Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36, 54, 61, 64, 65, and 69

[CC Docket Nos. 96–45, 98–77, 98–166, and 00–256; FCC 00–448]

Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule.

SUMMARY: In this document, the Commission seeks comment on a petition for rulemaking submitted by the Multi-Association Group (MAG). The Petition sets forth an interstate access reform and universal service supported proposal for incumbent local exchange carriers subject to rate-of-return regulation. The MAG offers its plan as a comprehensive solution to regulatory issues facing non-price cap carriers.

DATES: Comments are due on or before February 26, 2001. Reply comments are due on or before March 12, 2001. Written comments by the public on the proposed and/or modified information collections discussed in this Further Notice of Proposed Rulemaking are due on or before February 26, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before March 26, 2001.

ADDRESSES: All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to vhuth@omb.eop.gov. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to Wanda Haris, Competitive Pricing Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 5–A452, Washington, DC 20554. Parties who choose to file by paper and comment on the universal service aspect of the MAG plan should also submit one paper copy of the comments to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: William Scher, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket Nos. 96–45, 98–77, 98–166, and 00–256 released on January 5, 2001. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, DC, 20554.

This NPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Paperwork Reduction Act

The NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection(s) contained in this NPRM, as required by the PRA, Public Law 104–13. Public and agency comments on the proposed and/or modified information collections discussed in this Notice of Proposed Rulemaking are due on or before February 26, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before March 26, 2001.

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 Control Number: None.

Title: Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers.

Form No.: N/A.

Type of Review: Proposed New collections.

Respondents: Business or other for-profit.

Title	No. of respondents	Est. time per response	Total annual burden
1. Tariff Filing	65	2	130
2. Annual Data Filings:			
a. Special Access Rate Reporting	64	1	64
b. Filing the Effective Per Line Support and a Geographic Description And Map	1501*	2	2502
3. Periodic Data Filings:			

Title	No. of respondents	Est. time per response	Total annual burden
a. Reporting of Mergers & Acquisitions	20	80	1600
b. Filing of Low-end Adjustments With NECA	4	20	80

*Based on the number of study areas.
Total Annual Burden: 4376.
Cost to Respondents: $0.

Needs and Uses: The Commission is seeking comment on a proposal filed by a Multi-Association Group (MAG). The MAG plan proposes to reform the interstate access charge structure for non-price cap carriers, to establish explicit interstate access universal service support for non-price cap carriers that will be sustainable in an increasingly competitive marketplace, and to require interexchange carriers to offer their services that are available in other areas in the non-price cap carriers' service areas. Affected carriers may be required to file tariffs and to make periodic and annual data filings. The information will be used to determine compliance with Commission rules and eligibility for interstate access universal service support.

Synopsis of NPRM

I. Introduction

1. In this NPRM, we seek comment on a Petition for Rulemaking submitted by the MAG. The Petition sets forth an interstate access reform and universal service support proposal for incumbent local exchange carriers (LECs) subject to rate-of-return regulation (rate-of-return or non-price cap carriers). It is designed to be implemented over a five-year period beginning on July 1, 2001.

2. The MAG offers its plan as a comprehensive solution to regulatory issues facing non-price cap carriers, and asks that the Commission adopt the plan without modification as an integrated package. The MAG plan is modeled in some respects on the CALLS plan adopted for price cap carriers. The MAG plan would increase the recovery of common line costs through flat, non-traffic sensitive charges. For carriers that elect a transition to a new form of incentive-based regulation, it provides for reduced per-minute access rates, and a new, explicit interstate access universal service subsidy to make up for any shortfall in carriers' revenues. The MAG plan also proposes to eliminate the current funding caps on high-cost loop support for rural carriers. The MAG believes its plan would have many benefits, including a more efficient access rate structure, more explicit universal service support, and new incentives for carriers to increase efficiency and invest in new technologies.

3. The specifics of the MAG plan are set forth in the Petition, in particular Exhibits 1 (Detailed Description) and 3 (Proposed Rules).

II. Issues for Comment

4. The MAG offers its plan as a comprehensive solution to regulatory issues facing non-price cap carriers, and asks that the Commission adopt the plan without modification as an integrated package. We seek comment on whether we should adopt the MAG plan in its entirety, as requested by the MAG members. We also seek comment on whether, in the event that we do not adopt the MAG plan in its entirety, there are specific aspects of the proposal that we should adopt or incorporate into any of our captioned proceedings. In addition, we seek comment on the impact, if any, of the MAG plan on other pending proceedings before the Commission. We also seek comment on the process through which the Commission should evaluate the MAG plan. In particular, we ask how we may best address the concerns that may be raised by parties who are not members of the MAG.

5. We invite interested parties from all industry segments, including competitive LECs, IXCs, and wireless providers, as well as consumer groups and state commissions, to submit comments on the MAG plan. Parties should comment on the public policy implications of the MAG plan and/or particular aspects of the plan, including its potential effects on the competition and universal service goals of the 1996 Act, and whether and how it would promote consumer welfare. What would the net impact of the MAG proposal be on non-price cap carrier revenues? Parties also should address how small business entities, including small incumbent LECs and new entrants, will be affected by the MAG plan. We briefly discuss several of the major issues raised by the MAG plan that we encourage interested parties specifically to address in their comments.

6. *Access Rate Structure.* We seek comment on the access rate structure aspects of the MAG plan. Are the proposed reforms, which in some respects are modeled on the CALLS plan adopted for price cap carriers, appropriate for non-price cap carriers? Are they likely to achieve the competitive and consumer benefits anticipated by the MAG members? Is continued maintenance of lower SLC caps for non-price cap carriers than for price cap carriers consistent with section 254 of the 1996 Act? Is a two-path scheme necessary to accommodate diversity among non-price cap carriers? Would the potential regulatory complexity of this two-tiered approach have practical or administrative consequences? Would the MAG plan benefit all non-price cap carriers, regardless of size and/or operating conditions? Are larger carriers with relatively low costs more likely than small carriers to elect Path A? If so, would the result be inflation of Path B access rates? What are the characteristics of companies that are likely to elect Path B? Is it appropriate as a legal or policy matter to restrict RAS to Path A carriers? Would it be appropriate to close out our rate-of-return proceeding and keep the rate of return at its current level of 11.25 percent for Path B carriers? We invite parties to comment on these and any other issues related to the MAG plan's proposed reform of the interstate access rate structure for non-price cap carriers.

