

section; and that, for telephone companies subject to price cap regulation set forth in part 61 of this chapter, line-side port costs shall be assigned to the Common Line rate element.

(e) COE Category 4 (Circuit Equipment) shall be apportioned among the interexchange category and the Common Line, Transport, and Special Access elements. COE Category 4 shall be apportioned in the same proportions as the associated Cable and Wireless Facilities; except that any DS1/voice-grade multiplexer investment associated with analog local switches and assigned to the local transport category by this section shall be reallocated to the local switching category.

§ 69.307 [Amended]

29. Section 69.307 is amended by removing paragraph (c).

§ 69.308 [Removed]

30. Section 69.308 is removed.

31. Section 69.309 is revised to read as follows:

§ 69.309 Other investment.

Investment that is not apportioned pursuant to §§ 69.302 through 69.307 shall be apportioned among the interexchange category, the billing and collection category and access elements in the same proportions as the combined investment that is apportioned pursuant to §§ 69.303 through 69.307.

32. Section 69.401 is amended by revising paragraph (b) to read as follows:

§ 69.401 Direct expenses.

* * * * *

(b) Plant Specific Operations Expenses in Accounts 6210, 6220, and 6230, shall be apportioned among the interexchange category and access elements on the basis of the apportionment of the investment in Accounts 2210, 2220, and 2230, respectively; provided that any expenses associated with DS1/voice-grade multiplexers, to the extent that they are not associated with an analog tandem switch, assigned to the local transport category by this paragraph shall be reallocated to the local switching category; provided further that any expenses associated with common channel signalling included in Account 6210 shall be assigned to the local transport category.

* * * * *

§ 69.406 [Amended]

33. Section 69.406 is amended by removing paragraph (a)(9).

§ 69.410 [Removed]

34. Section 69.410 is removed.

35. Section 69.411 is revised to read as follows:

§ 69.411 Other expenses.

Except as provided in §§ 69.412, 69.413, and 69.414, expenses that are not apportioned pursuant to §§ 69.401 through 69.409 shall be apportioned among the interexchange category and all access elements in the same manner as § 69.309 Other investment.

§ 69.501 [Amended]

36. Section 69.501 is amended by removing and reserving paragraph (a).

37. Section 69.502 is revised to read as follows:

§ 69.502 Base factor allocation.

Projected revenues from the following shall be deducted from the base factor portion to determine the amount that is assigned to the Carrier Common Line element:

- (a) End User Common Line charges, less any marketing expense revenues recovered through end user common line charges pursuant to § 69.156;
- (b) Special Access surcharges; and
- (c) The portion of frozen per-line support that carriers receive pursuant to § 54.303 that is attributable to LTS payments received prior to January 1, 1998.

§ 69.611 [Removed]

38. Section 69.611 is removed.

[FR Doc. 97-14628 Filed 6-10-97; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket Nos. 94-1 and 96-262; FCC 97-159]

Price Cap Performance Review for Local Exchange Carriers; Access Charge Reform

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On May 7, 1997, the Federal Communications Commission adopted the Fourth Report and Order in CC Docket No. 94-1, Second Report and Order in CC Docket No. 96-262, revising its price cap regulations applicable to incumbent local exchange carriers (incumbent LECs). Specifically, the Commission replaced the choice of three X-Factors in the current price cap plan with a single X-Factor of 6.5

percent. The Commission also eliminated sharing obligations, but retained the low-end adjustment mechanism. The Commission adopts a fixed X-Factor to remain in effect until the next performance review, rather than updating the X-Factor annually on the basis of a five-year industry-wide moving average. In the *Fourth Further Notice* in CC Docket No. 94-1, the Commission sought comment on revising the common line PCI formula and the price cap exogenous cost rules. The Commission adopted revisions to the common line PCI formula in its *Access Reform First Report and Order* adopted concurrently with this Order, and so does not need to adopt any further revisions here. Also, as a result of its decision to adopt a fixed X-Factor, the Commission does not need to address issues regarding the price cap exogenous cost rules. The Commission requires price cap LECs to reset their price cap indices as of July 1, 1997, to be at the levels that would have been in effect had the 6.5 percent X-Factor taken effect concurrently with the 1996 annual access tariffs.

