following standards by September 21, 2001:

PRETREATMENT STANDARDS (PSES)

Regulated parameter	Maximum daily [1]	Maximum monthly average [1]
Acetone	20.7	8.2
n-Amyl acetate	20.7	8.2
Ethyl acetate	20.7	8.2
Isopropyl acetate	20.7	8.2
Methylene chloride	3.0	0.7

[1] mg/L (ppm).

[68 FR 12273, Mar. 13, 2003]

§ 439.27 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart must achieve the following pretreatment standards:

Regulated parameter	Pretreatment standards [1]	
	Maximum daily discharge	Average monthly discharge must not exceed
1 Acetone	20.7	8.2
2 n-Amyl acetate	20.7	8.2
3 Ethyl acetate	20.7	8.2
4 Isopropyl acetate	20.7	8.2
5 Methylene chloride	3.0	0.7

[1] Mg/L (ppm).

[63 FR 50431, Sept. 21, 1998; 64 FR 48104, Sept. 2, 1999]

Subpart C—Chemical Synthesis Products

§ 439.30 Applicability.

This subpart applies to discharges of process wastewater resulting from the manufacture of pharmaceutical products by chemical synthesis.

[63 FR 50431, Sept. 21, 1998]

§ 439.31 Special definitions.

For the purpose of this subpart:

(a) *Chemical synthesis* means using one or a series of chemical reactions in the manufacturing process of a specified product.

(b) *Product* means any pharmaceutical product manufactured by chemical synthesis.

[68 FR 12273, Mar. 13, 2003]

§ 439.32 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BPT:

(a) The limitation for BOD_5 is the same as specified in § 439.12(a).

(b) The limitation for TSS is the same as specified in § 439.12(b).

(c) The limitations for COD are the same as specified in § 439.12(c) and (d).

(d) The limitations for cyanide are the same as specified in § 439.12(e), (f) and (g).

[63 FR 50431, Sept. 21, 1998, as amended at 68 FR 12273, Mar. 13, 2003]

§ 439.33 Effluent limitations attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BCT: Limitations for BOD5, TSS and pH are the same as the corresponding limitations in § 439.32.

[63 FR 50432, Sept. 21, 1998]

§ 439.34 Effluent limitations attainable by the application of best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BAT:

(a) The limitations are the same as specified in § 439.14(a).

(b) The limitations for COD are the same as specified in § 439.12(c) and (d).

* * * * *

[FR Doc. 04–55508 Filed 5–5–04; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 54, 61, and 69

[CC Docket Nos. 00–256 and 96–45; FCC 04–31]

Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this document, the Commission takes additional steps to provide rate-of-return carriers greater flexibility to respond to changing marketplace conditions. In particular, the Commission modifies the ''all-or-nothing'' rule to permit rate-of-return carriers to bring recently acquired price cap lines back to rate-of-return regulation without requiring a waiver of the all-or-nothing rule. In this way, the Commission reduces the administrative costs and uncertainties of such acquisitions for rate-of-return carriers. The Commission also grants rate-of-return carriers the authority immediately to provide geographically deaveraged transport and special access rates, subject to certain limitations. With this additional pricing flexibility, rate-of-return carriers will be able to set more economically efficient rates and respond to competitive entry. Finally, the Commission merges Long Term Support with Interstate Common Line Support. This will make the Commission's universal service mechanisms simpler and more transparent, while ensuring that rate-of-return carriers maintain existing levels of universal service support.

DATES: Effective June 7, 2004; except for § 61.38(b)(4), §§ 61.41(c), (d), and (e), and § 69.123(a)(1), (a)(2), (c), and (d), which contain information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

ADDRESSES: All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, Room TW–A325, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein must be submitted to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 Twelfth Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*, and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to *Kim_A._Johnson@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Douglas Slotten, Wireline Competition Bureau, Pricing Policy Division, 202–418–1572, or Ted Burmeister, Wireline Competition Bureau, Telecommunications Access Policy Division, 202–418–7389.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (Order) in CC Docket Nos. 00–256 and 96–45, adopted on February 12, 2004, and released on February 26,

2004, and the Errata, adopted and released on April 14, 2004. The complete text of these Orders are available for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. The complete text is available also on the Commission's Internet site at *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365. The complete text of the Order may be purchased from the Commission's duplicating contractor, Qualex International, Room CY–B402, 445 Twelfth Street, SW., Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or e-mail at *qualexint@aol.com*.

Synopsis of Report and Order and Errata

1. The Commission takes additional steps to provide rate-of-return carriers greater flexibility to respond to changing marketplace conditions in response to comment sought in *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00–256, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00–256, Fifteenth Report and Order in CC Docket No. 96–45, and Report and Order in CC Docket Nos. 98–77 and 98–166, 66 FR 59719 (Nov. 30, 2001). In particular, the Commission modifies the all-or-nothing rule to permit rate-of-return carriers to bring recently acquired price cap lines back to rate-of-return regulation. In this way, the Commission reduces the administrative costs and uncertainties of such acquisitions for rate-of-return carriers. The Commission also grants rate-of-return carriers the authority immediately to provide geographically deaveraged transport and special access rates, subject to certain limitations. With this additional pricing flexibility, rate-of-return carriers will be able to set more economically efficient rates and respond to competitive entry. Finally, the Commission merges Long Term Support (LTS) with Interstate Common Line Support (ICLS). This will make the Commission's universal service mechanisms simpler and more transparent, while ensuring that rate-of-return carriers maintain existing levels of universal service support.

