

sections 154(i), 303(g), 303(r), and 332(c)(7), a notice of proposed rulemaking is hereby adopted.

55. *It is further ordered* That the petition for rulemaking of the Cellular Telecommunications Industry Association, filed December 22, 1994 (RM-8577), is hereby Dismissed.

vi. Further Information

56. For further information concerning the NPRM, contact Shaun A. Maher, Esq. at (202) 418-7240, internet: smaher@fcc.gov, Policy & Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, Washington, D.C. 20554.

List of Subjects in 47 CFR Part 1

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97-24166 Filed 9-11-97; 8:45 am]

BILLING CODE 6712-01-U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 54 and 69

[CC Docket No. 97-181; FCC 97-316]

Defining Primary Lines

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: As a result of reforms adopted to implement the Telecommunications Act of 1996, our access charge rules require incumbent LECs subject to the Commission's price cap rules to charge subscriber line charges (SLCs) and presubscribed interexchange carrier charges (PICCs) at different levels for secondary residential and multi-line business lines. This NPRM considers how Commission should define and identify primary lines for the purposes

of implementing the Commission's access charge rules.

DATES: Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before September 25, 1997, and reply comments on or before October 9, 1997. Written comments by the public on the proposed and/or modified information collections are due September 25, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before November 12, 1997.

ADDRESSES: Parties should send their comments or reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Parties filing on paper should also send three (3) copies of their comments to Sheryl Todd, Federal Communications Commission, Accounting and Audits Division, Universal Service Branch, 2100 M Street, N.W., Room 8611, Washington, DC 20554. Parties filing in paper form should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW, Washington, D.C. 20036. See **SUPPLEMENTARY INFORMATION** section for further information about filing comments and reply comments electronically.

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725-17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Valerie Yates, Legal Counsel, Common

Carrier Bureau, (202) 418-1500, or Sheryl Todd, Common Carrier Bureau, (202) 418-7400. For additional information concerning the information collections contained in this NPRM contact Judy Boley at 202-418-0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

1. This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: None, new information collection.

Title: In the Matter of Federal-State Joint Board on Universal Service, Defining Primary Lines, Notice of Proposed Rulemaking, CC Docket No. 97-181.

Form No.: None.

Type of Review: New collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion; one-time requirement.

Proposed collection	No. of respondents	Est. time per response	Total annual burden	Est. costs per respondent
(a.) Request by ILEC to consumer	164	100	16,400	1,6400.00
(b.) Response by consumer to identify primary line	149,141,075	1.083	12,378,709	0.00
(c.) Disclosure statement	164	100	16,400	0.00
(d.) Recordkeeping	164	50	8,200	286,040.00

15 min.

Total Annual Burden: 12,419,709 hours.

Needs and Uses: The information collections proposed in this NPRM are

necessary to fully implement the rules the Commission adopted in its *Universal Service Order* and *Access Charge Reform Order* because, without

a definition and a means of identifying and verifying primary residential lines, incumbent LECs subject to Commission price cap regulation will not be able to

assess the appropriate charges for these lines. Requiring incumbent LECs to assess different-level charges on primary residential lines is necessary to balance between reforming our access charge rules to facilitate local competition, and preserving and advancing universal service by taking action to maintain low rates for subscribers to local telephone service.

Summary of Analysis, Tentative Conclusions, and Issues for Comment

I. Introduction

2. In the Universal Service Order and the Access Charge Reform Order we concluded that the \$3.50 cap on the subscriber line charge (SLC) for primary residential and single-line businesses should remain unchanged. See Federal-State Joint Board on Universal Service, (62 FR 32862 (June 17, 1997)) (hereinafter *Universal Service Order*); Access Charge Reform, (62 FR 31868, (June 11, 1997)) (hereinafter *Access Charge Reform Order*); see also Federal-State Joint Board on Universal Service, (61 FR 63778 (December 2, 1996)) (hereinafter *Recommended Decision*). In the *Access Charge Reform Order*, however, we adjusted the SLC caps for additional residential and business lines. We also created a presubscribed interexchange carrier charge (PICC) that will, over time, supplant the traffic-sensitive carrier common line charge (CCLC). Under our new access charge rules, in 1998 SLC and PICC levels for primary residential and single-line business lines will be lower than the levels prescribed for secondary residential and multi-line business lines. As a result of these changes, we must establish criteria to identify primary residential lines for the purpose of determining SLC and PICC levels.