7. *Universal Service Support.* Unlike the CALLS plan, the MAG plan does not estimate the amount of implicit support in access rates, or place a ceiling on the proposed new access subsidy, RAS. Is it appropriate to cap interstate access support for price cap carriers but not for non-price cap carriers? To what extent is RAS likely to increase the size of the universal service fund, and how will RAS support levels change over time? What impact will such increases have on consumers? Is the increase likely to be offset by decreases in access rates and charges resulting from implementation of the MAG plan? Should RAS be available to support special access services, which have not been defined as supported services by the Commission? If the Commission creates RAS as a residual support mechanism, should LTS be retained as a separate interstate access subsidy? Should we adopt a provision similar to

that included in the *CALLS Order* for recovery of universal service contributions through a separate rate element or line item?

8. *Incentive-Based Regulation.* Would the MAG incentive-based approach create appropriate economic incentives for operating efficiency and investment? Is it likely to encourage long term investment? Is it likely to encourage investment in high-speed infrastructure? Is the proposed ability of carriers to fix or adjust RPL at any time likely to reinforce ''lumpy'' investment patterns (significant investment in a single year, rather than a steady flow of investment), and/or encourage cost inflation? How would consumers benefit from any of the efficiency gains that incentive-based regulation is expected to produce?

9. In addition, to what extent is the MAG incentive-based approach likely to increase non-price cap carrier revenues? Does an inflation factor equal to the GDP Price Index accurately reflect changes in costs per line experienced by the carriers that can be expected to select Path A? Should an X-factor or consumer productivity dividend be included in RPL? Is a low-end adjustment necessary where carriers retain the option to remain under rate-of-return regulation, and at what level should it be set? How would the Commission evaluate the validity of low-end adjustment showings if carriers are no longer required to report cost data annually? What are the costs and benefits of permitting carriers to elect on a study area basis when to convert to incentive-based regulation and whether to continue pooling? Is the five-year transition period proposed by the MAG an appropriate transition period to incentive-based regulation? We invite commenters to address these issues and any others when discussing the incentive-based regulation proposals in the MAG plan.

10. *Advanced Services.* One goal of the MAG plan is to promote the deployment of advanced services to rural areas, a goal shared by the Commission. We seek comment on the validity of the MAG's premise that universal service funding caps and regulatory uncertainty have diminished non-price cap carriers' incentives to invest in new technologies. Does the MAG plan represent the best means of promoting the deployment of advanced services in rural areas, or are there alternative means that would better accomplish this goal? Does the MAG plan require the use of universal service funding to support advanced services or infrastructure capable of providing advanced services?

11. *Mergers and Acquisitions.* Is elimination of the all-or-nothing rule, as proposed in the MAG plan, warranted? Cost shifting concerns prompted the Commission to adopt the rule in 1993; do these concerns remain valid today? Likewise, is the proposed elimination of the freeze of study areas for non-price cap carriers warranted? Does the MAG plan adequately address gaming concerns that would arise if § 54.305 of the Commission's rules were eliminated? Are there alternative ways to address the underlying concerns raised by the MAG that limits on universal service support discourage non-price cap carriers in rural areas from acquiring and upgrading telephone exchanges? We invite the Joint Board to comment on the universal service implications of these MAG proposals.

12. *Geographic Rate Averaging and Rate Integration.* We seek comment on the proposed pricing rules in the MAG plan that would be applicable to IXCs. Among other things, we invite parties to address whether all IXC minimum monthly charges should be prohibited, or whether IXCs should only be required to offer at least one calling plan without such charges. In addition, how would the Commission ensure that IXCs comply with the MAG's proposed requirements, given the fact that the Commission does not regulate the rates of IXCs?

III. Procedural Issues

A. Ex Parte Presentations

13. This is a permit but disclose rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules.

B. Initial Regulatory Flexibility Act

14. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the proposals in this NPRM. 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 the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA) in accordance with the RFA. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

15. The Commission has initiated this proceeding to consider interstate access charge and universal service reforms for rate-of-return carriers proposed by the MAG. The MAG plan would raise SLCs for all rate-of-return carriers to the price cap carriers' SLC caps and permit deaveraging of the SLCs. The plan would also extend the Lifeline program to cover the increased SLCs and eliminate the cap on high cost loop support and the corporate operations expense limitation. In other respects, the plan would permit rate-of-return carriers to continue under the current access charge and universal service regulatory regimes, or elect the alternatives available in the MAG plan. The MAG plan would also require IXCs to pass through to customers savings realized from reduced access rates and to offer the same optional calling plans to rural and urban customers alike.

16. Rate-of-return carriers electing the alternative regulatory approach proposed by the MAG plan would commence a five-year transition plan for interstate access charges and universal service funding. The MAG plan would, for example: establish an ''incentive'' method for compensating NECA pool members electing the incentive approach based on inflation-adjusted, revenue per line amounts; reduce per minute access charges to $0.016; establish low-end earnings levels; consolidate the two NECA pools into one pool; provide for certain pricing flexibility if a non-price cap carrier elects to remove one or more study areas from the NECA pool; and make certain of the options, including participation in the NECA pool, available on a study-area basis. The plan also establishes procedures for introducing new services and for the treatment of mergers and acquisitions. The plan would also establish an additional, explicit universal service subsidy for non-price cap carriers electing the incentive approach of the MAG plan (known as rate averaging support), make universal service support payments portable, and permit carriers to deaverage the universal service support into three zones per wire center. Settlements with non-price cap carriers would be handled by NECA whether a carrier elected to convert to incentive-based regulation under Path A of the MAG plan or remain under rate-of-return regulation. A rate-of-return carrier could elect to tariff its offerings for one or more study areas itself, which would give it additional pricing flexibility, but would

require it to forgo any rate averaging support.

2. Legal Basis

17. This rulemaking action is supported by sections 4(i), 4(j), 201–205, 254, and 403 of the Communications Act of 1934, as amended.

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

18. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines ''small entity'' as having the same meaning as the term ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, 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.

19. We have included small incumbent carriers in this RFA analysis. As noted, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent carriers in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

20. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small providers of local exchange services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent Telecommunications Industry Revenue data, 1,348 incumbent carriers reported that they were engaged in the provision of local exchange services. We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of local exchange carriers that would qualify as small business concerns under the SBA's definition. Of this number, 13 entities are price cap carriers that would not be subject to the rules, if adopted. Consequently, we estimate that fewer than 1,335 providers of local exchange service are small entities or small incumbent local exchange carriers that may be affected by the proposed rules.

21. *Competitive Local Exchange Carriers.* 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 communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of competitive LECs nationwide of which the Commission is aware appears to be the data that the Commission collects annually in connection with the Telecommunications Relay Service (TRS). According to the Commission's most recent data, 129 companies reported that they were engaged in the provision of either competitive access provider services or competitive LEC services. The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of competitive LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 129 providers of local exchange service are small entities or small competitive LECs that may be affected by these proposals.

22. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Carrier Locator* data, 738 carriers reported that their primary telecommunications service activity was the provision of interexchange services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are less than 738 small entity IXCs that may be affected by the proposed rules.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

23. The MAG plan is a proposal submitted by four associations representing rate-of-return carriers. Under the MAG proposal, all rate-of-return LECs would be required to modify their access tariffs to comply with the new SLC caps, which may be deaveraged. Rate-of-return LECs selecting Path A must adjust their traffic sensitive rates (carrier common line, local switching, transport, and transport interconnection charge) to comply with the composite access rate or CAR target. Rate-of-return carriers electing incentive-based regulation for one or more study areas must establish revenue per line or RPL compensation amounts that will be inflation-adjusted annually, after which they will not be required to file cost data with NECA. The MAG proposes that Path A carriers with study areas participating in the pool's switched traffic sensitive tariff, but not in the special access tariff, must provide the special access rates of those study areas to NECA by March 1 prior to the annual filing to support NECA's calculation of pool transport rates. The MAG plan also proposes that rate-of-return carriers choosing to deaverage their universal service support file the effective per-line support amount for each universal service zone and a geographic description and map of each such zone with the Commission, the relevant state regulatory agency, and USAC. Rate-of-return carriers would be required to notify the Commission and the affected state regulatory commission before incorporating acquired telephone exchanges or lines into existing study areas, rather than having to file a waiver to do so, as is currently required. The MAG plan proposes that Path A carriers under incentive-based regulation and participating in the NECA pool be required to perform a twelve-month cost study of the acquired lines within eighteen months of the acquisition. Finally, the plan would permit a Path A carrier subject to incentive-based regulation (whether in or out of the NECA pool) to file a cost study with NECA seeking a low-end adjustment if its earnings fall below 10.75 percent (if five or fewer study areas are served) or 10.25 percent (if more than five study

areas are served). It is not clear whether, on balance, the proposals will increase or decrease rate-of-return carriers' administrative burdens.

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

24. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

25. The proposals in the MAG plan could have varying positive or negative impacts on rate-of-return carriers, including any such small carriers. Because most of the changes are actually elective options, a small entity should be able to assess the impacts as part of its decision-making process. The alternative to consideration of adopting the MAG proposal at this time would be to continue in effect the existing access charge and universal service fund rules applicable to these small carriers, or adopting a portion, or a modified version, of the MAG plan. Public comments are welcomed on modifications of the MAG proposal that would reduce any potential impacts on small entities. Specifically, suggestions are sought on different compliance or reporting requirements that take into account the resources of small entities; clarification, consolidation, or simplification of compliance and reporting requirements for small entities that would be subject to the rules; and whether waiver or forbearance from the rules for small entities is feasible or appropriate. Comments should be supported by specific economic analysis.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

26. None.

IV. Comment Filing Procedures

27. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before February 26, 2001 and reply comments on or before March 12, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

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

29. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

30. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Wanda Harris, Competitive Pricing Division, 445 12th Street, SW., Washington, DC 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case CC Docket No. 00–256, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037.

31. Parties who choose to file by paper and comment on universal service aspects of the MAG plan also should submit one paper copy of the comments to Sheryl Todd, Accounting Policy Division, 445 12th Street, SW., Room 5–B540, Washington, DC 20554.

32. Written comments by the public on the proposed and/or modified information collections are due on or before February 26, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before March 26, 2001. 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 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW., Washington, DC 20503.

V. Ordering Clauses

33. Pursuant to the authority contained in sections 4(i), 4(j), 201–205, 254, and 403 of the Communications Act of 1934, as amended, this Notice of Proposed Rulemaking is adopted.

34. It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, 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 36

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

47 CFR Part 61

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

47 CFR Part 65

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Proposed Rules

For the reasons set forth in the preamble, the Federal Communications Commission proposes to amend 47 CFR Parts 36, 54, 61, 64, 65, and 69 as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

Subpart F—Universal Service Fund

1. The authority citation for part 36 continues to read as follows:

Authority: 47 U.S.C. Secs. 151, 154(i) and (j), 205, 221(c), 254, 403 and 410.

2. In § 36.601, add the following sentence to the end of paragraph (c) to read as follows:

§ 36.601 General.

* * * * *

(c) The indexed cap on the Universal Service Fund as described in this subsection shall no longer apply as of July 1, 2001. The Administrator shall recalculate the Universal Service Fund without such cap as of July 1, 2001.

3. In § 36.621, revise paragraph (a)(4) introductory text to read as follows:

§ 36.621 Study area total unseparated loop cost.

(a) * * *

(4) Corporate Operations Expenses, Operating Taxes and the benefits and rent portions of operating expenses, as reported in § 36.611(e) attributable to investment in C&WF Category 1.3 and COE Category 4.13. This amount is calculated by multiplying the total amount of these expenses and taxes by the ratio of the unseparated gross exchange plant investment in C&WF Category 1.3 and COE Category 4.13, as reported in 36.611(a), to the unseparated gross telecommunications plant investment, as reported in § 36.611(f). Total Corporate Operations Expense, for purposes of calculating universal service support payments, beginning July 1, 2001 shall be the actual average monthly per-line Corporate Operations Expense.

* * * * *

4. In § 36.622, add paragraphs (d) and (e) to read as follows:

§ 36.622 National and study area average unseparated loop costs.

* * * * *

(d) Beginning July 1, 2001, the National Average Unseparated Loop Cost per Working Loop shall be calculated pursuant to § 36.621 and § 36.622(a), without any of the caps formerly required in this part.

(e) The National Exchange Carrier Association shall calculate support for loop-related costs on a per-loop basis for study areas of Path A LECs, as defined in § 61.3 of this chapter, that elect Path A incentive regulation for such study areas initially by adjusting such support as calculated for each such study area for the year prior to such election to reflect the annual percentage change in the GDP Price Index (GDP–PI), the estimate of the Chain-Type Price Index for Gross Domestic Product published by the United States Department of Commerce, and dividing such adjusted support by the study area's number of loops for the prior year reported pursuant to § 36.611. After election of incentive regulation for a study area, a Path A LEC may provide the Administrator with data updated to the date of such election, and the Administrator will adjust support for loop-related costs based on such data coincident with its time schedule. For each year subsequent to the year of election, the Administrator shall calculate per-line support for loop-related costs annually by adjusting the previous year's level of support to reflect the annual percentage change in the GDP–PI. The Administrator shall calculate the total annual support for loop-related costs for each such study area under incentive regulation by multiplying the adjusted per-loop support by the number of loops in that study area reported pursuant to § 36.611.

