Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1197).

**SUPPLEMENTARY INFORMATION:** This document concerns Sacramento Metropolitan Air Quality Management District Rule 447, Organic Liquid Loading, Santa Barbara County Air Pollution Control District Rule 316, Storage & Transfer of Gasoline, Ventura County Air Pollution Control District Rule 70, Storage & Transfer of Gasoline, and Yolo-Solano County Air Pollution Control District Rule 2.23, Fugitive Hydrocarbons. These rules were submitted to EPA on June 23, 1998, March 10, 1998, August 1, 1997, and November 30, 1994, respectively, by the California Air Resources Board. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: November 5, 1999.

**Laura Yoshii,**

*Deputy Regional Administrator, Region IX.*

[FR Doc. 99–30610 Filed 11–24–99; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 61

**[CC Docket Nos. 94–1 and 96–262; FCC 99–345]**

### Prescription of Local Exchange Carrier Price Cap Productivity Offset (''X-Factor'')

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document seeks comment on the represcription of the productivity offset, or ''X-factor,'' in the local exchange carrier price cap formula. The X-factor of 6.5 percent prescribed by the Commission in the *1997 Price Cap Performance Review Order* was reversed and remanded to the agency by the U.S. Court of Appeals for the D.C. Circuit. Therefore, the Commission seeks comment on the retroactive prescription of the X-factor for the period affected by the court's remand, from July 1, 1997 to June 30, 2000, and on the prospective prescription, from July 1, 2000 forward. The Further Notice of Proposed Rulemaking (''FNPRM'') identifies three studies on which the historical component of the X-factor prescription may be based: the 1997 staff total factor productivity (''TFP'') study relied upon in the 1997 order; a new 1999 staff TFP study; or a staff Imputed X study. This document also seeks comment on whether a consumer productivity dividend (''CPD'') should be included in the X-factor.

**DATES:** Comments are due on or before December 30, 1999, and reply comments are due on or before January 14, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Aaron Goldschmidt, (202) 418–1520.

**SUPPLEMENTARY INFORMATION:** In 1997, the Commission represcribed the amount by which it annually adjusts price caps for incumbent local exchange carriers subject to the price cap rules (''price cap LECs''). *Price Cap Performance Review for Local Exchange Carriers*, 62 FR 31939, June 11, 1997 (''*1997 Price Cap Review Order*''). The revised price cap adjustment required price cap LECs to reduce inflation-adjusted prices for interstate access services by an ''X-factor'' of 6.5 percent annually. Pursuant to petitions for review of the Commission's order, the United States Court of Appeals for the District of Columbia Circuit reversed and remanded the Commission's decision. *USTA* v. *FCC*, 188 F.3d 521 (D.C. Cir. 1999). The court has stayed issuance of its mandate until April 1, 2000, to allow time for the Commission to conduct this proceeding. *USTA* v. *FCC*, Nos. 97–1469 *et al.*, (D.C. Cir. June 21, 1999).

In this Further Notice of Proposed Rulemaking (''FNPRM'') we seek comment on how we should represcribe an X-factor. More specifically, we seek comment on prescribing two separate X-factors to address retroactively the period affected by the court remand (July 1, 1997 to June 30, 2000), and prospectively the period from July 1, 2000 forward, or a single X-factor to cover the combined period. Specifically, we seek comment on three possible bases for setting the historical component of the X-factor: (1) by relying on the results of the 1997 staff TFP study used in the 1997 order; (2) by relying on the results of a new 1999 staff TFP study that makes several adjustments to the 1997 staff study; or (3) by relying on the results of a new staff Imputed X study that determines the X-factor that would have produced a competitive level of capital compensation in the interstate jurisdiction during the period between price cap performance reviews.

Further, we seek comment on resetting, on a forward-looking basis, price cap LEC prices to a level that is consistent with any X-factor prescription in order to rebalance the sharing of benefits of price caps between LECs and their customers. This FNPRM is limited to issues surrounding the setting of the X-factor, and does not include any broader changes to our method of price cap regulation.

