

on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612, entitled *Federalism* (52 FR 41685, October 30, 1987). This action directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(b)(4). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 9, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. In § 180.482, by adding alphabetically in paragraph (b), the following commodities to the table to read as follows:

§ 180.482 Tebufenozide; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/Revocation Date
* * *	* *	*
Sugarcane	1.0	N/A
Sugarcane molasses	3.0	N/A
* * *	* *	*

* * * * *

[FR Doc. 99-24695 Filed 9-21-99; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 61 and 69

[CC Docket Nos. 96-262, 94-1, 98-157; CCB/CPD File No. 98-63; FCC 99-206]

Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Petition of U S West Communications, Inc. for Forbearance From Regulation as a Dominant Carrier in the Phoenix, AZ MSA; Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises the rules that govern the provision of interstate access services by those incumbent local exchange carriers subject to price cap regulation to advance the pro-competitive, deregulatory national policies embodied in the Telecommunications Act of 1996. With these revisions, the Commission continues the process it began in 1997 to reform the regulation of interstate access charges in order to accelerate the development of competition in all telecommunications markets and to ensure that the Commission's own

regulations do not unduly interfere with the operation of these markets as competition develops.

DATES: Effective October 22, 1999, except for 47 CFR 1.774, 61.47, 69.709, 69.711, 69.713, 69.729, which contain information collection requirements that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT:

Tamara Preiss, Deputy Division Chief, Common Carrier Bureau, Competitive Pricing Division, (202) 418-1520. For additional information concerning the information collections contained in this Report and Order contact Judy Boley at 202-418-0214, or via the Internet at jboleym@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Access Reform Fifth Report and Order* adopted August 5, 1999, and released August 25, 1999. The Order was accompanied by a Further Notice of Proposed Rulemaking (Notice) printed elsewhere in this **Federal Register** issue. The full text of this Report and Order (and the accompanying Notice), as well as the complete files for the relevant dockets, is available for inspection and copying during the weekday hours of 9:00 a.m. to 4:30 p.m. in the Commission's Reference Center, 445 12th St. SW, Room CY-A257, Washington DC, or copies may be purchased from the Commission's duplicating contractor, ITS Inc., 1231 20th St. NW, Washington DC 20036; (202) 857-3088. The complete text of the Order also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common_Carrier/Orders/1999/fcc99206.wp.

This Report and Order contains new and/or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA.

Paperwork Reduction Act

This Report and Order contains either a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Public Law 104-12. Written comments by the public on the information collections are due 30 days after date of publication in the **Federal Register**. OMB notification of action is due November 22, 1999.

Comments should address: (1) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the

information collected; and (d) ways to minimize the burden of the collection of information on the respondents including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060-0760.

Title: Access Charge Reform—CC Docket No. 96-262 (First Report and

Order), Second Order on Reconsideration and Memorandum Opinion and Order, Third Report and Order, and Fifth Report and Order.

Form No.: N/A.

Type of Review: Revised collection.

Respondents: Businesses or other for profit.

Section/title	Number of responses	Est. time per response	Total annual burden
Showings Under Market-Based Approach	13	2117	27,520
Cost Study	13	8	104
Tariff Filings	13	35	455
Third Party Disclosure	14	160	2,240
Contract Based Tariffs	13	60	780

Total Annual Burden: 30,829 hrs.

Estimated Cost Per Respondent: \$600.

OMB Control No.: 3060-0526.

Title: Density Pricing Plan.

Form No.: N/A.

Type of Review: Revised Collection.

Respondents: Businesses or other for Profit.

Section/title	Number of responses	Est. time per response	Total annual burden
Density Pricing Plan	13	48	624

Estimated Costs Per Respondents: \$0.

OMB Control No.: 3060-0770.

Title: Price Cap Performance Review for Local Exchange Carriers—CC Docket No. 94-1 (New Services).

Form No.: N/A.

Type of Review: Revised Collection.

Respondents: Businesses or other for Profit.

Section/title	Number of responses	Est. time per response	Total annual burden
New Services	13	10	130

Estimated Costs Per Respondents: \$0.

Needs and Uses: The Commission provides detailed rules for implementing the market-based approach, pursuant to which price cap LECs would receive pricing flexibility in the provision of interstate access services as competition for those services develops. The Order grants immediate pricing flexibility to price cap LECs in the form of streamlined introduction of new services, geographic deaveraging of rates for services in the trunking basket, and removal of certain interstate interexchange services from price cap regulation and provides for additional pricing flexibility upon showings.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act, the Fifth Report and Order contains a Final Regulatory Flexibility Analysis regarding the Order which is set forth in the Order. A brief

description of the analysis follows. Pursuant to section 604 of the Regulatory Flexibility Act, the Commission performed a comprehensive analysis of the Order with regard to small entities. This analysis includes: (1) A succinct statement of the need for, and objectives of, the Commission's decisions in the Order; (2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the Commission's assessment of these issues, and a statement of any changes made in the Order as a result of the comments; (3) a description of and an estimate of the number of small entities to which the Order will apply; (4) a description of the projected reporting, recordkeeping and other compliance requirements of the Order, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills

necessary for compliance with the requirement; and (5) a description of the steps the Commission has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the Order and why each one of the other significant alternatives to each of the Commission's decisions which affect small entities was rejected.

Synopsis of Order

I. Introduction

1. In this Order, the Commission revises the rules that govern the provision of interstate access services by those incumbent local exchange carriers (ILECs) subject to price cap regulation (collectively, "price cap LECs") to advance the pro-competitive, de-regulatory national policies embodied in the Telecommunications Act of 1996

(1996 Act). With these revisions, the Commission continues the process it began in 1997, with the *Access Reform First Report and Order* (62 FR 31868, June 11, 1997), to reform regulation of interstate access charges in order to accelerate the development of competition in all telecommunications markets and to ensure that the Commission's own regulations do not unduly interfere with the operation of these markets as competition develops.

2. In the *Access Reform First Report and Order*, the Commission adopted a primarily market-based approach to drive interstate access charges toward the costs of providing these services. The Commission envisioned that this approach would enable it to give carriers progressively greater flexibility to set rates as competition develops, until competition gradually replaces regulation as the primary means of setting prices. In this Order, the Commission fulfills its commitment to provide detailed rules for implementing the market-based approach, pursuant to which price cap LECs would receive pricing flexibility in the provision of interstate access services as competition for those services develops.

3. The pricing flexibility framework the Commission adopts in this Order is designed to grant greater flexibility to price cap LECs as competition develops, while ensuring that: (1) Price cap LECs do not use pricing flexibility to deter efficient entry or engage in exclusionary pricing behavior; and (2) price cap LECs do not increase rates to unreasonable levels for customers that lack competitive alternatives. In addition, these reforms will facilitate the removal of services from price cap regulation as competition develops in the marketplace, without imposing undue administrative burdens on the Commission or the industry.