5. The definition of *''Study area''* in Part 36, Appendix-Glossary, is revised to read as follows:

* * * * *

Study area. Study area boundaries shall be frozen as they are on November 15, 1984, except that Path A LECs and Path B LECs, as defined in § 61.3, may alter study area boundaries when they acquire exchanges or lines from another telephone company, including a company subject to price cap regulation, so long as they notify the Common Carrier Bureau and the affected state regulatory commission or commissions of their intent to do so 30 days before the completion of such transaction. In such transaction with a Path A LEC or Path B LEC, the study area boundaries of a company subject to price cap regulation shall be adjusted accordingly.

* * * * *

PART 54—UNIVERSAL SERVICE

Subpart A—General Information

6. In § 54.5, add the following definitions in alphabetical order to read as follows:

§ 54.5 Terms and definitions.

* * * * *

Path A incentive regulation. ''Path A incentive regulation'' is the form of regulation established in § 61.62 of this chapter.

Path A LEC. A ''Path A LEC'' is an ILEC as defined in § 61.3 of this chapter.

Subpart D—Universal Service Support for High Cost Areas

7. Add a new paragraph (g) to § 54.301 to read as follows:

§ 54.301 Local switching support.

* * * * *

(g) The Administrator shall calculate local switching support on a per-line basis for study areas of Path A LECs that elect Path A incentive regulation for such study areas initially by adjusting the local switching support for each such study area for the year prior to such election to reflect the annual percentage change in the Department of Commerce's Gross Domestic Product—Chained Price Index (GDP–PI) and by dividing such adjusted support by its number of working loops for the prior year. After election of incentive regulation for a study area, a Path A LEC may provide the Administrator with data updated to the date of such election, and the Administrator will adjust local switching support based on such data coincident with its time schedule. For each year subsequent to the year of election, the Administrator shall calculate per-line local switching support annually by adjusting the previous year's level of support to reflect the annual percentage change in the GDP–PI. The Administrator shall calculate the total annual local switching support for each such study area under incentive regulation by multiplying the adjusted per-line local switching support by the number of working loops in that study area reported pursuant to § 36.611.

8. In § 54.303, paragraph (a) is revised and paragraph (b)(5) is added to read as follows:

§ 54.303 Long term support.

(a) Beginning July 1, 2001, an eligible telecommunications carrier that

participates in the association pool shall receive Long Term Support.

* * * * *

(b) * * *

(5) The Administrator shall calculate Long Term Support on a per-line basis for study areas of Path A LECs that elect incentive regulation for such study areas initially by adjusting the Long Term Support for each such study area for the year prior to such election to reflect the annual percentage change in the GDP–PI and dividing such adjusted amount by its number of working loops for the prior year. For each year subsequent to the year of election, the Administrator shall calculate per-line Long Term Support annually by adjusting the previous year's level of support to reflect the annual percentage change in the GDP–PI. The Administrator shall calculate the total annual Long Term Support for each such study area under incentive regulation by multiplying the adjusted per-line Long Term Support by the number of working loops in that study area reported pursuant to § 36.611 of this chapter.

9. In § 54.305, add a sentence at the end of the section to read as follows:

§ 54.305 Sale or transfer of exchanges.

* * * This section shall not apply to non-price cap LECs as defined in § 61.3 of this chapter.

10. In § 54.307, paragraph (a)(1) is revised to read as follows:

§ 54.307 Support to a competitive eligible telecommunications carrier.

(a) * * *

(1) A competitive eligible telecommunications carrier shall receive support for each line it serves based on the support the ILEC receives for each line. A Path A LEC's per-line support for purposes of this section shall be the effective per-line support per zone calculated in § 54.321(b).

* * * * *

11. Add §§ 54.319 and 54.321 to subpart F to read as follows:

§ 54.319 Rate averaging support.

(a) Beginning July 1, 2001, Path A LECs with study areas that participate in the pool administered by the association as of July 1, 2001 shall receive Rate Averaging Support (RAS).

(b) The Association shall calculate RAS as described in this paragraph.

(1) The common line component of RAS will be calculated as the difference between the pool's projected common line revenue requirement for Path A LECs and the sum of revenues of Path A LECs from end user common line charges and carrier common line (CCL) charges described in part 69 of this chapter of these rules and Long Term Support (LTS) of Path A LECs. The common line component of RAS will be distributed among study areas of Path A LECs subject to incentive regulation based on the difference between their individual common line revenue requirements and the sum of their individual revenues from end user common line charges and CCL charges that are consistent with the targeted CAR and their individual LTS.

(2) The traffic sensitive switched component of RAS will be calculated as the difference between the pool's projected traffic sensitive switched revenue requirement for Path A LECs and the sum of Path A LECs' projected revenues from the traffic sensitive elements that constitute the CAR as defined in § 69.130 and local switching support (LSS) of Path A LECs. The traffic sensitive component of the RAS will be distributed among Path A study areas based on the difference between their individual traffic sensitive switched revenue requirements and the sum of their individual revenues from the traffic sensitive elements that constitute the CAR as defined in § 69.130 and their individual LSS.

(3) The special access component of RAS will be calculated based on identifying the difference between projected special access revenue requirements and special access billed revenues for all those study areas of Path A LECs participating in the pool and subject to incentive regulation with revenue retention ratios greater than one. This component of the RAS would be distributed only to Path A study areas with revenue retention ratios greater than one based on their base year individual revenue retention ratios.

(c) The Association will calculate RAS annually, but the Association may adjust RAS on a monthly basis to reflect any delay in reporting of actual lines and billed revenues to bring Path A incentive settlements and revenues into balance beginning with periods after June 30, 2006.

(d) Path B LECs and non-pooling Path A LECs as defined in § 61.3 of this chapter are not eligible to receive RAS.

§ 54.321 Adjustments to per-line universal service support; disaggregation.

(a) The Administrator shall increase per-line universal service support as calculated in this part and in part 36 to reflect any expansion in the supported services listed in § 54.101 or if the Commission or Congress acts to stimulate the deployment of new services, adjust such support to reflect costs that Path A LECs and Path B LECs incur in complying with new state or federal regulations as the Commission shall permit by rule or order, which, subject to further order of the Commission, include but are not limited to regulations concerning number portability, the Communications Assistance in Law Enforcement Act, the completion of the amortization of depreciation reserve deficiencies, changes in the Uniform System of Accounts requirements made pursuant to § 32.16 of this chapter, changes in the Separations Manual, state and federal tax law changes, and changes in rules governing affiliate transactions and cost allocation; and adjust such support to reflect changes in Lifeline support per § 54.403.