In a separate but related proceeding, the Commission is seeking comment on a proposal submitted by the Coalition for Affordable Local and Long Distance Services (''CALLS''). *See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service*, 64 FR 50527, September 16, 1999. The CALLS proposal would purportedly eliminate the necessity of retrospectively adjusting the X-factor in response to the court's remand. Instead, it would keep the X-factor at 6.5 percent, but would target X-factor reductions to the traffic-sensitive price cap basket. Once local switching rates reached a certain level, all price cap indices would be frozen. Adoption of the CALLS proposal would also eliminate the need to prescribe an X-factor on a going-forward basis. We seek comment in this proceeding on the prescription of the X-factor because, in the event that the CALLS proposal is not adopted, or not all price cap LECs become signatories to the proposal, the Commission must be prepared to prescribe a new X-factor before April 1, 2000.

#### Option 1: The 1997 Staff TFP Study

We seek comment on whether we should use only the results from the 1997 staff TFP study in setting the historical component of the X-factor for the remand period. We seek comment on whether, in addressing the court's remand, we are precluded from revising the X-factor using any other methodology, or from supplementing the data in the 1997 staff TFP study.

The court did not find fault with the 1997 staff TFP study, and did not ask us to revisit it. Instead, the court limited its critique of TFP to our selection of a value at the upper end of the reasonableness range, and with the upward adjustment to the reasonable range.

In their responses to a 1998 request to refresh the record in our *Access Charge Reform* proceeding, both USTA and AT&T used the methodology in the 1997 staff TFP study to extend the calculation of the X-factor through 1997. USTA has also calculated an X-factor for 1998. We seek comment on the legal and logical arguments supporting consideration of data that have become available after the

close of the record for the remanded prescription. We note that USTA and AT&T did not agree with each other on the value of the historical component for 1996 and 1997. We seek comment on USTA's and AT&T's updates of the 1997 staff TFP study, and on their recommendations for prescribing an X-factor.

If we set the X-factor by using the 1997 staff TFP study, the court's remand requires that we justify our selection from within the reasonable range. Within the reasonable range, should we use some measure of central tendency, e.g., the mean or median, as the best estimator of productivity? Could and should we consider prescribing above the mean? If the reasonable range includes a statistically meaningful trend, should this inform our choice? What other justifications could be made for selecting above or below some measure of central tendency? Should these justifications affect our selection from the reasonable range, or are they more relevant to the selection of a CPD?

**Option 2: The 1999 Staff TFP Study**

In comments filed with the Commission late last year, several parties identified what they believe is a problem in the way in which the 1997 staff TFP study employed the TFP methodology commonly used in economic analysis to set an X-factor. The 1999 staff TFP study takes this potential problem as a point of departure and attempts to correct it. We seek comment on the 1999 staff TFP study, and on its premise that the 1997 staff TFP study methodology may fail to calculate an X-factor that is consistent with the objectives of our price cap plan.

The 1997 staff TFP study subtracts the cost of the labor and material inputs from revenues, and the residual revenue is assumed to be the cost of the capital input. The 1999 staff TFP study attempts to capture the gains in productivity that would have been revealed in a competitive marketplace by varying total capital compensation according to a measure of the competitive capital compensation rate.

We seek comment on the following method for adjusting the capital compensation in the 1997 staff TFP study. The first step is to identify a competitive price index series to use as a surrogate for the annual change for the cost of capital in a competitive market. The second step is to assume LEC capital compensation in 1991, the first full year of LEC price cap, was at a competitive level. Because price caps were implemented in 1991, the 1999 staff TFP study assumes that LECs earned a normal return in that year. The third step is to combine the competitive price index and the 1991 LEC capital compensation rate to create a competitive LEC capital compensation rate for the historical period. The fourth step is to increase or decrease LEC capital compensation based on this competitive LEC capital compensation rate. The fifth step is to adjust LEC revenues, making appropriate allowance for taxes, for the change in capital compensation. The final step is to recalculate LEC historical TFP using these revised capital compensation and revenue data.

