should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

31. Parties who choose to file by paper may submit such filings by hand or messenger delivery, by U.S. Postal Service mail (First Class, Priority, or Express Mail), or by commercial overnight courier. Parties must file an original and four copies of each filing in WT Docket Nos. 03–103 and 05–42. Parties that want each Commissioner to receive a personal copy of their comments must file an original plus nine copies. If paper filings are hand-delivered or messenger-delivered for the Commission's Secretary, they must be delivered to the Commission's contractor at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002–4913. To receive an official ''Office of the Secretary'' date stamp, documents must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission. (The filing hours at this facility are 8 a.m. to 7 p.m.) If paper filings are submitted by mail though the U.S. Postal Service (First Class mail, Priority Mail, and Express Mail), they must be sent to the Commission's Secretary, Marlene H. Dortch, Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. If paper filings are submitted by commercial overnight courier (*i.e.*, by overnight delivery other than through the U.S. Postal Service), such as by Federal Express or United Parcel Service, they must be sent to the Commission's Secretary, Marlene H. Dortch, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743. (The filing hours at this facility are 8 a.m. to 5:30 p.m.)

32. Parties may also file with the Commission some form of electronic media submission (*e.g.*, diskettes, CDs, tapes, etc.) as part of their filings. In order to avoid possible adverse affects on such media submissions (potentially caused by irradiation techniques used to ensure that mail is not contaminated), the Commission advises that they should not be sent through the U.S. Postal Service. Hand-delivered or messenger-delivered electronic media submissions should be delivered to the Commission's contractor at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002–4913. Electronic media sent by commercial overnight courier should be sent to the Commission's Secretary, Marlene H. Dortch, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743.

33. Regardless of whether parties choose to file electronically or by paper, they should also send one copy of any documents filed, either by paper or by e-mail, to each of the following: (1) Best Copy & Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, facsimile (202) 488–5563, or e-mail at *www.fcc@bcpiweb.com*; and (2) Richard Arsenault, Mobility Division, Wireless Telecommunications Bureau, 445 12th Street, SW., Washington, DC 20554, or e-mail at *Richard.Arsenault@fcc.gov.*

34. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. These documents also will be available electronically at the Commission's Disabilities Issues Task Force Web site, *http://www.fcc.gov/dtf,* and from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII text, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Best Copy & Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160, facsimile (202) 488–5563, or via e-mail at *www.fcc@bcpiweb.com.* This document is also available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Brian Millin at (202) 418–7426, TTY (202) 418–7365, *Brian.Millin@fcc.gov*, or send an e-mail to *access@fcc.gov.*

C. Ex Parte Rules Regarding the NPRM—Permit-But-Disclose Comment Proceeding

35. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed in accordance with Commission rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206.

Ordering Clauses

36. Pursuant to the authority contained in sections 1, 4(i), 11, and 303(r) and (y), 308, 309, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 161, 303(r), (y), 308, 309, and 332, this Notice of Proposed Rulemaking is hereby *adopted,* and parts 1 and 22 of the Commission's rules are amended accordingly.

37. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Radio, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–6950 Filed 4–12–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[WC Docket No. 05–25; RM–10593; FCC 05–18]

Special Access Rates for Price Cap Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission initiates a rulemaking proceeding to determine the regulatory framework to apply to price cap local exchange carriers' (LECs) interstate special access services after June 30, 2005, including whether to maintain, modify, or repeal the pricing flexibility rules. Bell Operating Company (BOC) interstate special access services have assumed increasing significance as a key input for business customers, commercial mobile radio service (CMRS) providers, interexchange carriers (IXCs), and competitive LECs, and BOC revenues from these services have increased significantly since price cap regulation began.

DATES: Comments are due on or before June 13, 2005 and reply comments are due on or before July 12, 2005.

ADDRESSES: All filings must be sent to the Commission's Secretary, Marlene H. Dortch, 445 12th Street, SW., TW–B204, Washington, D.C. 20554. Parties should also send a copy of their paper filings to Margaret Dailey, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A232, 445 12th Street, SW., Washington, DC 20554. Parties shall also serve one copy with the Commission's copy contractor, Best

Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Margaret Dailey, Wireline Competition Bureau, Pricing Policy Division (202) 418–1520, *margaret.dailey@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket No. 05–25, RM–10593, FCC 05–18, adopted on January 19, 2005, and released on January 31, 2005. The full text of this document is available on the Commission's Internet site at *http://www.fcc.gov* and for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the FCC's Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365. The full text of the NPRM may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, e-mail at *fcc@bcpiweb.com,* or via its Web site at *http://www.bcpiweb.com.*

Initial Paperwork Reduction Act of 1995 Analysis

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198. 44 U.S.C. 3506(c)(4).

Introduction

This NPRM, adopted January 19, 2005 and released January 31, 2005 in WC Docket No. 05–25, RM–10593, FCC 05–18, initiates a proceeding to determine the regulatory framework to apply to incumbent price cap LECs interstate special access services after June 30, 2005, including whether to maintain, modify, or repeal the pricing flexibility rules.

Background

Price cap LECs charge IXCs, competitive LECs, CMRS providers, and end users for access services in accordance with parts 61 and 69 of the Commission's rules, 47 CFR parts 61 and 69. There are two types of access service: (1) Special access, which does not use local switches, instead employing dedicated facilities that run directly between end users and IXCs or between two end users; and (2) switched access, which uses local switches. Charges for special access are divided into channel termination charges and channel mileage charges. The special access rates for incumbent price cap LECs currently are subject to two pricing regimes—price caps and pricing flexibility.

Price Cap Regulation

Prior to 1991 the Commission determined the appropriate charges for access service through rate-of-return regulation, pursuant to which LECs were limited to recovering their costs plus a prescribed return on investment. In 1991, in the LEC Price Cap Order, 55 FR 42375, Oct. 19, 1990, the Commission implemented price cap regulation, which, in contrast to rate-of-return regulation, limits the profits a LEC may earn by focusing on the prices that a LEC may charge and the revenues it may generate from interstate access services. Price cap carriers whose interstate access charges are set by price cap rules are permitted to earn returns significantly higher, or potentially lower, than the prescribed rate of return that incumbent LECs are allowed to earn under rate-of-return rules. Price cap regulation encourages incumbent LECs to improve their efficiency by harnessing profit-making incentives to reduce costs, invest efficiently in new plant and facilities and develop and deploy innovative services, while setting price ceilings at reasonable levels. Price cap regulations also give incumbent LECs greater flexibility in determining the amount of revenues that may be recovered from a given access service. The price cap rules group services together into different baskets, service categories, and service subcategories, and then identify the total permitted revenues for each basket or category of services. Within these baskets or categories, incumbent LECs are given some discretion to determine the portion of revenue that may be recovered from specific services, and thus to alter the rate levels associated with a given service. In the short run, the behavior of individual companies has no effect on the prices they are permitted to charge, and they are able to keep any additional profits resulting from reduced costs. This creates an incentive to cut costs and to produce efficiently. In this way, price caps act as a transitional regulatory scheme until the advent of actual competition makes price cap regulation unnecessary.

With passage of the Telecommunications Act of 1996, Pub. Law 104–104, 110 Stat. 56, the Commission began reforming access charges, stating in the Access Charge Reform Order, 62 FR 31939, June 11, 1997, that it would rely on competition as the primary method for bringing about cost-based access charges and anticipating that it would lessen, and eventually eliminate, rate regulation as competition developed. To assist in this effort, the Commission said it would require price cap LECs to start forward-looking cost studies no later than February 8, 2001, for all services then remaining under price caps.

Subsequently, in 2000, in the CALLS Order, 65 FR 38684, June 21, 2000, the Commission adopted the industry-proposed CALLS plan, which represents a five-year interim regime designed to phase out implicit subsidies in access charges and move towards a more market-based approach to rate setting. In adopting the CALLS plan, the Commission offered price cap LECs the choice of completing the forward-looking cost studies required by the Access Charge Reform Order or voluntarily making the rate reductions required under the five-year CALLS plan. All price cap carriers opted for the CALLS plan.

The CALLS plan separated special access services into their own basket and applied a separate X-factor to the special access basket. The X-factor under the CALLS plan, unlike under prior price cap regimes, is not a productivity factor, but represents a transitional mechanism to lower special access rates for a specified period of time. The special access X-factor was 3.0 percent in 2000 and 6.5 percent in 2001, 2002, and 2003. In addition to the X-factor, access charges under the CALLS plan are adjusted for inflation as measured by the Gross Domestic Product-Price Index (GDP–PI). For the final year of the CALLS plan (July 1, 2004—June 30, 2005), the special access X-factor is set equal to inflation, thereby freezing rate levels. Thus, absent the implementation of a new price cap regime when the CALLS plan expires, price cap LECs' special access rates will remain frozen at 2003 levels unless the Commission makes regulatory changes requiring adjustments in PCIs. In adopting the CALLS plan, the Commission hoped that, by the end of the five-year interim period, competition would exist to such a degree that deregulation of access charges for price cap LECs would be the next logical step.

Pricing Flexibility

In addition to general access charge reform, the Commission began exploring whether and how to remove price cap LECs' access services from regulation once they became subject to substantial competition. In 1999, it adopted the Pricing Flexibility Order, 64 FR 51258, Sept. 22, 1999, which established triggers to measure the extent to which competitors had made irreversible, sunk investment in collocation and transport facilities. A price cap LEC that satisfies these triggers may obtain pricing flexibility to offer special access services at unregulated rates through generally available and individually negotiated tariffs (*i.e.*, contract tariffs). A price cap LEC may obtain pricing flexibility in two phases, each on a Metropolitan Statistical Area (MSA) basis. Under Phase I, a price cap LEC may offer volume and term discounts and contract tariffs for interstate special access services unconstrained by the Commission's part 61 and part 69 rules. The price cap LEC, however, must continue to offer its generally available, price cap constrained (*i.e.*, subject to parts 61 and 69) tariff rates for these services. Under Phase II, a price cap LEC may file individualized special access contract tariffs, subject only to continuing to make available generalized special access tariff offerings. Neither the contract tariffs nor the general offerings are constrained by parts 61 or 69.