All-or-Nothing Rule

2. Section 61.41 of the Commission's rules, 47 CFR 61.41, provides that if a price cap carrier is in a merger, acquisition, or similar transaction, it must continue to operate under price cap regulation after the transaction. In addition, when rate-of-return and price cap carriers merge or acquire one another, the rate-of-return carrier must convert to price cap regulation within one year. Furthermore, if an individual rate-of-return carrier or study area converts to price cap regulation, all of its affiliates or study areas must also convert to price cap regulation, except for its average schedule affiliates. Finally, LECs that become subject to price cap regulation are not permitted to withdraw from such regulation or participate in NECA tariffs. These regulatory requirements collectively are referred to as the all-or-nothing rule.

3. The Commission modifies the all-or-nothing rule to permit a limited exception when a rate-of-return carrier acquires lines from a price cap carrier and elects to bring the acquired lines into rate-of-return regulation. The rule, as amended, will permit the acquiring carrier to convert the price cap lines back to rate-of-return regulation. The Commission defers further action on the all-or-nothing rule until it has reviewed the record compiled in response to the Second Further Notice that we also issue today.

4. The Commission adopted the all-or-nothing rule in order to avoid two specific problems that it envisioned. First, the Commission sought to prevent a carrier from shifting costs from its price cap affiliate to its rate-of-return affiliate, recovering those costs through the higher, cost-based rates of the non-price cap affiliate and increasing the profits of the price cap affiliate because of its reduced costs. Second, the Commission intended to prevent carriers from gaming the system by switching back and forth between the two different regulatory regimes. At a minimum, the record currently supports reform of the all-or-nothing rule when a rate-of-return carrier acquires price cap lines but intends to operate all of its lines, including the newly acquired price cap lines, under rate-of-return regulation.

5. When a rate-of-return carrier seeks to return acquired price cap lines to rate-of-return regulation, the problems that the all-or-nothing rule sought to prevent do not exist, or can be addressed in a less burdensome way. Because the carrier wishes to have all of its lines be subject to rate-of-return regulation, there can be no danger of cost shifting between price cap and non-price cap affiliates. Similarly, a rate-of-return carrier in this position is not necessarily seeking to game the system by moving back and forth between different regulatory regimes. However, recognizing the possibility that the acquiring rate-of-return carrier could later seek to return to price cap regulation, thereby potentially gaming the system, the Commission concludes that once a rate-of-return carrier brings acquired price cap lines into rate-of-return regulation, it may not for five years elect price cap regulation for itself, or by any means cause the acquired lines to become subject to price cap regulation, without first obtaining a waiver. The Commission believes that this restriction responds to the concerns underlying the adoption of the all-or-nothing rule, while not requiring that the election be unnecessarily irreversible. The Commission does not restrict the number of lines that may be acquired by a rate-of-return carrier and returned to rate-of-return regulation because the risks of abuse are very small and the administrative benefits are significant.

6. The Commission notes that the carriers involved in a merger or acquisition must coordinate to ensure that, as of the effective date of the transaction, their respective tariffs reflect the services being offered after the merger or acquisition. The Commission also notes that price cap carriers are required to adjust their price cap indices to reflect the removal of the transferred access lines.

Pricing Flexibility

Geographic Deaveraging of Transport and Special Access Services

7. The Commission amends § 69.123 of the Commission's rules to permit rate-of-return carriers immediately to deaverage geographically their rates for transport and special access services. The Commission will permit rate-of-return carriers to define both the scope and number of zones, provided that each zone, except the highest-cost zone, accounts for at least 15 percent of its revenues from those services in the study area. The Commission will require, however, that the zones established for transport and special access deaveraging are consistent with any unbundled network element (UNE) zones adopted pursuant to the requirements of section 251 and will require rate-of-return carriers to demonstrate that rates reflect cost characteristics associated with the selected zones. Granting rate-of-return carriers more flexibility to deaverage

these rates enhances the efficiency of the market for those services by allowing prices to be tailored more easily and accurately to reflect costs and, therefore, facilitates competition in both higher and lower cost areas.

8. The Commission's action here represents a measured modification of the current rule. That rule permitted rate-of-return carriers to deaverage these rates when a single entrant has established a cross-connect in one central office in the rate-of-return carrier's study area. Thus, rather than filing deaveraged rates only when a competitor has entered the market via collocation, the rate-of-return carrier may now, immediately upon the effective date of this order, file deaveraged rates that may become effective in fifteen days. The greater flexibility afforded by the ability to deaverage transport and special access rates will benefit access customers through more efficient pricing of access services.

