Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area for an Airport

* * * * *

ANE CT E2 New Haven, CT [Removed]

* * * * *

Issued in Burlington, MA, on January 31, 1997.

David J. Hurley,

Manager, Air Traffic Division, New England Region.

[FR Doc. 97–3073 Filed 2–6–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ANE–29]

Amendment of Class E Airspace; Old Town, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; correction.

SUMMARY: This action corrects the longitude and latitude coordinates for Dewitt Field, Old Town Municipal Airport (KOLD) in the description of revised Class E airspace intended to provide for adequate controlled airspace for those aircraft using the new GPS RWY 12 and GPS RWY 30 Instrument Approach Procedures.

EFFECTIVE DATE: 0901 UTC, January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Joseph A. Bellabona, Operations Branch, ANE–530.6, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7536; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION:

History

On October 24, 1996, the FAA published in the Federal Register (61 FR 55091) a direct final rule revising Class E airspace at Old Town, ME. That action was necessary to provide adequate controlled airspace for aircraft using the new GPS RWY 12 and GPS RWY 30 Instrument Approach Procedures to Dewitt Field, Old Town Municipal Airport (KOLD). The FAA uses the direct final rulemaking procedure for non-controversial rules when the FAA believes that no adverse public comment will be received. On December 19, 1996, the FAA published in the Federal Register (61 FR 66910) confirmation that the FAA received no adverse comments to this direct final rule, and that the effective date of the rule was December 5, 1996. Since publication of that confirmation, the FAA has determined that this action is necessary to correct the longitude and latitude coordinates for the Dewitt Field and the Old Town Non-Directional Beacon (NDB) that appear in the description of the revised Class E airspace at Old Town, ME.

Correction to the Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic coordinates of Dewitt Field and the Old Town NDB contained in the description of Class E airspace at Old Town, ME, as published in the Federal Register on October 24, 1996 (61 FR 55091), Federal Register document 96–27184: page 55092, column 2; and the description in FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1; are corrected as follows:

§ 71.71 [Corrected]

Subpart E—Class E Airspace

* * * * *

ANE ME E5—Old Town, ME [Corrected]

Dewitt Field, Old Town Municipal Airport, ME

By removing ''(lat. 44°57′10″ N, long. 68°40′25″ W)'' and substituting ''(lat. 44°57′09″ N, long. 68°40′28″ W),'' and

Old Town NDB

By removing ''(lat. 44°00′24″ N, long. 68°38′00″ W)'' and substituting ''(lat. 45°00′24″ N, long. 68°38′00″ W),''

* * * * *

Issued in Burlington, MA on January 31, 1997.

David J. Hurley,

Manager, Air Traffic Division, New England Region.

[FR Doc. 97–3072 Filed 2–6–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ANE–28]

Amendment to Class E Airspace; Lebanon, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; correction.

SUMMARY: This document makes a correction to the amendment to the Class E airspace at Lebanon, NH (LEB) published in the Federal Register on September 10, 1996 (61 FR 47672). In the description of the airspace removed, the state identifier is incorrect, listing Lebanon as in ''ME'' rather than ''NH.'' This document corrects that typographical error.

EFFECTIVE DATE: February 7, 1997.

FOR FURTHER INFORMATION CONTACT: Raymond Duda, Operations Branch, ANE–530.3, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (617) 238–7533; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION: On September 10, 1996, the FAA published in the Federal Register an amendment to the Class E airspace at Lebanon, NH removing the Class E airspace extending upward from the surface of the airport (61 FR 47672). A confirmation of the effective date for this amendment was published in the Federal Register on December 19, 1996 (61 FR 66910).

Correction to the Final Rule

Accordingly, pursuant to the authority delegated to me, the amendment to Class E airspace at Lebanon, NH as published in the Federal Register on September 10, 1996 (61 FR 47672), Federal Register document 96–23091: page 47673, column 1; and the description in FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1; are corrected by revising ''ANE ME E2 Lebanon, NH [Removed]'' to read ''ANE NH E2 Lebanon, NH [Removed]''.

Issued in Burlington, MA, on January 31, 1997.

David J. Hurley,

Manager, Air Traffic Division, New England Region.

[FR Doc. 97–3071 Filed 2–6–97; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 61

[CC Docket No. 96–187; FCC 97–23]

Implementation of Section 402(b)(1)(a) of the Telecommunications Act of 1996 (Tariff Streamlining Provisions for Local Exchange Carriers)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In light of the passage of the Telecommunications Act of 1996 (1996 Act), which provides for streamlined tariff filings by local exchange carriers (LECs), the Commission is issuing this Report and Order to implement the

specific streamlining requirements of the Act. The Report and Order determines that the statutory effect of LEC tariffs subject to streamlined regulation being ''deemed lawful'' is that a LEC tariff will be lawful upon its effective date unless it is supended by the Commission prior to that time. In addition, the Report and Order finds that all LEC tariff filings, not just those proposing a rate decrease or increase, are eligible for streamlined treatment. Finally, the Report and Order adopted additional measures to streamline the administration of the LEC tariff review process.

EFFECTIVE DATE: February 8, 1997.

FOR FURTHER INFORMATION CONTACT: Patrick Donovan or Dan Abeyta at (202) 418–1520, Common Carrier Bureau, Competitive Pricing Division. For additional information concerning the information collections contained in this Report and Order, contact Dorothy Conway at (202) 418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in CC Docket No. 96–187 (FCC 97–23) adopted on January 30, 1997 and released on January 31, 1997. The full text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., N.W., Washington, D.C. 20037. The complete text may also be obtained through the World Wide Web, at http:/www.fcc.gov/Bureau/Common/Carrier/Order/fcc9723.wp or may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (202) 857–3800, 2100 M St., NW., Suite 140 Washington, DC 20037.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, the Report and Order contains a Final Regulatory Flexibility Analysis which is set forth in the Report and Order. A brief description of the analysis follows.

Pursuant to section 604 of the Regulatory Flexibility Act, the Commission performed a comprehensive analysis of the Report and Order with regard to small entities. This analysis includes: (1) A succinct statement of the need for; and objectives of the Commission's decisions in the Report and Order; (2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the Commission's assessment of these issues, and a statement of any changes made in the Report and Order as a result of the comments; (3) a description of and estimate of the number of small entities and small incumbent LECs to which the Report and Order will apply; (4) a description of the projected recordkeeping and other compliance requirements of the Report and Order, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for compliance with the requirement; (5) a description of the steps the Commission has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the Report and Order and why one of the other significant alternatives to each of the Commission's decisions which affect small entities was rejected.

The rules adopted in this Report and Order are necessary to implement the provisions of the Telecommunications Act of 1996.

Paperwork Reduction Act

1. On November 27, 1996, the Office of Management and Budget (OMB) approved all of the proposed changes to our information collection requirements in accordance with the Paperwork Reduction Act. We have, however, decided not to adopt several of the information collection requirements proposed in the NPRM and we have modified others. For example, we declined to adopt the proposal to require the LECs to include a summary and legal analysis with their tariff filings, but we will require that LEC tariff filings include a statement in tariff transmittal letters clearly indicating that the tariff is being filed on a streamlined basis under section 204(a)(3) of the Act and whether the tariff filing contains a proposed rate increase, decrease or both for purposes of section 204(a)(3). We conclude that these requirements and modifications constitute a new ''collection of information,'' within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501-3520. These requirements and modifications have been approved by OMB. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

2. The Commission concurs with OMB's recommendation that we consider input from the industry before implementing a system for the electronic filing of tariffs and related pleadings.

OMB Approval Number: 3060–0745.

Expiration Date: August 31, 1997.

Title: Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996 (Tariff Streamlining Provisions for Local Exchange Carriers) CC Docket No. 96–187.

Respondents: Business or other for-profit, including small businesses.

Proposed requirement	Number of respondents	Annual hour burden per response
Electronic filing	50	72
Separate filing for rate decreases	10	4
Identification/labelling of streamlined tariffs	50	9

Total Annual Burden: 4090.

Estimated Costs Per Respondents: $3,400.

Total Estimated Annual Reporting and Recordkeeping Costs: $170,000.

Needs and Uses: The information collections adopted in this Report and Order will be used to ensure that affected telecommunications carriers fulfill their obligations under the Communications Act, as amended.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden to the Record Management Branch, Washington, D.C. 20554.

Synopsis of Report and Order

I. Introduction

3. On February 8, 1996, the ''Telecommunications Act of 1996''

(1996 Act) became law. The intent of this legislation is ''to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.'' This Report and Order adopts rules to implement section 402(b)(1)(A)(iii) of the 1996 Act, which adds section 204(a)(3) to the Communications Act. This section provides for streamlined tariff filings by local exchange carriers (LECs). In the NPRM, 61 FR 49987 (September 24, 1996), we proposed measures to implement the tariff streamlining requirements of section 204(a)(3). Twenty-nine parties filed comments and twenty-one filed replies.

II. The 1996 Act

4. Section 402(b)(1)(A)(iii) of the 1996 Act adds new subsection 3 to section 204(a) of the Communications Act of 1934 (the Act):

(3) A local exchange carrier may file with the Commission a new or revised charge, classification, regulation, or practice on a streamlined basis. Any such charge, classification, regulation, or practice shall be deemed lawful and shall be effective 7 days (in the case of a reduction in rates) or 15 days (in the case of an increase in rates) after the date on which it is filed with the Commission unless the Commission takes action under paragraph (1) before the end of that 7-day or 15-day period as is appropriate.

Section 402 of the 1996 Act also amends section 204(a) of the Act to provide that the Commission shall conclude any hearings initiated under this section within five months after the date the charge, classification, regulation, or practice subject to the hearing becomes effective. Section 402(b)(4) of the 1996 Act provides that these amendments shall apply to any charge, classification, regulation, or practice filed on or after one year after the date of enactment of the Act, *i.e.*, February 8, 1997.

5. Under the 1996 Act, a LEC is defined as ''any person that is engaged in the provision of telephone exchange service or exchange access.'' A LEC ''does not include a person insofar as such person is engaged in the provision of commercial mobile radio service under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of such term.''

III. Streamlined LEC Tariff Filings Under Section 402 of the 1996 Act

A. Commission Authority Under the 1996 Act to Defer LEC Tariffs Eligible for Streamlined Treatment

6. In the NPRM, we stated that by adopting section 204(a)(3) Congress intended to streamline LEC tariff filings by providing that they would become effective within seven or fifteen days notice unless suspended and investigated by the Commission. Section 203(b)(2) of the Act, however, provides that the Commission may defer the effective date of tariffs for up to 120 days. In the NPRM, we tentatively concluded that Congress intended to foreclose the exercise of our general deferral authority under section 203(b)(2) of the Act with respect to the tariffs eligible for streamlined treatment. We solicited comment on this tentative conclusion.

7. ALLTEL Telephone Services Corporation (ALLTEL), Ameritech, Bell Atlantic, BellSouth Corp. (BellSouth), Cincinnati Bell Telephone (CBT), GTE Services Corp. (GTE), NYNEX Telephone Companies (NYNEX), Pacific Telesis Group (Pacific Telesis), Southwestern Bell Telephone Company (SWBT), United States Telephone Association (USTA), and US West, Inc. (US West) agree with the tentative conclusion set out in the NPRM that the Commission does not have discretion to defer for up to 120 days tariffs that LECs may file under the new streamlining provisions. GTE asserts that granting the Commission such discretion would enable competitors to continue to use the tariff review process to delay implementation of LEC pricing changes, a result that GTE contends would be contrary to Congressional intent to accelerate the tariff review process. NYNEX asserts that the Commission's deferral authority is derived from section 203(b)(1) of the Act while section 204(a)(3) provides for streamlined tariff filings. NYNEX concludes that, because there is no provision in section 204(a)(3) for deferring streamlined tariffs, Congress did not intend the deferral authority in section 203 to be applicable to tariffs filed pursuant to section 204. In contrast, AT&T Corp. (AT&T), America's Carrier Telecommunications Association (ACTA), and Telecommunications Resellers Association (TRA) contend that the 1996 Act does not affect the Commission's authority to defer LEC tariff filings. According to AT&T, Congress could not have intended to preclude the Commission from deferring tariff filings made by monopoly LECs while retaining the authority to defer tariff filings made by carriers who face significant competition. MCI Communications Corporation (MCI) states that the Commission's deferral authority is foreclosed only for rate increases and decreases and that the Commission may continue to exercise its deferral authority for all other LEC tariffs. The General Services Administration (GSA) contends that the Commission retains its deferral authority because Congress did not amend section 203(b)(1).

8. Neither the statute nor the legislative history to the 1996 Act directly addresses whether Congress intended to foreclose our exercise of deferral authority with respect to LEC streamlined tariffs. We conclude that the more recent and specific provisions of the 1996 Act take precedence over our general deferral authority in section 203. We believe continued application of the general deferral authority contained in section 203 to LEC tariffs filed on a streamlined basis under the specific provisions set out in new section 204(a)(3) would be contrary to Congressional intent. Accordingly, we adopt our tentative conclusion in the NPRM that we may not defer LEC tariffs filed under the tariff streamlining provisions of the 1996 Act.

B. Effect of Streamlined LEC Tariff Filings Being ''Deemed Lawful''

9. Section 204(a)(3) of the Act provides that LEC tariffs filed on a streamlined basis ''shall be deemed lawful.'' The 1996 Act and the legislative history are silent regarding the specific legal consequences of this provision. In the NPRM, we tentatively concluded that, by specifying that LEC tariffs shall be ''deemed lawful,'' Congress intended to change the current regulatory treatment of LEC tariff filings. The Commission set forth two possible interpretations of ''deemed lawful.''

10. Under the first interpretation, a tariff that becomes effective without suspension and investigation would be a ''lawful'' tariff. It could subsequently be found unlawful in a rate prescription proceeding under section 205, or in a complaint proceeding under section 208. The Commission, however, could not award refunds or damages for the time that the rate was in effect but could only order tariff revisions or award damages on a prospective basis. This would differ radically from the current practice, where a rate that goes into effect without suspension and investigation is the ''legal'' rate, leaving carriers liable for damages, for the time the tariff was in effect, subject to the applicable two-year statute of

limitations set out in section 415(a) of the Act, if the tariff is subsequently found unlawful.