AT&T's Petition for Rulemaking

On October 15, 2002, AT&T filed a Petition for Rulemaking requesting that the Commission revoke the pricing flexibility rules and revisit the CALLS plan as it pertains to the rates that price cap LECs, and the BOCs in particular, charge for special access services. AT&T claims that the Pricing Flexibility Order's triggers fail to predict price-constraining competitive entry and such entry has not occurred. It further contends that, based on ARMIS date, the BOCs' interstate special access revenues more than tripled between 1996 and 2001, and that their returns on special access services were between 21 and 49 percent in 2001, but that for every MSA for which pricing flexibility was granted, BOC special access rates either remained flat or increased. Thus, AT&T claims that BOC special access rates are unjust and unreasonable in violation of section 201 of the Communications Act, 47 U.S.C. 201, and the Commission must initiate a rulemaking to revisit its pricing flexibility rules. During the pendency of this rulemaking, AT&T requests that the Commission grant interim relief by: (1) Reducing the rates for all special access services subject to Phase II pricing flexibility to the rates that would generate an 11.25 percent rate of return, and (2) imposing a moratorium on granting the BOCs further pricing flexibility.

Price cap LECs generally oppose the AT&T Petition for Rulemaking. They claim that their special access rates are reasonable and lawful, that there is robust competition in the market for special access services, that the collocation-based triggers of the Pricing Flexibility Order accurately measure competition, and that the data relied upon by AT&T are unreliable. The BOCs also contend that their special access revenues per line declined between 1996 and 2001.

Notice of Proposed Rulemaking

The Commission commences this rulemaking to seek comment on the interstate special access regime that it should put in place post-CALLS. We also seek comment on whether, as part of a special access regulatory regime, we should maintain, modify, or repeal the Commission's pricing flexibility rules. Thus we grant AT&T's petition inasmuch as we initiate a rulemaking proceeding.

As a separate issue we seek comment on what interim relief, if any, is necessary to ensure that special access rates remain reasonable while we consider what regulatory regime will follow the CALLS plan. Given the complexities discussed in the following NPRM, there is a strong likelihood that we will not complete the rulemaking proceeding before expiration of the CALLS plan on June 30, 2005. The record here contains substantial evidence suggesting that productivity in the provision of special access services has increased and continues to increase. Currently, however, the CALLS plan contains no productivity factor to require price cap LECs to share any of their productivity gains with end users. 47 CFR 61.45(b)(1)(iv). Accordingly, we anticipate adopting an order prior to June 30, 2005, that will establish an interim plan to ensure special access price cap rates remain just and reasonable while the Commission considers the record in the rulemaking proceeding. One interim option would be to impose the last productivity factor adopted by the Commission and upheld upon judicial review, 5.3 percent. We seek comment on this option and other reasonable interim alternatives. The Commission requests that any party that comments on the appropriate post-CALLS special access regulatory regime and/or proposes that the Commission alter in any way the existing pricing flexibility rules include in its comments specific language that would codify its proposed special access regulatory regime and/or its proposed pricing flexibility rule change(s).

Price Cap LEC Interstate Special Access Rates Post CALLS

First, we must determine the type of rate regulation, if any, that should apply. We tentatively conclude that we should continue to regulate special access rates under a price cap regime and that the price cap regime should continue to include pricing flexibility rules that apply where competitive market forces constrain special access rates. Such a regime, we tentatively conclude, would result in just and reasonable rates as required by section 201 of the Communications Act, 47 U.S.C. 201. We seek comment on these tentative conclusions. We also seek comment on how to resolve the major issues involved in implementing a price cap regime for special access services, as outlined below.

Changes in the Special Access Market

Automated Reporting Management Information System (ARMIS) data show that, in the 2001–2003 period, BOC special access operating revenues, operating expenses, accounting rates of return, and the number of special access lines increased annually (*i.e.*, compound annual growth rates over the period) by approximately 12, 7, 17, and 18 percent, respectively. BOC special access average investment decreased at a compounded annual rate of less than one percent over the same period. The overall (*i.e.*, not compounded annually) BOC interstate special access accounting rates of return were approximately 38, 40, and 44 percent in 2001, 2002, and 2003, respectively. In the period 1992–2000, a period that precedes the CALLS plan and significant pricing flexibility, BOC interstate special access operating revenues, operating expenses, average investment, accounting rates of return, and special access lines increased at a compounded annual rate of approximately 16, 12, 11, 11, and 32 percent, respectively. The overall (non-compounded) BOC special access accounting rates of return varied over this period from a low of approximately 7 percent in 1995 to a high of approximately 28 percent in 2000.

These accounting data suggest that the BOCs have realized special access scale economies throughout the entire period of price cap regulation, including before and after the Commission adopted pricing flexibility and the CALLS plan. Special access line demand increased at a significantly higher rate than operating expenses and investment throughout both periods, suggesting that the BOCs realized scale economies in both periods. Although, some parties contend that the accounting rates of return derived from ARMIS data are meaningless, we use ARMIS data here for the limited purpose of examining the relationship between demand growth and growth in expenses and investment. To the extent the accounting rules have remained the same over the period analyzed, the analysis of growth rates and scale economies should not be significantly affected by the cost allocation issues these parties raise. We invite parties to comment on the relevance of these data and the relationship between demand growth and growth in expenses and investment in the special access market. To demonstrate the possible impact of cost allocations during the price cap period of regulation, including before and after the Commission adopted pricing flexibility and the CALLS plan, we invite parties: (1) To remove from the BOCs' interstate special access operating expenses and average investment data reported in ARMIS any expenses and investments that are not directly assignable; and (2) to calculate the compound annual growth rates for BOC interstate special access operating expenses and average investment using these adjusted data.

Developing a Special Access Price Cap Regime

The PCI, the core component of price cap regulation, has three basic components: (1) A measure of inflation, *i.e.*, the Gross Domestic Product (chain weighted) Price Index (GDP–PI); (2) a productivity factor or ''X-Factor,'' that represents the amount by which price cap LECs can be expected to outperform economy-wide productivity gains; and (3) adjustments to account for ''exogenous'' cost changes that are outside the LEC's control and not otherwise reflected in the PCI. While we seek comment on whether and, if so, how to develop a new special access price cap, we focus our inquiry below on productivity and growth issues and on developing service categories and subcategories. Parties may comment on whether we should include inflation and exogenous cost adjustments in a new special access price cap regime. We tentatively conclude, however, that, except as otherwise discussed herein, we should retain the same method of revising the PCI to reflect inflation and exogenous cost adjustments that presently apply to special access services.

Productivity Factor or X-Factor. The productivity or X-factor contained in the PCI has varied over the course of price cap regulation. Most recently, in the CALLS Order, 65 FR 38684, June 21, 2000, the Commission changed the X-factor from a productivity-based factor to a transitional mechanism to reduce special access rates for a specified period, setting the special access X-factor at 3.0 percent in 2000, 6.5 percent for the next three years, and equal to the GDP–PI thereafter, essentially freezing the special access PCI (after accounting for exogenous cost adjustments). In recent years, the BOCs have earned special access accounting rates of return substantially in excess of the prescribed 11.25 rate of return that applies to rate of return LECs. The BOCs' collective average special access accounting rates of return over the last six years (1998–2003) have been 18, 23, 28, 38, 40, and 44 percent, respectively. We seek comment on whether a rate of return in excess of the Commission's prescribed rate of return for rate-of-return LECs is a valid benchmark for determining the need for an X-factor, or an X-factor that is higher than the factor under the CALLS plan or the pre-CALLS price cap regime. If it is appropriate for us to examine an X-factor in light of these rates of return, we seek comment on whether we should re-impose a productivity-based X-factor as a method of reducing the special access PCI.

We ask parties to submit studies quantifying an appropriate X-factor for special access services. In the Phase I Accounting Streamlining Order, 65 FR 16328, March 28, 2000, the Commission sought to reduce incumbent LEC accounting and reporting requirements by, among other things, eliminating the requirement that LECs report the expense matrix data used in calculating the X-factor, but expected LECs to provide such data upon request. We now request that price cap LECs submit their expense matrix data from 1994 to 2004 (or 2003, if 2004 data are not yet available). These data should correspond exactly to the expense matrix data required in 1999 under part 32 of the Commission's rules, 47 CFR 32.5999(f).

Given that we propose to address special access services independent of switched access services, we seek comment on whether it is necessary to estimate and apply to special access services an X-factor that is unique to these services. Assuming that this is necessary, we seek comment on whether it is possible to calculate accurately such an X-factor. If it is only possible to measure productivity accurately for the entire firm, or for some broader category of services than special access services, we invite commenters to address the reasonableness of applying this broader X-factor to special access services alone. We seek comment on the consequences of using in the special access PCI a productivity factor that is based on a broad-based productivity study such as the total factor productivity growth rate (TFP) study prepared by Commission staff in support of the 6.5 percent X-factor adopted in the 1997 Price Cap Review Order, 62 FR 31939, June 11, 1997.