(b) Within each study area, a Path A LEC or Path B LEC may define up to three zones per wire center and allocate to each a different percentage of the total universal service support per line provided to that study area under this part and part 36 of this chapter. Universal service support for purposes of this calculation section shall include Rate Averaging Support, if any, as calculated in § 54.319. Such allocation must be reasonably related to such LEC's costs of providing service in the various zones, and must remain in effect for at least four years. For each such zone, such LEC will calculate the effective per-line support amount within each zone by dividing the percentage of the study area's total universal service support allocated to that zone by the total number of lines within that zone. Such LEC must file the effective per-line support amount for each zone, together with a geographic description and map of each such zone, with the Commission, the Administrator, and the public utility commission of the state in which the study area is located.

(c) If a Path A LEC that participates in the pool administered by the Association and is under incentive regulation acquires or merges with an exchange or study area, for the first eighteen months after the date of the transaction, the universal service support for the acquired lines will be set at the average support of all Path A study areas in the pool under incentive regulation. The acquiring LEC must perform a cost study of the acquired lines for a consecutive twelve-month period within the first eighteen months after acquisition, and the support for the acquired lines will be calculated according to the cost study. If the acquired lines are included in an existing study area of the acquiring LEC, the LECs would receive an automatic waiver from the price cap rules of parts 61 and 69 of this chapter so that

individual exchanges from price cap companies may convert to incentive regulation.

PART 61—TARIFFS

Subpart A—General

12. In § 61.3, add the following definitions in alphabetical order to read as follows:

§ 61.3 Definitions.

* * * * *

(aaa) *Non-price cap LEC.* An incumbent Local Exchange Carrier for which price cap regulation is not mandatory and does not apply.

* * * * *

(bbb) *Path A.* A method of regulation provided in §§ 61.60 through 61.62.

(ccc) *Path A incentive regulation.* A method of regulation of Path A LECs provided in § 61.62.

(ddd) *Path A incentive study area.* A study area for which a Path A LEC has elected Path A incentive regulation.

(eee) *Path A LEC.* A non-price cap LEC that chooses Path A pursuant to § 61.60.

(fff) *Path A transition period.* The period from July 1, 2001, through June 30, 2006.

(ggg) *Path B.* A method of regulation provided in § 61.60(d).

(hhh) *Path B LEC.* A non-price cap LEC that chooses Path B pursuant to § 61.60.

* * * * *

(iii) *Revenue per line (RPL).* A settlement method used in Path A incentive regulation calculated pursuant to § 61.62(a)(1)(B).

* * * * *

Subpart E—General Rules for Dominant Carriers

§ 61.39 [Amended]

13. Amend § 61.39(b)(4)(ii) by removing the phrase ''carrier common line pool'' and adding in its place ''pool administered by the National Exchange Carrier Association.''

14. In § 61.41(c), add paragraph (c)(4) to read as follows:

§ 61.41 Price cap requirements generally.

* * * * *

(c) * * *

(4) Notwithstanding the provisions of § 61.42(c)(1) and (c)(2), when a Path A LEC or Path B LEC, as defined in § 61.3, acquires lines, exchanges or study areas from a telephone company subject to price cap regulation, or acquires, is acquired by, merges with, or otherwise becomes affiliated with a telephone company subject to price cap regulation, the Path A LEC or Path B LEC may retain its status as a Path A LEC or Path B LEC or become subject to price cap regulation in accordance with § 69.3(i) and the requirements referenced in that section.

15. Add §§ 61.60 and 61.62 to subpart E to read as follows:

* * * * *

§ 61.60 Regulation of non-price cap LECs.

(a) As of July 1, 2001, non-price cap LECs will be subject to either Path A or Path B as described in this section and § 61.62.

(b) Non-price cap LECs must notify the Commission no later than March 1, 2001, whether they elect to be Path A LECs or Path B LECs as of July 1, 2001. Such LECs must make this election on a per-operating company basis.

(c) *Path A.*—(1) *During the Path A transition period.*

(i) Except as otherwise expressly provided in the Commission's rules, during the Path A transition period, Path A LECs will continue under the regulations in place for them prior to July 1, 2001. During the Path A transition period, a Path A LEC that is a non-price cap LEC may choose for any of its study areas to recover revenues within the Association's single pool described in § 69.603 of this chapter on the same basis that the study area did prior to July 1, 2001. However, at any time during the Path A transition period, a Path A LEC may choose to move one or more of its study areas to Path A incentive regulation as defined in § 61.62.

(ii) If a Path A LEC's study area is settling with the pool at the start of the plan on a cost basis, it may continue during the Path A transition period to settle with the pool based on its reported costs.

(iii) A Path A LEC currently operating on an average schedule basis may choose for one or more of its study areas to remain regulated on that basis during the transition period. That study area will continue to settle with the pool based on average schedule settlement formulas. Path A LECs under average schedule rules may elect Path A incentive regulation within the pool on a per-study-area basis at any time during the Path A transition period. Path A LECs with average schedule study areas could also elect to convert to cost at any time during the transition period on a per-study area basis, consistent with current rules, as long as they have not moved to incentive regulation.

(iv) For all Path A LECs within the pool, there will be per-study area tariff election options during the Path A transition period. For switched access services, a Path A LEC may elect by study area to participate in the common line tariff only or the common line and traffic sensitive tariffs. Special access tariff participation is optional.

(2) *Post-transition period.* At the conclusion of the Path A transition period, all study areas of all Path A LECs not already subject to Path A incentive regulation will become Path A incentive study areas.

(d) *Path B.* (1) Except as otherwise expressly provided in the Commission's rules, Path B LECs will continue under the regulations in place for them prior to July 1, 2001. The authorized rate of return as of July 1, 2000 remains in effect for Path B LECs that continue under rate-of-return regulation.

(2) During the Path A transition period, a Path B LEC may elect to become a Path A LEC. After such election and until the end of the Path A transition period, such LEC, like other Path A LECs, may choose on a per-study-area basis to be subject to Path A incentive regulation pursuant to §§ 61.60 through 61.62. After expiration of the Path A transition period, all of the study areas of such Path A LEC will become subject to incentive regulation pursuant to such subsections.

(3) After expiration of the Path A transition period, Path B LECs that have not become Path A LECs may only be subject to Path A incentive regulation upon application for and grant of a waiver of this subsection by the Common Carrier Bureau of the Commission.

(4) Path B LECs may elect to file interstate access rates on a per-study area basis outside the Association tariffing and pooling process consistent with the tariff election options in effect prior to July 1, 2001.

§ 61.62 Path A Incentive Regulation.

(a) *During the Path A transition period.*—(1) *Study areas participating in the Association pool.*

(i) A study area of a Path A LEC participating in the Association pool and electing Path A incentive regulation during the Path A transition period will receive monthly settlement payments, including explicit universal service support, from the pool that equal the product of its revenue per line (RPL) for that year and its actual average monthly access line count. Pool settlements will be based on the pool's realized rate of return.