11. Under the second interpretation, the statutory language would be construed to establish higher burdens for suspension and investigation by presuming LEC tariffs lawful. Under this interpretation, the statutory language ''unless the Commission [suspends and investigates the tariff] before the end of that 7-day or 15-day period,'' would not apply to the ''deemed lawful'' phrase, but only to the ''shall be effective'' phrase of section 204(a)(3). We noted in the NPRM that Congress did not otherwise amend the statutory scheme for tariffs filed by interstate communications common carriers. Therefore, the Commission or parties to a tariff proceeding could rebut the presumption of lawfulness in the truncated pre-effective tariff review process established by the 1996 Act. Tariffs would still be subject to complaint and/or investigation, and refunds or damages could be awarded for any time that the tariff was in effect, subject to the applicable statute of limitations.

12. We also solicited comment on other possible interpretations of ''deemed lawful.'' We stated in the NPRM that we would adopt the interpretation that would best implement the intent of the 1996 Act's tariff streamlining provisions. We also solicited comment on the impact of these interpretations of ''deemed lawful'' on small entities, both LECs and other small entities, that might be customers of LEC tariffed services. In particular, we solicited comment on the relative burdens that would be imposed on small entities by possible interpretations of ''deemed lawful.''

13. The LECs and USTA support adoption of the first interpretation of ''deemed lawful.'' They favor the position that tariffs filed on a streamlined basis are lawful unless the Commission takes action prior to the effective date of the tariffs and that retroactive damage awards for successful challenges to LEC tariffs are prohibited by the 1996 Act. According to these parties, this interpretation of ''deemed lawful'' is consistent with the precedent established in *Arizona Grocery*. There the U.S. Supreme Court held that a tariff rate that is allowed to become effective is considered the ''legal'' rate, that is, the rate that the carrier is required to collect and the customer to pay under the filed rate doctrine. The lawfulness of an effective rate, however, remains subject to challenge either pursuant to a section 204(a)(1) hearing, a complaint proceeding initiated pursuant to section 208 of the Act, or an investigation established under section 205 of the Act. If, after completion of one of these proceedings, the Commission determines that some element of the effective tariff is unlawful, the Commission may order the filing carrier to pay damages, pursuant to section 207 of the Act, on a prospective basis only. The Supreme Court, these commenters point out, has held that an agency generally may not retroactively subject a carrier to refund liability if the agency subsequently declares the tariff rate to be unreasonable.

14. Furthermore, these commenters maintain that Congress intended to alter the regulatory treatment for LEC tariff filings by adjudging streamlined LEC filings lawful by operation of the statute without need for a regulatory hearing and determination. BellSouth, for example, argues that, if the Commission does not exercise its discretion to suspend and investigate a LEC tariff filing, then the statute deems the filing to be lawful upon its effective date. In addition, BellSouth maintains that the statute confers upon the tariff the same status that previously could only be acquired through a Commission determination or adjudication. Pacific Telesis argues that, in determining Congressional intent, the starting point is the text of the statute and that, where as here, the statute is clear, no further inquiry is needed. According to Pacific Telesis, the phrase ''shall be deemed lawful'' expressly mandates that a filed tariff be treated, by operation of law, as lawful at the time of filing. It further states that the next phrase, ''and shall be effective,'' states a separate requirement regarding the time within which the tariff applies and therefore any consideration by the Commission of the tariff, even in the pre-effective period, must recognize this lawful status. SWBT argues that the ''shall be deemed lawful'' language of the 1996 Act limits any subsequent Commission review of a section 208 complaint challenging a LEC tariff filed on a streamlined basis. According to SWBT, the complainant in a section 208 proceeding would have the insurmountable burden of overcoming the Commission's prior determination that the tariff is lawful. Thus, SWBT believes that a tariff revision that becomes effective under the streamlined procedures would be the lawful rate until the Commission concluded in a section 205 proceeding that a different charge, classification, or regulation would be lawful in the future. In addressing the question of limitation on damages, NYNEX asserts that several factors should minimize customers' concern about possible overcharges. NYNEX maintains that the Commission still has the authority to suspend and investigate a tariff that appears unlawful and to impose an accounting order. According to NYNEX, this action should serve to protect customers' rights to obtain damages if the tariff is later found to be unlawful at the conclusion of an investigation. In addition, NYNEX contends that, even if an unlawful tariff has gone into effect, a five-month time limit on investigations and complaint proceedings imposed by the 1996 Act will limit the time during which potentially unlawful rates would be in effect. Finally, NYNEX points out that, with increased competition, customers will have other choices if a LEC attempts to charge unlawful rates. USTA supports adoption of the first interpretation of ''deemed lawful,'' arguing that the statutory language provides that tariffs filed on a streamlined basis shall be deemed lawful unless the Commission takes action pursuant to section 204(a)(1).

15. The remainder of the commenting parties oppose adoption of the first interpretation of ''deemed lawful.'' They are concerned that customers would be precluded from recovering damages for overpayments where a tariff was later found to be unlawful. MFS states that the first interpretation would create a ''perverse incentive'' for LECs to overcharge because they would be allowed to continue to collect such payments for the duration of any later tariff investigation or complaint proceeding. The only burden on the LECs would be defending their position in a complaint or investigation proceeding. Ad Hoc Telecommunications Users Committee (Ad Hoc) states that the LECs' analysis of the first interpretation of ''deemed lawful'' overlooks the Communications Act requirement that carrier rates be just and reasonable and that consumers be protected from unjust and unreasonable rates. Furthermore, Ad Hoc maintains that, contrary to the LECs' position, customers are not protected from unlawful rates due to the availability of other options because the marketplace has yet to reach a competitive state. In addition, MCI, AT&T, and GSA contend that this interpretation must be rejected because Congress gave no indication that it intended to limit customers' remedies.

16. GSA notes that, in the NPRM, the Commission recognized that the Act and its legislative history do not provide an explanation of the term ''deemed lawful.'' According to GSA, it would be

unreasonable for the Commission to adopt the first interpretation of ''deemed lawful'' absent a clear indication that Congress intended to make a fundamental change to the regulatory framework for LEC tariffs. GSA argues as well that Congress made no corresponding changes to other sections of the Act designed to assure that LEC rates are reasonable, and that this interpretation of section 204(a)(3) would appear to be in conflict with these sections. GSA maintains that, without changes to these sections, Congress could not have intended this radical departure from existing tariff regulatory procedures. Capital Cities/ABC, Inc., CBS, Inc., National Broadcasting Company, Inc., and Turner Broadcasting System, Inc. (CapCities) contend that the new section 204(a)(3) of the Act does not modify the long-standing statutory scheme of pre-effective tariff review by the Commission on its own initiative or upon complaint of interested parties, and potential refunds if carrier tariffs which have been allowed to become effective are found unlawful after investigation and opportunity for hearing. Rather, CapCities argues, section 204(a)(3) serves to extend formally to dominant LECs a variation of the streamlined tariff filing mechanism that the Commission has applied in various forms to other tariff filings.

17. The other non-LEC parties likewise support the adoption of the second interpretation of ''deemed lawful.'' AT&T, for example, contends that the purpose of the ''deemed lawful'' provisions is to establish a presumption of lawfulness for the relevant tariffs during pre-effectiveness review. AT&T contends that this presumption is, as the NPRM suggests, analogous to that accorded to LEC rate filings that are within applicable price cap limits, or to filings by non-dominant carriers under section 1.773 of the Commission rules. Therefore, AT&T maintains that tariffs filed pursuant to Section 204(a)(3) should not be suspended unless a petitioner makes a showing similar to the four-part test required under section 1.773. Moreover, AT&T contends that, because incumbent LECs retain significant market power and therefore are more likely than carriers facing competition to charge unreasonable rates, petitioners challenging a tariff filed pursuant to section 204(a)(3) should be required to show only that it is ''more likely than not'' that the disputed tariff is unlawful, rather than ''a high probability'' that the tariff will be found unlawful. Accordingly, AT&T argues that, because of the LECs' market position, petitions challenging their tariffs should have a lower threshold showing than petitions filed against tariffs proposed by nondominant carriers.

18. MFS takes a position similar to AT&T, claiming that the Commission should adopt rules that presume section 204(a)(3) filings are lawful and assign the burden of proof to those wishing to challenge the lawfulness of the filing. Sprint Corp (Sprint) maintains that the second interpretation is ''clearly the correct one.'' Sprint also states that there is nothing in the statute itself nor in the legislative history that indicates a Congressional intent to overturn well established precedent that holds that an effective tariff establishes only the legal rate and not the lawful rate, citing *Arizona Grocery*.

19. With respect to how the Commission should interpret ''deemed lawful,'' KMC Telecom Inc. (KMC), ACTA, TRA and SWBT discussed the effect the Commission's decision would have on small entities. KMC opposes adoption of the first interpretation of ''deemed lawful'' because it states that such a finding would render the pre-effective tariff review process meaningless for small competitors because it would be nearly impossible for them to monitor and review all LEC tariff filings sufficiently to overcome any presumption of lawfulness within the limited time period for filing petitions. KMC further states that, if the deadline for opposing tariffs is missed, then the only relief available is the filing of a formal complaint, which involves a lengthy and costly process that is not a practical remedy for a small company. ACTA states that, as a practical matter, precluding damages as a remedy will endanger the viability of small carriers because the LECs could litigate protested issues indefinitely without any threat of liability for damages. TRA states that LECs should not be permitted to charge and retain unreasonable rates while being exempt from paying damages for such unlawful charges. SWBT states that adoption of an interpretation of ''deemed lawful'' that would limit participation in review would not negatively impact small carriers because ''their current participation in the tariff review process is rare, and * * * Commission policy assumes that there is no need to allow for small entity/customer participation in the tariff filings of non-dominant carriers.''

20. Based on our analysis of the statute in light of the record compiled in this proceeding and relevant judicial precedent, we adopt the first interpretation of ''deemed lawful.'' In reaching this conclusion, we determine that this interpretation is compelled by the language of the statute viewed in light of relevant appellate decisions, and that our alternative approach outlined in the NPRM is not a permissible reading of this statutory provision.

21. The first step in statutory construction is to look at the language of the statute. In the NPRM, we suggested that the statutory phrase, ''deemed lawful,'' may be interpreted in two different ways. Appellate cases, however, have consistently found that the term ''deemed,'' in this context, is not ambiguous. Developed in the context of energy rate regulation, this precedent states that the term ''deemed to be reasonable'' must be read to establish a conclusive presumption of reasonableness. In addition, we note that in this context the courts have explained that, while a rate contained in a properly filed tariff is the legal rate, a rate is ''lawful'' only if it is reasonable. Accordingly, we conclude that, because section 204(a)(3) uses the phrase ''deemed lawful,'' it must be read to mean that a streamlined tariff that takes effect without prior suspension or investigation is conclusively presumed to be reasonable and, thus, a lawful tariff during the period that the tariff remains in effect. For the reasons discussed below, we do not find, however, that the Commission is precluded from finding, under section 208, that a rate will be unlawful if a carrier continues to charge it during a future period or from prescribing a reasonable rate as to the future under section 205. Given the unambiguous meaning of the term ''deemed lawful,'' we see no reason to resort to the legislative history (although there is none on point) in concluding that this term denotes a conclusive presumption. In light of this statutory language as viewed under relevant appellate case law, we find that this interpretation is required in order to give effect to the language of the statute and therefore decline to adopt the alternative interpretation suggested in the NPRM. We find further, however, that the ''deemed lawful'' language does not govern streamlined tariff filings that become effective after suspension in those instances where the Commission suspends and initiates an investigation of a LEC tariff within the 7 or 15 day notice periods specified in section 204(a)(3). In those cases, the LEC streamlined tariffs would not be ''deemed lawful'' under section 204(a)(3) because they were suspended and set for investigation. Rather, they would be ''legal'' until the Commission

concluded an investigation and made a determination as to their lawfulness. The lawfulness of such tariffs would be determined by the orders issued by the Commission at the conclusion of those proceedings.

22. We recognize that our interpretation of section 204(a)(3) will change significantly the legal consequences of allowing tariffs filed under this provision to become effective without suspension. Under current practice, a tariff filing that becomes effective without suspension or investigation is the legal rate but is not conclusively presumed to be lawful for the period it is in effect. Indeed, if such a tariff filing is subsequently determined to be unlawful in a complaint proceeding commenced under section 208 of the Act, customers who obtained service under the tariff prior to that determination may be entitled to damages. In contrast, tariff filings that take effect, without suspension, under section 204(a)(3) that are subsequently determined to be unlawful in a section 205 investigation or a section 208 complaint proceeding would not subject the filing carrier to liability for damages for services provided prior to the determination of unlawfulness. We find, based on the language of the statute, that this is the balance between consumers and carriers that Congress struck when it required eligible streamlined tariffs to be deemed lawful.

23. Further, section 204(a)(3) does not mean that tariff provisions that are deemed lawful when they take effect may not be found unlawful subsequently in section 205 or 208 proceedings. No language in section 204(a)(3) states or requires us to infer such a limitation, nor is there any legislative history suggesting such a limitation. As the 1996 Act did not amend section 205 or 208, nor refer to them in amending section 204, it did not limit our authority either to conduct tariff investigations under section 205 or to process complaint proceedings commenced under section 208. In fact, the language of section 205, which was not changed by the 1996 Act, makes clear that the Commission may find that a rate ''is or will'' be in violation of the Act and prescribe ''what will be the just and reasonable charge'' for the future. The ''deemed lawful'' language in section 204(a)(3) changes the current regulatory scheme only by immunizing from challenge those rates that are not suspended or investigated before a finding of unlawfulness. It does nothing to change the Commission's ability to prescribe rates as to the future under section 205 or to find under section 208 that a rate will be unlawful if charged in the future. Even where the agency has made an affirmative finding of lawfulness, which would not be the case where a tariff has become effective without suspension under section 204(a)(3), the tariff remains subject to further review under section 205. Thus, a rate that is ''deemed lawful'' can also be reevaluated as to its future effect under sections 205 and 208 and the Commission may prescribe a rate as to the future under section 205.