9. The Commission is not persuaded that geographic deaveraging will lead to unreasonable, monopolistic rates in areas not served by a competitor. Thus, deaveraging of transport and special access rates should not permit rate-of-return carriers to erect barriers to entry. Any deaveraged rates will be subject to the tariff review and complaint processes. Continuing to require averaged rates could result in preclusion or uneconomic entry. The Commission has observed that averaging across large geographic areas distorts the operation of markets in high-cost areas because it requires incumbent LECs to offer services in those areas at prices substantially lower than their costs of providing those services. Prices that are below cost reduce the incentives for entry by firms that could provide the services as efficiently, or more efficiently, than the incumbent LEC. Similarly, discrepancies between price and cost may create incentives for carriers to enter low-cost areas even if their cost of providing service is actually higher than that of the incumbent LEC.

10. The Commission simplifies its rules by allowing the rate-of-return carrier to establish its own zones. The Commission concludes that granting rate-of-return carriers the flexibility to choose the number of zones and the criteria for establishing zone boundaries is more likely to result in reasonable and efficient pricing zones than if their flexibility is more constrained. Therefore, the Commission eliminates all competitive prerequisites for the deaveraging of transport and special access rates and permits rate-of-return carriers to define pricing zones as they wish, so long as each zone, except the highest-cost zone, accounts for at least 15 percent of the rate-of-return carrier's transport and special access revenues in the study area. This ensures that any lower rates resulting from deaveraging are enjoyed by a range of customers, rather than being focused on only a few customers in a way that might evade the Commission's prohibition on contract pricing by rate-of-return carriers for individual customers.

11. The permissive geographic deaveraging the Commission discusses here applies to rates for all services in the transport and special access categories to which density zone pricing currently applies. The Commission requires that the same zones be used for all transport and special access elements. The Commission retains the constraints on annual price increases within zones that are contained in § 69.123(e)(1) of the Commission's rules. Although such constraints limit rate-of-return carriers' ability immediately to rebalance rates in a manner that reflects the actual costs of providing the services at issue, the Commission remains concerned with preventing the disruptive effects of rapid and unexpected price increases. The Commission also retains the requirement that transport and special access services offered between telephone company locations be priced at the rates for the higher zone.

12. The Commission is not persuaded that greater geographic deaveraging flexibility will lead to predatory pricing by incumbent LECs, or by arguments that any further deaveraging should result only in price decreases, *i.e.*, that it be ''downward only.'' The Commission will no longer require rate-of-return carriers to file zone pricing plans in advance of tariff filings. Parties wishing to challenge the reasonableness of rate-of-return carrier zones may do so as part of the tariff review process, or in a formal complaint under section 208 of the Act.

13. Under the present rules governing geographic deaveraging, rate-of-return carriers may not deaverage transport or special access rates until at least one cross-connect is operational in the study area. Thus, a rate-of-return carrier today would have to have established a cross-connect charge before it could offer the allowed services at deaveraged rates. The cross-connect subelement recovers costs associated with the cross-connect cable and associated facilities connecting the equipment owned by or dedicated to the use of the interconnector with the telephone company's equipment and facilities used to provide interstate special or switched access services. The Commission concludes that a rate-of-return carrier wishing to geographically deaverage transport or special access rates must establish a cross-connect element providing for interconnection and may not charge collocated providers for entrance facilities or channel terminations when the entrant provides its own transmission facilities. This merely brings forward the requirement that would apply today if a rate-of-return carrier qualified and elected to geographically deaverage rates. A rate-of-return carrier that could assess such a charge for the combined facilities would clearly still possess some degree of market power, and would be attempting to use that power in an anticompetitive manner. Finally, the requirement that rate-of-return carriers must tariff a cross-connect element in order to geographically deaverage rates ensures that transport competitors can interconnect with the rate-of-return carrier's access network, whether or not rate-of-return carriers claim exemption under either section 251(f)(1) or (f)(2). Thus, competition will not be foreclosed if a carrier claims its exemption.

Volume and Term Discounts for Transport Services

14. Under the current rules, rate-of-return carriers are permitted to offer volume and term discounts for special access services. After a certain number of DS1 equivalent cross-connects are operational in the study area, they may offer such discounts for transport services. After reviewing the record, the Commission concludes that no relaxation of the requirements for offering volume and term discounts for transport services is warranted at the present time. The Commission retains the existing cross-connect-based standards as the trigger for when a rate-of-return carrier may offer volume and term discounts for transport services, rather than adopting any alternative suggested in the record. To date, no party has taken advantage of the existing ability to offer volume and term discounts for transport services—whether this is because they cannot meet the threshold, or for some other reason, is not apparent from the record before us.

15. The record indicates that there is limited competition in rate-of-return carrier service areas that would serve to discipline the provision of volume and term discounted transport services offered by rate-of-return carriers. The Commission agrees with those parties that argue that wireless generally is not a substitute for transport, and thus

wireless competition is unlikely to restrain rate-of-return carrier pricing of transport services.