In addition to updating the data for the period 1996–1998, the 1999 staff TFP study makes three other modifications to the 1997 staff TFP study. First, the 1999 staff TFP study uses the recently revised Bureau of Labor Statistics (''BLS'') series on multifactor productivity in place of the antecedent series. Second, the 1999 staff TFP study uses the number of dial equipment minutes, rather than the number of calls, in calculating the local service output index. Third, the 1999 staff TFP study recalculates the labor input to adjust for the fact that all the costs, but only a fraction of the benefits, of the 1992–95 employee buyouts have been recognized on the accounting books. We seek comment on these modifications to the 1997 staff TFP study.

Several additional aspects of the 1997 staff TFP study may warrant highlighting and comment. The 1999 staff TFP study does not make these adjustments because they either are not easily quantified, or do not make a significant impact on the level of the X-factor. We seek comment on the decision of the 1999 staff TFP study to not make any of these adjustments. We also seek comment on whether there are any additional issues that necessitate adjusting the X-factor, how any such adjustments would affect the X-factor, and how they should be made.

The court's remand requires that we justify our selection from within a reasonable range. We seek comment on how we should determine the reasonable range and how we should select from within this range. In our determination of the reasonable range in the *1997 Price Cap Review Order*, we gave recent years more weight than more distant years. Should we continue to discount more distant years? Should the period under price cap regulation be given more weight than the period under rate-of-return regulation? Given that price cap regulation may have been anticipated by price cap LECs for some years before its introduction, what years should be included in the price cap period?

We also seek comment on whether additional years of data should be considered in the remand, or whether the X-factor we select should rely on the same years of data as used in the *1997 Price Cap Review Order*. We seek comment on the legal and logical arguments supporting consideration of data that have become available after the close of the record for the remanded prescription. Would it be more responsive to the court's remand to prescribe an X-factor based on data available in 1997 or to consider the additional data that has become available in the interim in setting the X-factor on a going-forward basis?

**Option 3: The Staff Imputed X Study**

As an alternative to either of the TFP methodologies, the Bureau staff also has performed a study, the staff Imputed X study, designed to calculate the X factor that yields the aggregate revenues that would have been generated in a competitive market. While price caps provide incentives for cost reduction similar to those of competition, they do not guarantee that revenues will follow a similar path. In a competitive market, revenues on average will be equal to costs, including compensation of capital at a competitive market level. This method is intended to replicate the effects of a competitive market in apportioning the gains from successful operation between carriers and consumers. The approach used here differs from the TFP approach, *inter alia*, in that it measures productivity growth by looking at aggregate expense and revenue data rather than by weighting and aggregating categories of physical inputs and outputs. In contrast to both of the TFP approaches, this method appears to have modest data requirements and to be computationally simple and easily understandable. Nevertheless, this method should have the same incentive effects as the TFP approach or any other method of calculating an X-factor.

The staff Imputed X study calculates the change in 1998 revenue and operating income for each price cap LEC that would result from imposing a hypothetical X-factor from the inception of price caps in 1991 through 1998. The results for all price cap LECs are aggregated, and the X-factor required to produce revenues equal to costs, including a competitive level of capital compensation in the aggregate for all LECs, is calculated. The calculation was also performed for 1991 through 1995 for comparison with the original TFP study. The calculation takes account of

the increase in the demand for service that would have resulted from the lower price. Changes in the competitive cost of capital were accounted for by adjusting the capital compensation found reasonable by the Commission at the inception of price caps by an index of bond rates over the period. The index is the same one used for the 1999 staff TFP study to measure the price of capital. Moody's Baa corporate bond rate was used. We noted above that, in a competitive capital market, indexes of bond rates will agree closely. Further, in an efficient market, there are no persistent arbitrage opportunities between different financial instruments, so that we have no reason to expect that the trend of bond rates would differ over time from that of the return on an efficient diversified portfolio. Thus, applying any of several published indices to the allowed rate at the beginning of the period will yield approximately the same estimate of the end-period rate.