4. Specifically, this Order grants immediate pricing flexibility to price cap LECs in the form of streamlined introduction of new services, geographic deaveraging of rates for services in the trunking basket, and removal, upon implementation of toll dialing parity, of certain interstate interexchange services from price cap regulation. The Commission also establishes a framework for granting price cap LECs greater flexibility in the pricing of all interstate access services once they satisfy certain competitive criteria. In Phase I, the Commission allows price cap LECs to offer contract tariffs and volume and term discounts for those services for which they make a specific competitive showing. In Phase II, the Commission permits price cap LECs to offer dedicated transport and special

access services free from the Commission's part 69 rate structure and part 61 price cap rules, provided that the LECs can demonstrate a significantly higher level of competition for those services. This Order amends the Commission's rules, as revised in 1998 *Biennial Regulatory Review—Part 61 of the Commission's Rules and Related Tariffing Requirements*, 64 FR 46584 (August 26, 1999).

II. Background

A. Price Cap Regime

5. To recover the costs of providing interstate access services, incumbent LECs charge IXC's and end users for access services in accordance with the Commission's part 69 access charge rules. Part 69 establishes two basic categories of access services: Special access services and switched access services. Special access services do not use local switches; instead they employ dedicated facilities that run directly between the end user and the IXC's point of presence (POP). Switched access services, on the other hand, use local exchange switches to route originating and terminating interstate toll calls. The Commission has not prescribed specific rate elements in part 69 for special access services. Part 69 does establish specific switched access elements and a mandatory switched access rate structure for each element.

6. Interoffice transmission services, known as transport services, carry interstate switched access traffic between an IXC's POP and the end office that serves the end user customer. Incumbent LEC transmission facilities that carry switched interstate traffic between an IXC's POP and the incumbent LEC end office serving the POP (this office is called the serving wire center, or SWC), are known as entrance facilities. Incumbent LECs currently offer two types of interstate switched transport service between a SWC and an end user's end office. Under the first service, direct-trunked transport, calls are transported between the SWC and the end office by means of a direct trunk, a dedicated facility, that does not pass through an intervening switch. The second service, tandem-switched transport, routes calls from the SWC to the end office through a tandem switch located between the SWC and the end office. Traffic travels over a dedicated circuit from the SWC to the tandem switch and then over a shared circuit, which carries the calls of many different IXC's, from the tandem switch to the incumbent LEC end office. Incumbent LEC tandem switches and end office switches switch interstate

traffic between the transport trunks carrying traffic to and from the IXC POP's and the end users' local loops.

7. Charges for special access services generally are divided into channel termination charges and channel mileage charges. Channel termination charges recover the costs of facilities between the customer's premises and the LEC end office and the costs of facilities between the IXC POP and the serving wire center. Channel mileage charges recover the costs of facilities (also known as interoffice facilities) between the serving wire center and the LEC end office serving the end user.

8. In 1990, the Commission replaced rate-of-return regulation for the BOCs and GTE with an incentives-based system of regulation that encourages companies to: (1) Improve their efficiency by developing profit-making incentives to reduce costs; (2) invest efficiently in new plant and facilities; and (3) develop and deploy innovative service offerings. The price cap plan is designed to replicate some of the efficiency incentives found in fully competitive markets and to act as a transitional regulatory scheme until actual competition makes price cap regulation unnecessary.

9. Under the original price cap plan, interstate access services were grouped into four different baskets: The common line, traffic-sensitive, special access, and interexchange baskets. In the *Second Transport Order* (59 FR 10300, March 4, 1994), the Commission combined transport and special access services into the newly created trunking basket. Each basket is subject to a price cap index (PCI), which caps the total charges a LEC may impose for interstate access services in that basket. The PCI is adjusted annually by a measure of inflation minus a "productivity factor," or "X-Factor." A separate adjustment is made to the PCI for "exogenous" cost changes, which are changes outside the carrier's control and not otherwise reflected in the price cap formula.

10. Within the traffic-sensitive and trunking baskets, services are grouped into service categories and subcategories. Rate revisions for these services are limited by upper and, in the original price cap plan, lower pricing bands established for that particular service. Originally, the pricing band limits for most of the service categories and subcategories were set at five percent above and below the Service Band Index (SBI). In 1995, however, the Commission increased the lower pricing bands to ten percent for those service categories in the trunking and traffic-sensitive baskets and 15 percent for those services subject to density zone

pricing. These pricing bands give price cap LECs the ability to raise and lower rates for elements or services as long as the actual price index (API) for the relevant basket does not exceed the PCI for that basket, and the prices for each category of services within the basket are within the established pricing bands. Together, the PCI and pricing bands restrict a price cap LEC's ability to offset price reductions for services that are subject to competition with price increases for services that are not subject to competition.

B. Pricing Flexibility

11. When it adopted the *LEC Price Cap Order* (55 FR 42375, October 19, 1990), the Commission required price cap LECs to offer all interstate special and switched access services at geographically averaged rates for each study area. Since that time, the Commission has taken significant steps to increase the LECs' pricing flexibility and ability to respond to the advent of competition in the exchange access market. In the *Special Access and Switched Transport Expanded Interconnection Orders* (57 FR 54323, November 19, 1992; 58 FR 48756, September 17, 1993), the Commission permitted LECs to introduce density zone pricing for high capacity special access and switched transport services in a study area, provided that they could demonstrate the presence of "operational" special access and switched transport expanded interconnection arrangements and at least one competitor in the study area. The Commission also permitted price cap LECs to offer volume and term discounts for special access and switched transport services upon specific competitive showings.

12. Subsequently, the Commission eliminated the lower service band indices, concluding that this action would lead to lower prices and encourage LECs to charge rates that reflect the underlying costs of providing exchange access services. The Commission found 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 competitive entry.

13. In that same order, the Commission also relaxed the procedures for introducing new switched access services, in response to arguments that new services and technologies do not fit the part 69 rate structure requirements. The Commission prescribed the original rate structure for introducing new

switched access services in 1983. At that time, incumbent LECs were required to file a part 69 waiver each time they wanted to introduce a new rate element for switched access service that did not conform to the prescribed switched access rate structure. A part 69 waiver required incumbent LECs to demonstrate that "special circumstances warrant deviation from the general rule and that such deviation will serve the public interest." Incumbent LECs also had to comply with the "new services" test, which required an incumbent LEC to demonstrate that its tariffed rates for new services would recover no more than the carrier's direct costs of providing the service, plus a reasonable amount of overhead, and no less than the carrier's direct costs of providing the service. Finally, incumbent LECs were directed to file their tariffs introducing a new service on at least fifteen days' notice and to incorporate the new service into the appropriate price cap basket and indices within six to eighteen months after the new service tariff became effective.

14. The Commission found that the part 69 rate structure imposed a costly, time-consuming, and unnecessary burden on incumbent LECs and significantly impeded the introduction of new services. Accordingly, the Commission modified the part 69 rate structure rules to permit an incumbent LEC to introduce a new service by filing a petition based on a "public interest" standard that is easier to satisfy than the general standard applicable to waivers of the its rules. In addition, under the new rules, once an initial incumbent LEC has satisfied the public interest requirement for establishing new rate elements for a new switched access service, another incumbent LEC may file a petition seeking authority to introduce an identical new service, and its petition will be reviewed within ten days of the release of a Public Notice. The LEC may introduce the new rate element following the ten-day period, unless the Common Carrier Bureau (the Bureau) informs the LEC before that time that its new service does not qualify for "me too" treatment.