II. Discussion

3. Although this NPRM focuses on price cap ILECs, we also solicit comment on whether the various proposals set forth in this NPRM for defining, identifying, and verifying primary lines for price cap ILECs could also be applied for rate-of-return ILECs if, in a future proceeding, the Commission concludes that all ILECs should assess SLCs and PICCs that are higher for secondary lines.

A. Defining Single-Line Business Lines and Primary Residential Lines

4. We invite parties to describe the methods carriers use to distinguish multiple-line businesses from single-line businesses and to distinguish between residential and business customers, and seek comment on

whether the Commission should revise its rules or policies to ensure the correct SLCs and PICCs are assessed on these lines. In particular, we note, that § 69.104(h) defines a single-line business line. It states: "A line shall be deemed to be a single line business line if the subscriber pays a rate that is not described as a residential rate in the local exchange service tariff and does not obtain more than one such line from a particular telephone company." 47 CFR 69.104(h). In the *Access Charge Reform Order*, we defined the term "telephone company" for the purposes of part 69 of our rules, to mean an "incumbent LEC" as that term is defined in section 251(h)(1) of the Act. 47 CFR 69.2 We seek comment on whether we should alter this definition. We seek comment on whether maintaining this definition would be favorable because, given that only price cap ILECs will assess different SLCs and PICCs on multi-line businesses, maintaining this definition would allow incumbent LECs to assess the correct SLCs and PICCs without determining whether a customer receives service from other carriers. We note however, that if we maintain this definition, a business that obtains one line from an ILEC and one line from a competitive LEC or a wireless carrier would be treated as a single-line business for the purposes of its SLC and PICC. We seek comment on whether this outcome would be competitively neutral and whether it would be consistent with the Joint Board's recommendations with respect to the level of the primary line SLC. We further seek comment on whether a business with a single line in each of two locations should be considered a single-line business.

5. *Primary residential line.* We seek comment on how we should define "primary residential line." Specifically, we seek comment on whether the primary residential line should be defined as the primary line of an individual subscriber, of a residence, of an individual household, or on another basis. For example, defining the primary line as the primary line to a primary residence would not allow two households in a single residence each to subscribe to a line that is subject to the primary-line level SLC and PICC (i.e., one of the two lines would be subject to the higher SLC and PICC). Conversely, defining the primary line in terms of a subscriber's residence may have the advantage of being administratively simple and less invasive of subscribers' privacy because it does not require the gathering of information regarding subscriber living arrangements that

would be needed to identify households. We seek comment on these issues.

6. Parties that favor defining the primary residential line in terms of "subscribers," "residences," "households," or any other term, should propose definitions of such terms, including definitions used by other entities. We seek comment on whether we should use, for example, the definition of household used by either the U.S. Census Bureau, see U.S. Department of Commerce, Bureau of the Census, Census of Population and Housing, 1990, Technical Documentation (May 1992) at B-14, or the Internal Revenue Service (IRS), see 26 CFR 1.2-2(b)(3) or (4); 26 U.S.C. 26 U.S.C. 151. We ask parties to identify other definitions that may be easily applied by consumers and carriers alike. Additionally, we ask parties to estimate, to the extent possible, the number of lines that will be classified as primary residential lines under any definition that they support. Parties should also discuss how the definition of the primary residential line selected would affect the success of the approach, discussed below, they favor to verify the number of such lines.