The data used for these estimates differ from those used for the TFP calculations in that they are purely interstate in nature. The TFP calculations used total company data because of the difficulty of separating interstate and intrastate costs for the TFP calculations, despite interstate data being conceptually more appropriate for representing the services regulated by the Commission under price caps. The data for the staff Imputed X study also include all price cap carriers, whereas the TFP studies use data for the regional Bell operating companies (''RBOCs'') only. The calculations assume that a decrease in price would result in an increase in the quantity of service purchased, while the TFP calculations necessarily reflect only experience under the prices that were actually in effect. Finally, the staff Imputed X study does not make an adjustment in expense data comparable to the adjustment made in the 1999 staff TFP study to compensate for the accounting treatment of employee buyouts. To provide a check on the revised TFP calculations, the X-factor calculations using the staff Imputed X study were repeated using data only for the RBOCs and assuming no demand growth in response to lower prices. These calculations were performed for both 1995 and 1998.

We note that the approach described here is similar to the Direct Model proposed by AT&T, which the Commission has referred to as the Historical Revenue Approach in the 1997 price cap performance review proceeding. The staff Imputed X study differs from the approach proposed by AT&T primarily in that the staff calculation includes an adjustment to take account of likely demand stimulation resulting from a lower price cap, and the calculation takes account of changes over time in competitive return to capital. Data sources and calculations also differ somewhat. In the *Price Cap Performance Review for Local Exchange Carriers*, 60 FR 19526, April 19, 1995 (''*1995 Price Cap Review Order*''), the Commission noted that the Historical Revenue Approach has the advantage that it reflects performance in providing the interstate services that are subject to price caps, and includes input cost changes. In comments in the 1997 price cap performance review proceeding, GSA supported the Historical Revenue Approach and noted that it incorporates both TFP growth and the input price differential.

Most criticisms of AT&T's Historical Revenue Approach dealt with the data and methodology used by AT&T in its calculations. Commenters responding to AT&T's proposal pointed out that data reported under Commission accounting, separations, and other rules may not accurately track economic costs. In its comments in the 1997 price cap performance review proceeding, NYNEX criticized use of the Historical Revenue Approach on the grounds that accounting-based rules are a poor measure of a firm's economic performance. We note that the Commission declined to adopt the Historical Revenue Approach in the *1997 Price Cap Review Order* due to administrative concerns and incentive effects.

We seek comment on the validity of the staff Imputed X study for estimating the appropriate level of the X-factor. Does the X-factor estimated using these data and assumptions accurately represent the productivity growth achievable by the price cap LECs over the period examined? We request comment on the theoretical appropriateness of this methodology. We also seek comment on the following questions: Is an interstate-only calculation conceptually proper, and do the data allow an accurate measure of interstate revenues, expenses, and investment? Calculations reported in the staff Imputed X study show that X-factors calculated on an annual basis appear to increase over time. Are there explanations for the trend we see other than increasing efficiency? Does this apparent trend suggest that an additional adjustment, such as the CPD, is necessary in addition to revising the calculation of the X-factor? Alternatively, is the CPD no longer necessary because the approach described here sufficiently passes the benefits of increased efficiency to ratepayers? What is the appropriate method for determining the competitive cost of capital? Is applying an index of bond rates to the rate of return used by the Commission to initialize rates at the inception of price caps a reasonable approach? Would taking account of the mix of debt and equity held by the LECs yield a more accurate estimate of the trend in the cost of capital?

We request comment on the data and calculations used in the staff Imputed X study. Are more appropriate data sources available, and can adjustments be made that would improve the accuracy of the calculations reported here? AT&T in its Historical Revenue Approach in 1994 used Price Cap Indices (''PCIs'') from the Commission's Tariff Review Plan data to measure actual changes in allowed rates. This approach includes all changes that occurred in the price caps, including exogenous changes not related to the operation of the X factor. Is such an approach conceptually appropriate? Would use of PCIs rather than the X factor in effect more accurately reflect price performance for purposes of these calculations?

We also seek comment on whether, in responding to the remand, it is appropriate to use data for the period that was available to us at the time of the *1997 Price Cap Review Order*, or whether we should make use of the best information available to us now, including data for subsequent years that have become available in the meantime. We seek comment on the legal and logical arguments supporting consideration of data that have become available after the close of the record for the remanded prescription. Would it be more responsive to the court's remand to prescribe an X-factor based on data contemporaneous with the prescription and to consider the additional data in setting the X-factor on a going-forward basis? In addition, the court's remand requires that we justify our selection from within a reasonable range. How should we determine a reasonable range for setting the X-factor using the staff Imputed X study, and how we should select from within that range?