15. The Commission also recognized that additional modifications to the Part 69 rate structure could increase consumer choice, streamline regulation, and increase consumer welfare by increasing incentives for innovation. The Commission, therefore, sought comment on whether to permit price cap LECs to establish new switched access rate elements without prior approval. It also invited comment on whether to eliminate the new services test and permit LECs to offer new

services free from price cap regulation. In the *Access Reform First Report and Order*, the Commission deferred resolution of these issues, as well as other issues concerning the timing and degree of pricing flexibility, to a future report and order.

III. Summary

A. Pricing Flexibility

16. Since the release of the *Access Reform First Report and Order*, the Commission has re-examined the record generated in response to the *Access Reform NPRM* (62 FR 4670, January 31, 1997) and the *Price Cap Second FNPRM* (60 FR 49539, September 26, 1995); it has observed competition develop in the marketplace; and the it has invited parties to update and refresh the record relating to access charge reform to reflect any changes that may have taken place since May 1997. In addition, the Commission has received and reviewed several petitions (and the associated records) from BOCs seeking pricing flexibility in the form of forbearance from dominant carrier regulation in the provision of certain special access and high capacity services. Although the Commission's current price cap regime gives LECs some pricing flexibility and considerable incentives to operate efficiently, significant regulatory constraints remain. As the market becomes more competitive, such constraints become counter-productive. The Commission recognizes that the variety of access services available on a competitive basis has increased significantly since the adoption of its price cap rules. Therefore, in response to changing market conditions, the Commission grants price cap LECs immediate flexibility to deaverage services in the trunking basket and to introduce new services on a streamlined basis. The Commission also removes certain interstate interexchange services from price cap regulation upon implementation of intra- and interLATA toll dialing parity, and the it establishes a framework for granting price cap LECs further pricing flexibility upon satisfaction of certain competitive showings and seek comment on additional flexibility for certain switched access services.

1. Immediate Regulatory Relief

17. As discussed above, the original rate structure for interstate switched transport services required price cap LECs to charge averaged rates throughout a study area. The Commission subsequently found that this requirement forced LECs to price above cost in the high-traffic, lower-cost

areas where competition is more likely to develop. In the *Switched Transport Expanded Interconnection Order*, therefore, the Commission created a density zone pricing plan that allows some degree of deaveraging of rates for switched transport services. It concluded that relaxing the pricing rules in this manner would enable price cap LECs to respond to increased competition in the interstate switched transport market.

18. Although the density zone pricing plan afforded some pricing flexibility to price cap LECs, it contained several constraints, such as the increased scrutiny applicable to plans with more than three zones. The Commission now concludes that market forces, as opposed to regulation, are more likely to compel LECs to establish efficient prices. Accordingly, for purposes of deaveraging rates for services in the trunking basket, the Commission eliminates the limitations inherent in the its current density zone pricing plan and allow price cap LECs to define the scope and number of zones within a study area, provided that each zone, except the highest-cost zone, accounts for at least 15 percent of the incumbent LEC's trunking basket revenues in the study area and that annual price increases within a zone do not exceed 15 percent. In addition, the Commission eliminates the requirement that LECs file zone pricing plans prior to filing their tariffs.

19. The Commission also permits price cap LECs to introduce new services on a streamlined basis, without prior approval. Generally, the Commission modifies the its rules to eliminate the public interest showing required by § 69.4(g) and to eliminate the new services test (except in the case of loop-based new services) required under §§ 61.49(f) and (g) of the Commission's rules. These modifications will eliminate the delays that now exist for the introduction of new services as well as encourage efficient investment and innovation.

20. Certain interstate interexchange services provided by price cap LECs are found in the interexchange basket, including interstate intraLATA services and certain interstate interLATA services called "corridor services." In this Order, the Commission allows price cap LECs to remove from the interexchange basket, and, hence, price cap regulation, their interstate intraLATA toll services and corridor services, provided the price cap LEC has implemented intra- and interLATA toll dialing parity in all of the states in which it provides local exchange service. The presence of competitive

alternatives for these services, coupled with implementation of dialing parity, should prevent price cap LECs from exploiting over a sustained period any market power may possess with respect to these services and thus warrants removal of these services from price cap regulation.

2. Relief That Requires a Competitive Showing

21. In addition, the Commission adopts a framework for granting further regulatory relief upon satisfaction of certain competitive showings. Relief generally will be granted in two phases and on an MSA (Metropolitan Statistical Area) basis. To obtain Phase I relief, price cap LECs must demonstrate that competitors have made irreversible, sunk investments in the facilities needed to provide the services at issue. For instance, for dedicated transport and special access services, price cap LECs must demonstrate that unaffiliated competitors have collocated in at least 15 percent of the LEC's wire centers within an MSA or collocated in wire centers accounting for 30 percent of the LEC's revenues from these services within an MSA. Higher thresholds apply, however, for channel terminations between a LEC end office and an end user customer. In that case, the LEC must demonstrate that unaffiliated competitors have collocated in 50 percent of the price cap LEC's wire centers within an MSA or collocated in wire centers accounting for 65 percent of the price cap LEC's revenues from this service within an MSA. For traffic-sensitive, common line, and the traffic-sensitive components of tandem-switched transport services, a LEC must show that competitors offer service over their own facilities to 15 percent of the price cap LEC's customer locations within an MSA. Phase I relief permits price cap LECs to offer, on one day's notice, volume and term discounts and contract tariffs for these services, so long as the services provided pursuant to contract are removed from price caps. To protect those customers that may lack competitive alternatives, however, LECs receiving Phase I flexibility must maintain their generally available, price cap constrained tariffed rates for these services.

22. To obtain Phase II relief, price cap LECs must demonstrate that competitors have established a significant market presence (*i.e.*, that competition for a particular service within the MSA is sufficient to preclude the incumbent from exploiting any individual market power over a sustained period) for provision of the services at issue. Phase II relief for dedicated transport and

special access services is warranted when a price cap LEC demonstrates that unaffiliated competitors have collocated in at least 50 percent of the LEC's wire centers within an MSA or collocated in wire centers accounting for 65 percent of the LEC's revenues from these services within an MSA. Again, a higher threshold applies to channel terminations between a LEC end office and an end user customer. In that case, a price cap LEC must show that unaffiliated competitors have collocated in 65 percent of the LEC's wire centers within an MSA or collocated in wire centers accounting for 85 percent of the LEC's revenues from this service within an MSA. Phase II relief permits price cap LECs to file tariffs for these services on one day's notice, free from both the Commission's Part 61 rate level and its Part 69 rate structure rules.