24. In this decision, we do not adopt the view of Pacific Telesis that the phrase ''shall be deemed lawful and shall be effective 7 days * * * or 15 days * * * after the date on which it is filed'' mandates that a tariff be treated as lawful at the time of filing. In our view, the better reading of section 204(a)(3) is that a streamlined tariff becomes both effective and ''deemed lawful'' 7 or 15 days after the date on which it is filed. Congress did not amend the Act to eliminate the Commission's suspension authority for LEC tariffs and therefore, Congress did not intend that LEC tariffs be deemed lawful when filed. Moreover, it would be illogical if, for example, a tariff could be considered lawful before it even takes effect and while another tariff is already in place.

25. We also conclude that the Commission may find a tariff provision that is ''deemed lawful'' under section 204(a)(3) to be unlawful at the conclusion of a section 205 investigation or 208 complaint proceeding based on a preponderance of the evidence presented in either proceeding. We currently employ this standard in section 205 and 208 proceedings and find nothing in section 204(a)(3) requiring us to establish a higher evidentiary standard for determining the prospective lawfulness of a streamlined tariff provision. Further, we decline to impose a higher burden as a matter of policy.

26. In adopting the first interpretation of ''deemed lawful,'' we have considered the comments of KMC, ACTA, and TRA, which expressed a concern that adoption of this interpretation would be unfair to small consumers and competitors of LECs. With respect to KMC's concern that the adoption of the first interpretation would make it difficult for small competitors to challenge LEC tariff filings, we note that all parties, including small entities, will have the same opportunity to challenge tariff filings eligible for streamlined regulation before they become effective or to initiate a section 208 complaint proceeding after the filings become effective. These procedures will permit small businesses to participate fully in pre-effective review of LEC tariffs and to obtain a determination of the lawfulness of a LEC tariff after it has gone into effect. Small businesses will be able to protect against this possible impact on them caused by ''deemed lawful'' treatment of LEC tariffs by participating in the pre-effective tariff review process. In addition, the program of electronic filing of tariffs that we discuss in Section III, D, 1, *infra.* will facilitate participation by small entities in the tariff review process. To the extent that small entities will have greater difficulty than larger entities in participating in the tariff review process, we note that the shortened time period for pre-effective review of LEC tariffs is required by the 1996 Act and that, as explained above, we are compelled by the language in the statute as interpreted by relevant judicial precedent to adopt the first interpretation of ''deemed lawful.''

C. LEC Tariffs Eligible for Filing on a Streamlined Basis

1. Types of Tariff Filings Eligible for Streamlined Filing

27. The first sentence of section 204(a)(3) provides that LECs may file ''a new or revised charge, classification, regulation, or practice on a streamlined basis.'' The NPRM observed that this suggests that LEC tariff filings that propose any change, including rate increases and decreases, may be eligible for streamlined filing. The second sentence of section 204(a)(3) provides for specified effective dates only for tariffs proposing rate increases or decreases. In the NPRM, we tentatively concluded that all LEC tariff filings that involve changes to the rates, terms, and conditions of existing service offerings, regardless of whether they involve a rate increase or decrease, would be eligible for streamlined treatment, with the possible exception of tariffs for new services.

28. Concerning new services, the NPRM asked whether the phrase ''a new or revised charge'' included tariffs introducing entirely new services or whether the word ''new'' refers only to new charges, classifications, regulations, or practices for existing services. The NPRM therefore solicited comment on whether section 204(a)(3) applies to new or revised charges associated with existing services, but not to charges associated with new services. The NPRM stated that this approach may be preferable as a matter of policy, to the extent permissible under the statute, because it would permit the Commission and interested parties

greater opportunity to review tariffs that propose to introduce new services since those filings are more likely to raise sensitive pricing issues than revisions to tariffs for services that have already been subject to review.

29. The LECs, Ad Hoc, TRA, Sprint, USTA, AT&T, National Exchange Carrier Association (NECA), and GSA support our tentative conclusion that the streamlining provisions of the 1996 Act apply to tariffs proposing changes to a rate, term, or condition as well as to rate increases and decreases. Generally, these commenters contend that almost any change in the terms and conditions of an existing service, regardless of whether the change involves a rate increase or decrease, will affect the overall rate or cost to the consumer and therefore should be subject to streamlining. Ameritech contends that the plain meaning of the first sentence of section 204(a)(3) clearly states that LECs may file a new or revised charge, classification, regulation, or practice on a streamlined basis. Ameritech concludes from this language that Congress intended streamlining to apply to all tariff revisions, not just those involving rate increases or decreases. While AT&T and NECA agree with the Commission's tentative conclusion that streamlining should apply to changes in rates, terms, and conditions of existing services, as well as to rate increases and decreases, they note that the statute does not specify time periods for consideration of suspension or deferral in the case of changes to a ''classification, regulation, or practice'' to an existing service. AT&T recommends that the Commission require LECs to file such tariffs thirty days prior to the tariff's proposed effective date. NECA suggests that the Commission adopt a rule that permits tariff filings containing only terms and conditions only to be filed on seven days' notice.

30. Time Warner Communications Holdings, Inc. (TW Comm), MCI, and the Association for Local Telecommunications Services (ALTS) disagree with the tentative conclusion in the NPRM, arguing that the statute is clear that streamlining applies only to rate increases and decreases to existing services. MCI, for example, argues that changes to terms and conditions should not be eligible for streamlined treatment because the second sentence of section 204(a)(3) applies reduced notice periods only to rate increases or decreases. In addition, MCI contends that, given the LECs' continued market share, there is still a ''substantial possibility'' that any proposed terms and conditions in LEC tariffs will result in unreasonable discrimination in violation of section 202 of the Act. MCI asserts that proposed changes to LEC tariffs that do not include rate increases or decreases should be subject to more thorough scrutiny than would be possible under the streamlining provisions of the 1996 Act.

31. While the LECs, USTA, the Competitive Telecommunications Association (CompTel), and GTE support the Commission's tentative conclusion that section 204(a)(3) should be construed to include changes to existing rates, they disagree with the Commission's stated inclination to exclude new services from streamlined treatment. NYNEX maintains that the terms ''new or revised charge, classification or practice'' in section 204(a)(1) are repeated in section 204(a)(3) and that the Commission has consistently interpreted the former section as giving it authority to investigate and impose an accounting order for all types of tariffs, including those for new services and revised rates for existing services. If the Commission interpreted the terms ''new'' and ''revised'' for purposes of section 204(a)(3) to exclude tariffs proposing new services, NYNEX argues that it would imply that the Commission does not have authority under section 204(a)(1) to order investigations or conduct complaint proceedings of any tariffs proposing new services. US West argues that streamlining new services will facilitate competition by allowing the LECs to respond quickly to changing market conditions, such as the introduction of new services by their competitors, and to reward innovation. Ameritech and USTA further argue that it would not be in the public interest to permit LECs' competitors, but not the LECs, to introduce new services on an expedited basis. GTE maintains that, when the first two sentences of the statute are considered together, it is clear that tariffs proposing new services, as described in the first sentence, are to be afforded the streamlined treatment described in the second sentence.

32. A number of commenters believe that new services should be excluded from eligibility for streamlined treatment. ALTS argues that tariffs for new services should not be eligible for streamlined treatment because they do not involve changes in rates and they are more likely to raise policy questions than rate changes. MCI takes a similar position, stating that the statute is clear that the streamlining provisions apply only to ''a new or revised charge, classification, regulation, or practice'' associated with existing services. Both ALTS and MCI maintain that the current 45-day notice period for new services is reasonable and should be retained. Sprint believes that new services are not covered by the streamlining provisions because the word ''new'' in the statute does not modify or relate to a new service, but rather relates to a new charge, term, condition, or practice for an existing service. In addition, Sprint maintains that charges for new services are neither rate reductions nor rate increases and, thus, are not eligible for streamlining under the language of the statute. Ad Hoc asserts that, because LECs have market power, the Commission should construe the statute narrowly to ensure that LEC tariffs for new services are thoroughly reviewed. GSA is in favor of excluding new services from streamlining because of the complexity of new service offerings. GSA supports a policy of giving such tariffs a higher level of scrutiny.

33. We find that all LEC tariffs involving rate increases, decreases, and/or changes to the rates, terms, and conditions of existing services are eligible for streamlining. We also conclude that LEC tariffs introducing new services are eligible for streamlined filing. Making all LEC tariffs eligible for streamlining will provide a consistent reading of section 204(a)(3) and section 204(a)(1) by establishing that all tariff filings are subject to the provisions of section 204. We agree with NYNEX that we have consistently interpreted section 204(a)(1) as giving the Commission authority to investigate and impose an accounting order on all types of tariffs, including those for new services. Making all LEC tariffs eligible for streamlining will continue this practice as well as give greatest effect to Congressional intent to streamline the LEC tariff process. In addition, we find that this interpretation will simplify the administration of the LEC tariff process by making it unnecessary for the Commission, carriers, or interested persons to determine whether a particular tariff qualifies for streamlining. Accordingly, we determine that all LEC tariffs are eligible for streamlined filing.

2. Optional Nature of LEC Streamlined Tariff Filings

34. Section 204(a)(3) states that LECs ''may'' file under streamlined provisions. In the NPRM, we tentatively concluded that LECs may elect to file on longer notice periods than those provided for in section 204(a)(3), but that, if they chose to do so, such tariffs would not be ''deemed lawful.''

35. SWBT, ALLTEL, USTA, NYNEX, NECA, and GTE disagree with the Commission's tentative conclusion and

contend that tariffs should be deemed lawful whether or not they are filed on a streamlined basis. USTA and SWBT, for example, maintain that, while the statute may give LECs the option to file their tariffs on a streamlined basis, a determination that the tariff is ''deemed lawful'' is not dependant on whether the LEC filed on a streamlined basis. ACTA and TRA support the Commission's tentative conclusion.

36. We determine, as set out in the NPRM, that LECs may, but are not required to, file tariffs on a streamlined basis. As noted above, the first sentence of section 204(a)(3) states that LECs ''may'' file a tariff on a streamlined basis. We also interpret this section to mean that, if a LEC chooses not to avail itself of the streamlining provisions, then the tariff would be filed pursuant to the general tariffing requirements set out in section 203 of the Act and governed by the notice periods set out in section 61.58 of our rules. In addition, LEC tariffs filed outside the scope of section 204(a)(3) shall not be ''deemed lawful'' because, by definition, they are not filed pursuant to that section and are not, therefore, accorded the treatment provided for in that section. We also conclude that we may exercise our deferral authority with respect to such tariffs.

37. In the NPRM, we tentatively concluded that section 204(a)(3) does not preclude the Commission from exercising its forbearance authority under section 10(a) of the Act to establish permissive or complete detariffing of LEC tariffs.

38. Most of the commenters agree with the tentative conclusion set out in the NPRM that the Commission has forbearance authority to reduce or eliminate filing requirements for LEC tariffs. Pacific Telesis believes that the Commission has forbearance authority to remove tariff filing requirements when competition develops to the point where regulation is unnecessary. GSA states that nothing in either section 204(a)(3) or section 10(a) of the 1996 Act restricts the Commission from applying its forbearance authority to LEC tariff filings. CompTel and ACTA, on the other hand, argue that the general provisions of section 10(a) are overridden by the specific language of new section 204(a)(3), which requires LECs to file tariffs. They contend that this interpretation is consistent with general statutory construction principles mandating that specific provisions take precedence over more general ones. They further argue that any interpretation of the statute that gave the Commission authority to eliminate LEC tariff filing requirements entirely would void the new streamlining provisions.

39. We affirm our tentative conclusion that we may exercise forbearance authority to reduce or eliminate tariff filing requirements for LECs, including the filing of tariffs eligible for streamlined treatment. Section 10(a) accords the Commission general authority to forbear from enforcing almost any provision of the Act applicable to common carriers if specific preconditions are met. The only limitation on this authority is provided in subsection 10(d), which states that the Commission may not forbear from applying certain interconnection requirements on incumbent LECs set out in section 251(c) of the 1996 Act or from authorizing Bell Operating Company interLATA entry pursuant to section 271 of the 1996 Act until ''those requirements have been fully implemented.'' Absent any express limitation on our authority to forbear from applying tariffing requirements of section 203 of the Act, we conclude that we have authority to do so under section 10(a). In addition, we find it difficult to construe section 204(a)(3), which states that LECs ''may'' file streamlined tariffs, and our section 10 forbearance authority to mean that the statute imposes a requirement that LECs ''must'' file tariffs. Rather, we find that Congress intended to reduce or eliminate regulation as competition develops and to provide for the detariffing of LEC services under appropriate conditions.

4. Applications of Section 204(a)(3) of the Act to Tariff Filings of Nondominant LECs

40. As noted above, under the 1996 Act, a LEC is defined as ''any person that is engaged in the provision of telephone exchange service or exchange access.'' The NPRM did not address the application of section 204 to nondominant LECs.

41. Several of the commenters assert that the 1996 Act's streamlined tariffing provisions should not apply to nondominant LECs. They argue that there is nothing in the 1996 Act or its legislative history to suggest that Congress intended to increase the current one-day's notice period for nondominant LECs. In any event, MCI asserts that, if the Commission determines that Section 204(a)(3) applies to nondominant LECs, it should forbear from applying Section 204 (a)(3) to nondominant providers of interstate access service that do not have market power.

42. The statute does not distinguish between incumbent LEC and competitive LECs for purposes of Section 204. Therefore, we conclude that all LECs, including nondominant LECs, to the extent they file tariffs, are eligible to file tariffs on a streamlined basis. At this time, we have not addressed the extent to which nondominant LECs are required to comply with our tariffing rules. Two petitions before the Commission will provide an opportunity for us to do so. As noted above, the statute also provides that LECs ''may'' file under streamlined provisions. We have interpreted this section to mean that LECs may choose to use these streamlined provisions, but that tariffs filed outside of the scope of these provisions are governed by the general tariffing provisions of section 203. Accordingly, we also conclude that Section 204(a)(3) does not limit the ability of nondominant LECs to file tariffs on one-day's notice under § 61.23(c) of our rules. We also conclude that such tariffs would not be eligible for ''deemed lawful'' treatment, but that such tariffs would continue to enjoy the presumption of lawfulness accorded all nondominant carrier filings under § 1.773(a)(ii) of our rules.

D. Streamlined Administration of LEC Tariffs

1. Electronic Filing

43. In the NPRM, we proposed establishing a program for electronic filing of tariffs and associated documents. We sought comment on: (a) whether or not to establish an electronic filing program; (b) whether such a system should be operated by the Commission or carriers; (c) whether tariffs should be filed in a specified database format; and (d) what system security measures should be adopted.