Growth Factor. In the LEC Price Cap Order, 55 FR 42375, Oct. 19, 1990, the Commission adopted a price cap formula for the common line basket that included a growth or ''g'' factor to account for price cap LEC average cost decreases attributable to demand growth. While the Commission has applied a uniform X-factor for a multi-year period to all price cap carriers and price cap services, the ''g'' factor, in contrast, varies by LEC, year, and service because it relies on each individual LEC's prior year's demand growth rate for a specific service element or basket. In the LEC Price Cap Order, because per-minute traffic growth was not directly indicative of per-line cost increases, the Commission developed ''g'' to represent per-minute growth per access line. The Commission found that including ''g'' would give all of the benefits of MOU demand growth to IXCs, while excluding ''g'' would give all of the benefits of MOU demand growth to LECs. The Commission therefore incorporated g/2 into the PCI formula because it found that both IXCs and LECs contribute to demand growth.

If we adopt new special access price cap regulation for price cap LECs, it may also be appropriate to include a factor in the special access PCI formula similar to the ''g'' factor currently in the common line formula. ARMIS data suggest that special access line demand growth does not produce a proportional increase in special access costs. In such a circumstance, use of a special access PCI formula that does not include a growth factor may produce unreasonable rates. We therefore invite parties to comment on whether a special access PCI formula should include a growth factor similar to the ''g'' factor in the common line PCI formula. We also seek comment on how to define a special access line growth factor. For example, should this factor be based on the change in DS–1 equivalent capacity, changes in DS–3 equivalent capacity, or some basis other than capacity equivalents? We seek comment on whether the demand growth benefits reflected in a ''g'' factor should be shared between the LECs and the special access customers. Finally, parties advocating for a ''g'' factor should comment on how to avoid including demand growth-related efficiencies in both the ''g'' factor and the X-factor.

Sharing and Low End Adjustment. In establishing the initial price cap regime in 1990, in the LEC Price Cap Order, 55 FR 42375, Oct. 19, 1990, the Commission required price cap LECs to share with their customers 50 percent of their earnings above a rate of return of 12.25 or 13.25 percent, depending on whether an individual price cap LEC selected a productivity factor of 3.3 or 4.3 percent. Price cap LECs with rates of return above 16.25 or 17.25 percent had to share 100 percent of their excess earnings, depending on the productivity factor selected. The Commission also allowed price cap LECs with rates of return less than 10.25 percent to make a ''low end adjustment,'' or to increase their PCIs in the following year to a level that would allow them to earn at least a 10.25 percent rate of return. The Commission adjusted the sharing and low end adjustment rules in the 1995 Price Cap Review Order, 60 FR 19526, April 19, 1995, and, in the 1997 Price Cap Review Order, 62 FR 31939, June 11, 1997, it eliminated the sharing requirements altogether, finding that sharing severely blunts the incentives of price cap regulation by reducing the rewards for LEC efficiency gains. The Commission also found that eliminating sharing requirements removed the last vestige of rate-of-return regulation that had created incentives to shift costs between services to evade sharing in the interstate jurisdiction. We tentatively conclude, for the same reasons that the Commission eliminated sharing, that we should not now require LECs to share earnings if we decide to adopt a price cap plan for special access services. We seek comment on this tentative conclusion.

In the Pricing Flexibility Order, 64 FR 51258, Sept. 22, 1999, the Commission eliminated the low end adjustment mechanism for price cap LECs that qualify for and elect to exercise either Phase I or Phase II pricing flexibility. The Commission retained the low-end adjustment for price cap LECs that have not qualified for and elected to exercise either Phase I or Phase II pricing flexibility to protect these LECs from events beyond their control that would affect earnings to an extraordinary degree. For the same reason, we tentatively conclude that, if we adopt a price cap plan for special access services, we should retain a low-end adjustment mechanism for price cap LECs that have not implemented pricing flexibility. We seek comment on this tentative conclusion. We further seek comment on the nature of a low-end adjustment for special access services only. We request that parties identify the relationship between the low-end adjustment level and any new authorized rate of return we develop in this proceeding. For example, should the low-end adjustment continue to be 100 basis points below the authorized rate of return?

Rate Structure—Interstate Special Access Baskets and Bands

Within the special access service price cap basket, services currently are grouped into service categories and subcategories. 47 CFR 61.42(e)(3). Similar services are grouped together into service categories within a single basket to act as a substantial bar on the LEC's ability to engage in anticompetitive behavior, including cost shifting. The Commission in the LEC Price Cap Order, 55 FR 42375, Oct. 19, 1990, established upper and lower pricing bands for each separate category or subcategory, initially setting pricing bans for most service categories at five percent above and below the Service Band Index (SBI). Subsequently, it eliminated the lower service band indices, finding that the PCI and upper pricing bands adequately control predatory pricing and that greater downward pricing flexibility would benefit consumers both directly through lower prices and indirectly by encouraging only efficient entry. The Commission seeks comment on what categories and subcategories we should establish in a special access service basket if we adopt a price cap method to regulate special access prices. Should the Commission retain without modification the existing special access categories and subcategories? If not, parties should identify the specific categories and subcategories of special access service that they contend we should adopt. We also ask parties to discuss the advantages and disadvantages of having a special access basket with relatively few categories or subcategories compared to one with many.

We seek comment on whether to place competitive services and non-competitive services in separate and distinct categories and/or subcategories. Arguably, this would minimize the opportunity for a LEC to offset rate decreases for services for which there are competitive alternatives with rate increases for services for which there are no competitive alternatives. AT&T alleges that such competitive imbalances occur for DS1 and DS3 channel termination services between the LEC end office and the customer premises, where often there is little or no competition. It also claims that competition might not be quite so limited for DS1 and DS3 channel terminations between the IXC POP and the LEC serving wire center, and DS1 and DS3 channel mileage facilities between the LEC end office and the LEC serving wire center. We seek comment on whether we should establish separate categories for DS1 and/or DS3 special access services and subcategories for (1) special access channel terminations between the LEC end office and the customer premises, (2) special access channel terminations between the IXC POP and the LEC serving wire center, or (3) any other special access product market. Should any special access services be combined into a single category or subcategory? We also seek comment on whether we should take the same approach with regard to high capacity services above the DS–3 level (*e.g.,* OCn), or whether these higher capacity services should be placed in a high capacity category without sub-categories for special access channel terminations to customer premises, special access channel terminations to the IXC POP, and other special access facilities.

Some price cap LECs assert that broadband service such as DSL services account for a significant and growing portion of their special access revenues. These services may be subject to competition from high-speed cable modem services or wireless broadband offerings. We seek comment on whether to establish a separate category or subcategory for broadband services that are subject to some competition or are likely to be subject to competition in the near future. We note that, in the LEC Price Cap Order, 55 FR 42375, Oct. 19, 1990, the Commission excluded packet-switched services from price cap regulation because they were not included in its study of LEC productivity. We seek comment on whether such services should be included in price caps today. If not, what is the proper regulatory treatment of these services?

We seek comment on whether to establish separate subcategories for wholesale services and retail services. Arguably, this approach would minimize the extent to which a price cap LEC could manipulate headroom by offsetting rate decreases that apply to services purchased by a wholesale customer (*e.g.,* a rate decrease for a DS3 channel termination service purchased by an IXC) with rate increases that apply to services purchased by an end-user customer (*e.g.,* a rate increase for a retail DSL service purchased by a small business or residential customer.) We seek comment on whether this objective is desirable.

We also seek comment on what criteria and data we should examine to determine which services to place in which categories or subcategories. We ask parties to propose categories or subcategories, to explain in detail the bases for their proposed categories or subcategories, and to support their proposals with data and studies. Do competitive or non-competitive services placed in the same subcategory need to have similar demand or supply elasticities? Should we establish separate categories or subcategories based on special access line densities? For example, channel termination services extending between a LEC end office and customer premises in areas where there are more than 10,000 special access lines per square mile could be placed in a particular subcategory. We also seek comment on whether to use a single basket or multiple baskets and the advantages and disadvantages of each approach.

For the same reasons that the Commission eliminated the lower pricing bands, we tentatively conclude that there should be no lower band for service categories or subcategories to restrict the price cap LECs' downward pricing flexibility. We seek comment on this tentative conclusion. We seek comment on the upper band value to limit the price cap LECs' upward pricing flexibility for the categories or subcategories. Should we retain five percent as the value? Should we use different values for different categories or subcategories? What criteria and data should we use to determine these values?

Initial Special Access Price Cap Rates Post-CALLS

We must ensure that the initial rates under a new price cap plan will be just and reasonable. 47 U.S.C. 201(b). In this proceeding AT&T asserts that current special access rates are too high based on BOC special access rates of return, and that current rates for special access under price caps are lower than rates established after a grant of pricing flexibility. The BOCs respond that accounting rates of return are meaningless and the Commission expected that rates in some instances would increase when a carrier is granted pricing flexibility. They also present evidence purporting to show that overall special access revenues per line have decreased. As a preliminary matter, therefore, we solicit comment as to whether it is necessary for us to reinitialize rates to ensure that they are just and reasonable. To the extent we decide to reinitialize rates, we solicit comment as to several alternative approaches.

Rate-of-Return Benchmark. We seek comment on whether the 11.25 percent rate of return that the Commission prescribed for LECs in 1991 is a valid benchmark for determining that a price cap LECs' special access rates are just and reasonable. The costs of debt and equity financing that are supposed to be reflected in the rate of return likely have changed significantly since 1991. If parties believe that we should use rate of return as a benchmark for determining the reasonableness of price cap LEC special access rates, is there a rate of return other than 11.25 percent that we should use to make that determination? We invite parties to submit studies supporting an alternative rate of return.