16. The Commission is also skeptical that cable and satellite providers offer competition to transport services of rate-of-return carriers. These competitors largely bypass the rate-of-return carriers' switched access networks and thus do not restrain transport prices. To the extent that cable may, in certain instances, provide dedicated transmission offerings that bypass the rate-of-return carrier network, rate-of-return carriers today are allowed to offer volume and term discounts for special access services, which would be the service with which the entrant would be competing. Thus, the competition faced by rate-of-return carriers for transport services is limited and is significantly less than that in price cap carrier service areas.

17. The Commission concludes that further volume and term discount pricing flexibility for transport services should be available only if there is evidence of significant competition. Volume and term discount pricing flexibility must be structured to prevent exclusionary pricing behavior to safeguard the development of competition in rate-of-return carrier service areas.

18. The Commission finds that the various alternative triggers suggested in the record fail to address the concern with a rate-of-return carrier's ability to erect barriers to entry and engage in price discrimination. While the market opening events that commenters identify would facilitate the development of competition, they do not, in and of themselves, indicate that any particular level of competition exists. Therefore, there would be no assurance that rate-of-return carriers could not erect barriers to entry, or engage in unreasonable price discrimination. On the other hand, competition can develop without an entrant with eligible telecommunications carrier (ETC) status being present because significant competition could exist in part of a rate-of-return carrier's service area before an entrant sought ETC status. The argument that UNEs should be available throughout the service area before pricing flexibility should be granted also fails to address the level of competition that might exist because an entrant might enter without using UNEs. The Commission also declines to adopt an approach modeled on that for price cap carriers because the Commission believes that the diversity among rate-of-return carriers and the markets they serve make those triggers an unreliable predictor of the competitive effects in any of the rate-of-return carriers' markets. The Commission believes that the actual competition reflected in a cross-connect standard is a better judge of when volume and term discounts for transport services are appropriate because it indicates that the rate-of-return carrier is facing actual competition for those services. It is also administratively easy to administer.

19. The Commission declines to condition additional pricing flexibility on rate-of-return carriers being required to establish a ceiling rate for the associated non-discounted access service offering. The Commission also retains the study area as the basis to measure competitiveness in determining whether pricing flexibility is warranted for rate-of-return carriers.

20. In addition, the Commission declines to limit the length of any term contract to three years. Finally, the Commission concludes that the record is inadequate to permit it to reach any conclusions regarding Phase II pricing flexibility, non-dominant treatment of any services, or shortened filing periods for some services.

Contract Carriage

21. Under the current rules, rate-of-return carriers are prohibited from offering interstate access services pursuant to individual customer contracts. After reviewing the record in this proceeding, the Commission declines to permit rate-of-return carriers to offer contract carriage at this time. Contract carriage would permit a rate-of-return carrier to combine various elements, or parts of elements, in presenting an offering to a customer. This would present rate-of-return carriers with an opportunity to set non-cost-based prices in order to prevent entrants from providing service to the largest customers in their service areas, thereby precluding further competition for smaller customers in their service areas as well. The principal check on rate-of-return carrier rates is the authorized rate of return the Commission has prescribed. A rate-of-return carrier is permitted to set rates that provide the opportunity to earn this return on the entire portion of their rate base that is assigned to interstate access services. Therefore, any predation on the part of a rate-of-return carrier in its contract offerings could be recovered through higher rates for other customers, absent some check on the rate-of-return carrier's ability to accomplish this result. Because any predatory pricing would restrict entry, there would likely be no competitor to provide an alternative to those customers to whom the rate-of-return carrier was charging higher rates. Rate-of-return carriers have not demonstrated in the record how such behavior can be detected and prevented within the rate-of-return regulatory process. The pooling process would make detection even more difficult. The immediate geographic deaveraging of transport and special access services the Commission extends to rate-of-return carriers, along with the volume and term pricing already available to rate-of-return carriers, provide them with meaningful ways to respond to competition. Therefore, balancing the risks of undetectable anticompetitive behavior against the limited competition that presently exists in rate-of-return carrier service areas that could be considered a substitute for access services, the commission believes the better course is the conservative one of precluding contract carriage for rate-of-return carriers.

Other Issues

22. The Commission finds that the pricing flexibility permitted by this order can be accommodated within the pool by modifying its settlement and rate-setting mechanisms so they apply on a more targeted basis to narrower groups of customers. The Commission's current rules would permit such pooling to occur. Many of the rate-of-return carriers most likely to exercise this option—ALLTEL, CenturyTel, ACS of Anchorage, TDS—already file their own traffic-sensitive access tariffs for some or all of their study areas. Therefore, by this decision, smaller rate-of-return carriers may be able to offer pricing flexibility through the NECA traffic-sensitive pool that they would not be able to do if required to do so through their own tariffs. The tariffing costs will increase some for those carriers that elect to offer pricing flexibility, whether done on their own or through NECA. The increased administrative burdens on NECA will likely be less than those that would result if the Commission were to require rate-of-return carriers to file their own tariffs proposing flexible pricing arrangements.