B. CLEC Access Charges

23. In the *Access Reform NPRM*, the Commission sought comment on whether CLECs have market power in the provision of terminating access services and whether to regulate these services. In the *Access Reform First Report and Order*, it decided to treat CLECs as non-dominant in the provision of terminating access service, because they did not appear at that time to possess market power. The Commission stated, however, that it would revisit the issue of regulating CLEC terminating access rates if there were sufficient indications that CLECs were imposing unreasonable terminating access charges.

24. On October 23, 1998, AT&T filed a petition for declaratory ruling requesting that the Commission confirm that, under existing Commission rules and policies, an IXC may elect not to accept service at a price chosen by the CLEC. In its petition, AT&T alleges that some CLECs impose switched access charges significantly higher than those charged by the ILEC competitors in the same area. AT&T points to a Commission pronouncement in the *Access Reform First Report and Order* that "terminating rates that exceed those charged by the ILEC serving the same market may suggest that a CLEC's terminating access rates are excessive," thereby warranting Commission regulation.

25. In this Order, the Commission denies AT&T's petition. The Commission finds, however, that the record developed in response to AT&T's petition suggests the need for the it to revisit the issue of CLEC access rates.

IV. Procedural Issues and Ordering Clauses

A. Final Regulatory Flexibility Analysis

25. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in *Access Reform NPRM*. The Commission sought written comments on the proposals in the *Access Reform NPRM*, including the IRFA. Its Final Regulatory Flexibility Analysis (FRFA) in this Order conforms to the RFA, as amended. To the extent that any statement contained in this FRFA is perceived as creating ambiguity with respect to the Commission's rules or statements made in preceding sections of this Order, the rules and statements set forth in those preceding sections shall be controlling.

1. Need For and Objectives of This Report and Order

27. This proceeding is being conducted to advance the pro-competitive, de-regulatory national policies embodied in the Telecommunications Act of 1996. The Commission continues the process it began in 1997 with the *Access Reform First Report and Order* to reform regulation of interstate access charges in order to accelerate the development of competition in all telecommunications markets and to ensure that the its own regulations do not unduly interfere with the operation of these markets as competition develops.

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

28. The Commission has already addressed the general concerns raised by Rural Telephone Coalition that this proceeding may "prejudge and prejudice" a later rulemaking for non price cap LECs, and that the delay in implementing that rulemaking may injure non-price cap LECs. Otherwise, the comments filed do not address the specific issues contained in this Order.

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

29. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 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). The Small Business Administration has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be a small entity that has no more than 1500 employees.

Total Number of Telephone Companies Affected:

30. The Commission has 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 telephone communications business 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. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

31. *Price Cap Local Exchange Carriers*. The rulemaking contained in this Order applies only to price cap LECs. The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of price cap LECs that would qualify as small business concerns under the SBA's definition. However, there are only 13 price cap LECs. Consequently, the Commission estimates that significantly fewer than 13 providers of local exchange service are small entities or small price cap LECs that may be affected by these proposals.

4. Summary Analysis of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

32. In this Report and Order, the Commission adopts changes in pricing flexibility to price cap LECs in the form of streamlined introduction of new services, geographic deaveraging of rates for services in the trunking basket, and removal of interexchange services from price cap regulation. These changes will affect all price cap LECs, including small price cap LECs, and will require

small price cap LECs to make one or more tariff filings should they desire to obtain the additional pricing flexibility, which will involve the usage of legal skills, and possibly accounting, economic, and financial skills.

5. Burdens on Small Entities, and Significant Alternatives Considered and Rejected

33. In Sections III, IV, and V, the Commission adopts forms of regulatory relief for price cap LECs that can be granted under current market conditions and do not require a further competitive showing. Price cap LECs each will have to file at least one tariff to implement this relief, but the administrative burdens they will face in future filings will diminish as a result. In Section VI, the Commission grants additional pricing flexibility to price cap LECs that make "competitive showings," or satisfy "triggers," to demonstrate that market conditions in particular areas warrant the relief at issue. In order to minimize the administrative burdens on price cap LECs, the Commission bases its triggering mechanisms on objectively measurable criteria.

34. The Commission considered and rejected alternative triggers and granting a different amount of pricing flexibility. In setting the triggers and relief in the manner the Commission did, it attempted to balance the interests of price cap LECs in being able to gain regulatory relief, with its interest in protecting ratepayers from unreasonable rate levels and new entrants from anti-competitive actions.

6. Report to Congress

35. The Commission will send a copy of this Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of this Report and Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

C. Paperwork Reduction Act

36. On April 1, 1997, the Office of Management and Budget (OMB) approved all of the Commission's proposed information collection requirements in accordance with the Paperwork Reduction Act. The OMB made one recommendation, suggesting that the Commission tries "to minimize the number of new filings that firms must create in order to be compliant with the rules adopted * * *". The

Commission has carefully considered the recommendation of OMB, and in the course of preparing this Order, it has decided to modify several of the collection requirements proposed in the *Access Reform NPRM*. This Order has greatly reduced the number of filings a price cap LEC will have to submit to receive pricing flexibility. In addition, many of the filings should take less time to make than was originally proposed. For example, the Commission estimates that based on the competitive triggers it adopted, it should only take five hours each to make two Phase II showings per MSA for all special access and dedicated transport services, whereas the original filing to OMB estimated that each Phase II showing would take approximately 300 hours.

D. Ordering Clauses

37. Accordingly, *It is Ordered*, pursuant to sections 1, 4(i), 4(j), 201–205, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 303(r), 403, and section 553 of Title 5, United States Code, that revisions to Parts 1, 61, and 69 of the Commission's rules, 47 CFR Parts 1, 61, 69, *are adopted* as set forth in the rule changes in this Order.

38. *It is further ordered* that the rule revisions adopted in this Order will be effective 30 days after publication of this Order in the **Federal Register**. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

39. *It is further ordered* that, pursuant to section 10(c) of the Communications Act of 1934, 47 USC. 160(c), the period for review by the Commission of the petition for forbearance filed by U S West Communications, Inc., CC Docket No. 98–157, *is extended* by 90 days.

40. *It is further ordered* that the petition for declaratory ruling filed by AT&T, CCB/CPD File No. 98–63, *is denied*.

List of Subjects

47 CFR Part 0

Organization and functions.

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Telecommunications.

47 CFR Part 61

Communications common carriers, Telephone.

47 CFR Part 69

Communications common carriers, Telephone.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Rule Changes

Accordingly, parts 0, 1, 61, and 69 of Title 47 of the Code of Federal Regulations are amended to read as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.291 is amended by adding paragraph (i) to read as follows:

§ 0.291 Authority delegated.

* * * * *

(j) *Authority concerning petitions for pricing flexibility.* (1) The Chief, Common Carrier Bureau, shall have authority to act on petitions filed pursuant to part 69, subpart H, of this chapter for pricing flexibility involving special access and dedicated transport services. This authority is not subject to the limitation set forth in paragraph (a)(2) of this section.

(2) The Chief, Common Carrier Bureau, shall not have authority to act on petitions filed pursuant to part 69, subpart H, of this chapter for pricing flexibility involving common line and traffic sensitive services.