The aim of price cap regulation is rates that approximate the rates a competitive firm would charge, and competitive firms make business decisions based on economic, not accounting, rates of return. Thus the BOCs contend that accounting rates of return do not represent a valid basis for evaluating price cap rates in general, and that our cost allocation rules and the current separations freeze may undermine the usefulness of an examination of rates of return derived from ARMIS data. Accordingly, we seek comment generally on whether accounting rates of return are meaningful statistics for evaluating the reasonableness of price cap rates. What factors may affect the relevance of ARMIS data to our examination of special access rates? Even if the overall accounting rate of return has evidentiary value, we also seek comment on whether an accounting rate of return for a subset of services, *i.e.,* the special access basket, is meaningful to this inquiry. The allocation of common costs to multiple services according to our accounting rules necessarily reflects policy judgments that may not reflect how price cap LECs would allocate common costs if they operated in fully competitive markets. Thus we seek comment on the need to evaluate the special access rate of return in the context of the price cap LECs' overall rates of return. We note that the Commission has never examined accounting rates of return for specific categories of services to determine whether a price cap LEC must share over-earnings or can make a low-end adjustment to compensate for underearnings, but instead has determined whether such adjustments should be made based on the price cap LEC's overall interstate access rate of return. We therefore seek comment on what measures or indicators we may use in addition to, or in lieu of, rate of return to determine whether current special access rates are just and reasonable. We invite parties to submit any such measures or indicators they deem appropriate.

The recent significant growth in BOC DSL subscribers and revenues creates a unique issue in using the accounting rate of return solely for the special access basket. Some BOCs may book the full amount for DSL revenues as special access revenues, while at the same time, the incremental cost booked to the special access category for DSL service may not be nearly as large as these DSL revenues. Generally, there are no incremental DSL-related loop-side structure costs (*e.g.,* for trenching, poles, manholes, or conduit) booked to the special access category. These otherwise account for a large majority of a typical price cap LEC's total network costs. We seek comment on the extent to which the accounting treatment of DSL revenues, expenses, and investment under the Commission's rules accounts for the BOCs' recent high special access rates of return. If DSL growth is a significant factor in the high accounting special access rates of return, rather than growth in traditional DS1 or DS3 services, for example, how should we interpret these rates of return?

We seek comment on the need for a comprehensive review of detailed cost studies to establish initial rate levels for each special access service. Alternatively, is there a simpler, less burdensome method of setting initial rate levels without having to rely on cost studies? To develop initial rates based on an 11.25 percent rate of return, we would: (1) Calculate, for the most recent calendar year, a price cap LEC's special access rate of return, based on ARMIS data; (2) calculate the percentage by which revenues would have had to have been lower to earn an 11.25 percent rate of return; (3) reduce that price cap LEC's current special access rates across the board by that percentage; and (4) use these reduced rates as the initial rates under a new price cap plan. We seek comment on this approach to establishing just and reasonable initial rates, on variants of this approach, and on other approaches that avoid use of cost studies.

Cost Studies. Parties commenting that we should use detailed cost studies to set initial special access rates under a new price cap plan should also comment on whether such studies should be based on historical accounting costs, *i.e.,* embedded costs, or forward-looking economic costs. Generally, forward-looking costs are viewed as more relevant, and embedded costs as less relevant, to setting prices in a competitive market. Further, the Commission stated its goal in the Access Charge Reform Order, 62 FR 31868, June 11, 1997, that interstate access charges reflect forward-looking costs, and envisioned in the CALLS Order, 65 FR 38684, June 21, 2000, a proceeding near the expiration of the CALLS plan to determine whether and to what degree it could deregulate price cap LECs due to the existence of competition. We seek comment on whether setting rates based on forward-looking costs, as suggested in these orders, should guide us in selecting a method to set initial rates under a new special access price cap plan. Parties that support the use of historical costs rather than forward-looking costs should comment on and submit calculations showing the magnitude of any difference between the implied depreciation expense in LECs' special access actual realized revenues and regulatory accounting deprecation expense calculated pursuant to the Commission's rules during the price cap years. By implied depreciation, we mean total booked revenues less total booked expenses (excluding accounting depreciation expense) less an 11.25 percent rate of return on the rate base, expressed in dollars. If the implied depreciation expense significantly exceeds the regulatory accounting depreciation expense, in setting the initial rates would we need to adjust downward the rate base to avoid the eventual over-recovery of the original cost of the LECs' assets? Further, any party that supports the use of a cost study, forward-looking or historical, to set rates should submit such a study and support its use.

Use of Comparable Services. Some special access services are comparable to switched access transport services. For example, a special access channel termination service extending between an IXC POP and a LEC serving wire center is comparable to a switched access entrance facility. We therefore seek comment on whether setting initial special access prices under a new price cap plan at levels equal to current prices for comparable switched access transport would result in just and reasonable rates. Parties should address whether this approach is improperly circular, given that some transport rates, *e.g.*, direct trunked transport rates, were presumed reasonable by the Commission in the First Transport Order, 57 FR 54717, Nov. 20, 1992, if they were set based on rates for comparable special access services. Such an approach may be feasible for some services, *e.g.*, DS1 or DS3 special access services, but not necessarily for all special access services. Assuming that this approach is reasonable for some subset of special access services, we ask for comment on how to establish initial just and reasonable rates for the remaining special access services. For example, is it reasonable to establish rates for the remaining services by adding to the rate for the comparable switched access transport service the percentage difference or the dollar differences between the current rate for comparable special access service and the current rate for the non-comparable special access service? We request that parties that believe that initial rates, in whole or in part, should be based on rates for comparable switched access transport services submit such studies.

Incentives. We seek comment on whether, in determining whether special access rates will be just and reasonable, we should consider as a significant factor the risk of reducing price cap LECs' incentives to operate at minimum cost and to innovate under future price cap plans. Specifically, we question the effect of reallocating benefits resulting from price cap LEC efforts to minimize costs and innovate under the existing price cap plan on LEC expectations of future regulatory action. We seek comment on the potential effect of reducing current rates in the first year of a new price cap plan on price cap LEC incentives to operate efficiently and to innovate.

Periodic Adjustment. We further seek comment on whether a new price cap plan should include a requirement that rates be adjusted up or down at fixed intervals (*e.g.*, every three or five years) based on the prescribed rate of return, or some other measure of price cap LEC performance. For example, under one variant of such a price cap plan, LECs would not be required to share any earnings in excess of the prescribed rate of return, and generally the core elements of the plan (*e.g.*, the productivity factor) would remain constant throughout the specified interval. If a price cap LEC's achieved rate of return (or other performance measure) were greater or lesser than the prescribed rate of return (or other performance benchmark) by a predetermined amount during the interval, then rates would be adjusted down or up at the beginning of the next interval. At the beginning of the latter interval, the adjusted rates would reflect the prescribed rate of return or other performance benchmark. We seek comment on whether to adopt such an adjustment mechanism in a price cap plan. We also seek comment on how such a plan would affect price cap LEC incentives to operate efficiently and to innovate. How would price cap LEC incentives under such a plan differ from the incentive effects of a plan that included an earnings sharing requirement (*i.e.* required price cap LECs to share earnings in excess of the prescribed rate of return by adjusting rates downward in the year immediately following the year in which they over-earned)? Parties supporting this type of adjustment should provide the operational details of their proposed plan, including specifying the length of the interval that should be used under any such plan. We also seek comment on other variants of an approach that would require rate adjustments at fixed intervals to target the prescribed rate of return, or other performance benchmark.

Pricing Flexibility

In the Pricing Flexibility Order, 64 FR 51258, Sept. 22, 1999, the Commission essentially determined that irreversible, sunk investment by competitive carriers in the special access market, as evidenced by the satisfaction of certain collocation and competitive transport facilities deployment triggers, demonstrates sufficient competitive market entry in specific geographic markets to constrain monopoly behavior, including exclusionary conduct, by incumbent price cap LECs. The Commission acknowledged that incumbent price cap LECs might enjoy high market shares at the time pricing flexibility was granted, but concluded that they could not exercise market power where they faced competition from entrants using their own facilities. It relied on the collocation-based triggers rather than performing an unduly burdensome market power analysis. Pricing flexibility provided incumbent price cap LECs with the ability to lower rates in specific markets (MSAs) in response to competitive pressure.

In this proceeding, parties have introduced evidence that, in MSAs where incumbent price cap LECs have received Phase II pricing flexibility, they have not lowered special access rates, but instead have either maintained or raised them. Therefore, as part of our examination of the proper price cap special access regulatory regime to adopt post-CALLS, we also examine whether the Commission's pricing flexibility rules have worked as intended and, if not, whether they should be modified or repealed. This inquiry is consistent with our ongoing commitment to ensure that our rules, particularly those based on predictive judgments, remain consistent with the public interest, as evidenced by empirical data. Our questions below are focused on Phase II, not Phase I, pricing flexibility because, once Phase II flexibility is granted, incumbent price cap LECs no longer need to offer their generally available price cap tariffs.

As a threshold matter, parties providing information regarding the rates they are charging or paying for special access services should identify whether the rates they identify are from the LEC's price cap tariff, a contract tariff, or a Phase II pricing flexibility tariff. Parties also should identify the percentage of special access services (by market) that are provided or obtained, as the case may be, from each of these three types of tariffs. We further request that parties identify whether the rates are the month-to-month rates or volume and term rates from the relevant tariff. Finally, we note that the Pricing Flexibility Order treats dedicated transport services (*i.e.*, entrance facilities, direct-trunked transport, and the flat-rated portion of tandem-switched transport) in the same manner as non-channel termination special access services. We, therefore, tentatively conclude that any changes we make to the pricing flexibility rules for non-channel termination special access services shall apply equally to the pricing flexibility rules for dedicated transport. We seek comment on this tentative conclusion.