(ii) The Association shall calculate the RPL as the revenue requirement or settlement amount received per average monthly line count in the base year prior to the study area's conversion to incentive regulation, adjusted initially for inflation to reflect the annual

percentage change in the GDP Price Index (GDP–PI). During the transition period, the pool settlements for study areas under incentive regulation will be based on the study area's RPL requirement, but adjusted for the pool's realized rate of return. The RPL will be adjusted annually for inflation to reflect the annual percentage change in the GDP–PI. A Path A LEC may also provide information to the Association to permit it to update the RPL on a prospective basis to reflect updated cost study or revenue requirement data up to the point when the study area converted to Path A incentive regulation. *Example:* A study area in the Association pool elects Path A incentive regulation as of July 1, 2001, the start of the path A transition period. The revenue figures that the Association will use for calculating the RPL for that study area will be based on a 1999 cost study or average schedule revenue requirement data, adjusted for inflation to reflect the GDP Price Index (GDP–PI). On July 1, 2002, the RPL may be adjusted for inflation and to include updated 2000 cost study or settlement data. On July 1, 2003, the RPL will be adjusted for inflation, and it may be updated to include a half-year of updated 2001 cost study or settlement data. In all subsequent years, the RPL will be adjusted annually to include inflation only. Alternatively, a Path A LEC may notify the Association to set an RPL for a study area based on the latest data available at the time that the study area converts to Path A incentive regulation, with no further cost study or settlement updates. The Association then would adjust the RPL only for inflation.

(iii) Special access settlements for study areas subject to Path A incentive regulation that participate in the pool will be the product of a retention ratio, *i.e.,* a factor by which a pool participant keeps a percentage of the revenue that it bills, and billed revenues. A retention ratio equal to the base year's retention ratio (adjusted for rate changes) will apply.

(iv) Exchanges acquired by pool participants may enter the pool. If a Path A LEC in the pool and under incentive regulation acquires or merges with an exchange or study area, for the first eighteen months after the date of the transaction, the RPL for the acquired lines will be set at the average RPL of all Path A study areas in the pool under incentive regulation. The acquiring LEC must perform a cost study of the acquired lines for a consecutive twelve-month period within the first eighteen months after acquisition, and the RPL for the acquired lines will be calculated according to the cost study. If the acquired lines are included in an existing study area of the acquiring LEC, the RPL for that study area will be the weighted average of the RPLs of the acquiring study area and the acquired lines. If the acquired lines will be in a separate study area, the RPL for that study area is calculated separately from the RPLs of the acquiring LEC's existing study areas.

(2) *Study areas not participating in the Association pool.*

(i) Path A LECs may elect to file interstate access rates on a per-study area basis outside the Association tariffing and pooling process. Once a study area exits the Association pool, it cannot return, absent a waiver of this and other applicable rules, except that if pool participants acquire lines or study areas outside the pool, the acquired lines may reenter the pool.

(ii) Path A LECs that elect the non-pooling option for one or more of their tariff options will file and administer their own interstate access tariffs for those tariff options. Interstate access charge rate elements will be those in the applicable sections of part 69 of this chapter. End User Common Line Charges must be set, and apply, pursuant to § 69.104 of this chapter. Non-pooling Path A LECs on Path A incentive regulation will establish all other switched access rate elements based on the applicable RPL consistent with paragraph (a)(1)(ii) of this section. Such rates may initially include universal service revenues including rate averaging support (RAS) as defined in § 54.319 of this chapter lost by exiting the pool, but RAS will not apply in subsequent years for study areas outside the pool. Once the initial rates are established, they can be de-averaged so long as such de-averaging does not increase the RPL. Path A LECs will establish special access rates for study areas outside the pool on a market basis. Deaveraging, term and volume discounts and contract pricing are permitted for such special access services. Such LECs may introduce new interstate access services subject to the tariff filing requirements of subpart F of part 61. A low end adjustment is available to non-pooling study areas subject to Path A incentive regulation per § 61.62(c)(3).

(b) *After the Path A transition period.*—(1) *Study areas participating in the Association pool.* After the Path A transition period ends, all study areas of Path A LECs that participate in the pool will receive settlements calculated by the Association as the product of the study area's RPL and actual line counts. For special access, settlements will be based on the applicable retention ratio, multiplied by billed revenues. The Association will make any adjustments needed to bring the available pool revenues and settlement claims into balance for Path A LECs once actual data is available. This adjustment amount will be included in the RAS of § 54.319 of this chapter on a monthly basis, to reflect any lag in the reporting of access lines and revenues. The low-end adjustment of § 61.60(c) will continue to be available.

(2) *Study areas not participating in the Association pool.* Path A LECs that elect the non-pooling option for one or more of their study areas will file and administer their own interstate access tariffs consistent with paragraph (a)(2) of this chapter. The low end adjustment of § 61.62(c) will continue to be available.

(c) *Path A low end adjustment.*—(1) *Five or fewer study areas subject to incentive regulation in the pool.* A Path A LEC with five or fewer study areas that are subject to Path A incentive regulation and are within the pool may apply for a low end adjustment at the end of a tariff period for any of its study areas in the pool if the interstate access rate of return for the prior year for a study area or study areas is below the authorized level of 11.25% by more than 50 basis points (*i.e.*, the return is less than 10.75%). Such LEC must apply to the Association for the adjustment. Such application must include a cost study demonstrating that the study area or areas earned less than 10.75% for a given year. Upon such a showing, the LEC will receive payments in twelve equal installments over the following year to bring the prior year's earnings for the study area or areas up to 10.75%. The Association will adjust the RAS, as defined in § 54.319 of this chapter, accordingly. Except in special circumstances, these payments will terminate at the end of the twelve-month period following the year in which the study area underearned. Any claim for an adjustment in a subsequent year would have to be supported by a new cost study. The accounting for these payments will provide that such payments will not increase the LEC's earnings for the period in which they are received. Any claim for a low end adjustment for a year subsequent to that for which an adjustment already has been made will exclude currently paid low end adjustment revenues.

(2) *More than five study areas subject to incentive regulation in the pool.* A Path A LEC with more than five study areas that are in the pool and subject to incentive regulation may apply for a low end adjustment for any of its study areas in the pool at the end of a tariff period

if the interstate access rate of return for the prior year for the study area or areas is below the authorized level of 11.25% by more than 100 basis points (*i.e.*, the return is less than 10.25%). Such LEC must apply to the Association for the adjustment. Such application must include a cost study demonstrating that the study area or areas earned less than 10.25% for a given year. Upon such a showing, the LEC will receive payments in twelve equal installments over the following year to bring the prior year's earnings of the study area or areas up to 10.25%. The Association will adjust the RAS, as defined in § 54.319 of this chapter, accordingly. Except in special circumstances, these payments would terminate at the end of the twelve-month period following the year in which the study area underearned. Any claim for an adjustment in a subsequent year would have to be supported by a new cost study. The accounting for these payments will provide that such payments will not increase the LEC's earnings for the period in which they are received. Any claim for a low end adjustment for a year subsequent to that for which an adjustment already has been made will exclude currently paid low end adjustment revenues.