EFFECTIVE DATE: June 16, 1997.

FOR FURTHER INFORMATION CONTACT: Steven Spaeth, Competitive Pricing Division, Common Carrier Bureau, (202) 418-1530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted May 7, 1997, and released May 21, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room 230, 1919 M St., N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Suite 140, 2100 M Street, N.W., Washington, D.C. 20037.

Regulatory Flexibility Analysis

In the *Fourth Further Notice* in CC Docket No. 94-1, 60 FR 52362 (October 6, 1995), we certified that the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, did not apply to this rulemaking proceeding because none of the rule amendments under consideration would have a significant economic impact on a substantial number of small entities. (The RFA was amended by the Contract With America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847 (1996) (CWAAA).) Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). Carriers subject to price cap regulation for local exchange access affected by the rule amendments

adopted in this Order are generally large corporations or the affiliates of such corporations. No party commented specifically in response to the analysis in our certification.

In passing the Telecommunications Act of 1996 (1996 Act), Congress sought to establish "a pro-competitive, deregulatory national policy framework" for the United States telecommunications industry. See Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56 (1996). These fundamental changes in the structure and dynamics of the telecommunications industry wrought by the 1996 Act now necessitate that the Commission review its existing access charge regulations to ensure that they are consistent and compatible with the 1996 Act's far-reaching changes. The rule revisions we adopt based on the record developed in the *Fourth Further Notice* in CC Docket No. 94-1, and the *Notice* in CC Docket No. 96-262, will facilitate the deregulatory policy established in the 1996 Act. In particular, our elimination of sharing obligations removes a major impediment to deregulating individual interstate access services at the time competitive conditions for a particular service warrant deregulation.

The rules we adopt in this Order are applicable only to LECs subject to price cap regulation. Currently, 13 incumbent LECs are subject to price cap regulation. We tentatively concluded in the *Fourth Further Notice* in CC Docket No. 94-1 that the price cap LECs are not "small business concerns" because they are generally large corporations or affiliates of such corporations. We hereby affirm this analysis.

The Commission will send a copy of this final certification, along with this Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A), and to the Chief Counsel for Advocacy of the Small Business Administration, 5 U.S.C. 605(b).

Summary of Report and Order

In conjunction with the *Access Reform First Report and Order* and the *Universal Service Order*, adopted concurrently with this Order, the Commission adopts reforms needed to set the stage for the progressive deregulation of incumbent LECs with the development of competition.

Under price cap regulation, LEC interstate access services have been placed in one of four groups of access services, called baskets. A price cap index (PCI) limits the weighted average of rate increases for each basket to the

rate of inflation, the Gross Domestic Product Price Deflator (GDP-PI), minus an "X-Factor." The X-Factor is intended to measure the amount by which LECs are more productive than the economy as a whole.

Under our prior price cap rules, the baseline X-Factor was based on the average of the short-term and long-term trends in rate reductions prior to our adoption of the original price cap plan in 1990, plus a consumer productivity dividend (CPD) of 0.5 percent. We designed the X-Factor and the consumer productivity dividend so that, at minimum, rates would decline more quickly than they had declined before 1990, and so would assure that the first benefits of price cap regulation would flow to access customers in the form of lower rates. In the *First Report and Order* in CC Docket No. 94-1, 60 FR 19526 (April 19, 1995), we tentatively concluded that an analysis that directly measured the growth of LEC productivity and input prices would provide a better basis for prescribing an X-Factor than the methodology the Commission used in previous Orders. In the *Fourth Further Notice* in CC Docket No. 94-1, 60 FR 52362 (October 6, 1995), the Commission invited comment on the total factor productivity (TFP) methodology and other alternatives for calculating the X-Factor. The Commission invited parties to supplement the record in the *Notice of Proposed Rulemaking* in CC Docket No. 96-262, 62 FR 4670 (January 31, 1997). We find that the record supports prescribing a single X-Factor of 6.5 percent, based on our conclusions regarding a reasonable method of calculating LEC TFP and input prices, and our decision to retain the 0.5 percent CPD. This X-Factor is reasonable and challenging, and falls within a range of reasonable X-Factors.