44. Nearly every commenter supports establishing an electronic filing system. Many commenters suggest, however, that, before we implement a mandatory system of electronic filing, we initiate either an industry working group or issue a further NPRM to ensure the security of the program and to discuss its functional requirements. Sprint asserts that the industry is not ready to participate in an electronic filing system because there are no industry standards regarding systems, format, or software. There is also disagreement regarding whether participation in the system should be mandatory or not. None of the commenters includes a precise time frame for implementing such a system, although Frontier Corp. (Frontier) states that it should be implemented before the LEC streamlining provisions take effect.

45. Commenters are divided on who should design and maintain the system. Some commenters support having the Commission maintain and control the system. Other commenters support a system designed by the Commission but run by carriers subject to Commission oversight over access and security. MFS and McLeod Telemanagement, Inc. (McLeod) suggest that a third-party contractor should maintain the system.

46. Most commenters advocate the use of an Internet-based system. Some of these commenters support a system of dial-up access in addition to the Internet-based system. USTA favors utilization of the World Wide Web over the use of bulletin boards or dial-in databases. It argues that bulletin boards are slower than the World Wide Web, and dial-in databases require specific software, which are difficult to administer. Ameritech, BellSouth, and CITI propose specific systems, such as EDGAR, the electronic filing system of the SEC. NYNEX, SWBT, and ACTA propose that the Commission post notices of tariff filings on its Web page, which would be linked to LEC Web pages where the LECs would post their tariffs. USTA proposes a system with company-specific sections on the FCC's Web page. NECA proposes that the Commission set up separate servers for providing information and posting of tariffs for public review, which would permit anonymous log-ons to the public server.

47. Ameritech suggests that the system adopted by the Commission should accommodate multiple platforms and software packages rather than specify a database that would require re-drafting tariffs into a standardized system. GSA and CITI, however, contend that the Commission should prescribe a standardized format for tariff filings. AT&T and USTA suggest that the system be structured to allow carriers to download tariffs in spreadsheet formats and as ASCII text files.

48. Many commenters suggest methods to prevent unauthorized changes to tariffs, such as using: password or PIN number protection; electronic signatures; and encryption devices. NTCA recommends that the Commission ensure that a permanent record of historically filed tariffs is maintained. Ad Hoc and AT&T urge that the notice period not begin to run until the filing is posted. GSA and AT&T propose that we establish a return receipt confirmation to specify the date of filing and commencement of the notice period. Several commenters urge the Commission to require that filings be posted on the system at a specified time early in the day of filing, *i.e.*, 10 a.m. Pacific Telesis and U.S. West oppose this suggestion.

49. We find that a program for the electronic filing of tariffs and associated documents would facilitate administration of tariffs. An electronic filing program could afford filing parties a quick and economical means to file tariffs while giving interested parties virtually instant notification and access to the tariffs. In addition, we conclude that participation in such a system should be mandatory for all LECs, because, if some LECs are allowed to continue to file on paper, we would not realize the full benefit of electronic filing. An electronic filing system also should not impose undue burdens on LECs, but rather reduce their overall administrative burdens. Accordingly, subject to the availability of adequate funding, we will establish a program for the electronic filing of tariffs and associated documents, such as transmittal letters, requests for special permission, and cost support documents. We will require LECs to file this information electronically. Our program will also permit filing of petitions to suspend and investigate and responsive documents electronically and we encourage parties to do so. Because a database system would place significant strictures on filing, including a significant alteration of the format of current tariffs, we will not require that tariffs and associated documents be filed in a database format. Instead, our electronic filing program will permit entities to file electronically consistent with their current formats. We further determine that the Commission, at least at the initial stage of implementation, will be responsible for administering the electronic filing program. We may consider other alternatives at a later time.

50. We delegate authority to the Chief, Common Carrier Bureau to establish this program including determinations concerning transition mechanisms, establishment of procedures to assure security, when the program should be initiated, and any other issues that may arise regarding the initiation of the electronic filing program. We direct the Bureau to consult with industry and potential users informally and share plans for its proposed implementation and make any necessary adjustments in light of industry and user views, as appropriate. We also direct the Bureau to permit filing of, and access to, LEC tariffs and associated documents by means of the Internet. We direct the Bureau to implement this program in coordination with other electronic filing initiatives within the agency.

2. Exclusive Reliance on Post-Effective Tariff Review

51. We currently rely on pre- and post-effective review of tariffs to ensure LEC compliance with Title II of the Communications Act. In the NPRM, we solicited comment on whether we can, and should, in implementing the streamlined tariff provisions of the 1996 Act, adopt a policy of relying exclusively on post-effective tariff review, at least for certain types of tariff filings, to oversee LEC compliance with the Act. In the NPRM, we asked whether exclusive reliance on post-effective review could significantly streamline the tariff review process while continuing to provide an opportunity for evaluation of the lawfulness of tariffs. We sought comment on whether, under such a policy, we should retain the discretion to conduct a pre-effective tariff review in individual cases. We also solicited comment on the extent to which section 204(a), which provides that when a tariff is filed, the Commission may either on its own initiative or ''upon complaint'' suspend and investigate the tariff, limits our ability to rely exclusively on post-effective tariff review.

52. Commenters generally oppose relying exclusively on post-effective tariff review. AT&T states that Congress did not intend to eliminate pre-effective review of LEC tariffs. To find otherwise, AT&T explains, would permit LECs to impose rates and terms on customers that would stay in effect until such time as the Commission could conclude an investigation. In addition, AT&T contends that such a finding would negate section 204(a), which authorizes the Commission to initiate an investigation when a complaint is filed or upon its own initiative ''whenever there is filed any new or revised charge, classification, regulation or practice.'' CompTel points out that reliance solely on post-effective review would be particularly inappropriate if the Commission interprets the term ''deemed lawful'' as changing the legal status of tariffs. Under this scenario, CompTel claims that consumers would be denied any protection from LEC tariff filings that are given the force of an affirmative finding of lawfulness and reviewed only after taking effect. According to CompTel, consumer remedies would be further limited by the Commission's inability to suspend a tariff after it has become effective.

53. Sprint, Frontier, and NECA are the only commenters that favor our proposal to rely solely on post-effective review of tariffs. According to NECA, relying on post-effective tariff review

would eliminate the need for filing of petitions and allow tariffs to go into effect within the streamlined notice periods, thereby furthering the intent of the 1996 Act to accelerate the tariff review process. Sprint asserts that post-effective review of LEC tariffs will suffice, provided that the Commission adopts the position that ''deemed lawful'' only creates a rebuttable presumption of lawfulness. The remedies provided under sections 205 and 208 of the Act would still be available, and LEC customers could recover damages for tariffs found to be unlawful as of the effective date of the tariff filing, according to Sprint.

54. We conclude that pre-effective tariff review is required by the statute which contemplates pre-effective tariff review by identifying specific actions that we can take, i.e., suspension and investigation, prior to the effective date of the tariff. In addition, eliminating pre-effective tariff review would restrict the opportunity for interested parties to obtain review of potentially unlawful tariffs. We further find that pre-effective review is a useful tool to assure carriers' compliance with sections 201 through 203 of the Act. Therefore, we will retain our practice of pre-effective review. We will continue to rely additionally on post-effective tariff review, including the section 208 complaint process and in section 205 tariff investigations.

3. Pre-Effective Tariff Review of Streamlined Tariff Filings

55. In the NPRM, we solicited comment on what measures, if any, the Commission should take to facilitate decision-making within seven or fifteen days concerning whether to suspend and investigate tariffs filed pursuant to section 204(a)(3).

a. Summaries and Legal Analyses

56. In the NPRM, we solicited comment on whether we should establish requirements that LECs file summaries of proposed tariff revisions with their streamlined tariff filings in order to provide a more complete description than under current requirements, and that LEC tariffs filed on a streamlined basis be accompanied by an analysis showing that they are lawful under applicable rules.

57. With the exception of Ameritech, the LECs unanimously oppose the Commission's proposal to require them to file a summary with tariff filings. All of the LECs also oppose a requirement that they file an analysis demonstrating that the tariff filing is lawful. LECs argue that these requirements would impose increased burdens, contrary to the deregulatory goals of the 1996 Act. They also argue that the information contained in the proposed summaries is already provided in the Description and Justification (D&J) section of tariff transmittals. Ameritech further states that requiring a legal analysis is inconsistent with the directive in section 204(a)(3) that LEC tariffs are deemed lawful and that the burden of demonstrating otherwise should rest on parties opposing the filing. NYNEX states that the Commission should adopt reduced tariff support requirements for streamlined tariff filings. Finally, CBT states that the legal analysis requirement would have a chilling effect on small and mid-size LECs that may be sensitive to legal fees.

58. Non-LEC commenters support these possible requirements, stating that they would assist the Commission and the public in reviewing tariff filings without imposing a significant burden on the LECs. CapCities suggests that the summaries include details, on a service-by-service basis, of the rate or service impact of the proposed tariff and the reasons in support of the proposed changes.

59. We will not impose any additional requirements for supporting information concerning LEC tariff filings at this time. Although a summary and legal analysis could be useful to the Commission and the public, we find that it is not necessary to require it as part of our initial implementation of streamlined LEC tariff filings because we are not convinced that it would expedite the tariff review process. Instead, we will gain experience from our initial administration of streamlined LEC tariffs and revisit this issue if necessary.

b. Presumptions of Unlawfulness

60. In the NPRM, we solicited comment on whether it would be consistent with the 1996 Act to establish presumptions of unlawfulness for narrow categories of tariffs, such as tariffs facially not in compliance with our price cap rules, that would permit suspension and designation of issues for investigation through abbreviated orders or public notices. We solicited comment on what kinds of tariffs could be accorded this presumption.

61. All LECs oppose establishing presumptions of unlawfulness. They argue that these presumptions would be contrary to section 204(a)(3). For example, Bell Atlantic argues that, ''[t]here is no way to reconcile [establishing presumptions of unlawfulness] with the statutory mandate, that absent direct action by the Commission, tariff filings are 'deemed lawful' within 7 to 15 days.'' Pacific Telesis explained that, ''[b]y deeming LEC tariffs lawful at the time of filing, Congress created a presumption of continuing lawfulness which puts the burden on the party challenging the tariff to overcome the presumption.''

62. The Interexchange Carriers (IXCs) support the proposal, suggesting further that the Commission should reject any tariff filing that is facially inconsistent with any existing rule or regulation. CompTel states that the presumptions would help the Commission serve its dual mandates of protecting consumer interests and expediting the tariff review process.

63. We will not establish presumptions of unlawfulness for any categories of tariffs. Such presumptions would be inconsistent with the legislative intent of this provision. Instead, consistent with our current practice, we intend to utilize the tariff review process to identify problematic tariffs that warrant suspension. We note, however, that tariffs that facially do not comply with our rules, such as out-of-band price cap filings, will, for that reason, continue to have a high probability of rejection or suspension and investigation.

c. Treatment of Tariffs Containing Both Rate Increases and Decreases

64. The 1996 Act provides that LEC tariffs that propose to decrease rates shall be effective in 7 days and tariffs proposing rate increases shall be effective in 15 days. The statute is silent on which notice period will apply to tariffs that contain both increases and decreases. In the NPRM, we tentatively concluded that the 15-day notice period should apply to such tariffs and that carriers wishing to take advantage of the 7-day notice period should file rate decreases in separate transmittals.

65. Non-LEC commenters support the Commission's proposal. They argue that it is necessary to protect the interest of customers to challenge rate increases, and that, therefore, the longer notice period shall apply. All the LECs, except BellSouth, oppose this requirement because requiring separate transmittals would purportedly increase the regulatory burden on LECs. As an alternative, NYNEX, SWBT, and Pacific Telesis suggest that the Commission look at the overall effect on the Actual Price Index (API) for a service category to determine if a tariff filing should be classified as an increase or a decrease. They explain that most access services contain numerous individual rate elements, so that a tariff that reduces most rate elements for a particular service may nonetheless contain rate increases for individual elements. ALLTEL suggests that small and mid-

sized companies be permitted to define rate increases and decreases at the access category level. CBT suggests that all of the increases and decreases in a given transmittal be aggregated and the applicable notice period determined by the net overall change.

66. USTA states that price cap LECs should continue to identify increases or decreases at the rate element level pursuant to the current Part 61 rules. It further proposes that the Commission ensure a streamlined approach for small and mid-sized LECs by permitting rate-of-return LECs to define rate increases or decreases at the access category level and file accordingly. USTA also proposes that LECs under Optional Incentive Regulation be permitted to define rate increases at the basket level. Finally, USTA proposes the elimination of those Part 61 rules that require non-price cap LECs to list increases or decreases in specific rate elements in tariff transmittals.

67. Ad Hoc opposes the LECs' suggestion that the Commission use API calculations to determine whether the tariff should be considered a rate increase or decrease because section 204(a)(3) of the Act specifically provides for a fifteen-day notice period whenever a LEC files a tariff with a rate increase. Ad Hoc argues that, with the use of the API, there may be significant increases that are balanced out by decreases, thereby shortening the time interested members of the public would otherwise have to review the proposed rate increase. Ad Hoc also states that customers typically purchase only some of the services made available in a carrier's tariff offering so there is the risk that members of the public could be subjected to rate increases without proper time to respond.

68. Several commenters also address the need for establishing new notice periods for streamlined tariffs that propose changes in terms and conditions and for new services. AT&T proposes that the Commission require that LECs file tariffs proposing changes in terms and condition 30 days prior to the tariff's proposed effective date. GTE states that, because there is ''no functional difference'' between an increase in rates and a new service, new services should be subject to the same 15-day notice period as price increases. Pacific Telesis suggests that the Commission treat new services as rate reductions and apply the 7-day notice period. Pacific Telesis maintains that new services, like rate reductions, benefit the public and therefore should be implemented as quickly as possible.