(3) *Path A LECs with five or fewer study areas subject to incentive regulation outside the pool.* A Path A LEC with five or fewer study areas that do not participate in the pool and are subject to incentive regulation may apply at the end of a tariff period to the Commission for a low end adjustment to its rates if the interstate access rate of return for the prior year for its interstate tariff filing entity is below the authorized level of 11.25% by more than 50 basis points (*i.e.*, the return is less than 10.75%). Such application must include a cost study demonstrating that the study areas collectively earned less than 10.25% for a given year. Upon approval of such adjustment, the tariff filing entity will adjust its rates prospectively for twelve months to permit its interstate tariff filing entity to realize an interstate return of 10.25%. Except in special circumstances, this adjustment would terminate at the end of the twelve-month period following the year in which the tariff filing entity underearned. Any claim for an adjustment in a subsequent year would have to be supported by a new cost study. The accounting for this adjustment must provide that such adjustment will not increase the LEC's earnings for the period in which it is made. Any claim for a low end adjustment for a year subsequent to that for which an adjustment already has been made will exclude current low end adjustment revenues.

(4) *More than five study areas subject to incentive regulation outside the pool.* A Path A LEC with more than five study areas that are outside the pool and subject to incentive regulation may apply to the Commission for a low end adjustment to its rates at the end of a tariff period if the interstate rate of return for the prior year for its interstate tariff filing entity is below the authorized level of 11.25% by more than 100 basis points (*i.e.*, the return is less than 10.25%). Such application must include a cost study demonstrating that the study areas collectively earned less than 10.25% for a given year. Upon such a showing, the tariff filing entity will adjust its rates prospectively for twelve months to bring its prior year's earnings up to 10.25%. Except in special circumstances, this adjustment would terminate at the end of the twelve-month period following the year in which the tariff filing entity underearned. Any claim for an adjustment in a subsequent year would have to be supported by a new cost study. The accounting for this adjustment will provide that such adjustment will not increase the LEC's earnings for the period in which it is made. Any claim for a low end adjustment for a year subsequent to that for which an adjustment already has been made will exclude current low end adjustment revenues.

(d) *Adjustments for new regulatory requirements.* When new state or federal requirements as in § 54.321(a)(2) of this chapter apply to Path A LECs with study areas subject to Path A incentive regulation in the pool, the Association is authorized to prospectively adjust the RPL for these study areas within 90 days of the effective dates of such requirements in order to permit recovery of the costs of complying with them.

PART 64—[AMENDED]

Subpart R—Geographic Rate Averaging and Rate Integration

16. In § 64.1801, paragraph (c) is added to read as follows:

§ 64.1801 Geographic rate averaging and rate integration.

* * * * *

(c) Providers of interstate interexchange telecommunications services must offer customers in rural and high-cost areas of the United States the same optional calling plans, including discount or volume-based plans, that are available to their customers in urban areas. Providers of interstate interexchange telecommunications services in rural and high-cost areas of the United States are prohibited from imposing minimum monthly charges on their residential customers. Providers of interstate interexchange telecommunications services in rural and high-cost areas of the United States must pass through to long distance customers the savings that IXCs realize from lower access rates charged by Path A LECs and Path B LECs.

PART 65—[AMENDED]

Subpart F—Maximum Allowable Rates of Return

§ 65.702 [Amended]

17. In § 65.702, revise paragraph (b) by removing the phrase ''pool or pools'' and add in its place where ever it exists the word ''pools.''

PART 69—[AMENDED]

Subpart A—General

18. In § 69.2, add the following definitions in alphabetical order to read as follows:

§ 69.2 Definitions.

* * * * *

(WW) *Non-price cap LEC.* This term means the same as in § 61.3 of this chapter.

* * * * *

(XX) *Path A incentive study area.* This term means the same as in § 61.3 of this chapter.

(YY) *Path A LEC.* This term means the same as in § 61.3 of this chapter.

(ZZ) *Path A transition period.* This term means the same as in § 61.3 of this chapter.

* * * * *

19. In § 69.3, paragraph (e)(9) is revised and paragraph (g) is amended by removing the phrase ''Association pool'' and by adding the phrase ''Association common line pool.''

§ 69.3 Filing of access service tariffs.

* * * * *

(e) * * *

* * * * *

(9) At the start of the Path A transition period defined in § 61.3 of this chapter, non-price cap LECs that elect to file their own tariffs outside the Association pool for one or more of their study areas effective July 1, 2001, shall notify the Association no later than March 1, 2001 that such study areas will no longer participate in Association tariffs. After the start of the Path A transition period, non-price cap LECs that elect to file their own tariffs outside the Association

pool for one or more of their study areas effective July 1, 2002 or thereafter, shall notify the Association no later than March 1 prior to the annual tariff filing that such study areas will no longer participate in Association tariffs. During the Path A transition period, a non-price cap LEC within the Association pool may elect to participate in the pool's common line tariff only or the common line and traffic sensitive tariffs. After the Path A transition period ends, non-price cap LECs may elect for their study areas to participate in the Association pool's common line and traffic sensitive tariffs. The exercise of such options shall be effective July 1 of each year beginning in 2001, and such LECs must notify the Association of their decision regarding such options according to the schedule established earlier in this paragraph (e)(9). Path A LECs have the option to file special access tariffs outside the pool.

* * * * *

Subpart B—Computation of Charges

20. In § 69.101, revise the paragraph to read as follows:

§ 69.101 General.

Except as provided in § 69.1 and subpart C of this part, charges for each access element shall be computed and assessed as provided in this subpart. For general rules governing the calculation of charges for Path A LECs and Path B LECs, see §§ 69.130 through 69.136.

21. Section 69.104 is revised to read as follows:

§ 69.104 End user common line charge for non-price cap LECs and Path A incentive study areas.

(a) This section is applicable only to non-price cap LECs. A charge that is expressed in dollars and cents per line per month shall be assessed upon end users that subscribe to local exchange telephone service or Centrex service to the extent they do not pay carrier common line charges. A charge that is expressed in dollars and cents per line per month shall be assessed upon providers of public telephones. Such charge shall be assessed for each line between the premises of an end user, or public telephone location, and a Class 5 office that is or may be used for local exchange service transmissions.