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.*, 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 303(r).

4. Amend § 1.773 by adding paragraph (a)(1)(v) to read as follows:

§ 1.773 Petitions for suspension or rejection of new tariff filings.

(a) * * *

(1) * * *

(v) For the purposes of this section, any tariff filing by a price cap LEC filed pursuant to the requirements of § 61.42(d)(4)(ii) of this chapter will be considered *prima facie* lawful, and will not be suspended by the Commission unless the petition requesting suspension shows each of the following:

(A) That there is a high probability the tariff would be found unlawful after investigation;

(B) That any unreasonable rate would not be corrected in a subsequent filing;

(C) That irreparable injury will result if the tariff filing is not suspended; and

(D) That the suspension would not otherwise be contrary to the public interest.

* * * * *

5. Add § 1.774 to read as follows:

§ 1.774 Pricing flexibility

(a) *Petitions.* (1) A petition seeking pricing flexibility for specific services pursuant to part 69, subpart H, of this chapter, with respect to a metropolitan statistical area (MSA), as defined in § 22.909(a) of this chapter, or the non-MSA parts of a study area, must show that the price cap LEC has met the relevant thresholds set forth in part 69, subpart H, of this chapter.

(2) The petition must make a separate showing for each MSA for which the petitioner seeks pricing flexibility, and for the portion of the study area that falls outside any MSA.

(3) Petitions seeking pricing flexibility for services described in §§ 69.709(a) and 69.711(a) of this chapter must include:

(i) The total number of wire centers in the relevant MSA or non-MSA parts of a study area, as described in § 69.707 of this chapter;

(ii) The number and location of the wire centers in which competitors have collocated in the relevant MSA or non-MSA parts of a study area, as described in § 69.707 of this chapter;

(iii) In each wire center on which the price cap LEC bases its petition, the name of at least one collocator that uses transport facilities owned by a provider other than the price cap LEC to transport traffic from that wire center; and

(iv)(A) The percentage of the wire centers in the relevant MSA or non-MSA area, as described in § 69.707 of this chapter, in which competitors have collocated and use transport facilities owned by a provider other than the price cap LEC to transport traffic from that wire center; or

(B) The percentage of total base period revenues generated by the services at issue in the petition that are attributable to wire centers in the relevant MSA or non-MSA area, as described in § 69.707 of this chapter, in which competitors have collocated and use transport facilities owned by a provider other than the price cap LEC to transport traffic from that wire center.

(4) Petitions seeking pricing flexibility for services described in § 69.713(a) of this chapter must make a showing sufficient to meet the relevant requirements of § 69.713 of this chapter.

(b) *Confidential treatment.* A price cap LEC wishing to request confidential treatment of information contained in a pricing flexibility petition should

demonstrate, by a preponderance of the evidence, that the information should be withheld from public inspection in accordance with the requirements of § 0.459 of this chapter.

(c) *Oppositions.* Any interested party may file comments or oppositions to a petition for pricing flexibility. Comments and oppositions shall be filed no later than 15 days after the petition is filed. Time shall be computed pursuant to § 1.4.

(d) *Replies.* The petitioner may file a reply to any oppositions filed in response to its petition for pricing flexibility. Replies shall be filed no later than 10 days after comments are filed. Time shall be computed pursuant to § 1.4.

(e) *Copies, service.* (1)(i) Any price cap LEC filing a petition for pricing flexibility must submit its petition pursuant to the Commission's Electronic Tariff Filing System (ETFS), following the procedures set forth in § 61.14(a) of this chapter.

(ii) The price cap LEC must provide to each party upon which the price cap LEC relies to meet its obligations under paragraph (a)(3)(iii) of this section, the information it provides about that party in its petition, even if the price cap LEC requests that the information be kept confidential under paragraph (b) of this section.

(A) The price cap LEC must certify in its pricing flexibility petition that it has made such information available to the party.

(B) The price cap LEC may provide data to the party in redacted form, revealing only that information to the party that relates to the party.

(C) The price cap LEC must provide to the Commission copies of the information it provides to such parties.

(2)(i) Interested parties filing oppositions or comments in response to a petition for pricing flexibility may file those comments through ETFS.

(ii) Any interested party electing to file an opposition or comment in response to a pricing flexibility petition through a method other than ETFS must file an original and four copies of each opposition or comment with the Commission, as follows: the original and three copies of each pleading shall be filed with the Secretary, FCC, Room CY-A257, 445 Twelfth St. S.W., Washington, D.C., 20554; one copy must be delivered directly to the Commission's copy contractor, International Transcription Service, Inc., 1231 Twentieth St. N.W., Washington, D.C. 20036. Additional, separate copies shall be served simultaneously upon the Chief, Common Carrier Bureau; the Chief,

Competitive Pricing Division; and the Chief, Tariff and Pricing Analysis Branch of the Competitive Pricing Division.

(iii) In addition, oppositions and comments shall be served either personally or via facsimile on the petitioner. If an opposition or comment is served via facsimile, a copy of the opposition or comment must be sent to the petitioner via first class mail on the same day as the facsimile transmission.

(3) Replies shall be filed with the Commission through ETFS. In addition, petitioners choosing to file a reply must serve a copy on each party filing an opposition or comment, either personally or via facsimile. If a reply is served via facsimile, a copy of the reply must be sent to the recipient of that reply via first class mail on the same day as the facsimile transmission.

(f) *Disposition.* (1) A petition for pricing flexibility pertaining to special access and dedicated transport services shall be deemed granted unless the Chief, Common Carrier Bureau, denies the petition no later than 90 days after the close of the pleading cycle. The period for filing applications for review begins the day the Bureau grants or denies the petition, or the day that the petition is deemed denied. Time shall be computed pursuant to § 1.4.

(2) A petition for pricing flexibility pertaining to common-line and traffic-sensitive services shall be deemed granted unless the Commission denies the petition no later than five months after the close of the pleading cycle. Time shall be computed pursuant to § 1.4.

PART 61—TARIFFS

6. 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.

7. Amend § 61.3 by revising paragraph (m) and adding paragraphs (nn), (oo), and (pp), to read as follows:

§ 61.3 Definitions.

* * * * *

(m) *Contract-based tariff.* A tariff based on a service contract entered into between a non-dominant carrier and a customer, or between a customer and a price cap local exchange carrier which has obtained permission to offer contract-based tariff services pursuant to Part 69, Subpart H, of this chapter.

* * * * *

(nn) *Corridor service.* “Corridor service” refers to interLATA services offered in the “limited corridors”

established by the District Court in *United States v. Western Electric Co., Inc.*, 569 F. Supp. 1057, 1107 (D.D.C. 1983).

(oo) *Toll dialing parity.* “Toll dialing parity” exists when there is dialing parity, as defined in § 51.5 of this chapter, for toll services.

(pp) *Loop-based services.* Loop-based services are services that employ Subcategory 1.3 facilities, as defined in § 36.154 of this chapter.