Under our current price cap rules, incumbent price cap LECs are permitted to choose among three X-Factors, two of which include obligations to share certain earnings. Sharing requires incumbent LECs to "share" half or all earnings above specified rates of return with their access customers in the form of lower access rates during the next year. We adopt a system of pure price caps, without sharing, because sharing tends to blunt the efficiency incentives that we sought to create with price cap regulation. We conclude that, under the price cap rules we adopt today, any benefits of retaining sharing are outweighed by the benefits of eliminating sharing. We consider the X-Factor we adopt today to be a much more reliable measure of incumbent LEC potential productivity gains.

Therefore, we have substantially more confidence that this X-Factor will flow through a reasonable portion of LEC productivity gains to access customers. We also find that, because we establish a price cap plan with only one X-Factor, a matching mechanism is no longer necessary. To guard against our new X-Factor requiring individual LECs to charge unreasonably low rates, we will retain our current low-end adjustment mechanism, which permits LECs, after earning less than 10.25 percent in a calendar year, to make a one time upward adjustment their rates in the next tariff year, equal to the amount that would have allowed them to earn 10.25 percent in the calendar year.

This Order adopts a single X-Factor. The Commission adopted multiple X-Factor options in prior orders because of concerns that differences in LEC service areas might affect their abilities to increase their productivity growth. The Order observes that most of the price cap companies have selected the highest, no-sharing X-Factor option in our current rules, and concludes that the heterogeneity among LECs subject to price cap regulation does not affect their productivity growth as much as the Commission thought previously.

We sought comment on whether to keep the X-Factor up to date by basing it on an industry-wide moving average of TFP, or to continue to update the X-Factor in occasional performance reviews. We decide, in light of the fundamental changes to the marketplace resulting from the new competitive paradigm of the 1996 Act, that the better course is to select a new generally applicable X-Factor, based on the current record, that will remain in place until we change it in a new performance review.

We also sought comment on whether it is necessary to eliminate the "g/2" term from the common line PCI formula to conform to a TFP-based X-Factor. In the *Access Reform First Report and Order* adopted concurrently with this Order, we decide to eliminate the "g/2" term after a short transition period. In this Order, we conclude that no further revisions to the common line PCI formula are warranted.

The Commission sought comment on fashioning an X-Factor that would routinely incorporate cost changes currently considered exogenous into the PCI formula, which would eliminate the need for separate exogenous cost rules. Because the Commission adopts a fixed X-Factor in this Order, the X-Factor will not routinely incorporate exogenous cost changes into the PCI formula, and so no changes to the exogenous cost rules are warranted at this time.

The Order directs LECs to recalculate their price cap ceilings for July 1, 1997, to be at the levels they would have been had the 6.5 percent X-Factor had taken effect concurrently with their 1996 annual access filings. The Order finds that this adjustment is necessary because the interim price cap plan was intended to remain for a short time, and that the local companies should not be permitted to benefit indefinitely because the more accurate 6.5 percent X-Factor was not adopted sooner. The Commission's repeated emphasis that the X-Factor adopted in the *LEC Price Cap Performance Review* was "interim" should reasonably have put carriers on notice that another adjustment of the type we had adopted in that order would be possible—perhaps beginning with the 1995 tariff year, the first year under the interim X-Factor. This adjustment affects only future rate levels; it does not have any retroactive effect on past prices or earnings.

In the Third Further Notice of Proposed Rulemaking in CC Docket No. 94-1, 60 FR 52345 (September 26, 1995), the Commission sought comment on establishing rules governing the price cap treatment of video dialtone services. The Order concludes that one of the provisions of the 1996 Act makes those issues moot.