23. The Commission declines to require rate-of-return carriers to leave the NECA pool and file their own tariffs in order to offer pricing flexibility. The Commission is not persuaded that pooling is inconsistent with pricing flexibility. While pooling involves a degree of averaging and risk sharing that would not exist if carriers filed their own tariffs, this is the case whether pricing flexibility is involved or not. Rate-of-return carriers subject to section 61.38 of the Commission's rules must

file cost support with their tariffs, and those subject to section 61.39 must be prepared to submit cost support upon request. This supporting material will include a clear delineation of the geographically deaveraged pricing zones. It will also describe the process used to establish rates, whether on an individual carrier basis or through the use of some aggregation approach, such as the banding NECA currently uses for some rate elements, along with the actual cost support for the services for which pricing flexibility is being offered. While the cost support may not include individual carrier cost data, the NECA tariff filings offering pricing flexibility will include supporting material associated with the rates in question that the Commission and interested parties may utilize to detect efforts to erect barriers to entry or to establish discriminatory pricing practices. This is also consistent with allowing rate-of-return carriers to offer deaveraged SLCs within the NECA common line pool, as the Commission did in the *MAG Order.* Parties wishing to challenge the reasonableness of NECA's pool rates or rate development procedures may do so as part of the tariff review process, or in a formal complaint under section 208 of the Act.

24. The Commission declines to adopt other proposed limits. It does not restrict the availability of pricing flexibility with respect to transport elements that cannot be avoided because of network design configuration. The Commission also declines to revise the standard applicable to volume and term discounts for channel terminations. Finally, the Commission will not limit the availability of pricing flexibility to rate-of-return carriers participating in an incentive regulation plan.

Consolidation of Long Term Support and Interstate Common Line Support

25. The Commission merges LTS into the ICLS mechanism. First, merging LTS into ICLS promotes administrative simplicity. LTS and ICLS duplicatively provide support directed to the rate-of-return carriers' interstate common line costs. ICLS is narrowly tailored to individual carriers' support requirements under the current interstate access rate structure, acting as the residual source of revenue for rate-of-return carriers and ensuring that they can recover their common line revenue requirements while providing service at an affordable rate. LTS, on the other hand, normally provides each carrier with a fixed level of support grown annually by inflation and may bear little relevance to a particular carrier's support requirements. In most cases, LTS will not be sufficient to ensure that a carrier will recover its common line revenue requirement under the current rate structure. Although LTS effectively served the purposes it was designed to serve, it was not designed to meet the requirements of the rate-of-return access charge rate structure in place after the *MAG Order.* Eliminating LTS will make the interstate access rate structure and universal service mechanisms simpler and more transparent.

26. The Commission's elimination of the Carrier Common Line (CCL) charge obviates LTS's primary historical purpose. Having outlived its primary purpose as of July 1, 2003, when the CCL charge was completely phased out, the Commission concludes that LTS should be discontinued in the interest of administrative simplicity.

27. LTS's secondary role as an incentive for continued participation in the NECA common line pool also is no longer a valid reason to maintain LTS as a discrete support mechanism. LTS is only available to carriers that participate in the common line pool. Removing LTS as an artificial incentive for pool participation will give each carrier the freedom to choose to set rates outside of the NECA pool without sacrificing the universal service support that ensures affordable service for its customers. The Commission recognizes that NECA has made great strides in providing common line pool participants with increased flexibility in setting individual end user rates and that it anticipates further innovation in this respect. Carriers will undoubtedly regard such flexibility as a tremendous value in making their determinations whether to continue participating in the pool. Nonetheless, the Commission finds that each individual carrier is in the best position to decide whether pool participation promotes its particular best interests. The Commission concludes that the decision whether to participate in the pool should be left to each individual carrier based on the pool's inherent administrative benefits for that carrier without additional regulatory inducements.

28. We do not believe that eliminating LTS as an incentive for pool membership will risk or undermine the important benefits for carriers that elect to remain in the NECA common line pool. The Commission recognizes the continued benefits of pooling identified by NECA and other commenters, including the reduction of administrative burdens associated with tariff-filing and protection against the effects of short-term revenue fluctuations. The Commission anticipates that many, if not most, carriers will continue participating in the common line pool because of such benefits. In this regard, the Commission notes that the NECA traffic-sensitive pool remains viable despite no comparable regulatory incentive for participation. Based on examination of the record, however, the Commission cannot conclude that the benefits of pooling warrant continued use of universal service support to induce carriers to participate in the pool if they are not otherwise inclined to do so.

29. The regulatory concerns which justified the use of LTS to induce pool participation no longer hold. In the past, a non-pooling carrier might not recover its common line revenue requirement if it underprojected its costs or overprojected its demand in developing its access charge tariffs. The NECA common line pool spread that risk among all carriers, reducing the likelihood that any one carrier would suffer a major shortfall in revenue. Eliminating the CCL charge renders irrelevant this primary risk-pooling benefit of the common line pool. While the pool formerly ensured that an individual carrier would not suffer if CCL charge revenues were insufficient to recover its common line revenue requirements, the ICLS mechanism now ensures that no individual carrier will fail to recover its common line revenue requirement.