Assessing Competition in the Marketplace

Whether or not we perform a full market power analysis, two issues are relevant to assessing the state of competition in a market. First, if a market is or is presumed to be competitive, the level of competition can be assessed by determining whether there have been substantial and sustained price increases. Second, because the characteristics of different markets vary, an analysis of the level of competition should also include an examination of the cost functions of the industry at issue. In analyzing each issue, both the product or service market (*e.g.*, interstate special access services) and the relevant geographic market (*e.g.*, MSAs) should be well-defined.

Substantial and Sustained Price Increases. To measure competition, we first must determine whether there are substantial and sustained price increases for interstate special access services in well-defined markets. A substantial price increase need not be a large increase. For example, the United States Department of Justice and Federal Trade Commission Horizontal Merger Guidelines (DOJ Merger Guidelines) are designed to determine if a merger will result in a small but significant non-transitory price increase in the relevant produce market. AT&T claims in its petition that price cap LECs have increased interstate special access rates in some of the MSAs in which they have obtained Phase II pricing flexibility. We ask parties to provide data more recent data than the 2001 data in AT&T's petition that demonstrate whether or not substantial and sustained special access price increases have occurred in MSAs where price cap LECs have received Phase II pricing flexibility. Parties submitting such data should show the price changes that occurred after Phase II pricing flexibility and whether the changes were substantial (*i.e.*, did or did not result in rates above just and reasonable levels). We ask parties to establish an objective benchmark against which to measure the most recent rate levels, and to justify and explain, not merely assert, the usefulness of that benchmark. Parties that critique data purporting to show substantial rate increases (for example, in reply comments) should explain in detail why the rate increases should not be considered substantial. Parties that critique the benchmark proposed by other parties should propose an alternative benchmark.

If a price cap LEC is unable to maintain a substantial rate increase, *i.e.*, if another entity enters the market and offers the service at a lower rate, then the rate increase is not sustainable, and the original price cap LEC does not possess market power. Parties should therefore provide a measurement of the sustainability of any rate increases.

The BOCs claim that recent special access revenue increases result from high special access demand growth, rather than high and sustained special access rates, and that special access revenues per line are declining. We seek information to validate these claims, including: (1) Calculations of an Average Price Index (API) for all special access services (both those under price caps and those under pricing flexibility), (2) an SBI for each special access service category and subcategory, and (3) the revenues associated with the API and SBIs. In the Commission's annual access tariff review process, price cap LECs file an API, SBIs, and associated revenues for the special access basket. The LECs exclude from their calculations revenues for special access services provided in MSAs where they exercise pricing flexibility. In providing the information we request here, price cap LECs should recalculate the API, SBIs, and associated revenues for all special access services, including the services removed from price caps due to pricing flexibility, beginning in the year 2000, using the Tariff Review Plan RTE–1 and IND–1 electronic formats.

We invite parties to proffer evidence regarding whether the predictive judgments on which Phase II pricing flexibility was granted are supported by subsequent marketplace developments. We also invite parties to support claims of substantial and sustained price increases by identifying the product market (*e.g.*, channel terminations between LEC end offices and customer premises), the customer segment (*e.g.*, businesses in large or medium-sized buildings; large companies or small companies), or any other more detailed demarcation of the special access market in which these price increases occur.

Determination of Level of Market Competitiveness. Next, our analysis of the existence of substantial competition must analyze the cost functions in the industry. This analysis may include evaluation of the relevant product market, geographic market, demand responsiveness, supply responsiveness, market share, entry barriers, and other pricing behavior in well-specified markets. In the Pricing Flexibility Order, 64 FR 51258, Sept. 22, 1999, for example, the Commission relied on entry barrier and supply responsiveness analyses to develop the competitive triggers. The Commission determined that, if price cap LECs receive pricing flexibility and raise rates excessively, competitors will enter the market, thus providing additional supply of special access services at (presumably) lower prices than the incumbent. The Commission also determined that, if competitors make a significant amount of irreversible, sunk investment (specifically in collocation and transport facilities), this investment would signify that entry barriers in that market have been overcome. The Commission found it unnecessary to perform additional forms of market competitive analysis, concluding generally that such analyses would be unduly burdensome.

We seek comment on whether our pricing flexibility rules reflect a sufficiently robust assessment of the level of interstate special access competition. Parties should address whether actual market place developments have validated the supply responsiveness and entry barrier predictive judgments made in the Pricing Flexibility Order, and, if not, whether different supply responsiveness and entry barrier assessments are necessary. Parties should also address whether, in assessing our pricing flexibility regime, we should consider additional measures of competition, such as demand responsiveness and the other analytic methods discussed below.

Relevant Product Market. In the Pricing Flexibility Order, 64 FR 51258, Sept. 22, 1999, the Commission identified three categories of product markets for special access services: (1) Special access channel terminations between a LEC end office and the customer premises, (2) special access channel terminations between an IXC POP and a LEC serving wire center, and (3) other special access facilities. We seek comment on whether these are the relevant product markets. In the Pricing Flexibility Order, the Commission acknowledged the greater cost of entry into the product market for channel terminations between the LEC end office and the customer premises, and, therefore, adopted higher triggers that incumbent price cap LECs must satisfy in order to obtain Phase II pricing flexibility for this product market. Commenters should specifically address, therefore, whether channel terminations from the LEC end office to the customer premises constitute a separate and distinct product market.

Parties argue that a price cap LEC that has obtained Phase II pricing flexibility in an MSA may, in fact, be the only provider of special access channel terminations in that MSA, but can theoretically be free from all rate regulation of these channel terminations. We ask parties to refresh the record and address whether there have been substantial and sustained rate increases for channel terminations between LEC end offices and customer premises since the Commission began granting Phase II pricing flexibility. We also ask parties to address the degree of existing competition for special access channel termination services, including any available quantifications of market developments after the grant of Phase II pricing flexibility. Because Phase II pricing flexibility is a statistically significant variable in explaining any substantial and sustained special access rate increases, parties should show that pricing behavior changed significantly when and where price cap LECs obtained Phase II pricing flexibility.

We seek comment on whether product markets should be further subdivided by transmission capacity. For example, parties should comment (and provide data supporting their positions) on whether DS–1 special access channel terminations between the LEC end office and the customer premises are in the same product market(s) as DS–3 and OCn channel terminations.

Although we have not previously classified special access customers by factors such as annual revenue per building or required capacity, such differentiation may be important for a thorough analysis of the level of competition. Is the question of whether CMRS providers, IXCs, or enterprise business customers, for example, constitute one or multiple customer classes relevant to this analysis? Parties should support any proposed customer classes with reliable empirical data, including econometric estimates of cross elasticity of demand or marketing studies showing consumer substitutability of demand for competing services.

In discussing the relevant product markets, we ask parties to consider not only special access services provided over incumbent price cap LEC networks, but also whether services provided over other platforms, *e.g.*, cable, wireless, and satellite, as well as over competitive LEC, self-provisioned wireline facilities, could provide the equivalent of price cap LEC special access services. We seek comment on the willingness and ability of users to purchase equivalent special access services as substitutes for an incumbent price cap LEC's special access services. We ask parties to discuss whether significant, intermodal special access service price and quality differentials exist and, if so, whether the presence of such differentials implies that equivalent special access services and special access services provided by incumbent price cap LECs are in different product markets.

Geographic Market. To define the relevant market, we typically determine not only the relevant product market, but also the relevant geographic market(s). We ask parties to provide their analyses consistent with their proposed geographic market. In the Pricing Flexibility Order, 64 FR 51258, Sept. 22, 1999, the Commission identified the relevant geographic market for granting pricing flexibility for special access services as the MSA. We seek comment on whether the MSA remains the appropriate geographic market for each of the special access product markets identified above or by commenting parties.

Some parties claim that competition is concentrated in a small number of areas within MSAs and that, therefore, the MSA is too large to be the relevant geographic market. They allege that a pricing flexibility trigger based on collocation coupled with competitive transport does not consider the ubiquity of competitive transport facilities throughout an MSA. The collocation trigger, they contend, may demonstrate that numerous carriers have provisioned transport from their switches to collocation arrangements in a single wire center, such as a LEC serving wire center, but does not demonstrate the existence of competitive transport to interconnect the collocation arrangements to similar arrangements in any other price cap LEC wire centers. If, for example, a collocated competitor uses its own transport to carry traffic from a price cap LEC serving wire center to an IXC POP, this alternative transport may establish competition for this facility, but it is not sufficient to establish competition for other special access services. These parties conclude that the collocation trigger does not reveal the geographic extent of ''irreversible sunk investments'' by competitors throughout the MSA for which the incumbent price cap LEC has obtained pricing flexibility. Thus, they argue, incumbent price cap LECs may be able to exercise monopoly power through the use of exclusionary pricing strategies in some portions of the MSA. We seek comment on these contentions.

In the Pricing Flexibility Order , 64 FR 51258, Sept. 22, 1999, the Commission established two alternative collocation triggers: percentage of revenue associated with wire center collocation, or percentage of wire centers with collocation. We note that all price cap LEC pricing flexibility petitions to date have relied on the percentage of revenue trigger rather than the percentage of wire centers with collocation trigger. Because the percentage of revenue trigger requires collocation, and hence facilities deployment, in fewer wire centers in the MSA, we invite commenters to address whether the MSA remains a reasonable geographic market in which to measure irreversible sunk investment in the relevant special access product markets, particularly for channel terminations between the LEC end office and the customer premises.