**Consumer Productivity Dividend**

In *Policy and Rules Concerning Rates for Dominant Carriers*, 55 FR 42375, October 19, 1990 (''*LEC Price Cap Order*''), the Commission included a CPD of 0.5 percent in the X-factor offset to ensure that access customers received the first benefits of price caps in the form of reduced rates. This CPD was also included in the X-factor in

subsequent price cap review orders, including the *1997 Price Cap Review Order*, in which it was intended to offset the elimination of sharing requirements. These requirements had compelled price cap LECs to share a portion of their earnings above set percentages with access customers. The sharing requirements were intended to protect consumers against the possibility of an error in the establishment of the X-factor. Pursuant to the court's remand, the Commission seeks comment on whether to retain the CPD.

In remanding this issue to the Commission, the court specifically questioned the quantification of the CPD. When the Commission made its decision to include a CPD in the 1997 X-factor, the record included a study by Strategic Policy Research (''SPR'') that addressed the effects of eliminating the sharing requirements. The SPR study found that the LEC price cap plan with sharing requirements produced less than 35 percent of the efficiency incentives of unregulated competition. Those incentives decreased to 18 percent for price cap LECs whose earnings were in the 50–50 sharing category for each year of the four-year review cycle. The Commission discussed the SPR study in some detail in the *1995 Price Cap Review Order*. Although the Commission did not determine whether the SPR study accurately quantified the effects of sharing on productivity growth, it concluded that the study showed that there ''are substantial gains in incentives that [sharing] suppresses.'' *1995 LEC Price Cap Review Order*. The results of the SPR study were challenged by the Ad Hoc Telecommunications Users Committee (''Ad Hoc''), but Ad Hoc's own results indicated that sharing substantially reduced efficiency incentives. Ad Hoc's more conservative calculations indicated that elimination of sharing would increase efficiency incentives by at least 17 percent for all LECs, and by 41 percent for LECs in the 50–50 sharing category. We seek comment on the CPD amount justified on the basis of these studies to ensure that the benefits of sharing elimination would be apportioned between LECs and ratepayers. We also seek comment on additional methods for quantifying a CPD designed to ensure that consumers get a reasonable portion of the benefits from the elimination of sharing.

We also seek comment on whether a CPD should be included to reduce rates and correct for prior years when the X-factor may have been set too low. As noted above, the calculations used to set prior year X-factors may have underestimated LEC productivity. This underestimation may have caused rates to be set at too high a level. A mistake in the X-factor may not be self-correcting, but instead may cause increasingly erroneous prices over time. To obtain efficient prices in the future, it may be necessary both to adjust the value of the X-factor and to reset prices. Therefore, we seek comment on whether we should include in the X-factor a CPD designed to reduce rates, either by a one-time adjustment, or over a multi-year period, if we conclude that the X-factor historically has been set too low. If the reduction occurs over a multi-year period, should we account for the time value of money, and, if so, how should we calculate the reduction?

**Prescribing the X-Factor on a Going-Forward Basis**

We seek comment on whether we should prescribe an X-factor that would apply as of July 1, 2000 that is different from the retrospective X-factor applicable to the period affected by the court's remand, or whether the X-factor that we prescribe for the period beginning July 1, 1997 should continue in place until the next price cap performance review. We also seek comment on whether to include a prospective CPD adjustment in future X-factors to correct for any significant divergences between historic LEC productivity and prior X-factors, and on whether any such adjustment should be made at once or be phased in over several years.

In this FNPRM we seek comment on prescribing a future X-factor based on the results of the 1999 staff TFP study. In the alternative, we could prescribe an X-factor based on the results of the staff Imputed X study. Finally, we invite parties to comment on other alternatives that could serve as a basis for a future X-factor.

We also seek comment on how the prescription of the X-factor would affect smaller price cap LECs differently from other price cap LECs, and whether there should be a separate X-factor calculated for smaller price cap LECs.