30. In order to effectuate this decision, the Commission amends its rules to provide that LTS shall not be provided to any carrier beginning July 1, 2004. Overall support will not be reduced because the Commission's existing rules will operate to automatically increase ICLS by an amount to match any LTS reduction. For that reason, no further action by the Commission is necessary to implement the merger of LTS into ICLS.

Procedural Matters

Paperwork Reduction Act Analysis

31. The *Report and Order* has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements contained in § 61.38(b)(4), §§ 61.41(c), (d), and (e), and § 69.123(a)(1), (a)(2), (c), and (d) will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act, and will go into effect upon announcement in the **Federal Register** of OMB approval.

Final Regulatory Flexibility Act Analysis

32. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 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).

As required by the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *MAG Further Notice*. The Commission sought written public comment on the proposals in the *MAG Further Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended. To the extent that any statement in this FRFA is perceived as creating ambiguity with respect to the Commission's rules or statements made in the preceding sections of this Order, the rules and statements set forth in those preceding sections shall be controlling.

Need for, and Objectives of, the Rules

33. In this Order, the Commission modifies its interstate access charge and universal service rules for LECs subject to rate-of-return regulation. The Order carefully considers the needs of small and mid-sized local telephone companies serving rural and high-cost areas, in order to help provide certainty and stability for such carriers, encourage investment in rural America, and provide important consumer benefits.

34. This Order addresses three of the issues raised in the *MAG Further Notice*. First, the Commission modifies the ''all-or-nothing'' rule to permit rate-of-return LECs to bring recently acquired price cap lines back to rate-of-return regulation. This will reduce the administrative burdens on small rate-of-return carriers of seeking a waiver of the all-or-nothing rule because it will permit acquired lines to be returned to rate-of-return regulation, and thereby will reduce the uncertainty associated with such acquisitions. Second, the Commission grants rate-of-return carriers the authority immediately to provide geographically deaveraged transport and special access rates, subject to certain limitations. This action increases the efficiency of the interstate access charge rate structure by moving rates towards cost. Finally, the Commission merges Long Term Support (LTS) into the ICLS mechanism. This will promote administrative simplicity by eliminating an unnecessarily duplicative support mechanism without affecting the total support received by rate-of-return carriers, and without negatively affecting carriers that choose to participate in the NECA common line pool. Because LTS, but not ICLS, is conditioned on participation in the common line pool, the merger will permit each rate-of-return carrier the freedom to choose whether to set its own rates without sacrificing universal service support.

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

35. No comments were filed in response to the IRFA. However, certain comments filed in response to the *MAG Further Notice* included concerns that would relate to small entities. Several commenters argued that by eliminating the all-or-nothing rule, small, typically rural carriers would experience reductions in both transaction costs and uncertainty. Some commenters also argued that relaxing the rules on volume and term discounts for transport services, together with allowing carriers to offer services pursuant to customer contracts, would cause harm to small entities by foreclosing competition. Finally, commenters argued that merging LTS into ICLS would diminish the viability of the common line pool, which provides benefits to the small, rural carriers that participate in it.

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

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

37. 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 wired telecommunications carrier having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

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

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

estimates that most providers of incumbent local exchange service are small businesses that may be affected by the revised rules and policies.

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

41. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 261 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 261 companies, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the revised rules and policies.

42. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to operator service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 companies reported that they were engaged in the provision of operator services. Of these 23 companies, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of operator service providers are small entities that may be affected by the revised rules and policies.

43. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to payphone service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 761 companies reported that they were engaged in the provision of payphone services. Of these 761 companies, an estimated 757 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by the revised rules and policies.

44. *Prepaid Calling Card Providers.* The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 37 companies reported that they were engaged in the provision of prepaid calling cards. Of these 37 companies, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by the revised rules and policies.

45. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to ''Other Toll Carriers.'' This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission's data, 92 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these 92 companies, an estimated 82 have 1,500 or fewer employees and ten have more than 1,500 employees. Consequently, the Commission estimates that most ''Other Toll Carriers'' are small entities that may be affected by the revised rules and policies.

46. *Paging.* The SBA has developed a small business size standard for Paging, which consists of all such firms having 1,500 or fewer employees. According to Census Bureau data for 1997, in this category there was a total of 1,320 firms that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional seventeen firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

47. *Cellular and Other Wireless Telecommunications.* The SBA has developed a small business size standard for Cellular and Other Wireless Telecommunication, which consists of all such firms having 1,500 or fewer employees. According to Census Bureau data for 1997, in this category there was a total of 977 firms that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional twelve firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

48. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.'' These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the

Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Based on this information, the Commission concludes that the number of small broadband PCS licenses will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F Block auctions, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. The Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

49. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.* A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

50. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies. This standard provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

51. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order,* the Commission adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

52. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years. The SBA has approved these size standards. The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz bands to firms that had revenues of no more than $40 million in each of the three previous calendar years, or that had revenues of no more than $15 million in each of the previous calendar years. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that

qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. The Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

53. *Private and Common Carrier Paging. In the Paging Third Report and Order,* the Commission developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service,* 471 carriers reported that they were engaged in the provision of either paging and messaging services or other mobile services. Of those, the Commission estimates that 450 are small, under the SBA business size standard specifying that firms are small if they have 1,500 or fewer employees.