One reason that competition may not develop throughout an entire MSA is that the difference between the expected per unit costs of any potential competitor versus that of an incumbent price cap LEC may be considerably greater in some areas of an MSA than others. Any such cost disadvantages may be smaller in areas of relatively high special access line density, *e.g.*, downtown Boston, than in areas of relatively low density, *e.g.*, suburban Boston. We seek comment on the degree to which special access line density affects the cost disadvantage a potential entrant would face relative to an incumbent price cap LEC, and the reasons for any such disadvantage. We also seek comment on whether special access line density should be used to re-define the relevant geographic market, and, specifically, whether line density might be used to subdivide, not supplant, the MSA as the relevant geographic market, or whether line density might replace the MSA.

We request comment on how to establish line density zones, were we to use line density to define the relevant geographic market. We note that Commission rules generally require states to de-average state-wide UNE rates into at least three zones to reflect cost differences within the state. 47 CFR 51.507(f). Most states set rate zones for voice grade loops and DS1 loops, and some states also set rate zones for UNE loops with capacities higher than DS1 and for dedicated transport and entrance facility UNEs with various capacities. Would it be appropriate to use the rate zones already established by the states for comparable UNEs as the density zones for interstate special access services? Are UNEs and special access services comparable? For example, if a state does not de-average the rate for DS3 UNE loops, should the Commission use zones that the state established for DS1 loops for DS3 special access services? If a state does not de-average rates for dedicated transport or entrance facility UNEs, should the Commission use the zones that the state established for DS1 loops as the density zones for interoffice special access services? More generally, is it necessary to establish different sets of density zones for special access channel termination services extending between the LEC end office and the customer premises, for channel termination service extending between the LEC serving wire center and the IXC POP, and for interoffice facilities?

We also seek comment on alternative methods to develop line density zones for special access rates. What is the appropriate measure of special access line density? Should we measure line density based on incumbent price cap LEC DS0-equivalent special access lines per square mile, DS1 lines per square mile, DS3 lines per square mile, or on some other basis? How should we group line densities: (1) 10,000 DS0-equivalent special access lines and above? (2) 1,000 DS0-equivalent lines and below? We ask parties to propose line density zones for special access services, and to demonstrate why these zones would reflect varying degrees of special access competition.

If we adopt line density zones to define geographic markets for special access services, how should we apply any triggers that we adopt for pricing flexibility? If we retain collocation as a trigger, is there some special access line density level that is so high, *e.g.*, 10,000 lines or greater per square mile, that we can conclude that examination of the presence of collocation facilities is unnecessary? If we use density zones to define geographic markets and presence of collocation as a trigger, should the amount of collocation required vary inversely with special access line density within a zone? For example, could we grant pricing flexibility where there is a relatively low amount of collocation in a relatively high density zone or where there is a relatively high amount of collocation in a relatively low density zone?

Demand Responsiveness. Economists traditionally measure demand responsiveness by identifying other special access service options, relevant to a particular market, that are close substitutes, and determining whether consumers are impeded from switching to these substitutes. Although the Pricing Flexibility Order did not address demand responsiveness, it may be an important factor in assessing the level of competition for an incumbent price cap LEC's special access services. Parties may demonstrate that the market for a particular special access service is not competitive by showing that a significant number of an incumbent price cap LEC's customers cannot purchase a comparable special access service from another carrier. Parties are invited to provide a demand responsiveness analysis that shows whether demand responsiveness before grant of pricing flexibility differed significantly from demand responsiveness after grant of pricing flexibility. Parties should also show whether this response is significantly different between an MSA in which Phase II pricing flexibility has not been granted and an MSA in which it has. Because an MSA-by-MSA, service-by-service, customer-class-by-customer-class demand responsiveness analysis may be unduly burdensome, parties may aggregate demand responsiveness data, statistics, and analyses. Too much aggregation, however, may lead to inconclusive results. Because we have emphasized distinctions between product markets, (*e.g.*, special access channel terminations between the LEC end office and the customer premises, special access channel terminations between the IXC POP and the LEC serving wire center, and other special access services), we ask parties not to aggregate data from these markets. Also, we ask parties to provide disaggregated customer class data, regardless of how they choose to identify the relevant customer class(es) (*e.g.*, the occupancy of buildings, the distribution of revenues either by building or enterprise).

Supply Responsiveness. Supply responsiveness measures the ability of carriers, other than the incumbent price cap LEC, to supply enough capacity to respond to demand migrating from the incumbent price cap LEC's network if it increases prices for its special access services. Supply elasticities of a LEC's competitors may be important in assessing the level of competition for an incumbent price cap LEC's special access services after Phase II pricing flexibility is granted. Parties may demonstrate that the market for a particular special access service is not competitive by showing that, for each product market, competitors do not have enough readily-available supply capacity to constrain the incumbent price cap LEC's market behavior.

In the Pricing Flexibility Order, 64 FR 51258, Sept. 22, 1999, the Commission predicted that unreasonably high incumbent price cap LEC rates for special access to an area that lacked a competitive alternative would induce competitive entry that would in turn drive rates down. The Commission reasoned that substantial rate increases would not be sustainable because they would attract entry, increase competition, and ultimately result in lower rates. We seek comment on whether these predictions and the collocation triggers adopted in 1999 in the Pricing Flexibility Order remain reasonable in light of marketplace data generated since the grant and exercise of Phase II pricing flexibility.

We invite parties to provide detailed analyses of supply responsiveness, including the data necessary to determine whether an incumbent price cap LEC's competitors are supply-responsive. Parties providing this data should demonstrate the presence or lack of entry and/or increased competitive supply so that we may assess whether it is reasonable to continue to rely on our prior conclusions. We also ask commenters to show whether there is a statistically significant relationship between higher special access rates and high levels of competitive LEC entry, and to quantify the relationship. One way to quantify the relationship is to demonstrate a statistically significant relationship between increased competitive LEC entry and investment and the relative levels of special access rates and/or special access profit margins in MSAs where Phase II pricing flexibility has been granted. We are particularly interested in data that would show whether the incumbent price cap LEC responded to the competitive threat on a narrowly targeted basis (*e.g.*, by offering new lower contract tariff rates to the customer or customer location or specific building served by the competitor) or on a broader basis (*e.g.*, MSA-wide).

We ask parties to provide detailed information about their existing supply of special access facilities, including their ability or inability to self-deploy transport facilities, and/or to gain access to third-party alternatives. In providing such information, parties should disaggregate data among, at least, special access channel terminations between the LEC end office and the customer premises, and special access channel terminations between the IXC POP and the LEC serving wire center, and other special access facilities. We invite each commenter, for its company, to provide information about the supply of special access facilities at the MSA level for each MSA in which that company is present. If a party contends that the relevant geographic market is something other than the MSA, it should also provide information about the supply of special access facilities for that level of geographic market, for each market. We seek data for the following time periods: deployment before and up to the grant of Phase II pricing flexibility, deployment from the time pricing flexibility was granted until the present, and planned future deployment. Further, now that price cap LECs have obtained Phase II pricing flexibility in many MSAs, we ask parties to demonstrate the strength of any correlation between collocation and the provision of competitive transport facilities.

We encourage competitive LECs and other parties that have deployed their own special access transport facilities to provide their actual deployment cost information instead of relying on theoretical, estimated, or modeled costs of price cap LEC special access transport facilities. We note that some deployment costs are location specific, and ask that parties compare their costs to the costs of price cap LEC transport facilities across facilities that are as similar as possible. Finally, we note that, in certain industries, a short-term supply response may be ameliorated by other long-term supply responsiveness factors. For example, in an industry where assets can be deployed only in large increments, fixed costs are high, and there are substantial transaction costs to adding supply, we expect lags between changes in prices and a supply response. We therefore ask parties to demonstrate that supply responsiveness trends are stable by providing evidence of long-term trends.

Market Share. According to the DOJ Merger Guidelines, a high market share does not necessarily confer market power, but it is generally a condition precedent to a finding of market power. Although, in the Pricing Flexibility Order, the Commission did not rely on a market share analysis, we now invite parties to provide data and analysis of price cap LECs' market shares for special access services, by MSA where the LEC has obtained Phase II pricing flexibility, before and after the LEC implemented that pricing flexibility. Parties should supply market share data and analysis based on revenues and/or volumes on an annualized basis. If parties choose one measure of market share over others, they should identify their proposed measure with specificity and provide a thorough justification of their choice of that measure over other possible measures. We note that there are many ways of defining market share, such as volume of traffic, revenues, or network capacity. We ask parties to be specific in defining both the numerator and the denominator in the ratio that determines market share. For example, while parties should identify the size of the actual and potential market, they should not assume, without providing supporting evidence, that every building in an MSA is a potential customer for special access services. We also ask parties to disaggregate, as much as possible, any market share data provided by the special access product market (*e.g.*, special access channel terminations between the LEC end office and customer premises), and by customer classes. We invite parties to provide market share information at the MSA level and any other geographic market level they deem appropriate.

A company that enjoys a very high market share will be constrained from raising its prices substantially above cost if the market has high supply and demand elasticities. Thus, an analysis of the level of competition for special access services based solely on a price cap LEC's market share at a given time may not provide sufficient evidence for us to determine whether or not substantial competition exists. Therefore, we propose to consider market share in conjunction with other factors, including, but not limited to, supply and demand responsiveness, growth in demand, market shares before implementation of Phase II flexibility, and pricing trends. Parties providing market share analyses should take these factors into consideration, in particular, using market share analysis and supply responsiveness jointly to assess market power. Parties should ensure that the data and analyses they provide on supply responsiveness are consistent with their market share analyses and data. Parties need not provide estimates of supply elasticities separately from the data and analyses they include in their analyses of supply responsiveness. We expect that parties submitting this information will submit market share data and analyses that can be used in conjunction with supply responsiveness data and analyses.