* * * * *

8. Amend § 61.42 by redesignating paragraph (d)(4) as (d)(4)(i), and adding paragraph (d)(4)(ii), to read as follows:

§ 61.42 Price cap baskets and service categories.

* * * * *

(d) * * *

(4) * * *

(ii) If a price cap carrier has implemented interLATA and intraLATA toll dialing parity everywhere it provides local exchange services at the holding company level, that price cap carrier may file a tariff revision to remove corridor and interstate intraLATA toll services from its interexchange basket.

* * * * *

9. Amend § 61.45 by revising paragraph (d)(1)(vii) to read as follows:

§ 61.45 Adjustments to the PCI for local exchange carriers.

* * * * *

(d) * * *

(1) * * *

(vii) Retargeting the PCI to the level specified by the Commission for carriers whose base year earnings are below the level of the lower adjustment mark, subject to the limitation in § 69.731 of this chapter.

* * * * *

10. Amend § 61.46 to add paragraph (i) to read as follows:

§ 61.46 Adjustments to the API.

* * * * *

(i) In no case shall a price cap local exchange carrier include data associated with services offered pursuant to contract tariff in the calculations required by this section.

11. Section 61.47 is amended by revising paragraphs (a), introductory text, (e) introductory text, and (e)(1) and by adding paragraphs (f) and (k) to read as follows:

§ 61.47 Adjustments to the SBI; pricing bands.

(a) In connection with any price cap tariff filing proposing changes in the rates of services in service categories, subcategories, or density zones, the

carrier must calculate an SBI value for each affected service category, subcategory, or density zone pursuant to the following methodology: * * *

* * * * *

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

(1) *Five percent:*

- (i) Local switching (traffic sensitive basket)
- (ii) Information (traffic sensitive basket)
- (iii) Database Access services (traffic sensitive basket)
- (iv) 800 Database Vertical Services subservice (traffic sensitive basket)
- (v) Billing Name and Address (traffic sensitive basket)
- (vi) Local switching trunk ports (traffic sensitive basket)
- (vii) Signalling Transfer Point Port Termination (traffic sensitive basket)
- (viii) Voice grade (trunking basket)
- (ix) Audio/Video (trunking basket)
- (x) Total High Capacity (trunking basket)
- (xi) DS1 subservice (trunking basket)
- (xii) DS3 subservice (trunking basket)
- (xiii) Wideband (trunking basket)

(f) A local exchange carrier subject to price cap regulation may establish density zones pursuant to the requirements set forth in § 69.123 of this chapter, for any service in the trunking basket, other than the interconnection charge set forth in § 69.124 of this chapter. The pricing flexibility of each zone shall be limited to an annual increase of 15 percent, relative to the percentage change in the PCI for that basket, measured from the levels in effect on the last day of the preceding tariff year. There shall be no lower pricing band for any density zone.

* * * * *

(k) In no case shall a price cap local exchange carrier include data associated with services offered pursuant to contract tariff in the calculations required by this section.

12. In § 61.49, revise paragraphs (f)(2) and (g) introductory text, and add paragraphs (f)(3) and (f)(4) to read as follows:

§ 61.49 Supporting information to be submitted with letters of transmittal for tariffs of carriers subject to price cap regulation.

* * * * *

(f) * * *

(2) Each tariff filing submitted by a price cap LEC that introduces a new loop-based service, as defined in § 61.3(pp) of this part—including a restructured unbundled basic service element (BSE), as defined in § 69.2(mm) of this chapter, that constitutes a new loop-based service—that is or will later be included in a basket, must be accompanied by cost data sufficient to establish that the new loop-based service or unbundled BSE will not recover more than a just and reasonable portion of the carrier's overhead costs.

(3) A price cap LEC may submit without cost data any tariff filings that introduce new services, other than loop-based services.

(4) A price cap LEC that has removed its corridor or interstate intraLATA toll services from its interexchange basket pursuant to § 61.42(d)(4)(ii), may submit its tariff filings for corridor or interstate intraLATA toll services without cost data.

(g) Each tariff filing submitted by a local exchange carrier subject to price cap regulation that introduces a new loop-based service or a restructured unbundled basic service element (BSE), as defined in § 69.2(mm) of this chapter, that is or will later be included in a basket, or that introduces or changes the rates for connection charge subelements for expanded interconnection, as defined in § 69.121 of this chapter, must also be accompanied by:

* * * * *

13. Add § 61.55 to read as follows:

§ 61.55 Contract-based tariffs.

(a) This section shall apply to price cap LECs permitted to offer contract-based tariffs under § 69.727(a) of this chapter.

(b) Composition of contract-based tariffs shall comply with §§ 61.54(b) through (i).

(c) Contract-based tariffs shall include the following:

(1) The term of contract, including any renewal options;

(2) A brief description of each of the services provided under the contract;

(3) Minimum volume commitments for each service;

(4) The contract price for each service or services at the volume levels committed to by the customers;

(5) A general description of any volume discounts built into the contract rate structure; and

(6) A general description of other classifications, practices, and regulations affecting the contract rate.

14. Amend § 61.58 to add paragraphs (b), (c) and (d) to read as follows:

§ 61.58 Notice requirements.

* * * * *

(b) Tariffs for new services filed by price cap local exchange carriers shall be filed on at least one day's notice.

(c) Contract-based tariffs filed by price cap local exchange carriers pursuant to § 69.727(a) of this chapter shall be filed on at least one day's notice.

(d)(1) A local exchange carrier that is filing a tariff revision to remove its corridor or interstate intraLATA toll services from its interexchange basket pursuant to § 61.42(d)(4)(ii) shall submit such filing on at least fifteen days' notice.

(2) A local exchange carrier that has removed its corridor and interstate intraLATA toll services from its interexchange basket pursuant to § 61.42(d)(4)(ii) shall file subsequent tariff filings for corridor or interstate intraLATA toll services on at least one day's notice.

* * * * *

PART 69—ACCESS CHARGES

15. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

16. Amend § 69.3 by revising paragraph (e)(7) to read as follows:

§ 69.3 Filing of access service tariffs.

* * * * *

(e) * * *

(7) Such a tariff shall not contain charges for any access elements that are disaggregated or deaveraged within a study area that is used for purposes of jurisdictional separations, except as otherwise provided in this chapter.

* * * * *

17. Amend § 69.4 by revising paragraph (g)(1) and adding paragraph (i), to read as follows:

§ 69.4 Charges to be filed.

* * * * *

(g)(1) Local exchange carriers subject to price cap regulation, as that term is defined in § 61.3(x) of this chapter, may establish appropriate rate elements for a new service, within the meaning of § 61.3(t) of this chapter, in any tariff filing with a scheduled effective date after October 22, 1999.

* * * * *

(i) Paragraphs (b) and (h) of this section are not applicable to a price cap local exchange carrier to the extent that

it has been granted the pricing flexibility in § 69.727(b)(1).

18. In § 69.110, revise paragraph (e) to read as follows:

§ 69.110 Entrance facilities.

