moreover, we restate that our decision to detariff rates above the benchmark was motivated by our conclusion that rates above that level would be excessive (absent an agreement between the parties) and would place an inappropriate burden on IXCs and long distance customers. In this regard, we note that even the small CLECs covered by our RFA analysis are clearly prohibited by the Act and our rules from charging unjust or unreasonable rates. This order is designed to prevent such unjust or unreasonable rates.

59. Finally, we reject ALLTEL's assertion that the proposals in the Notice would place additional regulatory burden on ILECs. The proposals applied solely to CLECs and IXCs and we find ALLTEL's arguments to be unsupported in the record.

60. Although not responding specifically to the IRFA, many parties commented generally on the potential regulatory burdens associated with the Commission's various proposals. In brief, IXC commenters typically sought a mechanism to constrain CLEC access charges. In contrast, CLEC commenters typically sought to preserve their freedom to set access rates as they choose. We note that there are small entities on both sides of this debate. We encourage readers of this FRFA also to consult the complete text of this order, which describes in detail our analysis of the issues.

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

61. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. To estimate the number of small entities that may be affected by the proposed rules, we first consider the statutory definition of ''small entity'' under the RFA. The RFA generally defines ''small entity'' as having the same meaning as the term ''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, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that is independently owned and operated; is not dominant in its field of operation; and meets any additional criteria established by the SBA. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees.

62. The rules adopted in this order apply to CLECs and IXCs. Neither the Commission nor the SBA has developed a definition of small CLECs or small IXCs. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that telecommunications carriers file annually in connection with the Commission's universal services requirements. According to our most recent data, 349 companies reported that they were engaged in the provision of either competitive access services or competitive local exchange services (referred to collectively as CLECs) and 204 companies reported that they were engaged in the provision of interexchange services. Among these companies, we estimate that approximately 297 of the CLECs have 1500 or fewer employees and that approximately 163 of the IXCs have 1500 or fewer employees. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are 297 or fewer small CLECs, and 163 or fewer small IXCs that may be affected by the decisions and rules adopted in this order.

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

63. ALLTEL asserts that the Commission's proposals in the Further Notice ''could require CLECs to modify their tariffs or to eliminate those tariffs and negotiate individual contracts.'' This argument was echoed by other commenters who assert that the Commission's proposal to adopt mandatory detariffing would increase carriers' transaction costs, even though tariff filing requirements would be eliminated. We acknowledge these concerns and have decided not to adopt mandatory detariffing for all CLEC switched access services, at this time.

64. Thus, pursuant to this order, we allow competitive LECs to continue to file tariffs, as long as the rates for those services are within the defined safe harbor. We recognize that many CLECs—we estimate between 100–150 CLECs—may be required to re-file their tariffs in order to comply with this order. Given that ALTS, an organization which represents many CLECs, has supported this proposal, we believe that any increased burden will be outweighed by the benefits associated with resolving these issues. Further, we conclude that it is a burden that is justified by the Act's requirement that all rates be just and reasonable. We are optimistic that this approach will provide a bright line rule that permits a simple determination as to whether CLEC access charges are just and reasonable and, at the same time, will enable both sellers and purchasers of CLEC access services to avail themselves of the convenience of a tariffed service offering. Thus, we believe that this approach should minimize reporting and recordkeeping requirements on IXCs and CLECs, including any small entities, while also providing carriers with considerable flexibility.

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

65. Through this order, we seek to resolve contentious issues that have arisen with respect to CLEC switched access services. Because there are both small entity IXCs and small entity CLECs '' often with conflicting interests in this proceeding—we expect that small entities will be affected by any approach that we adopt. As discussed, we conclude that our approach best balances these goals by removing opportunities for regulatory arbitrage and minimizing the burdens placed on carriers.

66. In this order, we adopt a benchmark approach to CLEC access charges. We find that this approach will minimize the impact of the rules on small entities in several ways. First, it allows small business CLECs to continue to enjoy the convenience of offering a tariffed service, an advantage sought by CLECs, many of which may be relatively new and small businesses. Second, it will enable small IXCs to purchase most access services via tariff, rather than having to negotiate agreements with every CLEC. Finally, our approach ensures that IXCs will continue to accept and pay for CLEC switched access services, as long as the CLEC tariffs rates within the Commission's benchmarks. Many CLECs argued that such an outcome was essential for new, relatively small CLECs to continue to offer services.

67. In this order, we consider and reject several alternatives to the benchmark approach. In particular, we also considered continuing to rely on market forces to constrain CLEC switched access charges; adopting a mandatory detariffing policy, which would prohibit CLECs from filing any tariffs for their switched access services; and, subjecting CLECs to the panoply of regulation with which incumbents must comply.

68. Although many CLECs contend that the Commission need not take any particular action with respect to CLEC

switched access charges, we disagree. We conclude that our action is compelled by several factors, including our desire to reduce regulatory arbitrage opportunities and to revise our rules to allow competitive market forces to constrain CLEC access charges; growing evidence that CLEC switched access charges do not appear to be constrained by market forces; significant concerns that allowing IXCs to refuse to exchange traffic without restriction may lead to a decline in the universal connectivity upon which telephone users have come to rely.