69. We conclude that the 15-day notice period will apply whenever a tariff filing includes both rate increases and rate decreases and limit the application of the 7-day notice period to tariffs that only contain a rate decrease. Therefore, whenever a tariff transmittal includes an increase to any rate element, the longer notice period will apply even if other rates in the same transmittal are simultaneously decreased. Our conclusion is supported by the statute, which specifically provides for a 15 day notice period whenever a LEC files a tariff with a rate increase. We reject arguments advanced by the LECs that this approach is contrary to the concept of streamlining or that this will increase the regulatory burden on them. Rather, this result will permit LECs to propose rate increases and decreases in the same tariff filing. All of the carriers' rate changes will still receive streamlined treatment. Rate decreases will be subject to the longer notice period because of the carriers' decision to include them in the same tariff filing as a rate increase. Carriers are free to take full advantage of the shorter 7 day notice period by transmitting rate decreases in a separate filing. We also reject the LECs' various suggestions to base the applicable notice period on the net effect of changes to rate elements either at the access category level, basket level, or API. This will assure that customers that purchase only some elements of a tariff will receive the 15-days' notice that Congress intended for rate increases, even though rates for other elements decrease and even though rates measured at some aggregate level may decrease. In addition, we find that review of such calculations would unnecessarily complicate the tariff review process.

70. We further determine that the 15-day notice period shall also apply to tariffs that change terms and conditions or apply to new services even where there is no rate increase or decrease. This will result in the most efficient implementation of section 204(a)(3) by minimizing analysis of each filing to determine whether or not it should be considered a rate increase, decrease, or a change in terms and conditions. Thus, under the rules we establish, all LEC tariff transmittals, other than those that solely reduce rates, shall be filed on 15-days' notice. If there are other significant changes, the tariff transmittal will be subject to a 15-day notice period.

d. Mechanisms to Identify Contents of Filings

71. In the NPRM, we proposed requiring carriers to identify specifically tariffs filed pursuant to section 204(a)(3) and whether the transmittal contains a rate increase, decrease or both. We solicited comment on requiring either a label or a statement in the transmittal letter to achieve this result.

72. Only SWBT opposes our proposal. It explains that the proposal is unnecessary because the LECs currently provide this information by making a notation on tariff pages indicating that it contains either an increase or reduction, and through the Description and Justification (D&J) accompanying a new or restructured tariff. USTA also states that the D&J accompanying LEC tariffs adequately informs interested parties of the contents of a filing. USTA argues, however, that, should the Commission adopt such a requirement, it should apply to tariff filings of LEC competitors as well. Ad Hoc, ALLTEL, BellSouth, and TRA support the proposal to require LECs to identify such tariffs in the transmittal letter.

73. We will require that all LECs display prominently in the upper right hand corner of the tariff transmittal letters a statement indicating that the tariff is being filed on a streamlined basis under section 204(a)(3) of the Act and whether it is being filed on 7- or 15-days' notice. While review of the LEC tariff including notations on tariff pages and the D&J would inform interested parties of the contents of the filing, this statement by the carrier will allow the Commission and the public to identify quickly whether the tariff is eligible for streamlined treatment and the notice period to be applied to the filing, without imposing any undue burdens on carriers. Without such a statement, we will treat a tariff transmittal as filed outside of section 204(a)(3), *i.e.*, not on a streamlined basis.

e. Commission Notification to Interested Parties

74. In the NPRM, we sought comment on the best mechanism for alerting Commission staff and interested parties about the contents of LEC tariff filings. The NPRM proposed that we provide affirmative notice of LEC tariff filings to interested parties via e-mail. We sought comment on whether we should adopt the proposal before, or, only when, electronic filing of tariffs is implemented.

75. Most commenters support the proposal. McLeod suggests that the Commission require LECs to send notification to interested parties in order to preserve Commission resources. CapCities suggests that the LECs notify interested parties by facsimile as well as by e-mail. Only NECA and SWBT oppose the proposal. They argue that e-mail notification will be unnecessary upon implementation of an electronic filing system, and that parties already

have procedures in place to monitor filings.

76. Several supporters of the proposal suggest that additional notification requirements be placed on the LECs. MCI, KMC, and MFS urge the Commission to require that a carrier provide advance public notice of its intention to transmit a tariff filing and identify the service that would be affected. The LECs express strong opposition to these suggestions, stating that requiring advance notice would violate the Congressional mandate to streamline the tariff review process. TRA, the only commenter to address whether the proposal should be implemented immediately or upon implementation of the electronic filing system, advocated the former.

77. We find that e-mail notification is a simple, informal method of assisting parties in complying with the expedited notice periods required under the 1996 Act. Affirmative notice of tariff filings for the convenience of interested parties is possible without expending significant Commission resources. Despite the assertions from SWBT and NECA that parties have other means of learning of tariff filings, affirmative notice by e-mail will provide a useful way for interested parties to learn of tariff filings. Accordingly, we will notify by e-mail interested persons who request such notice of LEC tariff filings eligible for streamlined treatment. We delegate to the Chief, Common Carrier Bureau authority to establish this mechanism and to institute a means of receiving requests from interested persons. We envision that this e-mail notification will be provided on the day after the filing is made with the Commission. We emphasize that notice by e-mail will not constitute legal notice of filings, and failure of the Commission to provide the affirmative notice for any reason will not extend comment periods. In view of our decision, we see no benefit in requiring LECs to send e-mail notification of filings to interested parties. We also reject suggestions that we establish an additional requirement that LECs furnish advance notice of tariff filings. That requirement is not necessary to provide adequate notice to interested parties of LEC tariff filings.

4. NPRM Period and Filing Procedures

a. Deadlines for Petitions and Replies

78. As indicated in the NPRM, we need to establish new filing periods for petitions to suspend and reject LEC transmittals filed on 7- or 15-days' notice. The current pleading cycles listed in section 1.773 of our rules will not accommodate the filing of petitions and replies in response to LEC tariff changes made on 7-days' notice. In the NPRM, we proposed to require that petitions against those LEC tariff filings that are effective within 7 or 15 days of filing must be filed within 3 days after the date of the tariff filing and replies 2 days after service of the petition.

79. Most of the commenting LECs, as well as GSA, support the Commission's proposal to require that petitions be filed within 3 days of the tariff filing and that replies be filed within 2 days of service of the petition. NYNEX, MCI, AT&T, CapCities, and Ad Hoc state there is no reason to have the same filing periods for both tariffs filed on 15-days' notice and tariffs filed on 7-days' notice. AT&T and SWBT suggest shorter notice periods for replies than the Commission's proposal. Ameritech and Pacific Telesis sharply criticize AT&T's proposal for replies as one-sided and overly restrictive.

80. We agree with commenters who recommend establishing different filing periods for petitions and replies based on whether the tariff filing at issue was filed on 7-days' notice or 15-days' notice. We require that petitions against LEC tariff transmittals that are effective 7 days from filing must be filed within 3 calendar days from the date of tariff filing, and replies must be filed within 2 calendar days of service of petition. We reject SWBT's suggestion that petitions be required on the business day following the filing, as well as AT&T's suggestion that replies be required on the calendar day following service of the petition, because these proposals unreasonably abbreviate the amount of time within which to submit filings.

81. With respect to LEC tariff filings that are effective on 15-days' notice, we agree with NYNEX, CapCities, and Ad Hoc, that the current filing schedule set forth in sections 1.773(a)(2)(ii) and 1.773(b)(1)(ii) is sufficient. These rules require petitions to be filed within 7 calendar days of the tariff filing. Replies must be filed within 4 days of service of the petition.

b. Other Issues Relating to Computation of Time

82. The Act is silent on whether the new statutory notice periods refer to calendar days or working days. In the NPRM, we tentatively concluded that the statutory notice periods refer to calendar days, not working days. All the LECs, except Bell Atlantic, and USTA, agree that calendar days should be used in computing notice periods. Bell Atlantic argues that filings should not be calculated on a calendar day basis because this would leave inadequate time for the Commission to review the tariff. ACTA also disagrees with the Commission's tentative conclusion because of concerns that LECs will strategically submit tariffs at times that limit the ability of interested parties to review them. We interpret the statutory notice periods set out in section 204(a)(3) of the Act to refer to calendar days. This interpretation is consistent with the present computation of time set forth in section 1.773(a)(3) of the rules, which uses calendar days when calculating dates for filing petitions to suspend or reject a tariff. We find that using calendar days is consistent with existing Commission practice and best fulfills the intent of Congress to shorten the tariff review process.

83. The NPRM proposed that, when a due date falls on a holiday or weekend, the document shall be filed on the next business day. The LECs, the only parties to address this issue, support this proposal. We adopt the proposal as stated in the NPRM. This is consistent with sections 1.4(g) and 1.773(a)(3) of the Commission's rules. Therefore, when a due date falls on a holiday or weekend, the document shall be filed on the next business day.

84. The NPRM also proposed including intermediate holidays and weekends in computing time periods for petitions and replies. All comments received support this proposal. We adopt the proposal as stated in the NPRM, which is consistent with existing Commission practice set forth in section 1.773(a)(3). Therefore, intermediate holidays and weekends will be included in computing time periods.

c. Hand Delivery

85. Section 61.33(d) requires the transmittal letter of any tariff filing made on less than 15-days' notice to include the name, address, and facsimile number of the person designated to receive service of petitions against the filing. Section 1.773(a)(4) of the Commission's rules requires that petitions against a filing made on less than 15-days' notice be served personally or by facsimile. The NPRM proposed requiring that petitions and replies be hand-delivered to all affected parties where the filing party is a commercial entity.

86. NECA, GSA, and Pacific Telesis support the Commission's proposal. USTA and SWBT support requiring hand delivery of petitions, but not replies. CBT and MCI state that facsimile service is sufficient with confirmed receipt. In the alternative, MCI suggests that required hand delivery be limited to parties with a

representative in Washington, D.C. TRA states that facsimile transmissions should be added to hand delivery requirements as a consideration for small carriers with limited budgets. BellSouth states that only minor changes to sections 61.33 and 1.773(a)(4) are necessary to carry out the goals of the Commission. BellSouth proposes changing these rules to apply to tariffs and petitions filed on 15-days' notice or less.

87. We find that in-hand service of petitions and reply pleadings will facilitate full participation by carriers and interested persons in the Commission's review of LEC tariffs, particularly in view of the shortened statutory notice periods in section 204(a)(3) and the implementing rules adopted here. In light of the comments of TRA, we also find that it is important to provide for service by facsimile transmission as an alternative to hand delivery. Therefore, we will amend sections 61.33 and 1.773(a)(4) to apply to tariffs and to all associated documents filed on 15-days' notice or less, and require that such tariff filings include, among other things, the facsimile number of the individual designated by the filing carrier to receive personal or facsimile service of petitions and that petitions and replies in connection with such tariff filings be served by hand or by facsimile.

d. Elimination of Public Comment Period

88. In the NPRM, we sought comment on whether we should eliminate the public comment period during the 7- or 15-days' notice period. Only CBT supports our proposal to eliminate the public comment period. MCI, NYNEX, Ad Hoc, and Pacific Telesis all oppose the proposal as contrary to the right of the public to seek suspension and investigation of a tariff under section 204(a) of the Act. As discussed above, we will retain pre-effective tariff review as a useful tool for ensuring that LEC tariffs are just and reasonable. Public participation in tariff proceedings serve the public interest. Accordingly, we will not eliminate the public comment period for LEC tariffs filed on 7- or 15-days' notice.

e. Protective Orders

89. We regularly receive requests by carriers for confidential treatment of cost data filed with tariff transmittals. In many cases, we also receive requests under the Freedom of Information Act (FOIA) for cost information for which a filing carrier has requested confidential treatment. As a practical matter, we frequently will be unable to respond to these requests within the 7- and 15-days tariff review periods established by the 1996 Act. In the NPRM, we sought comment on whether we should routinely impose a standard protective order whenever a carrier claims in good faith that information qualifies as confidential under relevant Commission precedent. We also solicited comment regarding the terms that we should include in a standard protective order and the types of data that should be eligible for confidential treatment.

90. The majority of the parties commenting on this proposal oppose the use of a standard protective order, albeit for conflicting reasons. AT&T contends that we do not have the authority to issue a standard protective order because nothing in the FOIA or in the 1996 Act relieves us of our obligation to determine whether information in our possession may properly be withheld from the public despite the shortened tariff review process. AT&T states that, although Exemption 4 of the FOIA protects certain trade secrets and financial data from disclosure, it is well-settled that an agency invoking a FOIA exemption bears the burden of establishing its right to withhold information from the public. Therefore, AT&T concludes, we cannot simply accept a submitting party's assertion that tariff support materials are confidential. Moreover, AT&T asserts, data that are subject to a protective order are not automatically covered by Exemption 4. An agency still must demonstrate that the information in question is exempt from FOIA disclosure. Bell Atlantic takes the position that there is no legal requirement that cost support data must be available to the public. Moreover, even if there were such a requirement, Bell Atlantic contends, there would be no reason to continue following such a rule given the current level of competition. USTA also favors elimination of cost support data for streamlined tariff filings and states that, if this proposal were adopted, there would be no need for protective orders. In the alternative, USTA favors the use of standard protective agreements on a case-by-case basis. Ad Hoc maintains that the openness of the tariff review process would be compromised if data are routinely withheld from disclosure.

91. Ameritech, NYNEX, and TW Comm support, to some extent, the routine use of standard protective orders. Ameritech first argues that it supports elimination of the requirement to file cost support data. To the extent, however, that this requirement is retained, Ameritech favors the use of standard protective orders. Ameritech contends that the use of protective orders provides protection to data that in its view are intrinsically proprietary while enabling the tariff review process to go forward. Ameritech supports using the model protective order it submitted with a number of other parties in GC Docket No. 96–55. While NYNEX supports the use of a standard protective order, it also wants carriers to have the option of seeking nondisclosure of highly sensitive data under certain circumstances. TW Comm states that the use of protective orders should be limited to those circumstances where a LEC demonstrates that confidential treatment of its data is necessary to prevent competitive harm. If the LEC makes such a showing, TW Comm suggests, the data should be made available to interested persons under a narrowly-drawn protective order. TW Comm states that the terms of the protective order should be limited only to protecting the legitimate competitive interests of the LEC. TW Comm maintains that this goal could be accomplished by narrowly limiting access to the material to those persons who are preparing petitions in opposition to the tariff or participating in a tariff investigation.