(b) Beginning July 1, 2001, the maximum end user common line charges for all residential and single-line business lines shall be no higher than the maximum amounts for end user common line charges of price cap carriers stated in § 69.152 (d)(1)(ii)(A) through (d)(1)(ii)(D) (the ''stated amounts''), so long as those amounts are reasonably comparable to the end user common line charges that price cap LECs actually charge pursuant to § 69.152. Assuming such comparability, the end user common line charge for residential and single business lines will change to $5.00 per month on July 1, 2001, and annually change consistent with the stated amounts thereafter. There is no separate end user carrier common line charge for non-primary residence lines. End user common line charges for multi-line business lines and for each subscriber line associated with a public telephone will change from $6.00 per line to $9.20 per line in equal increments over the period from July 1, 2001 to July 1, 2003. End user common line charges for Centrex lines may be assessed based on a per-line charge that is 1/9 of the multi-line business end user common line charge. However, if a Centrex customer has fewer than nine lines, the monthly end user charge for those lines shall be the end user common line charge for one multi-line business.

(c) The End User Common Line charge for each residential local exchange service subscriber line shall be the same as such charge for each single-line business local exchange service subscriber line.

(d) A line shall be deemed to be a residential subscriber line if the subscriber pays a rate for such line that is described as a residential rate in the local exchange service tariff. Effective July 1, 2001, for purposes of this section, ''residential subscriber line'' includes residential lines that a non-price cap LEC provides to a competitive LEC that resells the line and on which access charges may be assessed.

(e) A line shall be deemed to be a single-line business subscriber 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.

(f) No charge shall be assessed for any WATS access line.

(g) A non-price cap LEC shall assess no more than one End User Common Line charge as calculated under the applicable method under this section for Basic Rate Interface integrated services digital network (ISDN) service. No more than five End User Common Line charges shall be assessed as calculated under this section for Primary Rate Interface ISDN service.

(h) In the event that a non-price cap LEC charges less than the maximum End User Common Line charge for any subscriber lines, it may not recover the difference between the amount collected and the maximum from carrier common line charges or RAS as defined in § 54.319 of this chapter.

(i) End User Common Line Charge De-Averaging. Beginning on July 1, 2001, non-price cap LECs may geographically de-average End User Common Line charges into up to three geographic zones per wire center, so long as no multi-line business End User Common Line charge is set lower than the lowest residential End User Common Line charge. Such LECs must file their End User Common Line Charges for each zone, together with a geographic description and map of each such zone, with the Commission. If such LECs participate in the pool, the Association will impute revenues from End User Common Line Charges as if they had been set at the maximum amount.

22. In § 69.114 paragraphs (a) through (d) are redesignated as paragraphs (b) through (e) and a new paragraph (a) is added to read as follows:

§ 69.114 Special access services.

(a) The Association will tariff special access services for Path A and Path B study areas participating in the pool. Path A LECs may also elect to tariff their special access services outside the Association pool. Pricing flexibility for individual rates, such as term and volume discounts, will be available. The Association will have the flexibility to develop other price structures that would align study area prices and costs more closely.

* * * * *

23. Add §§ 69.130, 69.132, 69.134 and 69.136 to subpart B to read as follows:

§ 69.130 Composite access rate.

(a) Association access tariffs for non-price cap LECs or access tariffs filed directly with the Commission by such entities shall include all applicable per-minute switched access rate elements in this subpart B.

(b) The Association shall calculate a Composite Access Rate (''CAR'') for the Association pool that is the weighted aggregate of the per-minute switched access rates of the Path A LECs' study areas that participate in the pool at any time. During the Path A transition period, as defined in § 61.3 of this chapter, NECA will adjust the CAR annually according to the following schedule: As of July 1, 2001, the CAR will equal 2.2 cents per minute. As of July 1, 2002, the CAR will equal 1.8 cents per minute. As of July 1, 2003, and thereafter, the CAR will equal 1.6 cents per minute.

§ 69.132 New access services for non-price cap LECs and Path A incentive study areas.

New access services of non-price cap LECs shall be introduced at prevailing market rates. Such services either shall be administered by the Association on behalf of LECs that are pool participants or introduced outside the pool by non-price cap LECs that do not participate in the pool.

§ 69.134 Rates for certain access elements of Path A LECs.

Notwithstanding other sections of this subpart B:

(a) For Path A LECs that participate in the Association pool, the Association may set charges for the access rate elements included in the CAR to recover the revenue requirement that remains after revenues are received from the end user common line charges, carrier common line charges, long term support (LTS), local switching support (LSS), and rate averaging support (RAS) of such LECs. The Association shall set charges for such rate elements in a flexible manner to develop price structures that would align such charges and costs more closely.

(b) Path A LECs with study areas participating in the pool's switched traffic sensitive tariff but not in the special access tariff must provide the special access rates of those study areas to the Association by March 1 prior to the annual filing to support Association calculation of pool transport rates.

§ 69.136 Rates for certain access elements of Path B LECs.

For Path B LECs, the Association will calculate a total revenue requirement for average schedule and cost companies. The end user common line charges of Path B LECs will be the same as those for Path A LECs. Association calculations of rates for the access elements of Path B LECs will follow §§ 69.104 through 69.129 in effect as of July 1, 2000, recognizing the explicit support flows from Long Term Support and local switching support.

Subpart G—Exchange Carrier Association

24. Add a new paragraph (c) to § 69.603 to read as follows:

§ 69.603 Association functions.

* * * * *

(c) As of July 1, 2001, the Association shall convert its pooling system to a single pool for Path A LECs and Path B LECs, as defined in § 61.3 of this chapter. The authorized rate of return for the pool shall be that in effect as of July 1, 2000. The Association is authorized to evaluate the operation of the pool during the Path A transition period, as defined in § 61.3 of this chapter, and, as of the end of that period, is authorized to replace the single pool with two or more pools, including but not limited to separate pools for Path A LECs and Path B LECs, upon 60 days prior notice to the Commission.

* * * * *

25. In § 69.605, paragraphs (a) and (e) are revised to read as follows:

§ 69.605 Reporting and distribution of pool access revenues.

(a) Access revenues and cost data shall be reported by participants in association tariffs to the association for computation of monthly pool revenues distributions in accordance with this subpart. Notwithstanding the foregoing, Path A LECs with Path A incentive study areas as defined in § 61.3 are not required to report cost data to the Association for those study areas.

* * * * *

(e) The Association may update average schedule formulas for changes in costs or demands over the five-year period using changes in relative cost data of similarly-sized study areas that settle on a cost basis. The Association also may make structural modifications to the design of the average schedule formulas, to reflect changes in the mix of service offerings, changes in network design, or changes in operating practices.

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