69. On the other hand, we do not impose mandatory detariffing for all CLEC switched access services because we believe that our benchmark approach will provide a less drastic alternative for carriers, including small entity CLECs and small entity IXCs. For example, by enabling CLECs to continue to file tariffs within a safe harbor range, we respond to concerns expressed by many CLECs that complete detariffing of CLEC services would cause significantly increased transaction costs. We note, as well, that many IXC commenters supported this solution.

70. We also conclude that our benchmark approach is more desirable than subjecting CLECs to the panoply of ILEC regulation. The Commission has long stated its desire to allow competitive forces to constrain access charges. By adopting a benchmark approach, we continue to allow CLECs to tariff their services, while ensuring IXCs and long distance customers, generally, that CLEC rates will be just and reasonable. We note that no commenter favors subjecting CLECs to dominant carrier regulation.

71. We also adopted a transition mechanism that should minimize the impact of the decision on all carriers, including small entities. While we considered adopting a benchmark that would immediately drop CLEC access rates to that level charged by the competing incumbent LEC, we instead implement the benchmark through a three-year transition. This will allow CLECs, including any small businesses, a period of flexibility during which they can conform their business models to the new market paradigm that we adopt, herein. At the same time, by effecting significant reductions in switched access charges immediately, we will minimize the impact that excessive access rates might have on IXCs, including any small businesses. We believe that this transition should significantly reduce the impact of this order on small businesses.

72. In addition, by clarifying rules for the transport and origination of traffic between CLECs and IXCs, this order should continue to ensure the ubiquity of a fully interconnected telecommunications network that consumers have come to expect. We considered counter-proposals from some carriers that there should be no obligation to exchange traffic; however, we believe that our approach will best satisfy the expectations of end users who have come to rely on a seamless, fully-interconnected telephone network. Further, these rules should provide considerable assurance to CLECs, many of which may be small businesses, that seek to offer their customers access to the broadest range of IXCs possible. Many of these CLECs asserted that, without such a rule, larger, more established IXCs likely would refuse to exchange traffic with them, essentially driving them out of business. Our rules should address this concern by requiring IXCs to exchange traffic with CLECs that tariff rates within the benchmark, where IXCs already exchange traffic with other carriers in the same geographic area.

73. Overall, we believe that this order best balances the competing goals that we have for our rules governing CLEC switched access charges. We have not identified any additional alternatives that would have further limited the impact on small entities across-the-board while remaining consistent with Congress' pro-competitive objectives set out in the 1996 Act.

74. *Report to Congress:* The Commission will send a copy of this *CLEC Access Charge Reform Order,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. See 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this *CLEC Access Charge Reform Order,* including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *CLEC Access Charge Reform Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

V. Ordering Clauses

75. Pursuant to sections 1–5, 201–205, 303(r), 403, 502, and 503 of the Communications Act of 1934, as amended, this Report and Order, with all attachments, including revisions to part 61 of the Commission's rules, is hereby adopted.

76. The rule revisions adopted in this Order shall become effective thirty days after publication in the **Federal Register**.

77. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this CLEC Access Charge Order, including the Final and Initial Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 61

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 61 as follows:

PART 61—TARIFFS

Subpart C—General Rules for Nondominant Carriers

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

Authority: 47 U.S.C. 1, 4(i), 4(j), 201–205 and 403 unless otherwise noted.

2. Add § 61.26 to subpart C to read as follows:

§ 61.26 Tariffing of competitive interstate switched exchange access services.

(a) *Definitions.* For purposes of this section 61.26, the following definitions shall apply:

(1) *CLEC* shall mean a provider of interstate exchange access services that does not fall within the definition of ''incumbent local exchange carrier'' in 47 U.S.C. 251(h).

(2) *Competing ILEC* shall mean the incumbent local exchange carrier, as defined in 47 U.S.C. 251(h), that would provide interstate exchange access service to a particular end user if that end user were not served by the CLEC.

(3) *Interstate switched exchange access services* shall include the functional equivalent of the ILEC interstate exchange access services typically associated with following rate elements: carrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport facility (per mile); tandem switching.

(4) *Non-rural ILEC* shall mean an incumbent local exchange carrier that is not a *rural telephone company* under 47 U.S.C. 153(37).

(5) The *rate* for interstate switched exchange access services shall mean the composite, per-minute rate for these

services, including all applicable fixed and traffic-sensitive charges.

(6) *Rural CLEC* shall mean a CLEC that does not serve (i.e., terminate traffic to or originate traffic from) any end users located within either:

(i) Any incorporated place of 50,000 inhabitants or more, based on the most recently available population statistics of the Census Bureau or

(ii) An urbanized area, as defined by the Census Bureau.

(b) Except as provided in paragraphs (c) and (e) of this section, a CLEC shall not file a tariff for its interstate switched exchange access services that prices those services above the higher of:

(1) The rate charged for such services by the competing ILEC or

(2) The lower of:

(i) The benchmark rate described in paragraph (c) of this section or

(ii) The lowest rate that the CLEC has tariffed for its interstate exchange access services, within the six months preceding June 20, 2001.