92. TRA contends that, if a carrier chooses to use streamlined tariff procedures, it forfeits its right to request confidential treatment of its cost support data. SWBT opposes this position. CBT argues that, while it generally supports the use of protective orders, it recognizes that they do not afford absolute protection against disclosure of data. CBT maintains that it would be preferable for us to determine that the new competitive environment has caused a fundamental change in the nature of tariff proceedings and that the public interest in open tariff proceedings is now outweighed by the submitting party's need to protect competitively sensitive information. CBT suggests, therefore, that competitors' requests to review competitively sensitive information be rejected. GSA maintains that standard protective orders should be imposed on a routine basis. It contends that LECs should be able to prevent disclosure of their data and that interested parties should be able to petition the Commission for access. Further, GSA proposes that the Commission establish standards for a LEC to prevent disclosure of its cost support data, but GSA does not suggest what these standards should be.

93. It is evident that existing procedures for responding to requests for confidential treatment or for disclosing supporting cost data under

the FOIA cannot be completed in the limited time available for streamlined tariff review. We find that use of standard protective orders for purposes of streamlined LEC tariff review will properly serve the dual purpose of permitting limited access to important information by interested persons while protecting proprietary information from public disclosure. We have used protective orders in a variety of proceedings to protect competitively sensitive material from public disclosure while allowing interested parties to have access to potentially decisional documents. In so doing, the Common Carrier Bureau stated that * * * the competitive threat posed by widespread disclosure under FOIA may outweigh the public benefit in disclosure. In such instances, disclosure under a protective order or agreement may serve the dual purpose of protecting competitively valuable information while still permitting limited disclosure for a specific public purpose.

Accordingly, we are issuing, in this Report and Order, a standard protective order for use in review of LEC tariff filings submitted pursuant to section 204(a)(3). The Bureau will use the protective order where the submitting party includes with the tariff filing a showing by a preponderance of the evidence to support its case that the data should be accorded confidential treatment consistent with the provisions of the FOIA or makes a sufficient showing that the information should be subject to a protective order. This is the standard applicable in section 0.459 of our rules to requests that materials or information submitted to us be withheld from public disclosure. Therefore, at a minimum, the submitting party must comply with Section 0.459 (b) and (c) of the rules regarding the supporting information that must be included in its request for confidentiality. Because of the shortened LEC tariff notice periods in the 1996 Act, the Bureau will not have time to issue written determinations concerning whether the data are entitled to confidential treatment and still complete the tariff review process. Instead, it will routinely employ the standard protective order in the pre-effective tariff review process to permit meaningful participation by interested parties, so long as the carrier has made a good faith showing in support of confidential treatment. During the course of any follow-on investigation of tariffs filed under section 204(a)(3), the Bureau can make any further determination as necessary concerning a carrier's entitlement to confidentiality. We can and will employ appropriate sanctions against any carriers that abuse opportunities to obtain confidential treatment.

94. This will fully comport with our obligations under the FOIA. We are not, as AT&T suggests, ignoring our obligation to determine whether information qualifies for nondisclosure under either the FOIA or our confidentiality rules as submitting parties will continue to be required to make a persuasive showing that the data in question meet these standards. Moreover, the use of protective orders will prevent the unlimited disclosure of sensitive financial data, and will thereby protect the competitive interests of the filing party. Thus, this approach appropriately balances the competing interests at stake. We, therefore, decline to adopt the approaches proposed by CBT and TRA that propose either that all tariff support material be made public or that, alternatively all such material should be held in absolute confidence. We also believe that protective orders will afford adequate protection to even the highly sensitive data referenced by NYNEX. In addition, we find that ruling on individual requests, as NYNEX proposes, will cause unacceptable delays during a very short tariff review process and our goal in using standard protective orders is to eliminate the opportunity for such delays. Accordingly, we find that the routine use of a standard protective order in LEC streamlined tariff proceedings will eliminate delay during this shortened tariff review process as well as address the concerns of various parties concerning the protection of competitively sensitive financial data. Routine use of a standard protective order will also serve the public interest by enabling interested parties to comment, as provided for in the rules, in LEC streamlined tariff review proceedings. The NPRM in this proceeding only proposed use of a standard protective order in the pre-effective review of streamlined tariffs filed pursuant to section 204(a)(3). Thus, the standard protective order adopted here is not required to be used in tariff investigations, although its use is not precluded in those investigations where we find it appropriate.

95. As noted above, the NPRM sought comment on whether the Commission should routinely impose a protective order and what terms should be included in such a standard protective order. The NPRM also cited to GC Docket No. 96–55, 61 FR 16424 (April 15, 1996) in which a model protective order has been released for public comment. While, as described below, the standard protective order adopted herein is similar to the standard protective order released for public comment in that proceeding, our decision here is not binding upon any final Commission decision in GC Docket No. 96–55, which is intended to create a standard protective order for use in Commission proceedings generally. We note, however, that a number of the commenters in this proceeding incorporated by reference their comments submitted in GC Docket No. 96–55.

96. The standard protective order we adopt is similar to the model protective order in GC Docket No. 96–55, but includes several changes that were suggested by comments in this proceeding, as well as additional clarifying changes that we are adopting *sua sponte*. Significant modifications to the draft model protective order in GC Docket No. 96–55 include: (i) clarifying that consultants under contract to the Commission must execute a Declaration that they will abide by the protective order, unless they have signed a general non-disclosure agreement as part of their agreement with the Commission; (ii) clarifying that unauthorized use of Confidential Information, as well as unauthorized disclosure, is prohibited and subject to sanctions; (iii) clarifying that the prohibition on the unauthorized disclosure or use of the Confidential Information remains binding indefinitely unless the Submitting Party otherwise agrees; (iv) specifying that possible sanctions for violation of a protective order include disbarment from Commission proceedings, forfeitures, cease and desist orders, and a denial of access to Confidential Information in that and other Commission proceedings; (v) clarifying that the Protective Order is also an agreement between the Reviewing Parties and the Submitting Party; and (vi) clarifying that the Submitting Party retains all rights and remedies available at law or equity against any party using confidential information in a manner not authorized by the protective order. We note that the model protective order, as originally proposed, already contains the requirement proposed by the Joint Parties to require each person examining Confidential Information to execute a declaration agreeing to be bound by the terms of the protective order. Finally, because of the requirement for expedited tariff review, we have modified the provision in paragraph 7(b), which would have permitted parties to give certain entities access to confidential material if the Commission gave its approval. Because

of the shortened time periods for tariff review, we do not have time to entertain and rule on such requests.

97. The Commission has, however, declined to adopt certain modifications proposed by commenters. The Joint Parties' proposed to limit the number of authorized representatives able to examine Confidential Information to a maximum of seven with various sub-limits, such as one inside counsel and one outside counsel per party. We believe such a limitation would unduly limit the ability of, for example, a partner in a law firm to obtain the counsel of associates and that the serious consequences of violating a Commission protective order make this limitation unnecessary. We also decline to adopt the Joint Party's suggestion to bar the copying of Confidential Information, because we believe that the proposal imposes an unnecessary burden on the review of such information. We will, however, modify the Protective Order to require a Reviewing Party to keep a written record of all copies made and to provide this record to the Submitting Party on reasonable request.

5. Annual Access Tariff Filings

98. Section 69.3(a) of the Commission's rules requires LECs and the National Exchange Carrier Association (NECA) to submit revisions to their annual access tariffs on 90-days' notice to be effective on July 1 of each year. We indicated in the NPRM that these filings are limited to changes in rate levels, and therefore, are eligible for filing on a streamlined basis. As part of the annual access tariff filings, LECs are required to file summary material, known as tariff review plans (TRPs), to support the revisions to rates in the annual access tariffs. The TRPs partially fulfill the requirements of sections 61.38, 61.39, and 61.41 through 61.50 of the Commission's rules regarding the supporting information that LECs must provide with their tariff filings. We use the TRPs to monitor the LECs' compliance with Part 61 of the rules.

99. In the NPRM, we proposed to modify the annual access filing process in light of requirements of the 1996 Act. With respect to carriers subject to price cap regulation, we proposed to require carriers that elect to file under streamlined procedures to file a TRP prior to the filing of the annual tariff revisions that excluded information regarding the carriers' proposed rates but included information regarding the carriers' pricing indices, and to make it available to the public. Under this approach, this agency and interested parties could examine the carriers' current and proposed price cap indices, exogenous cost adjustments, and supporting information in advance of the LECs' submissions of their prospective rates and required supporting documents. We sought comment on this approach and on whether we may, under the 1996 Act, require price cap LECs to submit their TRPs prior to the date that they file their annual access tariffs. Because the price cap TRP would not include information regarding a LEC's tariffed rates, charges, classifications, or practices, we tentatively concluded that the TRP would not trigger application of the notice periods of section 204(a)(3) and that we could require its submission prior to the filing of the annual access tariffs. We also solicited comment on the filing date we should establish for the related TRP if we adopt this approach. With respect to carriers subject to rate-of-return regulation, we proposed to require them to file their TRPs and annual access filings that propose rate increases fifteen days prior to the scheduled effective date of July 1. With respect to each of these proposals, we proposed in the NPRM that LECs may nevertheless elect to file under existing rules, and therefore, file their TRPs with the annual access tariffs.

100. Frontier, CompTel, GSA, MCI, AT&T, ACTA, and, to some extent, Ameritech support the Commission's proposal to require the LECs to file their TRPs in advance of their annual access charge filing. They contend that it is within our jurisdiction as part of our regulatory oversight of access tariffs to require the advance filing of TRPs, and that this requirement will enable both this agency and consumers to review the support information fully before reviewing the access tariffs. While AT&T concurs with the NPRM's finding that revisions to annual access tariffs involve changes in rate levels and therefore qualify for streamlined treatment, it claims there is nothing in the 1996 Act that prevents us from requiring that TRPs and cost support data be filed in advance of the access tariff filings. AT&T therefore recommends that we retain our current timetable, under which LECs are to file their TRPs 90 days prior to the effective date of their annual access tariffs. CompTel urges that we treat annual access tariffs filed without proper prior notice of the TRP as presumed unlawful.

101. USTA and the LECs generally oppose requiring advance submission of the TRPs. They argue that the adoption of this proposal would impose an unnecessary burden on LECs, and would be inconsistent with the LEC tariff streamlining requirements of section 402 of the 1996 Act. Furthermore, they contend that the TRPs have no significance without the inclusion of the proposed rates. For example, Sprint states that, without the rates, the TRP is pointless because the rates drive the indices. USTA contends that the EXG–1 chart and the PCI–1 chart are the only pages that do not reference rates and, therefore, could be submitted early. These pages, however, cannot be completed until NECA calculates Long Term Support, which is contained in the Common Line Basket. USTA further argues that none of the TRP information can even be filed until the LECs' and NECA's tariffs are completed. These parties argue, therefore, that the annual access filing and the TRP should be filed on the shortened statutory notice periods. CBT recommends that the TRP should be eliminated for all LEC carriers in order to establish symmetrical regulation for all types of carriers.

102. Sprint and Ameritech acknowledge that at least some part of the TRP could be completed before the annual access tariff would actually be filed and that the information would be valuable to potential customers. Sprint argues that the LECs could be required to file their exogenous cost changes and PCI development 15 days prior to the filing of the annual access tariffs. Ameritech favors the submission of a modified TRP 15 days before the annual filing. Specifically, Ameritech suggests that price cap LECs file the following information for each price cap basket other than the common line basket: the PCI form showing the existing and proposed PCI; a description and explanation of any exogenous cost adjustments being made; and the proposed upper and lower bounds for the Service Band Indices. Ameritech states that, pending access reform, price cap LECs cannot file this information for the common line basket prior to their annual filings because of the interrelationship of NECA's calculation of long-term support and exogenous cost adjustments. Ameritech proposes that the price cap and rate-of-return LECs file a full TRP at the time of their annual filing. NYNEX suggests that the Commission use this proceeding to further streamline annual access tariff filings by eliminating the requirement for a detailed list of demand by rate elements, a discussion of how the indices were developed, and other required information.

103. The chief purposes of TRPs are to: (i) justify LECs' exogenous cost adjustments to their PCIs; (ii) verify revisions to the price cap indices; and

(iii) verify that the proposed rates are within the established price caps. We find that the first two purposes can be accomplished through early filing of TRPs that do not contain proposed rates. Early filing of information concerning exogenous costs and recalculation of PCIs would facilitate review of price cap LECs' annual access filings. We disagree with the LECs' arguments that this information cannot be filed until the tariff is submitted and that the information will have no significance without the proposed rates. Price cap indices are a function of inflation, productivity, and exogenous cost changes. None of these factors is dependent on a LEC's specific rates. Early filing of changes in these areas would facilitate review of the annual access filings within the streamlined notice periods by resolving most of the major issues currently raised in the annual access proceedings.

104. We also disagree with the arguments that the early submission of this TRP information is inconsistent with the streamlined notice provisions; to the contrary, as the statute contemplates, the actual tariff with rates will be filed on 7- or 15-days' notice. In addition, this submission of TRP information does not impose an unnecessary burden on price cap LECs. LEC are currently required to file TRPs at the time they file their annual access tariffs in order to comply with the cost support requirements of our rules. Early filing of the TRPs, absent rate information, will result in the filing of supporting information at the same time as under current rules, while allowing actual rates to be filed later on 7 or 15 days' notice. Accordingly, we will continue to require price cap LECs to file the TRP for their annual access filing, 90 days prior to July 1 of each year, but rate information need not be included. In view of the volume and complexity of the information submitted in the price cap carriers' TRPs, we conclude that any notice period less than 90 days would be inadequate to allow interested parties to review these filings carefully. Therefore, we reject Sprint's and Ameritech's proposals to file the TRP in 15 days. Finally, we conclude that NYNEX's suggestion to further streamline the annual access filing process is outside the scope of this proceeding. Non-price-cap LECs will be required to file their TRPs at the same time that they file their annual access tariffs. The notice period for non-price-cap annual access filings will be governed by the rules we adopt generally governing LEC streamlined filings. Thus, only annual access filings that solely decrease rates may be filed on 7-days' notice. As stated above, LECs may elect to file under existing rules and, therefore, file their TRPs with annual access tariffs that are filed subject to the applicable notice periods of our rules.