In addition, we seek comment on how the Commission's proposed adjustments to the price cap rate structure in *Access Charge Reform,* 64 FR 51258, September 22, 1999 (''*Pricing Flexibility Order*'') should affect the annual reductions required by our price cap rules. We proposed in the *Pricing Flexibility Order* to add a ''q'' factor to the formulae used to adjust annually the price cap indices (''PCIs'') for the baskets that contain the charges for local switching and tandem switching. The q factor would reduce switching charges based on growth in demand. The q factor would operate similarly to the g factor present in the common line PCI formula. The g factor is used to share with IXCs the benefits of demand growth that LECs receive from per-minute growth per access line. As proposed, the affected baskets would be reduced annually by both the X-factor and the q factor. The staff studies attached herein, however, may capture in their X-factor estimates some or all of the effect intended to be captured by the q factor. We seek comment on whether a q factor is necessary if an X-factor is adopted that captures its effect, and on how to remove any double counting that might result from the application of both factors. For example, if the X-factor reduction was $10, and the q factor reduction was $4, then we could directly apply $4 to the baskets containing local and tandem switching, and allocate the remaining $6 amongst all the baskets according to our price cap rules.

We also proposed to adjust on a prospective basis for the past absence of a q factor in the formulae that annually adjust the PCIs of the baskets containing charges for local and tandem switching. We seek comment on how any such adjustment should affect any proposed adjustment to the PCIs for all price cap baskets to offset the cumulative effect of past X-factors that may have been set below the rate of cost reduction actually achieved by LECs. Should we apply the logic suggested in the example of the previous paragraph? If so, should the shift of switching ports to common line increase the common line basket's share of any adjustment based on the past absence of a q factor?

In addition to proposing a q factor, we proposed to increase the ''g'' factor that applies to certain revenues in the common line basket from g/2 to a full g. We seek comment on whether any prospective adjustment to our X-factor prescription would be appropriate to account for this.

Finally, we proposed to replace the existing per-minute rate structure for local switching and tandem switching with capacity charges. We seek comment on whether replacing per-minute charges with capacity charges affects future growth in LEC productivity. We seek comment on whether any prospective adjustment to our X-factor is required and on how we would quantify this adjustment.

**Ex Parte Presentations**

This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with 47 CFR 1.1206(b). *Ex parte* presentations are permissible if disclosed in accordance with

Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. *See* 47 CFR 1.1206(b)(2). Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b).

**Initial Regulatory Flexibility Act Analysis**

As required by the Regulatory Flexibility Act (''RFA''), 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on small entities by the policies and rules proposed in this FNPRM. The RFA, 5 U.S.C. 601 *et seq.*, has been 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''). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided below. The Office of Public Affairs will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**. 5 U.S.C. 603(a).

*Need for and Objectives of the Proposed Rules.* The court has remanded to the Commission the selection of a 6.5 percent productivity offset, or X-factor, in the LEC price cap formula. In this FNPRM we seek comment on how we should represcribe an X-factor. We seek comment on prescribing one or more X-factors to address retroactively the period affected by the court remand (July 1, 1997 to June 30, 2000), and we seek comment on represcribing one or more X-factors from July 1, 2000 forward. Further, we seek comment on resetting, on a forward-looking basis, price cap LEC prices to a level that is consistent with any X-factor prescription in order to rebalance the sharing of benefits of price caps between LECs and their customers.

*Legal Basis.* The proposed action is supported by sections 1, 4(i), 4(j), 201–205, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), (j), 201–205, and 303(r).

*Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* 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. 5 U.S.C. 603(b)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 15 U.S.C. 632. 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''). 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3). The SBA has defined a small business for Standard Industrial Classification (''SIC'') category 4813 (Telephone Communications, Except Radiotelephone) to be an entity that has no more than 1,500 employees. 13 CFR 121.201.

We have included small incumbent LECs in this 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.'' 5 U.S.C. 601(3). 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. *See* Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* 61 FR 45476, August 29, 1996. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

The proposals in the FNPRM apply only to price cap LECs. At the current time, there are 13 price cap LECs. Of these companies, 11 are listed in the Commission's most recent *Statistics of Communications Common Carriers (''SOCC'')* report as having more than 1,500 employees. Consequently, we estimate that 2 or fewer providers of local exchange service are small price cap LECs that may be affected by these proposals.

*Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* We expect that, on balance, the proposals in this FNPRM will not change price cap LECs' administrative burdens or cause price cap LECs to incur any additional costs associated with proposed reporting and recordkeeping requirements. The studies would establish new X-factors that price cap LECs would need to utilize in their price cap calculations, but otherwise should not affect their administrative burdens or costs.

*Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires agencies to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c)(1)–(4). In the instant proceeding we are seeking comment on the prescription of the productivity offset, or X-factor, portion of the price cap formula. Therefore, only the first and last possible alternatives listed in section 603(c) of the RFA would be applicable. In the FNPRM, we seek comment on how the prescription of the X-factor would affect smaller price cap LECs differently from other price cap LECs, and whether there should be a separate X-factor calculated for smaller price cap LECs. We also do

not believe it would be appropriate to exempt small price cap LECs from the application of an X-factor. We seek comment on these issues and urge commenting parties to support their comments with specific evidence and analysis.

*Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules.* None.

**Filing of Comments and Reply Comments**

Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments on or before December 30, 1999 and reply comments on or before January 14, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (''ECFS'') or by filing paper copies.

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Only one copy of electronically-filed comments must be submitted.

Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW–B204, Washington, D.C. 20554.

Parties who choose to file by paper should also submit their comments on diskette. The diskette should be submitted to: Wanda Harris, Federal Communications Commission, Common Carrier Bureau, Competitive Pricing Division, 445 12th Street, S.W., Fifth Floor, Washington, D.C. 20554. The submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number in this case), type of pleading (comments or reply comments), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, S.W., Room CY–A257, Washington, D.C. 20554.

**Ordering Clauses**

Pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), (j), 201–205, and 303(r), *Notice Is Hereby Given* of the rulemaking described above and that *Comment Is Sought* on those issues.

The Commission's Office of Public Affairs, Reference Operations Division, Shall Send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 61**

Communications common carriers, Tariffs.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 99–30741 Filed 11–24–99; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## 49 CFR Parts 567 and 568

**[Docket No. NHTSA–99–5673]**

**RIN 2127–AE27**

## Vehicles Built in Two or More Stages

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of establishment of a negotiated rulemaking advisory committee and notice of the first meeting.

**SUMMARY:** NHTSA announces the establishment of a Negotiated Rulemaking Committee to develop recommended amendments to the existing NHTSA regulations (49 CFR parts 567 and 568) governing the certification of vehicles built in two or more stages to the Federal motor vehicle safety standards (49 CFR part 571). The purpose of the amendments would be to assign certification responsibilities more equitably among the various participants in the multi-stage vehicle manufacturing process. The Committee will develop its recommendations through a negotiation process. The Committee will consist of persons who represent the interests that would be affected by the proposed rule, such as first-stage, intermediate and final-stage manufacturers of motor vehicles, equipment manufacturers, vehicle converters, testing facilities, trade associations that represent various manufacturing groups, and consumers. This notice also announces the time and place of the first advisory committee meeting. The public is invited to attend; an opportunity for members of the public to make oral presentations will be provided if time permits.

**DATES:** The first meeting of the advisory committee will be from 10 a.m. to 5 p.m. on Tuesday, December 14, 1999, and will continue from 9 a.m. to 3 p.m. on Wednesday, December 15, 1999.

**ADDRESSES:** The first meeting of the advisory committee will take place at the Hotel Washington, 515 15th Street, NW, Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:**

For non-legal issues, you may call Charles Hott, Office of Crashworthiness Standards, at 202–366–4920.

For legal issues, you may call Rebecca MacPherson, Office of the Chief Counsel, at 202-366–2992.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On May 20, 1999, the National Highway Traffic Safety Administration (NHTSA) published a notice of intent to establish an advisory committee (Committee) for a negotiated rulemaking to develop recommendations for regulations governing the certification of vehicles built in two or more stages. The notice requested comment on membership, the interests affected by the rulemaking, the issues that the Committee should address, and the procedures that it should follow. The reader is referred to that notice (64 FR 27499) for further information on these issues.

NHTSA received 17 comments on the notice of intent. All commenters endorsed the concept of using the