Finally, the Order directs price cap LECs to file tariffs making adjustments to their rates to reflect these revisions to the price cap rules no later than June 25, 1997, to take effect July 1, 1997. Those LECs wishing to raise any rates in these filings must file no later than June 16, 1997. We also direct price cap LECs to file revised tariff review plans (TRPs) containing adjustments to their PCIs, APIs, and SBIs no later than June 2, 1997.

Ordering Clauses

Accordingly, *it is ordered*, pursuant to authority contained in §§ 4(i), 4(j), 201-205, 303(r), and 403 of the Communications Act of 1934, as

amended, 47 U.S.C. 154(i), 154(j), 201-205, 303(r), 403, and § 553 of Title 5, United States Code, that Part 61 of the Commission's Rules, 47 CFR Part 61, *is amended* as set forth below.

It is further ordered that the provisions in this Order will be effective June 16, 1997. We find good cause under 5 U.S.C. § 553(d)(3) to make the rules effective less than thirty days after publication, because the local exchange carriers subject to price cap regulation must file tariffs by June 16, in order for them to be effective on July 1, 1997, as required by § 69.3 of the Commission's rules, 47 CFR 69.3. In addition, to ensure that the local exchange carriers subject to price cap regulation have actual notice of these rules immediately following their release, we are serving those entities by certified, first class mail.

It is further ordered that local exchange carriers subject to price cap regulation *shall file* tariffs and revised tariff review plans in accordance with the requirements set forth above. These requirements are subject to review by the Office of Management and Budget, and will be effective upon that approval.

It is further ordered that the motion filed by Ad Hoc Telecommunications Users Committee on February 23, 1996, *is dismissed*.

List of Subjects in 47 CFR Part 61

Communications Common Carriers, Tariffs.

Federal Communications Commission.

Shirley S. Suggs,
Chief, Publications Branch.

Rule Changes

Part 61 of title 47 of the Code of Federal Regulations is amended as follows:

PART 61—TARIFFS

1. The authority citation continues to read as follows:

Authority: Secs. 1, 4(i), 4(j), 201-205, and 403 of the Communications Act of 1934, as

amended; 47 U.S.C. 151, 154(i), 154(j), 201-205, and 403, unless otherwise noted.

2. Section 61.45 is amended by revising paragraphs (b)(1), (b)(2), revising the definition for X in (c)(1), revising the last sentence of paragraph (c)(2), redesignating paragraph (d)(2) as (d)(2)(i), adding new paragraph (d)(2)(ii), and removing and reserving paragraph (h) to read as follows:

§ 61.45 Adjustments to the PCI for Local Exchange Carriers

* * * * *

(b) * * *

(1) Notwithstanding the value of X defined in § 61.44(b), the X value applicable to the baskets specified in § 61.42(d)(2), (3), and (6) shall be 6.5%.

(2) For the basket specified in § 61.42(d)(4), the value of X, for all local exchange carriers subject to price cap regulation, shall be 3.0%.

* * * * *

(c)(1) * * *

X=productivity factor of 6.5%,

* * * * *

(c)(2) * * * For the purposes of this paragraph, and notwithstanding the value of X defined in § 61.44(b), the X value applicable to the basket specified in § 61.42(d)(1), shall be 6.5%.

* * * * *

(d) * * *

(2) (i) * * *

(ii) Local exchange carriers specified in § 61.41(a)(2) or (a)(3) shall not be subject to the sharing mechanism set forth in the Commission's *Second Report and Order* in Common Carrier Docket No. 87-313, FCC 90-314, adopted September 19, 1990, with respect to earnings accruing on or after July 1, 1997. This paragraph has no effect on any sharing obligation of any local exchange carrier relating to earnings accrued before July 1, 1997.

* * * * *

[FR Doc. 97-14746 Filed 6-10-97; 8:45 am]

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