* * * * *

(e) Except as provided in paragraphs (f), (g), and (h) of this section, and subpart H of this part, telephone companies shall not offer entrance facilities based on term discounts or volume discounts for multiple DS3s or any other service with higher volume than DS3.

* * * * *

19. Amend § 69.123 by revising paragraphs (a), (b), (e)(2), and (f)(1), to read as follows:

§ 69.123 Density pricing zones.

(a)(1) Incumbent local exchange carriers not subject to price cap regulation may establish a reasonable number of density pricing zones within each study area that is used for purposes of jurisdictional separations, in which at least one interconnector has taken the subelement of connection charges for expanded interconnection described in § 69.121(a)(1).

(2) Such a system of pricing zones shall be designed to reasonably reflect cost-related characteristics, such as the density of total interstate traffic in central offices located in the respective zones.

(3) Non-price cap incumbent local exchange carriers may establish only one set of density pricing zones within each study area, to be used for the pricing of both special and switched access pursuant to paragraphs (c) and (d) of this section.

(b)(1) Incumbent local exchange carriers subject to price cap regulation may establish any number of density zones within a study area that is used for purposes of jurisdictional separations, provided that each zone, except the highest-cost zone, accounts for at least 15 percent of that carrier's trunking basket revenues within that study area, calculated pursuant to the methodology set forth in § 69.725.

(2) Price cap incumbent local exchange carriers may establish only one set of density pricing zones within each study area, to be used for the pricing of all services within the trunking basket for which zone density pricing is permitted.

(3) An access service subelement for which zone density pricing is permitted shall be deemed to be offered in the zone that contains the telephone company location from which the service is provided.

(4) An access service subelement for which zone density pricing is permitted which is provided to a customer between telephone company locations shall be deemed to be offered in the highest priced zone that contains one of the locations between which the service is offered.

* * * * *

(e) * * *

(2) Notwithstanding § 69.3(e)(7), incumbent local exchange carriers subject to price cap regulation may charge different rates for services in different zones pursuant to § 61.47(f) of this chapter, provided that the charges for any such service are not deaveraged within any such zone.

(f)(1) An incumbent local exchange carrier that establishes density pricing zones under this section must reallocate additional amounts recovered under the interconnection charge prescribed in § 69.124 of this subpart to facilities-based transport rates, to reflect the higher costs of serving lower density areas. Each incumbent local exchange carrier must reallocate costs from the interexchange charge each time it increases the ratio between the prices in its lowest-cost zone and any other zone in that study area.

* * * * *

20. Amend part 69 by adding subpart H to read as follows:

Subpart H—Pricing Flexibility

Sec.

69.701 Application of rules in this subpart.

69.703 Definitions.

69.705 Procedure.

69.707 Geographic scope of petition.

69.709 Dedicated transport and special access services other than channel terminations between LEC end offices and customer premises.

69.711 Channel terminations between LEC end offices and customer premises.

69.713 Common line, traffic-sensitive, and tandem-switched transport services.

69.714–69.724 [Reserved]

69.725 Attribution of revenues to particular wire centers.

69.727 Regulatory relief.

69.729 New services.

69.731 Low-end adjustment mechanism.

Subpart H—Pricing Flexibility

§ 69.701 Application of rules in this subpart.

The rules in this subpart apply to all incumbent LECs subject to price cap regulation, as defined in § 61.3(x) of this chapter, seeking pricing flexibility on the basis of the development of competition in parts of its service area.

§ 69.703 Definitions.

For purposes of this subpart:

(a) *Channel terminations.*

(1) A channel termination between an IXC POP and a serving wire center is a dedicated channel connecting an IXC POP and a serving wire center, offered for purposes of carrying special access traffic.

(2) A channel termination between a LEC end office and a customer premises is a dedicated channel connecting a LEC end office and a customer premises, offered for purposes of carrying special access traffic.

(b) *Metropolitan Statistical Area (MSA).* This term shall have the definition provided in § 22.909(a) of this chapter.

(c) *Interexchange Carrier Point of Presence (IXC POP).* The point of interconnection between an interexchange carrier's network and a local exchange carrier's network.

(d) *Wire center.* For purposes of this subpart, the term "wire center" shall refer to any location at which an incumbent LEC is required to provide expanded interconnection for special access pursuant to § 64.1401(a) of this chapter, and any location at which an incumbent LEC is required to provide expanded interconnection for switched transport pursuant to § 64.1401(b)(1) of this chapter.

(e) *Study area.* A common carrier's entire service area within a state.

§ 69.705 Procedure.

Price cap LECs filing petitions for pricing flexibility shall follow the procedures set forth in § 1.774 of this chapter.

§ 69.707 Geographic scope of petition.

(a) *MSA.* (1) A price cap LEC filing a petition for pricing flexibility in an MSA shall include data sufficient to support its petition, as set forth in this subpart, disaggregated by MSA.

(2) A price cap LEC may request pricing flexibility for two or more MSAs in a single petition, provided that it submits supporting data disaggregated by MSA.

(b) *Non-MSA.* (1) A price cap LEC will receive pricing flexibility with respect to those parts of a study area that fall outside of any MSA, provided that it provides data sufficient to support a finding that competitors have collocated in a number of wire centers in that non-MSA region sufficient to satisfy the criteria for the pricing flexibility sought in the petition, as set forth in this subpart, if the region at issue were an MSA.

(2) The petitioner may aggregate data for all the non-MSA regions in a single study area for which it requests pricing flexibility in its petition.

(3) A petitioner may request pricing flexibility in the non-MSA regions of

two or more of its study areas, provided that it submits supporting data disaggregated by study area.

§ 69.709 Dedicated transport and special access services other than channel terminations between LEC end offices and customer premises.

(a) *Scope.* This paragraph governs requests for pricing flexibility with respect to the following services:

(1) Entrance facilities, as described in § 69.110.

(2) Transport of traffic over dedicated transport facilities between the serving wire center and the tandem switching office, as described in § 69.111(a)(2)(iii).

(3) Direct-trunked transport, as described in § 69.112.

(4) Special access services, as described in § 69.114, other than channel terminations as defined in § 69.703(a)(2) of this part.

(b) *Phase I Triggers.* To obtain Phase I pricing flexibility, as specified in § 69.727(a) of this part, for the services described in paragraph (a) of this section, a price cap LEC must show that, in the relevant area as described in § 69.707 of this part, competitors unaffiliated with the price cap LEC have collocated:

(1) In fifteen percent of the petitioner's wire centers, and that at least one such collocator in each wire center is using transport facilities owned by a transport provider other than the price cap LEC to transport traffic from that wire center; or

(2) In wire centers accounting for 30 percent of the petitioner's revenues from dedicated transport and special access services other than channel terminations between LEC end offices and customer premises, determined as specified in § 69.725 of this part, and that at least one such collocator in each wire center is using transport facilities owned by a transport provider other than the price cap LEC to transport traffic from that wire center.