54. *700 MHz Guard Band Licensees.* In the 700 MHz Guard Band Order, the Commission adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

55. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The Commission uses the SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.,* an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the revised rules and policies.

56. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. The Commission will use SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.,* an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA small business size standard.

57. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of its evaluations in this analysis, the Commission estimates that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

58. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be

small and may be affected by the revised rules and policies. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

59. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

60. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A ''small business'' is an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity. The Commission concludes that the number of geographic area WCS licensees affected by this analysis includes these eight entities.

61. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the revised rules and policies.

62. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the revised rules and policies. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, the Commission tentatively concludes that at least 1,932 licensees are small businesses.

63. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, the Commission concludes that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

64. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* the Commission established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. The SBA has approved these size standards. The Commission cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under the Commission's rules in future auctions of 218–219 MHz spectrum.

65. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category that operated for

the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, the Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is the Commission's understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

66. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

67. The Order permits rate-of-return carriers acquiring price cap lines to return those lines to rate-of-return regulation without seeking a waiver. As a result, the administrative costs of seeking a waiver are avoided.

68. The Order also permits rate-of-return carriers to deaverage geographically their rates for transport and special access services within a study area. While rate-of-return carriers must define the scope of zones, the requirement that they be approved in advance is eliminated. The carrier is now required to demonstrate that each zone, except the highest-cost zone, accounts for at least 15 percent of its revenues from services in the study area, and must demonstrate that rates reflect cost characteristics associated with the selected zones.

69. Merging LTS into ICLS will promote administrative simplicity by eliminating a duplicative support mechanism without affecting the amount of universal service support received by small entities or negatively affecting carriers that choose to participate in the NECA common line pool.

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

70. The Commission has sought to minimize significant economic impacts on small entities, including small telephone companies, in revising the access and universal service rules in the Order. The Commission's approach is tailored to the specific challenges faced by small local telephone companies, many of which serve rural and high-cost areas.

71. The Commission considered whether to eliminate completely the ''all-or-nothing'' rule, but decided only to carve out an exception for rate-of-return carriers that wish to return the acquired price cap lines to rate-of-return regulation. This eliminates the need for a waiver before such acquisitions can be returned to rate-of-return regulation, thereby reducing transaction costs and uncertainty for small, typically rural carriers seeking to acquire lines from price cap carriers. The Commission continues to explore further modifications to the all-or-nothing rule within the larger context of incentive regulation for rate-of-return carriers in a *Second Further Notice.*

72. The Order permits rate-of-return carriers to geographically deaverage their rates for special access and transport services. The Commission gives rate-of-return carriers significant latitude to define pricing zones as they wish, subject to the limitation that each zone, except the highest-cost zone, must account for at least 15 percent of the rate-of-return carrier's transport and special access revenues in the study area. This requirement ensures that any lower rates resulting from deaveraging are enjoyed by a range of customers, rather than being focused on only a few customers in a way that might evade the Commission's prohibition on contract pricing by rate-of-return carriers. The Order continues to require rate-of-return carriers to have a tariffed cross-connect element in order to geographically deaverage rates, thereby ensuring that transport competitors, including small entities, can interconnect with the rate-of-return carrier's access network when it deaverages its special access and transport rates. In reaching this decision, the Commission considered and rejected claims by IXCs that immediate geographic deaveraging would lead to predatory pricing by rate-of-return carriers and that further deaveraging should result only in price decreases. The Order determines that permitting rate-of-return carriers to deaverage the rates for special access and transport services enhances the efficiency of the market for those services by allowing prices to be tailored more easily and accurately to reflect costs and, therefore, facilitates competition in both higher and lower cost areas. Rate-of-return carriers must provide cost support establishing that the deaveraged rates are cost-based, thereby ensuring that smaller, more vulnerable carriers are safeguarded from any such predatory pricing.

73. The Order also permits geographic deaveraging of rates for special access and transport services within the NECA pooling process. As a result, smaller rate-of-return carriers may be able to realize increased pricing flexibility through the NECA traffic-sensitive pool. Such increased pricing flexibility might not have been possible if they were required to file their own tariffs.

74. The Order declines to relax the existing competitive triggers for volume and term discounts for transport services, as many rate-of-return carriers urged. The Commission was concerned that the premature grant of such discount authority would permit a rate-of-return carrier to lock up large customers by offering them volume and term discounts at or below cost. Such discounts would potentially foreclose competition for smaller customers because large customers may create the inducement for potential competitors to invest in facilities which, once put into service, can be used to serve adjacent smaller customers. Accordingly, the Commission refuses to adopt less restrictive competitive triggers that would have more readily facilitated volume and term discounts, because such new triggers would not have ensured the presence of a competitor that would operate to prevent harm to smaller entities.