B. Identification of Primary Residential Lines

7. *Information Required To Identify Primary Residential Lines.* We tentatively conclude that, although an ILEC's business records likely distinguish between single-line and multi-line customers, and between residential and business customers, those records may be inadequate to identify the primary residential line. For these reasons, we tentatively conclude that identifying a primary residential line requires: (1) Identification of the subscriber, residence, or household (depending on the definition adopted); (2) identification of the primary residence of the subscriber or household; and (3) identification of the primary line, and of the incumbent LEC and interexchange carrier serving that line. We seek comment on these tentative conclusions.

8. *Using Customer Self-Certification To Collect Information.* We tentatively conclude that the Commission should permit price cap ILECs to use customer self-certification to identify primary lines for access charge purposes. We make this tentative conclusion because such an approach presumably would minimize the substantial administrative costs that would be inherent in any effort to require carriers or the Commission to identify primary residential lines without information

from the customer. The burden that self-certification will impose on individual customers would be significantly less than the burden that ILECs would otherwise bear to identify each of their customers' primary line independent of the customer.

9. We seek comment on the language that would have to be posed to subscribers to determine which is their primary residential line under such a self-certification proposal. We seek comment on whether we should adopt uniform language, or whether carriers should devise their own method of acquiring this information. We seek comment on whether LECs should be required to inform customers of the consequences of providing false information or designating more than one line as a primary line. We seek comment on how often this information should be collected. We tentatively conclude that this information should be collected once from all customers currently being served by price cap ILECs, and thereafter only at the time a customer orders service from a price cap ILEC. We seek comment on procedures that could be used to identify when customers switch service to a competing carrier. We also tentatively conclude that price cap ILECs should be required to maintain documentation of their customers' self-certification that is adequate to permit verification of the number of primary lines an ILEC reportedly serves. We seek comment on whether documentation could be accomplished by permitting customers to provide oral certification that is noted in the price cap ILEC's records or whether customers should be required to self-certify in writing. We also seek comment on how long these ILECs should be required to maintain documentation of customer self-certification. In addition, we seek comment on what action the price cap ILEC should take if a customer fails to provide a self-certification. We seek comment on any other administrative procedures parties recommend to implement a self-certification method of identifying primary residential lines, and are particularly interested in proposals that will reduce the administrative burden on carriers and customers.

10. *Resellers.* We seek comment on how to identify secondary lines for resellers that resell wholesale exchange service purchased from price cap ILECs. We seek comment on whether the Commission should require resellers to identify the primary and secondary lines of their customers and relay that information to price cap ILECs, or, whether price cap ILECs should identify

the primary and secondary lines for resellers' customers directly. We seek comment on whether, if, for example, a reseller collected customer certifications, the reseller should pass along the original copies of its customers' certifications to the price cap ILEC from which it is purchasing wholesale service. We invite alternative proposals, and encourage parties to suggest proposals that will accurately identify the secondary lines served by resellers and will be administratively simple to implement.

11. Although databases maintained by price cap ILECs could be useful to those ILECs for retaining customer records, we tentatively conclude that we will not use a national database, maintained by the Commission or another entity on a nation-wide basis, to track primary residential lines or single-line businesses for two reasons. First, such a database is not necessary to implement our access charge rules. Second, the administrative resources necessary to create such a database might outweigh any additional accuracy gained from this approach.

12. *Other Proposals.* We tentatively conclude that we will not pursue several other approaches presented by commenters in the Universal Service proceeding. We tentatively conclude that we will not adopt Teleport's proposal to use county and municipal records and databases to identify addresses of individuals. We also tentatively conclude, for the reasons articulated by MFS and to protect the privacy of consumers, that social security numbers should not be used to track primary residential lines.