(c) From June 20, 2001 until June 20, 2002, the benchmark rate for a CLEC's interstate switched exchange access services will be $0.025 per minute. From June 20, 2002 until June 20, 2003, the benchmark rate for a CLEC's interstate switched exchange access services will be $0.018 per minute. From June 20, 2003 until June 21, 2004, the benchmark rate for a CLEC's interstate switched exchange access services will be $0.012 per minute. After June 20, 2005, the benchmark rate for a CLEC's interstate switched exchange access services will be the rate charged for similar services by the competing ILEC, *provided, however,* that the benchmark rate for a CLEC's interstate switched exchange access services will not move to bill-and-keep, if at all, until June 20, 2005.

(d) Notwithstanding paragraphs (b) and (c) of this section, in the event that, after June 20, 2001, a CLEC begins serving end users in a metropolitan statistical area (MSA) where it has not previously served end users, the CLEC shall not file a tariff for its interstate exchange access services in that MSA that prices those services above the rate charged for such services by the competing ILEC.

(e) *Rural exemption.* Notwithstanding paragraphs (b) through (3) of this section, a rural CLEC competing with a non-rural ILEC shall not file a tariff for its interstate exchange access services that prices those services above the rate prescribed in the NECA access tariff, assuming the highest rate band for local switching and the transport interconnection charge. If the competing ILEC is subject to the Commission's *CALLS Order,* 65 FR 38684, June 21, 2000, this rate shall be reduced by the NECA tariff's carrier common line charge.

[FR Doc. 01–12758 Filed 5–18–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF61

Endangered and Threatened Wildlife and Plants; Final Rule for Endangered Status for *Astragalus pycnostachyus* var. *lanosissimus* (Ventura marsh milk-vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status for *Astragalus pycnostachyus* var. *lanosissimus* (Ventura marsh milk-vetch) pursuant to the Endangered Species Act (Act) of 1973, as amended. Historically known from a three-county region in coastal southern California, *A. pycnostachyus* var. *lanosissimus* was believed extinct until its rediscovery in 1997. The only known extant population of this recently rediscovered plant occurs in Ventura County, California, on less than 1 acre of degraded dune habitat that was previously used for disposal of petroleum wastes. The most significant current threats to *A. pycnostachyus* var. *lanosissimus* are direct destruction of this population from proposed soil remediation, residential development, and associated activities. This taxon is also threatened by unanticipated human-caused and natural events that could eliminate the single remaining population. Competition from nonnative invasive plant species is an additional threat. This action will extend the Act's protection to this plant.

EFFECTIVE DATE: This rule is effective June 20, 2001.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Rick Farris or Lois Grunwald, Ventura Fish and Wildlife Office, at the address above (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

Astragalus pycnostachyus var. *lanosissimus* (Ventura marsh milk-vetch) was first described by Per Axel Rydberg (1929) as *Phaca lanosissima* from an 1882 collection by S.B. and W.F. Parish made from ''La Bolsa,'' probably in what is now Orange County, California. The combination *A. pycnostachyus* var. *lanosissimus* was assigned to this taxon by Philip Munz and Jean McBurney in 1932 (Munz 1932).

Astragalus pycnostachyus var. *lanosissimus* is a herbaceous perennial in the pea family (Fabaceae). It has a thick taproot and multiple erect, reddish stems, 40 to 90 centimeters (cm) (16 to 36 inches (in)) tall, that emerge from the root crown. The pinnately compound leaves are densely covered with silvery white hairs. The 27–39 leaflets are 5 to 20 millimeters (mm) (0.2 to 0.8 in) long. The numerous greenish-white to cream colored flowers are in dense clusters and are 7 to 10 mm (0.3 to 0.4 in) long. The calyx teeth are 1.2 to 1.5 mm (0.04 in) long. The nearly sessile, single-celled pod is 8 to 11 mm (0.31 to 0.43 in) long (Barneby 1964). The blooming time has been recorded as July to October (Barneby 1964); however, the one extant population was observed in flower in June 1997. This variety is distinguished from *A. pycnostachyus* var. *pycnostachyus* by the length of calyx tube, calyx teeth, and peduncles. It is distinguished from other local *Astragalus* species by its size, perennial habit, size and shape of fruit, and flowering time.

The type locality is ''La Bolsa,'' where the plant was collected in 1882 by S.B. and W.F. Parish (Barneby 1964). Based on the labeling of other specimens collected by the Parishes in 1881 and 1882, Barneby (1964) suggested that this collection may have come from the Ballona marshes in Los Angeles County. However, Critchfield (1978) believed that ''La Bolsa'' could easily have referred to Bolsa Chica, a coastal marsh system located to the south in what is now Orange County. He noted that Orange County was not made a separate county from Los Angeles until 1889, 7 years after the Parish's collection was made. In the five decades following its discovery, *Astragalus pycnostachyus* var. *lanosissimus* was collected from about four locations in Los Angeles and Ventura counties, three of which are near one another. In Los Angeles County it was collected from near Santa Monica in 1882, the Ballona marshes just to the south in 1902, and ''Cienega'' in 1904, also likely near the Ballona wetlands. In