75. The Order also declines to permit rate-of-return carriers to offer services pursuant to individual customer contracts, as many rate-of-return carriers urged. Such an ability to combine various elements or parts of elements, the Commission notes, would allow rate-of-return carriers to set non-cost-based prices in order to prevent entrants from providing service to the largest customers in their service areas, thereby precluding further competition for smaller customers in their service areas as well.

76. The Order merges LTS into the ICLS mechanism. This will simplify the administration of common line support measures, while ensuring both that no individual carrier will fail to recover its common line revenue requirement, and that overall support will not be reduced as existing rules operate to automatically increase ICLS by an

amount to match any LTS reduction. Accordingly, the concerns of small entities over the elimination of LTS are fully addressed by the new ICLS mechanism. In reaching this conclusion, the Commission considered and rejected NECA's argument that the elimination of LTS will destabilize the NECA pool. The Order concludes that although many, if not most, carriers will continue participating in the common line pool, the benefits of pooling do not warrant the continued use of universal service support as a way to induce carriers to participate in the pool if they are not otherwise inclined to do so.

Report to Congress

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

Ordering Clauses

78. Pursuant to the authority contained in sections 4(i), 4(j), 201–205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 254, and 403, this Report and Order *is adopted*.

79. Parts 54, 61, and 69 of the Commission's rules, 47 CFR Parts 54, 61, and 69, *are amended* as set forth in the rule changes hereto, effective 30 days after their publication in the **Federal Register**, except that § 61.38(b)(4), §§ 61.41(c), (d), and (e), and § 69.123(a)(1), (a)(2), (c), and (d), which contain collections of information, are contingent upon approval by the Office of Management and Budget.

80. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 54

Communications common carriers, Telecommunications, Telephone.

47 CFR Parts 61 and 69

Communications common carriers, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 54, 61, and 69 of the Code of Federal Regulations as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

■ 2. Section 54.303(a) is revised by adding a second sentence to read as follows:

§ 54.303 Long term support.

(a) * * * Beginning July 1, 2004, no carrier shall receive Long Term Support.

* * * * *

PART 61—TARIFFS

■ 3. 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.

§ 61.38 [Amended]

■ 4. Section 61.38 is amended by removing and reserving paragraph (b)(4).

■ 5. Section 61.41 is amended by revising paragraphs (c) introductory text and (d) and adding a new paragraph (e) to read as follows:

§ 61.41 Price cap requirements generally.

* * * * *

(c) Except as provided in paragraph (e) of this section, the following rules in this paragraph (c) apply to telephone companies subject to price cap regulation, as that term is defined in § 61.3(ee), which are involved in mergers, acquisitions, or similar transactions.

* * * * *

(d) Except as provided in paragraph (e) of this section, local exchange carriers that become subject to price cap regulation as that term is defined in § 61.3(ee) shall not be eligible to withdraw from such regulation.

(e) Notwithstanding the requirements of paragraphs (c) and (d) of this section, a telephone company subject to rate-of-return regulation may return lines acquired from a telephone company subject to price cap regulation to rate-of-return regulation, provided that the acquired lines will not be subject to average schedule settlements, and provided further that the telephone company subject to rate-of-return regulation may not for five years elect price cap regulation for itself, or by any means cause the acquired lines to become subject to price cap regulation.

PART 69—ACCESS CHARGES

■ 6. The authority citation continues to read as follows:

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

■ 7. Section 69.123 is amended by revising paragraphs (a)(1), (c), and (d) introductory text and by removing and reserving paragraph (a)(2) to read as follows:

§ 69.123 Density pricing zones for special access and switched transport.

(a)(1) Incumbent local exchange carriers not 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 special access and transport revenues within that study area, calculated pursuant to the methodology set forth in § 69.725.

* * * * *

(c) Notwithstanding § 69.3(e)(7), in study areas in which a telephone company offers a cross-connect, as described in § 69.121(a)(1), for the transmission of interstate special access traffic, telephone companies may charge rates for special access sub-elements of DS1, DS3, and such other special access services as the Commission may designate, that differ depending on the zone in which the service is offered, provided that the charges for any such service shall not be deaveraged within any such zone.

* * * * *

(d) Notwithstanding § 69.3(e)(7), in study areas in which a telephone company offers a cross-connect, as described in § 69.121(a)(1), for the transmission of interstate switched traffic, or is using collocated facilities to interconnect with telephone company interstate switched transport services, telephone companies may charge rates for sub-elements of direct-trunked transport, tandem-switched transport, entrance facilities, and dedicated signaling transport that differ depending on the zone in which the service is offered, provided that the charge for any

such service shall not be deaveraged within any such zone.

* * * * *

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

24 GHz Service; Licensing and Operation

CFR Correction

In Title 47 of the Code of Federal Regulations, Part 80 to End, revised as of October 1, 2003, in § 101.509, in the first sentence of paragraph (e), ''–14 dBW/m^2'' is corrected to read ''–114 dBW/m^2''.

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