13. *Privacy Issues.* We encourage parties to comment on any potential issues related to subscriber privacy that may be raised by the customer self-certification proposal discussed above. Specifically, we seek comment on whether requiring consumers to provide information to their price cap ILECs regarding the identification of their households and primary residences would be consistent with those consumers' reasonable expectations of privacy and whether the Privacy Act would apply to the collection of self-certifications by ILECs. We tentatively conclude that we should require ILECs that collect this information to use this information only for the purposes of determining the correct SLC and PICC for individual consumers' lines, and not disclose it or permit access to it for any other purposes. We request comment on whether primary line information would constitute customer proprietary network information as defined in section 222(f)(1) of the Act. 47 U.S.C.

222(f)(1). We seek comment on whether sections 222 (c)(1), (d)(1), (d)(2), other parts of section 222, or other sections of the Act present exceptions that would allow carriers to disclose primary line information to the Commission, or another entity selected by the Commission, without customer approval.

C. Verifying Primary Residential Line Information

14. We tentatively conclude the Commission should implement a method to verify the number of primary lines served by a carrier, identified through customer self-certification. In light of the potential incentives for carriers to misreport the number of lines to which the end users subscribe, we tentatively conclude that we should adopt a method of verifying the number of primary lines served by price cap ILECs.

15. *Audits.* Although the Commission has broad authority to audit telecommunications carriers' records, 47 U.S.C. 220(c), we seek comment on whether audits would be an effective way to examine discrepancies in the number of primary lines a carrier serves and the number of primary-line SLCs and PICCs the carrier charges. Such audits would utilize appropriate auditing techniques and procedures to verify the number of primary-line SLCs and PICCs assessed by price cap ILECs. We tentatively conclude that audits of the ILEC's records could be performed to determine whether the ILEC misreported primary lines. We seek comment on our tentative conclusion to use audits to verify primary lines and on the type of audit that would be most effective and efficient. We also seek comment on what controls or procedures should be implemented that would protect against the possibility of a price cap ILEC misreporting primary lines.

16. *Models.* In the context of formulating a forward-looking economic cost mechanism to estimate the cost of providing service in high cost areas, the proponents of the Hatfield model have developed a method for estimating the number of primary lines in a census block. We seek comment on whether this method, or another modeling approach, could assist the Commission in verifying the number of primary lines served by price cap ILECs. Specifically, we seek comment on whether the Commission could use the estimates generated by the Hatfield model in conjunction with an audit. We also seek comment on whether the Hatfield approach would have to be modified to account for second homes. In addition,

we note that the Commission recently collected data on, *inter alia*, the number of loops served by carriers and the number of residential customers that subscribe to more than one line. We seek comment on whether these data would assist in verifying primary line counts.

D. Enforcement

17. We seek comment on available methods for the Commission to enforce its access charge rules, which impose different maximum SLCs and PICCs depending on whether a line is a primary or secondary line. We seek comment on whether the Commission's authority under sections 4(i), 206-209, 312, 403, and 503 of the Communications Act of 1934, and the provisions of Title 18 of the United States Code, 18 U.S.C. 1001(a), is sufficient to deter fraud or misrepresentation by carriers or consumers that may arise under the customer self-certification approach. We tentatively conclude that we should require carriers to notify their customers of the requirement to identify a single primary local exchange carrier and a single primary residence. We request comment on this tentative conclusion. We also seek comment on whether we should adopt measures to deter consumers from identifying more than one primary line.

18. We also seek comment on what types of sanctions would be appropriate and consistent with the Commission's statutory authority to punish violations of our rules regarding the identification of primary lines and request comment on whether section 222(c)(1) or any other portion of section 222 provides adequate authority to prevent misuse of the information that carriers collect. We tentatively conclude that, if the Commission, as a result of an audit or other method of verifying primary line counts, discovered that a price cap ILEC had misreported the number of primary lines it serves, the Commission could take the following actions: (1) Order the price cap ILEC to correct its billing practices and assess SLCs and PICCs at the correct level; (2) impose forfeitures pursuant to 47 U.S.C. 220(d) or 503(b) for violations of the Commission's rules; and (3) require the price cap ILEC to have an independent auditor conduct audits of its records at regular intervals determined by the Commission. We seek comment on these tentative conclusions.