6. Tariff Investigations

105. Section 402 of the 1996 Act amends section 204(a) of the Act, effective February 8, 1997, to provide that the Commission shall conclude all hearings initiated under this section within five months after the date the charge, classification, regulation, or practice subject to the hearing becomes effective. Currently, we do not have procedural rules governing tariff investigations; instead, the procedures are established in the orders designating issues for investigation. We solicited comment on whether we should establish procedural rules to expedite the hearing process in light of the shortened period in which the Commission must complete tariff investigations. Specifically, we sought comment on whether we should establish time periods for pleading cycles, and page limits for pleadings and exhibits, and whether we should require the filing of proposed orders. We also noted that, while section 204 investigations may be initiated by the Bureau, they must be terminated by the full Commission under section 5(c) of the Communications Act. We solicited suggestions for reforms that will permit more expeditious termination of tariff investigations, such as the use of abbreviated orders without extensive findings, especially where we find that the tariff under investigation is lawful. We also solicited comment on whether we can, consistent with section 5(c) of the 1934 Act, as amended, terminate investigations by a pro forma order that adopts a decisional memorandum or order of the Common Carrier Bureau. Finally, we solicited comment on whether we should establish procedures for informal mediation of tariff investigation issues.

106. Ad Hoc, USTA, NECA, Bell Atlantic, US West, and NYNEX support the adoption of procedural rules that would expedite the completion of tariff investigations within the five-month statutory deadline. NECA and Bell Atlantic support the use of abbreviated orders where we make a finding that a tariff is lawful. NYNEX proposed that we adopt the following filing schedule for investigations, calculated from the tariff's effective date: 21 days for the LECs to file the direct case; 35 days for comments/oppositions to the direct case; and 49 days for replies. Under this schedule, we would have over three months to conclude the investigation. MCI favors the establishment of time periods for pleading cycles and page limits in the designation order. In addition, MCI suggests that the designation order could specify that the parties should file proposed orders. CBT, US West, and Ameritech support the use of pro forma orders to terminate investigations. US West supports the use of pro forma orders, provided that they are in fact full Commission determinations of the lawfulness of tariffs and thus final appealable orders. Ameritech opposes the imposition of mandatory informal mediation.

107. GSA, AT&T, Bell Atlantic, and SWBT do not support the establishment of expedited procedures for investigations. GSA points out that section 204(a)(1) places the burden of proof for any rate changes or revisions on the carriers. In addition, GSA contends that we have the authority to reject a tariff if we find by our investigation that the proposed tariff is unjust and unreasonable. AT&T and Bell Atlantic suggest that we maintain our flexibility in conducting investigations so we may tailor procedures according to the requirements of a particular proceeding, rather than commit ourselves to any particular procedural rules.

108. We agree with the commenters that oppose the establishment of specific rules for expediting tariff investigations at this time. Rather, we will continue to set out procedures in designation orders that best meet the needs of a particular proceeding. We have the discretion, for example, to set page limits, establish pleading cycles, or use pro forma designation orders. We find that retaining the flexibility to tailor each investigation individually is the best means of ensuring that tariff investigations are completed within the five month time limit. We also intend, to the extent we may do so while giving full consideration to all issues, to use abbreviated orders for terminating tariff investigations, subject to the new requirements of the 1996 Act. We also favor encouraging parties to use informal mediation to resolve tariff disputes, but will not impose such a requirement at this time. Moreover, in order to expedite the tariff review process and ensure that we conclude all tariff investigations within the five month statutory period, we delegate authority to the Chief, Common Carrier Bureau to work within the cost support rules to establish format requirements for cost data that must be submitted by carriers with certain tariffs. We note that we recently proposed rules to improve

the speed and effectiveness of the formal complaint process. In constrast to formal complaints, we can better provide for expedited tariff investigations by establishing procedural requirements on a case-by-case basis because those requirements can be closely tailored to the issues that have been revealed in the tariff review process.

7. Requirements

109. Existing rules specifying notice periods for LEC tariffs must be amended to conform to the streamlined notice periods for LEC tariffs established in section 204(a)(3). For example, section 61.58 of our rules specifies the notice requirements for dominant carriers before new tariff proposals can go into effect. In particular, section 61.58 states that carriers subject to rate-of-return regulation must file a tariff on either 15-35-, or 45-days' notice, depending on the type of tariff at issue. Section 61.58(e) states that carriers subject to optional incentive regulation pursuant to section 61.50 of our rules must file a tariff on either 15- or 90-days' notice, depending on the type of tariff at issue. Finally, section 61.58(c) states that carriers subject to price cap regulation must file a tariff on either 14-, 45-, or 120-days' notice, depending on the type of tariff change. Therefore, in the NPRM we proposed to change section 61.58 of the Commission's existing rules governing notice periods for LEC tariff filings to make this section consistent with the streamlined notice periods of 7 and 15 days required by the 1996 Act. The few comments filed regarding this section of the rules support our proposal. Accordingly, we are amending section 61.58 of the rules to establish notice periods consistent with the 1996 Act.

IV. Effective Date

110. Section 402(b)(4) of the 1996 Act provides that the LEC tariff streamlining provisions shall apply to any charge, classification, regulation, or practice filed on or after one year after the effective date of the 1996 Act, *i.e.*, February 8, 1997. Section 553(d) of the Administrative Procedure Act (APA) provides that the required publication in the Federal Register of changes to the Code of Federal Regulations shall not be made less than thirty days before the effective date except, *inter alia,* as otherwise provided by the agency for good cause found and published with the rule. We find that it is necessary for our rules implementing the LEC streamlined tariff provisions of the 1996 Act to be effective at the time those statutory provisions become effective. Section 402(b)(4) of the 1996 Act is self-effectuating and will become effective on February 8, 1997, regardless of whether the rules adopted in this proceeding have become effective. Making these rules effective by February 8, 1997 will assist parties in complying with the LEC tariff streamlining provisions of the 1996 Act and will avoid possible confusion to LECs and their customers that could result if the Commission's existing LEC tariffing rules remain in effect after February 8, 1997. This constitutes good cause for making these rules effective earlier than thirty days prior to their publication in the Federal Register. We note as well, that much of this order is devoted to interpretation of the statute and promulgation of procedural rules, subject matters that are not subject to the thirty day period mandated by section 553(d) of the APA. Accordingly, we are making the rules adopted in this proceeding effective February 8, 1997.

V. Final Regulatory Flexibility Analysis

111. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM to implement section 402(b)(1)(a) of the Telecommunications Act of 1996, which provides for streamlined tariff filings by local exchange carriers. We sought written public comment on the IRFA proposals in the NPRM. Our Final Regulatory Flexibility Analysis (FRFA) in this Report and Order conforms to the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). None of the comments specifically addressed IRFA.

112. *Need for and Objectives of the Proposed Rule:* We promulgate the rules in this Report and Order to implement section 204(a) of the Communications Act of 1934, as amended by section 402 of the Telecommunications Act of 1996. Section 402 provides for streamlined tariff filings by local exchange carriers. In accordance with section 204(a), our implementing rules will implement streamlined tariff filing requirements by LECs with the minimum regulatory and administrative burden on telecommunications carriers. The objective of these rules is to ''streamline the procedures for revision by local exchange carriers of charges, classifications and practices.''

113. *Summary of Significant Issues Raised by the Public Comments In Response to the IRFA:* While none of the commenters specifically addressed the Commission's IRFA, we received several comments regarding the impact that the various alternatives facing the Commission would have on small companies. For instance, with respect to how the Commission should interpret ''deemed lawful,'' commenters including KMC, ACTA, TRA, and SWBT discussed the effect the Commission's decision would have on small entities.

114. With respect to treatment of tariff filings that include both increases and decreases, ALLTEL suggests that small and mid-sized companies be permitted to define rate increases and decreases at the access category level, and CBT suggests that all of the increases and decreases in a given transmittal be aggregated with the applicable notice period based on the net change. USTA proposes that the Commission ensure a streamlined approach for small and mid-sized LECs by permitting rate-of-return LECs to define rate increases or decreases at the access category level and file accordingly. USTA also proposes that LECs under Optional Incentive Regulation be permitted to define rate increases at the basket level.

115. We have also received comments from various parties regarding several discrete issues. For example, with respect to electronic filing, USTA states that the Commission must consider the impact on small LECs who may wish to file their own tariffs but do not have the resources to implement electronic filing at this time. Hence, USTA maintains that electronic filing should not be mandatory. Regarding our proposal in the NPRM that each LEC submit an analysis accompanying its tariff filing demonstrating that the transmittal is lawful, CBT states that this requirement would have a chilling effect on small and mid-size LECs that are sensitive to increased legal fees. TRA states that facsimile transmissions should be added to hand delivery requirements as a consideration for small carriers with limited budgets.

116. *Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply:* The RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act (SBA), 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the SBA, a ''small business concern'' is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1500 employees.

117. *Total Number of Telephone Companies Affected.* Many of the decisions and rules adopted herein may have a significant economic impact on a substantial number of small telephone companies identified by SBA. The United States Bureau of the Census (''the Census Bureau'') reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone service, as defined therein, for at least one year. This number contains a variety of different category of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.''

118. Our rules governing the streamlining of the LEC tariff process apply to all LECs. These companies may have fewer than 1,500 employees and thus fall within the SBA's definition of small telecommunications entity, we do not believe that such entities should be considered small entities within the meaning of the RFA. Because the small incumbent LECs subject to these rules are either dominant in their field of operations or are not independently owned and operated, consistent with our prior practices, they are excluded from the definition of ''small entity'' and ''small business concerns.'' Accordingly, our use of the terms ''small entities'' and ''small businesses'' does not encompass small incumbent LECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs that arguably might be defined by SBA as ''small business concerns.''

119. *Local Exchange Carriers.* Neither this agency nor SBA has developed a definition of small providers of local exchange service (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with Telecommunications Relay Service (TRS). According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange service. Although it seems certain that some of these carriers are not independently owned and operated, or have fewer than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. We conclude that there are fewer than 1,347 small incumbent LECs that may be affected by the proposals in this Report and Order.

120. Potential Petitioners Subject to 47 CFR 1.773: Section 1.773 of the Commission's rules apply to any entity who files a petition to suspend or reject a new tariff filing. Petitioners may be other telecommunications businesses, competitors of LECs or end users (i.e., consumers). It is not possible to determine with any specificity the primary field of business of an end user, nor is it possible to determine whether they may be a small entity. Therefore, for purposes of this FRFA, we have included general information about small businesses, small governmental jurisdictions, and small not-for-profit establishments, as well as telecommunications entities as potential petitioners that may be impacted by this R & O. An individual petitioner is not considered a small business under the RFA.

121. *Small Businesses (Workplaces).* Workplaces encompass establishments for profit and nonprofit, plus local, state and federal governmental entities. SBA guidelines to the SBREFA state that about 99.7 percent of all firms are small and have fewer than 500 employees and less than $25 million in sales or assets. There are approximately 6.3 million establishments in the SBA database.

122. *Governmental Jurisdictions.* The definition of a small governmental jurisdiction is one with a population of less than 50,000. There are 85,006 governmental jurisdictions in the nation. This number includes such jurisdictions as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental jurisdictions, we estimate that 96 percent, or 81,600, are small jurisdictions.

123. *Small Organizations.* The Commission has not established a definition of small organization therefore, we will use the definition under the RFA. The RFA defines a small organization as any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. There are approximately 257,038 total non-profit organizations in the United States.

124. *Total Number of Telephone Companies Affected. See supra* para. 115.

125. *Local Exchange Carriers. See supra* para. 117.

126. *Interexchange Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with TRS. According to our most recent data, 97 companies reported that they were engaged in the provision of interexchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 97 small entity IXCs that may be affected by the decisions and rules adopted in this Order.

127. *Competitive Access Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 30 companies reported that they were engaged in the provision of competitive access services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 30 small entity CAPs.

128. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies (SIC 4812) as an entity with 1,500 or less employees. The Census Bureau

reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned are operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies.

129. *Cellular Service Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4812). The most reliable source of information regarding the number of cellular service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 789 companies reported that they were engaged in the provision of cellular services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 789 small entity cellular service carriers.

130. *Mobile Service Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under SBA rules is for radiotelephone (wireless) companies (SIC 4812). The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 117 companies reported that they were engaged in the provision of mobile services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under SBA's definition. Consequently, we estimate that there are fewer than 117 small entity mobile service carriers.

131. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F. As set forth in 47 CFR section 24.720(b), the Commission has defined ''small entity'' in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. Our definition of a ''small entity'' in the context of broadband PCS auctions has been approved by SBA. The Commission has auctioned broadband PCS licenses in Blocks A, B, and C. We do not have sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. Based on this information, we conclude that the number of broadband PCS licensees affected by the decisions in this Order includes, at a minimum, the 90 winning bidders that qualified as small entities in the Block C broadband PCS auctions.

132. At present, no licenses have been awarded for Blocks D, E, and F of broadband PCS spectrum. Therefore, there are no small businesses currently providing these services. However, a total of 1,479 licenses will be awarded in the D, E, and F Block broadband PCS auctions, which commenced on August 26, 1996. Eligibility for the 493 F Block licenses is limited to entrepreneurs with average gross revenues of less than $125 million. We cannot estimate, however, the number of these licenses that will be won by small entities under our definition, nor how many small entities will win D or E Block licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective D, E, and F Block licensees can be made, we assume for purposes of this FRFA, that a majority of the licenses in the D, E, and F Block Broadband PCS auctions.

133. *SMR Licensees.* Pursuant to 47 CFR section 90.814(b)(1), the Commission has defined ''small entity'' in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The rules adopted in this Order may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do 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 less than $15 million. We assume, for purposes of this FRFA, that all of the extended implementation authorizations may be held by small entities.

134. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in this Order includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. It is not possible to ascertain how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of this FRFA, that a majority of the licenses may be awarded to small entities.

135. *Resellers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies (SIC 4812 and 4813 combined). The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 206 companies reported that they were engaged in the resale of telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers

that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 206 small resellers.

136. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements:* LECs subject to price cap regulation and LECs that elect to file tariffs subject to price cap regulation will be required to file their tariff review plans (TRP) prior to the filing of their annual tariff revisions. This requirement will not impose a significant burden on the LECs because they currently file TRPs at the time they file their annual access tariffs. Adoption of this proposal will require that the carriers allocate the resources needed to complete the TRPs prior to their filing of the annual access tariffs. In order to comply with this filing requirement, LECs will need to utilize tariff analysts and legal and accounting personnel. LECs have the personnel necessary to meet these requirements since they are already required to utilize staff with skills necessary to establish tariffs that comply with sections 201–205 of the Communications Act. Although this requirement that price cap LECs file their TRP prior to the filing of their annual tariff revisions will establish a new TRP filing deadline, we believe it is justified under the new streamlined tariff filing procedures. To date, we are not aware of any small entities that have elected to be subject to price cap regulation. Therefore, at the time these rules become effective, no small carriers will be required to file their TRPs prior to the filing of their annual tariff revisions. In the future, however, small entities that elect to be subject to price cap regulation pursuant to section 61.41(a)(3) of our rules will be required to comply with this reporting requirement.

137. In addition, our requirement that all petitions and reply pleadings be hand served or served by facsimile transmission will not impose a significant burden on small entities. Facsimile and hand delivery service are readily available throughout the country for any entities that may not have their own capabilities in these areas.

138. *Significant Alternatives and Steps Taken By Agency to Minimize Significant Economic Impact on a Substantial Number of Small Entities and Small Incumbent LECs Consistent with Stated Objectives:* We believe that our proposed actions to implement the specific streamlining requirements of section 204(a)(3) of the Communications Act, as well as additional steps for streamlining the tariff process, minimize the economic impact on small carriers that are eligible to file tariffs on a streamlined basis. For example, our proposal to establish a program for the electronic filing of tariffs will reduce the existing economic burden on carriers who are now required to file paper tariffs with the Commission. To the extent that specific concerns have been expressed regarding the ability of smaller companies to comply with electronic filing requirements, we conclude that this issue can be addressed by the Bureau in consultation with the industry when establishing the system.

139. Under the new competitive provisions of the 1996 Act, there could be a number of new LECs entering the local exchange market that would be considered small businesses. To the extent that such carriers file tariffs and would be considered non-dominant, we conclude that our rules would not create any additional burdens because under section 63.23(c), 47 CFR section 63.23(c), non-dominant carriers are permitted to file tariffs on one day's notice. Further, our determinations in this proceeding that will apply to such carriers will reduce administrative burdens for these carriers, to the extent they file tariffs pursuant to section 204(a)(3) of the Act.

140. In adopting the first interpretation of ''deemed lawful,'' we have considered the comments of KMC, ACTA, and TRA which expressed a concern that adoption of this interpretation would be unfair to small consumers and competitors of LECs. With respect to KMC's concern that the adoption of the first interpretation would make it difficult for small competitors to challenge LEC tariff filings, as discussed above in Section III., B, all parties, including small entities, will have the same opportunity to challenge tariff filings eligible for streamlined regulation before they become effective or to initiate a section 208 complaint proceeding after the filings become effective. These procedures will permit small businesses to fully participate in pre-effective review of LEC tariffs and to obtain a determination of the lawfulness of a LEC tariff after it has gone into effect. To the extent that small entities will have greater difficulty than larger entities in participating in the tariff review process, we note that the shortened time period for pre-effective review of LEC tariffs is required by the 1996 Act and that, as explained above, we are compelled by the language in the statute as interpreted by relevant judicial precedent to adopt the first interpretation of ''deemed lawful.'' Similarly, as to ACTA's and TRA's concern that the adoption of the first interpretation will adversely affect small carriers and consumers by precluding damages as a remedy for the period that tariffs are effective but have been found unlawful subsequently in a section 205 or 208 proceeding, we are compelled by the language in the statute as interpreted by relevant judicial precedent to adopt the first interpretation of ''deemed lawful.'' Small businesses will be able to protect against this possible impact on them caused by ''deemed lawful'' treatment of LEC tariffs by participating in the pre-effective tariff review process. Our program of electronic filing of tariffs will facilitate participation of small entities in the tariff review process.

141. In choosing not to impose a requirement that carriers submit an analysis accompanying their tariff filings demonstrating that the filing is lawful, we have addressed the concerns of CBT that this requirement might have a chilling effect on small and mid-size LECs that are sensitive to increased legal fees.

142. Finally, we have addressed the concern expressed by TRA that requiring hand delivery of petitions and replies could be prejudicial to small companies which may not be able to afford such service by adopting TRA's suggestion that facsimile transmission be added as an alternative to required hand delivery.

143. With respect to treatment of tariff filings that include both increases and decreases, we have considered the various alternative suggestions provided by ALLTEL, CBT, and USTA to permit small LECs to aggregate the rate increases and decreases in their filings, and file those with a net rate decrease on 7 days' notice. As stated above, we have rejected these suggestions because we believe that this approach would be contrary to the plain language of the statute which clearly states that the longer, 15 days' notice period will apply ''in the case of an increase in rates.'' Moreover, we have concluded that by requiring tabulation of net increases and decreases, this approach would create confusion and add another step to an already brief review process.

144. *Report to Congress:* The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the Federal Register.

VI. Final Paperwork Reduction Analysis

145. On November 27, 1996, the Office of Management and Budget (OMB) approved all of the proposed changes to our information collection requirements in accordance with the Paperwork Reduction Act. We have, however, decided not to adopt several of the information collection requirements proposed in the NPRM and we have modified others. For example, we declined to adopt the proposal to require the LECs to include a summary and legal analysis with their tariff filings, but we will require that LEC tariff filings include a statement in tariff transmittal letters clearly indicating that the tariff is being filed on a streamlined basis under section 204(a)(3) of the Act and whether the tariff filing contains a proposed rate increase, decrease or both for purposes of section 204(a)(3). We conclude that these requirements and modifications constitute a new ''collection of information,'' within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501–3520. These requirements and modifications are subject to OMB review and the Commission has requested emergency approval of these modifications to ensure that the requirements may be effective on February 8, 1997.

146. The Commission concurs with OMB's recommendation that we consider input from the industry before implementing a system for the electronic filing of tariffs and related pleadings.

VII. Ordering Clauses

147. Accordingly, *It is ordered* that pursuant to authority contained in sections 1,4(i), and 204(a)(3) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and 204(a)(3), Parts 1 and 61 of the Commission's rules are amended as set forth below.

148. *It is further ordered* that the policies, rules, and requirements set forth herein *are adopted.*

149. *It is further ordered* that the policies, rules and requirements adopted herein *shall be effective* February 8, 1997.

150. *It is further ordered* that authority is delegated to the Chief, Common Bureau, as set forth *supra* in paras. 48, 75 and 106.

List of Subjects in 47 CFR Parts 1 and 61.

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission
William F. Caton,
Acting Secretary.

Rule Changes

Parts 1 and 61 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 204(a)(3), 303, and 309(j), unless otherwise noted.

2. In § 1.773, paragraphs (a)(2)(i) through (a)(2)(iv) are redesignated as paragraphs (a)(2)(ii) through (a)(2)(v), paragraphs (b)(1)(i) through (b)(1)(v) are redesignated as paragraphs (b)(1)(ii) through (b)(1)(vi), new paragraphs (a)(2)(i) and (b)(1)(i) are added, paragraphs (a)(4) and (b)(3) are revised to read as follows:

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

(a) * * *

(2) * * *

(i) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filed pursuant to section 204(a)(3) of the Communications Act made on 7 days notice shall be filed and served within 3 calendar days after the date of the tariff filing.

* * * * *

(4) *Copies, service.* An original and four copies of each petition shall be filed with the Commission as follows: the original and three copies of each petition shall be filed with the Secretary, FCC room 222, 1991 M Street, NW., Washington, DC 20554; one copy must be delivered directly to the Commission's copy contractor, International Transcription Service, Inc., 2100 M St., NW., Suite 140, Washington, DC. Additional, separate copies shall be served simultaneously upon the Chief, Common Carrier Bureau; the Chief, Competitive Pricing Division; and the Chief, Tariff and Price Analysis Branch of the Competitive Pricing Division. Petitions seeking investigation, suspension, or rejection of a new or revised tariff made on 15 days or less notice shall be served either personally or via facsimile on the filing carrier. If a petition is served via facsimile, a copy of the petition must also be sent to the filing carrier via first class mail on the same day of the facsimile transmission. Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on more than 15 days notice may be served on the filing carrier by mail.

(b)(1) * * *

(i) Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filed pursuant to section 204(a)(3) of the Act made on 7 days notice shall be filed and served within 2 days after the date the petition is filed with the Commission.

* * * * *

(3) *Copies, service.* An original and four copies of each reply shall be filed with the Commission, as follows: the original and three copies must be filed with the Secretary, FCC room 222, 1919 M Street, NW., Washington, DC 20554; one copy must be delivered directly to the Commission's Copy contractor, International Transcription Service, Inc., 2100 M St., NW/. Suite 140, Washington, DC. Additional separate copies shall be served simultaneously upon the Chief, Common Carrier Bureau; the Chief, Competitive Division; and the Chief, Tariff and Price Analysis Branch of the Competitive Pricing Division and the petitioner. Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff made on 15 days or less notice shall be served on petitioners personally or via facsimile. Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff made on more than 15 days notice may be served upon petitioner personally, by mail or via facsimile.

PART 61—TARIFFS

3. The authority citation for part 61 continues to read as follows:

Authority: Sections 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.

4. Section 61.3(s) is revised to read as follows:

§ 61.3 Definitions.

* * * * *

(s) *Local Exchange Carrier.* Any person that is engaged in the provision of telephone exchange service or exchange access as defined in section 3(26) of the Act.

* * * * *

5. In section 61.33, paragraphs (d), (e), (f), and (g) are redesignated as paragraphs (e), (f), (g), and (h), new paragraph (d) is added and newly redesignated paragraph (e) is revised to read as follows:

§ 61.33 Letters of transmittal.

* * * * *

(d) Tariffs filed pursuant to section 204(a)(3) of the Communications Act

shall display prominently in the upper right hand corner of the letter of transmittal a statement that the filing is made pursuant to that section and whether it is being filed on 7- or 15-days' notice.

(e) In addition to the requirements set forth in paragraph (a) of this section, any carrier filing a new or revised tariff made on 15 days' notice or less shall include in the letter of transmittal, the name, room number, street address, telephone number, and facsimile number of the individual designated by the filing carrier to receive personal or facsimile service of petitions against the filing as required under § 1.773(a)(4) of this chapter.

6. Section 61.49 is amended by adding new paragraph (l) to read as follows:

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

* * * * *

(l) In accordance with §§ 61.41 through 61.49, local exchange carriers subject to price cap regulation that elect to file their annual access tariff pursuant to section 204(a)(3) of the Communications Act shall submit supporting material for their interstate annual access tariffs, absent rate information, 90 days prior to July 1 of each year.

7. New section 61.51 is added to part 61 under the heading ''Specific Rules for Tariff Publications'' to read as follows:

§ 61.51 LEC tariff filings requirements pursuant to section 204(a)(3) of the Communications Act.

(a) Local exchange carriers may file tariffs pursuant to section 204(a)(3) of the Communications Act. Such tariffs shall be filed in accordance with the notice periods set forth in § 61.58(d).

(b) Local exchange carriers may elect not to file any tariffs pursuant to section 204(a)(3) of the Communications Act that may be eligible for filing under that section. Any such tariffs not filed pursuant to section 204(a)(3) of the Communications Act shall be filed in accordance with the notice requirements of §§ 61.23 and 61.58.

(c) Local exchange carrier tariff filings pursuant to section 204(a)(3) must comply with the requirements of §§ 61.38, 61.39, and 61.41 through 61.50.

(d) Local exchange carriers subject to price cap regulation that elect to file their annual access tariff pursuant to section 204(a)(3) of the Communications Act shall submit support material for their interstate annual access tariffs, in accordance with § 61.49(l).

8. Section 61.52 is amended by adding new paragraph (c) to read as follows:

§ 61.52 Form, size, type, legibility, etc.

* * * * *

(c) Local exchange carriers shall file all tariff publications and associated documents, such as transmittal letters, requests for special permission, and cost support documents, electronically in accordance with the requirements established by the Chief, Common Carrier Bureau.

9. Section 61.58 is amended by revising paragraph (a)(2), redesignating paragraphs (d) and (e) as paragraphs (e) and (f), and adding new paragraph (d) to read as follows:

§ 61.58 Notice requirements.

(a) * * *

(2) Except for tariffs filed pursuant to section 204(a)(3) of the Communications Act, the Chief, Common Carrier Bureau, may require the deferral of the effective date of any tariff filing made on less than 120-days' notice, so as to provide for a maximum of 120-days' notice, or of such other maximum period of notice permitted by section 203(b) of the Communications Act, regardless of whether petitions under § 1.773 of this chapter have been filed.

* * * * *

(d) *Tariffs filed pursuant to section 204(a)(3) of the Communications Act.* Local exchange carriers filing tariffs pursuant to section 204(a)(3) of the Communications Act may file the tariff on 7-days' notice if it proposes only rate decreases. Any other tariff filed pursuant to section 204(a)(3) of the Communications Act, including those that propose a rate increase or any change in terms and conditions of service other than a rate change, shall be filed on 15-days' notice.

[FR Doc. 97–3113 Filed 2–6–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 93–316, RM–8403, RM–8576]

Radio Broadcasting Services; Douglas, Tifton and Unionville, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document denies the petition for reconsideration filed by Tifton Broadcasting Corporation and affirms our action in the *Report and Order* 60 FR 37597 (July 21, 1995) which substituted Channel 223C3 for Channel 223A at Douglas, Georgia, reallotted Channel 223C3 from Douglas to Tifton, Georgia, and modified the construction permit for Station WKZZ(FM) accordingly. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 7, 1997.

FOR FURTHER INFORMATION CONTACT: Authur D. Scrutchins, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order,* MM Docket No. 93–316, adopted January 24, 1997 and released January 31, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Roomm 239), 1919 M St, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–3118 Filed 2–6–97; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–209; RM–8885]

Radio Broadcasting Services; Belview, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document allots Channel 290A to Belview, Minnesota, as that community's first local broadcast service in response to a petition filed by Harbor Broadcasting, Inc. *See* 61 FR 55124, October 24, 1996. The coordinates for Channel 290A at Belview are 44–42–08 and 95–14–46. There is a site restriction 12.4 kilometers (7.7 miles) northeast of the community. With this action, this proceeding is terminated.

DATES: Effective March 17, 1997. The window period for filing applications for Channel 290A at Belview, Minnesota, will open on March 17, 1997, and close on April 17, 1997.