Where price cap LECs provide wholesale special access services to intermediate customers (*e.g.*, IXCs, CMRS providers) that ultimately supply the retail market, we invite parties to provide wholesale market share analyses and data, excluding retail market analyses and data. If parties would like to include market share analysis and data for the special access retail market, they may do so. Finally, we ask parties to identify whether and, if so, how UNEs are included in their analysis.

Barriers to Entry. An entry barrier may be defined as a cost of production that must be borne by competitors entering a market that is not borne by an incumbent already operating in the market. Cost advantages derived solely from the efficiency of the incumbent are not considered a barrier to entry. Access to important assets or resources that are not accessible to the potential entrant bestows an absolute advantage on the incumbent. The ease with which competitors can enter the special access market influences the level of competition in that market. For example, an incumbent price cap LEC might have a market share of over 50 percent, but no market power, if there are no significant barriers impeding entry into that market. In such a situation, the threat that an increase in price could eventually attract new entrants might be real enough to discourage the incumbent price cap LEC from increasing its price. Similarly, high rates of return may attract competitors to that market if entry barriers are relatively low.

In the Pricing Flexibility Order, 64 FR 51258, Sept. 22, 1999, the Commission predicted that substantial, irreversible or sunk investment in facilities used to provide competitive services would be sufficient to constrain the incumbent price cap LECs' pricing behavior. The

Commission reasoned that collocation represented a financial investment by a competitor to establish facilities within a wire center and that the investment in transmission facilities associated with collocation arrangements was largely location-specific, *e.g.*, the competitive LEC's facilities could not easily be removed and used elsewhere if entry failed. Because investment was location-specific, the entrant incurred sunk costs, making exclusionary strategies by the incumbent to drive the entrant from the market less likely to succeed. Parties in this proceeding contend that the economic reasoning in the Pricing Flexibility Order is incomplete. They claim that market entry by some carriers does not fully ameliorate the effect of sunk costs as a continuing and substantial barrier to entry. We seek comment on whether the assessment in the Pricing Flexibility Order of the relationship between entry barriers and irreversible, sunk investment by competitive carriers remains sufficiently robust. We also seek comment on whether this assessment has been validated by actual marketplace developments since adoption of the Pricing Flexibility Order in 1999.

We seek comment on the effect of the exit of numerous competitors from the market on the Pricing Flexibility Order's predictive judgment that collocation is evidence of irreversible market entry. Specifically, the Pricing Flexibility Order predicted that collocation equipment would remain available and capable of providing service in competition with the incumbent, even if the incumbent succeeded in driving a competitor from the market. In light of the numerous competitors that have exited the market (in whole or in part) since 1999, we seek comment on whether their collocation facilities (space and equipment) continue to be used by other competitive LECs or are available for use by competitive LECs without their first having to incur significant additional sunk costs. We note that incumbent price cap LECs retain data on which competitive carriers are collocated in their offices (and on the equipment located in the collocation spaces), and believe such information is particularly relevant here. We invite these incumbent price cap LECs to provide data (disaggregated on an MSA basis) that identifies whether and how the collocation spaces and equipment of competitive carriers that have exited the market are used by, or available to, other competitive carriers. We seek comment on what changes, if any, we should make to our pricing flexibility rules if the data show that collocation has not proven to be as accurate a proxy for irreversible competitive market entry as we expected.

Other Factors. We invite interested parties to provide discussion, supply data, and present analysis of other factors in addition to those discussed above that would be helpful in evaluating the level of competition for special access services in the MSAs where price cap LECs have obtained Phase II pricing flexibility. The discussion and analysis of these additional factors should include an assessment of the importance of these factors in making a final determination regarding the level of competition in the special access market.

Relationship Between Market Power and Impairment Standards

At the same time that the Commission established its pricing flexibility rules for special access services, it was implementing section 251 of the 1996 Act that require incumbent LECs to offer unbundled network elements. In implementing unbundling, the Commission repeatedly confronted the issue of whether to unbundle network elements or combinations of network elements comprising essentially the same facilities as those used to provide special access services. For example, at one time, the Commission imposed temporary use restrictions on combinations of unbundled loops and unbundled dedicated transport (known as enhanced extended links, or EELs) to prevent the unbundling requirements from causing a significant reduction of the incumbent LECs' special access revenues due to the possibility of mass migration of special access services to cost-based UNEs. More recently, in the Triennial Review Order, 68 FR 52307, Sept. 2, 2003, however, the Commission adopted new EELs eligibility criteria that were not based on the preservation of special access revenues. Some parties in these unbundling proceedings advocated variations on the pricing flexibility standard for determining when certain network elements should be unbundled. Further, the Commission recently modified its unbundling analysis in the Triennial Remand Order, 70 FR 8940, Feb. 24, 2005, in response to the *USTA II* decision, in which the Court of Appeals for the District of Columbia Circuit instructed the Commission to consider tariffed special access services when conducting an impairment analysis to determine what network elements should be unbundled. Therefore, we seek comment on the relationship, if any, between the market power threshold that underscores the pricing flexibility rules and the impairment standard for unbundling.

Tariff Terms and Conditions

Background. Although traditional market power analysis focuses on whether a firm can impose a substantial and sustained price increase within, and examines the cost characteristics of, the relevant geographic and product/service market, market power can also be exercised through exclusionary conduct. Evidence of such conduct may be found in the terms and conditions in a carrier's tariff. The Commission has long been concerned that dominant carriers could offer their services on terms and conditions that weaken or harm the competitive process sufficiently to reduce consumer welfare. With regard to special access services, the Commission has taken care to prevent exclusionary conduct while the market transitions from monopoly to competition. For example, in the Expanded Interconnection Order, 57 FR 54205, Nov. 17, 1992, the Commission permitted price cap LECs to offer volume and term discounts for special access services without any competitive showing, but it found that some large discounts might be anticompetitive or raise questions of discrimination. Moreover, in the Transport Rate Structure and Pricing Order, 60 FR 50120, Sept. 28, 1995, the Commission prohibited price cap LECs from including growth discounts in their tariffs, and, in the Expanded Interconnection Order, it limited the termination liabilities that they may tariff.

In this proceeding, parties complain that the terms and conditions for special access services in the tariff offerings of price cap LECs represent exclusionary conduct designed to deter market entry or induce market exit. They claim that, as dominant firms, price cap LECs can and have tariffed pricing structures through terms and conditions that negate the price breaks a competitor can offer a customer because the customer would then lose its discounts from the incumbent on other services or in other markets. They contend that dominant firms are likely to engage in this form of exclusionary conduct because, unlike classic exclusionary pricing, this conduct does not require the dominant firm to set any price below cost.

The BOCs respond that they have not engaged in exclusionary conduct, and that such allegations of strategic anticompetitive pricing are mere theoretical arguments. They point out that special deals to attract or retain customers may injure individual competitors but result in a net increase in overall consumer welfare. They also claim that a general prohibition on any discriminatory conduct would restrict competitive behavior, reduce competition, and harm consumers by denying them the direct benefit of any tariff terms, including volume and term price reductions. The BOCs contend that the pricing flexibility triggers, which serve as a proxy for irreversible market entry, ensure that any anticompetitive strategy to frustrate entry through the use of pricing flexibility tariffs or contract tariffs will be too late to be effective. The BOCs further claim that precluding volume and term discounts would place them at a competitive disadvantage, arguing that long-term contracts assure recovery of direct facility costs and allow amortization of up-front sunk costs. The BOCs argue that all carriers offer volume and term discounts and that customers willingly agree to them to obtain discounts. They contend that the parties complaining about such terms and conditions have extensive networks of their own and can self-provision any service they choose not to purchase from a BOC.

Discussion. A provider dominant in the market for one product may seek to influence the purchase of other products by imposing terms and conditions that bundle the products together. In this proceeding we are concerned with the question of whether a firm bundles the purchase of one product with the purchase of another product that the customer might not have bought. As with the market power analysis described above, in evaluating the terms and conditions associated with a price cap LEC tariff, parties should identify the special access product and geographic markets. Special access services involve facilities dedicated to connecting two locations. We seek comment on whether this connection is a single product or whether it represents several products. As stated above, we also ask whether the three categories of product markets for special access services identified in the Pricing Flexibility Order—(1) special access channel terminations between a price cap LEC's end office and the customer premises, (2) special access channel terminations between an IXC POP and a LEC serving wire center, and (3) other special access facilities—continue to be the relevant product markets. Also as stated above, we seek comment on whether the MSA remains the logical geographical market.

In conjunction with these product and geographic market analyses for special access services, we seek comment on the reasonableness of various levels of aggregation that a carrier may require of a customer to qualify for a discount. For example, are there cost justifications for bundling discounts with aggregations of services (*e.g.*, DS–1, DS–3, OCn) and/or geographic regions (*e.g.*, routes, wire centers, zones, LATAs, LEC footprints)? Is it reasonable for LECs to require that customers aggregate purchases across equivalent transport and special access products (*e.g.*, channel terminations and entrance facilities)? When price cap LECs base discounts on aggregations of products, do they offer equivalent non-bundled, product-by-product discounts?

Where a customer must make a volume commitment to obtain a discount, is it reasonable to condition the discount to the customer's previous purchase level? Does the manner of specifying volume levels affect the quality of competition? Do the discounts offered in price cap LEC tariffs vary with the volume of service purchased, and, if so, how? Is there a trade-off between the amount of aggregation allowed and the restrictiveness of the discount terms? Finally, parties should comment on whether they believe that conditioning discounts on prior volumes and future volume commitments violates the prohibition on growth discounts established in the Pricing Flexibility Order.