E. Consumer Disclosure

19. We seek comment on whether the Commission should require carriers to provide consumers with a uniform

disclosure statement describing this distinction. We tentatively conclude that such a disclosure requirement would be consistent with applicable First Amendment standards and invite comment on that conclusion. We seek comment on whether, for example, all local exchange carriers that charge a SLC should be required to make the following statement:

The subscriber line charge is a fee collected by your local telephone company to defray part of the costs of providing telephone service. The subscriber line charge covers the costs that can be attributed to providing customers with the ability to place telephone calls across state lines. In order to ensure that all customers have affordable access to local telephone service, the Federal Communications Commission allows your local telephone company to charge no more than \$3.50 for the subscriber line charge for each primary residential line. For additional lines, the Federal Communications Commission allows local telephone companies to charge no more than \$5.00 per line for the subscriber line charge in 1998.

We seek comment on whether this statement will be easily understood by all consumers. We invite alternate suggestions for a uniform consumer disclosure statement. We seek comment on whether this statement should be given orally at the time when a subscriber orders telephone service. We seek comment on whether this statement should be provided in writing to all consumers when the change takes effect. We seek comment on how, if we adopt a consumer disclosure statement including a reference to the SLC cap on secondary lines, such disclosure statement should indicate the annual increases in the SLC cap. We seek comment on whether such a statement would be compatible with marketing and consumer information campaigns that carriers may have instituted or that they may be formulating in preparation for the Commission's new access charge rules.

Deadlines and Instructions for Filing Comments

20. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before September 25, 1997, and reply comments on or before October 9, 1997.

21. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. Comments and reply comments also must clearly identify the specific portion of this NPRM to which a particular comment or set of comments is responsive. If a portion of a party's

comments does not fall under a particular topic listed in the outline of this NPRM, such comments must be included in a clearly labelled section at the beginning or end of the filing. Irrespective of the length of their comments or reply comments, parties shall include a table of contents in their documents. *Cf.* 47 CFR 1.49(b).

22. Parties should send their comments or reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Parties filing on paper should also send three (3) copies of their comments to Sheryl Todd, Federal Communications Commission, Accounting and Audits Division, Universal Service Branch, 2100 M Street, N.W., Room 8611, Washington, DC 20554. Parties filing in paper form should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW, Washington, D.C. 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

23. Commenters may also file informal comments or an exact copy of formal comments electronically via the Internet at: <<http://gullfoss.fcc.gov/cgi-bin/websql/cgi-bin/comment/comment.htm>>. Only one copy of electronically filed comments must be submitted. A commenter must note whether an electronic submission is an exact copy of formal comments on the subject line. A commenter also must include its full name and Postal Service mailing address its submission.

24. Parties not submitting an exact copy of their comments via the Internet are also asked to submit their comments and reply comments on diskette. Such diskette submissions are in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Sheryl Todd of the Common Carrier Bureau, 2100 M Street, N.W., Room 8611, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using WordPerfect 5.1 for Windows or compatible software. The diskette should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. Each diskette should contain only one party's comments in a single electronic file. The diskette

should be accompanied by a cover letter.

25. Written comments by the public on the proposed information collections are due September 25, 1997. Written comments must be submitted by OMB on the proposed information collection on or before 60 days after the date of publication in the **Federal Register**. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain__t@al.eop.gov.