(c) *Phase II Triggers.* To obtain Phase II pricing flexibility, as specified in § 69.727(b) of this part, for the services described in paragraph (a) of this section, a price cap LEC must show that, in the relevant area as described in § 69.707 of this part, competitors unaffiliated with the price cap LEC have collocated:

(1) In 50 percent of the petitioner's wire centers, and that at least one such collocator in each wire center is using transport facilities owned by a transport provider other than the price cap LEC to transport traffic from that wire center; or

(2) In wire centers accounting for 65 percent of the petitioner's revenues from dedicated transport and special access

services other than channel terminations between LEC end offices and customer premises, determined as specified in § 69.725 of this part, and that at least one such collocator in each wire center is using transport facilities owned by a transport provider other than the price cap LEC to transport traffic from that wire center.

§ 69.711 Channel terminations between LEC end offices and customer premises.

(a) *Scope.* This paragraph governs requests for pricing flexibility with respect to channel terminations between LEC end offices and customer premises.

(b) *Phase I Triggers.* To obtain Phase I pricing flexibility, as specified in § 69.727(a) of this part, for channel terminations between LEC end offices and customer premises, a price cap LEC must show that, in the relevant area as described in § 69.707 of this part, competitors unaffiliated with the price cap LEC have collocated:

(1) In 50 percent of the petitioner's wire centers, and that at least one such collocator in each wire center is using transport facilities owned by a transport provider other than the price cap LEC to transport traffic from that wire center; or

(2) In wire centers accounting for 65 percent of the petitioner's revenues from channel terminations between LEC end offices and customer premises, determined as specified in § 69.725 of this part, and that at least one such collocator in each wire center is using transport facilities owned by a transport provider other than the price cap LEC to transport traffic from that wire center.

(c) *Phase II Triggers.* To obtain Phase II pricing flexibility, as specified in § 69.727(b) of this part, for channel terminations between LEC end offices and customer premises, a price cap LEC must show that, in the relevant area as described in § 69.707, competitors unaffiliated with the price cap LEC have collocated:

(1) In 65 percent of the petitioner's wire centers, and that at least one such collocator in each wire center is using transport facilities owned by a transport provider other than the price cap LEC to transport traffic from that wire center; or

(2) In wire centers accounting for 85 percent of the petitioner's revenues from channel terminations between LEC end offices and customer premises, determined as specified in § 69.725, and that at least one such collocator in each wire center is using transport facilities owned by a transport provider other than the price cap LEC to transport traffic from that wire center.

§ 69.713 Common line, traffic-sensitive, and tandem-switched transport services.

(a) *Scope.* This paragraph governs requests for pricing flexibility with respect to the following services:

(1) Common line services, as described in §§ 69.152, 69.153, and 69.154.

(2) Services in the traffic-sensitive basket, as described in § 61.42(d)(2) of this chapter.

(3) The traffic-sensitive components of tandem-switched transport services, as described in §§ 69.111(a)(2)(i) and (ii).

(b) *Phase I Triggers.* (1) To obtain Phase I pricing flexibility, as specified in § 69.727(a), for the services identified in paragraph (a) of this section, a price cap LEC must provide convincing evidence that, in the relevant area as described in § 69.707, its unaffiliated competitors, in aggregate, offer service to at least 15 percent of the price cap LEC's customer locations.

(2) For purposes of the showing required by paragraph (b)(1) of this section, the price cap LEC may not rely on service the competitors provide solely by reselling the price cap LEC's services, or provide through unbundled network elements as defined in § 51.5 of this chapter, except that the price cap LEC may rely on service the competitors provide through the use of the price cap LEC's unbundled loops.

(c) [Reserved.]

§§ 69.714–69.724 [Reserved.]

§ 69.725 Attribution of revenues to particular wire centers.

If a price cap LEC elects to show, in accordance with § 69.709 or § 69.711, that competitors have collocated in wire centers accounting for a certain percentage of revenues from the services at issue, the LEC must make the following revenue allocations:

(a) For entrance facilities and channel terminations between an IXC POP and a serving wire center, the petitioner shall attribute all the revenue to the serving wire center.

(b) For channel terminations between a LEC end office and a customer premises, the petitioner shall attribute all the revenue to the LEC end office.

(c) For any dedicated service routed through multiple wire centers, the petitioner shall attribute 50 percent of the revenue to the wire center at each end of the transmission path, unless the petitioner can make a convincing case in its petition that some other allocation would be more representative of the extent of competitive entry in the MSA or the non-MSA parts of the study area at issue.

§ 69.727 Regulatory relief.

(a) *Phase I Relief.* Upon satisfaction of the Phase I triggers specified in §§ 69.709(b), 69.711(b), or 69.713(b) for an MSA or the non-MSA parts of a study area, a price cap LEC will be granted the following regulatory relief in that area for the services specified in §§ 69.709(a), 69.711(a), or 69.713(a), respectively:

- (1) Volume and term discounts;
- (2) Contract tariff authority, provided that

(i) Contract tariff services are made generally available to all similarly situated customers; and

(ii) The price cap LEC excludes all contract tariff offerings from price cap regulation pursuant to § 61.42(f)(1) of this chapter.

(iii) Before the price cap LEC provides a contract tariff service, under § 69.727(a), to one of its long-distance affiliates, as described in section 272 of the Communications Act of 1934, as amended, or § 64.1903 of this chapter, the price cap LEC certifies to the Commission that it provides service pursuant to that contract tariff to an unaffiliated customer.

(b) *Phase II Relief.* Upon satisfaction of the Phase II triggers specified in §§ 69.709(c) or 69.711(c) for an MSA or the non-MSA parts of a study area, a price cap LEC will be granted the following regulatory relief in that area for the services specified in §§ 69.709(a) or 69.711(a), respectively:

(1) Elimination of the rate structure requirements in subpart B of this part;

(2) Elimination of price cap regulation; and

(3) Filing of tariff revisions on one day's notice, notwithstanding the notice requirements for tariff filings specified in § 61.58 of this chapter.

§ 69.729 New services.

(a) Except for new services subject to paragraph (b) of this section, a price cap LEC may obtain pricing flexibility for a new service that has not been incorporated into a price cap basket by demonstrating in its pricing flexibility petition that the new service would be properly incorporated into one of the price cap baskets and service bands for which the price cap LEC seeks pricing flexibility.

(b) Notwithstanding paragraph (a) of this section, a price cap LEC must

demonstrate satisfaction of the triggers in § 69.711(b) to be granted pricing flexibility for any new service that falls within the definition of a "channel termination between a LEC end office and a customer premises" as specified in § 69.703(a)(2).

§ 69.731 Low-end adjustment mechanism.

(a) Any price cap LEC obtaining Phase I or Phase II pricing flexibility for any service in any MSA in its service region, or for the non-MSA portion of any study area in its service region, shall be prohibited from making any low-end adjustment pursuant to § 61.45(d)(1)(vii) of this chapter in all or part of its service region.

(b) Any affiliate of any price cap LEC obtaining Phase I or Phase II pricing flexibility for any service in any MSA in its service region shall be prohibited from making any low-end adjustment pursuant to § 61.45(d)(1)(vii) of this chapter in all or part of its service region.

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