Where discounts are based on the length of the term commitment, we seek comment on the relationship between up-front, non-recurring charges and termination penalties. Prior to the advent of competition, the trade-off between an up-front charge and amortization over the lease period, or term of the agreement, was the cost of money. With competition, non-recurring charges and termination penalties raise issues concerning barriers to entry, risk bearing, and retail versus wholesale churn. We seek comment on whether we should allow or require up-front, non-recurring charges to recover the costs associated with initiating service for a specific customer. Should we require amortization over the life of the facility of the cost of activities that benefit all customers using the facility? Additionally, we seek comment on whether it is reasonable for a price cap LEC to bundle a tariff discount with the condition that the customer terminate service with a competitor. Is such bundling for the same service on the same route reasonable? Finally, is it reasonable for a price cap LEC to bundle a tariff discount with restrictions on the use or reuse of a facility?

Relationship Between New Pricing Flexibility Rules and New Special Access Price Cap Rules

If we modify the pricing flexibility rules, we seek comment on whether and how to adjust the price cap rules to incorporate the effects of changes in the pricing flexibility rules. In the event that a price cap LEC currently has pricing flexibility for services for which it will not have flexibility under any new rules we adopt, we tentatively conclude that rates for these services should be regulated no differently from rates for services for which a LEC never had pricing flexibility and for which it would have none under any new criteria. We may, for example, adopt a single price cap special access basket that includes separate service categories for special access DS1 channel terminations extending between a price cap LEC end office and a customer premises, for DS1 channel termination services extending between a price cap LEC serving wire center and an IXC POP, and for DS1 interoffice facilities. If a price cap LEC either never had pricing flexibility for DS1 special access services, or currently has pricing flexibility but will no longer have it for these services under any new criteria, it would have to establish separate rates in a tariff and categories within the basket for each of the three service categories. Going forward, under the new price cap rules, the rate levels for the DS1 channel termination and interoffice facility services would be subject to the upper SBI limit for each category. These rate levels also would be constrained, as would those for any other special access service subject to price caps, because they are reflected in the API for the special access services basket that, in turn, must not exceed the PCI for the basket. We tentatively conclude that services subject to a new price cap plan going forward should be treated the same regardless of whether they never had or currently have pricing flexibility because, under the new criteria, there presumably is no distinction between the two services. We seek comment on this tentative conclusion. We also invite comment on other options under a new price cap plan for regulating rates for services that currently have pricing flexibility, but would have none under any new rules we might adopt.

We tentatively conclude that we should use the same approach to establish initial rates under a new price cap plan for services for which a LEC currently has pricing flexibility, but will have none going forward under any new criteria we adopt in this proceeding, and for services for which a LEC never had pricing flexibility and for which it would have none under any new pricing flexibility criteria. For example, if we find that initial rates should be based on a forward-looking cost study, rates for both of these categories of services would be set based on a forward-looking cost study, even though previously they were regulated differently. Again, there presumably is no distinction between the two services under any new pricing flexibility criteria that we adopt. There is therefore no obvious reason to establish initial rates for these services using different methods. We seek comment on this tentative conclusion. We also invite comment on other options under a new price cap plan for setting initial rates for services that currently have pricing flexibility, but would have none under any new criteria we adopt.

Procedural Matters

Initial Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA) the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided in paragraph 62 of the item. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

In this NPRM, the Commission explores the appropriate regulatory regime to establish for price cap LEC interstate special access services after June 30, 2005. The Commission tentatively concludes that a price cap regime should continue to apply and seeks comment on this tentative conclusion. The Commission also seeks comment on the appropriate rate structure and levels under any such price cap regime, including seeking comment on: a productivity factor, a growth factor, earnings sharing, a low-end adjustment, rate baskets and bands, and the initial rates. As part of our examination, we also seek comment on whether to maintain, modify, or repeal the pricing flexibility rules.

Legal Basis

This rulemaking action is supported by sections 1, 2, 4(i), 4(j), 201–205, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), (j), 201–205, and 303.

Description and Estimate of the Number of Small Entities to Which the Notice Will Apply

The Regulatory Flexibility Act (RFA), 5 U.S.C. 603, 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. The RFA generally defines the term ''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 which: (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).

In this section, we further describe and estimate the number of small entity licensees and regulatees that may also be directly affected by rules adopted in this proceeding. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its Trends in Telephone Service (TRS) report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.*, a wired telecommunications carrier having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

Wired Telecommunications Carriers. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

Incumbent Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,337 carriers reported that they were engaged in the provision of local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), and ''Other Local Exchange Carriers.'' Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to ''Other Local Exchange Carriers,'' all of which are discrete categories under which TRS data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 35 carriers reported that they were ''Other Local Service Providers.'' Of the 35 ''Other Local Service Providers,'' an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and ''Other Local Exchange Carriers'' are small entities that may be affected by the rules and policies adopted herein.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The NPRM explores the appropriate post-June 30, 2005 interstate special access regime for price cap carriers. The NPRM considers the varying options on setting rate structures and rate levels, as well as whether to maintain, modify, or repeal the pricing flexibility rules. If we determine to retain without modification the pricing flexibility rules and permit the existing price cap interstate special access regime to continue unchanged, there will be no additional reporting or recordkeeping burden on price cap LECs with respect to interstate special access rate structures or rate levels. If we adopt new or modified interstate special access charge rules, including without limitation the pricing flexibility rules, such rule changes may require additional or modified recordkeeping. For example, price cap LECs may have to file amendments to certain aspects of their interstate special access tariffs.

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

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. *See* 5 U.S.C. 603.

The overall objective of this proceeding is to determine the appropriate interstate access charge regime for price cap LECs. As part of our examination, we seek comment on the appropriate price cap interstate special access rate structures and levels, including seeking comment on: a productivity factor, a growth factor, earnings sharing, a low-end adjustment, rate baskets and bands, and the initial rates. We also seek comment on whether to maintain, modify, or repeal the pricing flexibility rules. We have invited commenters to provide economic analysis and data. We will consider any proposals made to minimize significant economic impact on small entities.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ex Parte Presentations

This proceeding will continue to be governed by ''permit-but-disclose'' *ex parte* procedures that are applicable to non-restricted proceedings under 47 CFR 1.1206. Parties making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one-or two-sentence description of the views and arguments presented generally is required. Other rules pertaining to oral and written presentations are set forth at 47 CFR 1.1206(b). Interested parties are to file any written *ex parte* presentations in this proceeding with the Commission's Secretary, Marlene H. Dortch, 445 12th Street, SW., TW–B204, Washington, DC 20554, and serve with one copy: Pricing Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–A452, Washington, DC 20554, Attn: Margaret Dailey. Parties shall also serve with one copy: Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone (202) 488–5300, facsimile (202) 488–5563, e-mail *fcc@bcpiweb.com*, or via its Web site *http://www.bcpiweb.com*.

Comment Filing Procedures

Pursuant to the Commission's rules, interested parties may file comments on or before June 13, 2005 and reply comments on or before July 12, 2005. 47 CFR 1.415, 1.419. All pleadings must reference WC Docket No. 05–25 and RM–10593. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message: ''get form your e-mail address.'' A sample form and directions will be sent in reply. Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM-ET) at *http://www.fcc.gov/e-file/email.html*.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, e-mail *fcc@bcpiweb.com*, or via its Web site at *http://www.bcpiweb.com*. In addition, one copy of each submission must be filed with the Chief, Pricing Policy Division, 445 12th Street, SW., Washington, DC 20554. Documents filed in this proceeding will be available for public inspection during regular business hours in the Commission's Reference Information Center, 445 12th Street, SW., Washington, DC 20554, and will be placed on the Commission's Internet site. For further information, contact Margaret Dailey at (202) 418–1520.

Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting the Consumer & Governmental Affairs Bureau at (202) 418–0531, TTY (202) 418–7365, or at *fcc504@fcc.gov*.

Ordering Clauses

Accordingly, *it is ordered that,* pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201–205, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 201–205, and 303, *Notice is hereby given* of the rulemaking described above and *Comment is sought* on those issues.

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–7350 Filed 4–12–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–753; MB Docket No. 05–147; RM–10823

Radio Broadcasting Services; Fort Lauderdale and Lake Park, Florida

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by by Charles Crawford, requesting the allotment of Channel 262A at Lake Park, Florida, as its first local aural broadcast service. This proposal requires the reclassification of Station WHYI–FM, Channel 264C, Fort Lauderdale, Florida to specify operation on Channel 264C0. *See Second Report and Order* in MM Docket 98–93, *1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules,* 65 FR 79773 (2000). An Order to Show Cause was issued to Clear Channel Broadcasting Licenses, Inc., licensee of Station WHYI–FM to which no response was received. Channel 262A can be allotted to Lake Park in compliance with the Commission's minimum distance separation requirements with a site restriction of site 4.7 kilometers (2.9 miles) south of the community at coordinates 26–45–29 NL and 80–03–28 WL.

DATES: Comments must be filed on or before May 10, 2005, and reply comments on or before May 25, 2005. Any counterproposal filed in this proceeding need only protect Station WHYI–FM, Fort Lauderdale, as a Class C0 allotment.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 05–147, adopted March 21, 2005, and released March 23, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida is amended by removing Channel 264C and by adding Channel 264C0 at Fort Lauderdale and by adding Lake Park, Channel 262A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–7050 Filed 4–12–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–750; MB Docket No.05–135; RM–11215]

Radio Broadcasting Services; Jackson and Madison, Mississippi

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by New South Communications, Inc., proposing the reallotment of Channel 242C0 from Jackson to Madison, Mississippi, and the modification of the license for Station WUSJ(FM) to reflect the new community. The coordinates for Channel 242C0 at Madison, Mississippi are 32–11–29 NL and 90–24–22 WL. There is a site restriction 24.0 kilometers (14.9 miles) southwest of the community.

DATES: Comments must be filed on or before May 10, 2005, and reply comments on or before May 25, 2005.