Initial Regulatory Flexibility Analysis

26. Pursuant to the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this NPRM, and should have a separate and distinct heading designating them as responses to the IRFA. The Commission will send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA) in accordance with the RFA. See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

27. *Need for and Objectives of the Proposed Rules.* Three principal goals of the Telecommunications Act of 1996 are: (1) Opening local exchange and exchange access markets to competition; (2) promoting increased competition in telecommunications markets that are already open to competition, particularly long distance services markets; and (3) reforming our system of universal service so that universal service is preserved and advanced as local exchange and exchange access markets move from monopoly to competition. The Commission's access charge and universal service rules were adopted at a time when interstate access and local exchange services were offered on a monopoly basis, and in many cases are inconsistent with the

competitive market envisioned by the 1996 Act. This NPRM is necessary to implement the rules the Commission adopted in its *Universal Service Order* and *Access Charge Reform Order* because, without a definition and a means of identifying and verifying primary residential lines, price cap ILECs will not be able to assess the appropriate charges for these lines. With this NPRM, we seek to identify primary residential lines in order to make the Commission's access charge and universal service rules consistent with Sections 251 and 254 of the Telecommunications Act of 1996.

28. *Legal Basis.* The proposed action is supported by Sections 4(i), 4(j), 201-205, 251, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201-205, 251, 254, and 403.

29. *Description and Estimate of the Number of Small Entities That May Be Affected by This NPRM.* The RFA directs the Commission to provide a description of, and where feasible, and estimate of the number of small entities that might be affected by proposed rules. The RFA defines the term "small entity" as having the same meaning as the term "small business," "small organization," and "small business concern" under section 3 of the Small Business Act (SBA). See 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). The Commission may also develop additional definitions that are appropriate to its activities. To be a small business concern, an entity must: (1) Be independently owned and operated; (2) be not dominant in its field of operation; and (3) meet any additional criteria established by the SBA. See 15 U.S.C. 632.

30. We believe that small ILECs are not small businesses for IRFA purposes because each is either dominant in its field of operation or is not independently owned and operated. We have found ILECs to be "dominant in their field of operation" since the early 1980s, and we consistently have certified under the Regulatory Flexibility Act, see 5 U.S.C. 605(b), that ILECs are not subject to regulatory flexibility analysis requirements because they are not "small business concerns." Out of an abundance of caution, for regulatory flexibility analysis purposes we will consider small ILECs within this present analysis and use the term "small ILECs" to refer to any incumbent LEC that arguably might be defined by SBA as a small business concern.

31. The proposals under consideration in this NPRM, if adopted,

would affect the fourteen (14) ILECs subject to price cap regulation by the Commission. Neither the Commission nor the SBA has developed a definition of small providers of local exchange service. The closest applicable definition under SBA rules is for telephone telecommunications companies other than radiotelephone (wireless) companies. The SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be an entity with no more than 1,500 employees, 15 U.S.C. 632 (citing 13 CFR 121.201). Of the fourteen ILECs subject to price cap regulation, we estimate that, at a maximum, six (6) of them have no more than 1,500 employees. Of these six, we estimate that at least one is not independently owned and operated. We seek comment on these estimates.

32. In addition, the proposals in this NPRM may also affect providers of local exchange service that purchase wholesale services from the 14 incumbent price cap LECs and resell that service to customers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company except radiotelephone (wireless) companies. 13 CFR 121.201, SIC 4813. However, the most reliable source of information regarding the number of resellers nationwide is the data that the Commission collects annually in connection with the *TRS Worksheet*. According to our most recent data, 260 companies reported that they were engaged in the resale of telephone service. We estimate that between 50 and 150 of these companies offer local exchange service on a resale basis, but we do not have data regarding how many of these carriers purchase service from price cap ILECs. We also do not have information on the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus we are unable at this time to estimate with greater precision the number of resellers that would qualify as small entities or small incumbent LEC concerns under the SBA's definition. Consequently, we estimate that there are fewer than 150 small entity resellers.

33. *Reporting, record keeping, and other compliance requirements.* The proposals to establish a customer certification system may require price cap ILECs to ask customers to identify their primary lines, maintain records verifying a customer's primary line

designation, submit their records to Commission audits to verify accuracy of primary line counts, and publish a consumer disclosure statement in their monthly bills.

34. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Alternatives Considered.* Throughout this NPRM, we seek comment on alternatives that will reduce the impact on all entities affected by these proposals, including small ILECs. We tentatively adopt a definition of single-line business lines that, we believe, will result in a smaller administrative burden for ILECs as they identify primary and secondary lines in order to charge the correct SLC or PICC. In addition, we ask commenters to identify the relative costs and benefits, including administrative costs, of adopting a particular definition of primary residential line. We ask parties to identify a definition of primary residential line that will be easy for carriers and customers to apply. We tentatively adopt customer self-certification as a means to identify primary lines because this method of identification is less administratively burdensome for ILECs than a method that does not include customer input. We seek comment on whether, and if so, the amount of time, ILECs must keep records of customer self-certification. We particularly encourage parties to submit proposals that will reduce the administrative burden on carriers and customers. We seek comment on whether we should include a standardized customer disclosure statement, and if so, whether that disclosure should be made in writing or may be made orally.

35. At this time, we tentatively conclude to eliminate several options because they would be too administratively burdensome. The proposals we tentatively reject include: creating and maintaining a national database of primary line designations; using local property records to identify and track primary lines; and using social security numbers to track primary lines.

36. *Federal rules which overlap, duplicate or conflict with this rule.* None.

Ordering Clauses

37. *It is ordered*, pursuant to Sections 1, 4 (i) and (j), 201-209, 218-222, 251, 254, and 403 of the Communications Act as amended, 47 U.S.C. 151, 154(i), 154(j), 201-209, 218-222, 251, 254, and 403 that this Notice of Proposed Rulemaking is hereby adopted and comments are requested as described above.

38. *It is further ordered* that the Commission shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 54

Communications common carriers, Health facilities, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 970828210-7210-01; I.D. 080697H]

RIN 0648-AK37

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Control Date for Atlantic Mackerel

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; notice of control date for the Atlantic mackerel fishery.

SUMMARY: NMFS announces that anyone entering the commercial Atlantic mackerel fishery after September 12, 1997 (control date) will not be assured of future access to the Atlantic mackerel resource in Federal waters if a management regime is developed and implemented under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that limits the number of participants in the fishery. This announcement is intended to promote awareness of potential eligibility criteria for future access to the commercial Atlantic mackerel fishery and to discourage new entries into this fishery

based on economic speculation, while the Mid-Atlantic Fishery Management Council (Council) contemplates whether and how access to that portion of the Atlantic mackerel fishery in Federal waters should be controlled. The potential eligibility criteria may be based on historical participation, defined as any number of trips having any documented amount of Atlantic mackerel landings. If such a regime is implemented, fishery participants may need to preserve records that substantiate and verify their participation in the Atlantic mackerel fishery in Federal waters.

DATES: Comments must be submitted by October 14, 1997.

ADDRESSES: Comments should be directed to David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508-281-9104.

SUPPLEMENTARY INFORMATION:

Background

Atlantic mackerel (*Scomber scombrus*) is a migratory species that supports important recreational and commercial fisheries along the Atlantic coast of the United States and Canada. The Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish (FMP) was developed by the Council to provide for the development of the U.S. Atlantic mackerel, squid, and butterfish fisheries. An initial notice establishing a control date of August 13, 1992, was issued for the Atlantic mackerel, squid, and butterfish fisheries (57 FR 36384, August 13, 1992), which stated that as of that date no vessel would be guaranteed entry into a limited access fishery, if the Council chose to implement one. This control date was rescinded for Atlantic mackerel on September 27, 1994 (59 FR 49235), because the Council and NMFS believed that information regarding biomass levels, fishing levels, fishing effort, and catch indicated that the mackerel fishery would not require limited-entry management in the foreseeable future. Removal of the control date also removed a barrier to access to this underutilized resource to vessel owners who were facing severe restrictions in other Northeast fisheries. In Amendment 5 to the FMP, the Council included a provision that would require the Secretary of Commerce to publish a control date for the Atlantic mackerel fishery when commercial landings reached 50 percent of allowable biological catch (ABC). NMFS did not