

Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154(i)-(j), 157, 201-209, 218-220, 251, 271-273, and 403 that this Memorandum Opinion and Order *is adopted*.

2. The Commission has thus completed its review of the record in the above-captioned rulemaking. Accordingly, the above-captioned proceeding *is terminated*.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 51

[WC Docket No. 03-173; FCC 03-224]

#### Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document initiates a rulemaking proceeding to examine the rules applicable to pricing of unbundled network elements (UNEs) and resold telecommunications services made available by incumbent local exchange carriers (LECs) to competitive LECs. The Federal Communications Commission (Commission) adopted the current UNE pricing regime known as the Total Element Long Run Incremental Cost (TELRIC) methodology in 1996. This Commission stated at that time that it intended to re-examine this methodology over time, and this rulemaking represents the Commission's first such re-examination of its UNE pricing rules. The Commission also adopted resale pricing rules in 1996. The U.S. Court of Appeals for the Eighth Circuit reversed the resale pricing rules in 2000. This document seeks comment on whether, and, if so, in what manner, to revise the Commission's UNE pricing rules and on whether, and, if so, in what manner, to promulgate resale pricing rules.

**DATES:** Comments due December 16, 2003, and reply comments due January 30, 2004.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. *See*

**SUPPLEMENTARY INFORMATION** for filing instructions.

**FOR FURTHER INFORMATION CONTACT:** Steve Morris, Wireline Competition Bureau, Pricing Policy Division, (202) 418-1530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket No. 03-173, adopted on September 10, 2003, and released on September 15, 2003. The full text of this document is available on the Commission's website Electronic Comment Filing System and for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, SW., Washington, DC 20554. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365. The full text of the NPRM may also be purchased from the Commission's duplicating contractor, Qualex International, Room CY-B402, 445 Twelfth Street, SW., Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or e-mail at [qualexint@aol.com](mailto:qualexint@aol.com).

#### Background

1. This NPRM, adopted September 10, 2003 and released September 15, 2003 in WC Docket No. 03-173, FCC 03-224, initiates a proceeding to examine the Commission's UNE pricing and resale pricing rules. Currently, the Commission's TELRIC rules, 47 CFR 51.501 *et seq.*, which were promulgated in 1996, apply to the pricing of UNEs. The U.S. Supreme Court affirmed the Commission's jurisdiction to promulgate these rules in 1999 and affirmed the reasonableness of these rules in 2002. In contrast, however, because the U.S. Court of Appeals for the Eighth Circuit reversed the Commission's resale pricing rules in 2000, there currently are no resale pricing rules. Because the Commission's UNE pricing rules have not been examined in over seven years, and because the Commission does not have resale pricing rules, we conclude that it is time to examine the pricing rules for UNEs and resale.

#### Discussion

2. We undertake this rulemaking with the goal of modifying or clarifying the Commission's UNE and resale pricing rules to aid state commissions in more easily developing UNE pricing and resale discounts that meet the statutory standards established by Congress in section 252(d) of the Telecommunications Act of 1996 and to provide more certainty and consistency in the results of these state proceedings.

*See* 47 U.S.C. 252(d). We seek to determine whether our UNE pricing methodology is working as intended and, in particular, whether it is conducive to efficient facilities investment. We also undertake this rulemaking to examine whether, and, if so, in what manner, to promulgate resale pricing rules.

3. As a preliminary matter, we reaffirm our commitment to using forward-looking costing principles to determine UNE rates. We decline to open an inquiry into alternative pricing theories, including historical cost, efficient component pricing rule, and Ramsey pricing theories. Instead, in examining UNE pricing rules, the NPRM focuses, and seeks comment, on whether clarifications or modifications should be made to the current forward-looking economic cost-based rules.

4. In the NPRM, we will examine whether the UNE pricing rules distort our intended pricing signals by understating forward-looking costs and thereby thwart the development of facilities-based competition. We will consider whether modifications to the current UNE pricing rules are necessary to both preserve their forward-looking emphasis and pro-competitive purposes, while simultaneously making the rules more transparent and theoretically sound. Specifically, we tentatively conclude that UNE prices should be based on costs more firmly rooted in the real-world attributes of the existing networks of incumbent LECs rather than the speculative attributes of a purely hypothetical network. We seek comment on this tentative conclusion.

5. We seek comment on the appropriate goals of a UNE pricing regime. Should UNE prices continue to be set in a manner that sends efficient entry and investment signals to competitors and that enables incumbent LECs to recover their forward-looking costs? We ask that parties comment on whether these remain the appropriate goals and, if not, that parties identify alternative pricing goals. We seek information on how the Commission can measure whether a pricing regime is sending appropriate entry and investment signals. We request parties comment on the value of comparisons to an incumbent LEC's historical costs? We also seek comment on potential other goals of a pricing regime, such as transparency and verifiability.

6. We seek comment on the effect of the Commission's recent decision in the *Triennial Review Order*, 68 FR 52276, September 2, 2003. In particular, the Commission adopted a new interpretation for determining whether requesting telecommunications carriers

are entitled to access a network element on an unbundled basis. We ask that comments discuss in detail the relationship, if any, between this new interpretation and the Commission's UNE pricing rules. In particular, we seek comment on the affect on our pricing rules of the limitations on the unbundling mandates associated with hybrid fiber/copper loops. We also seek comment on the affect limitations on fiber loop unbundling should have on UNE pricing rules. Further, we request that parties comment on how states should set rates for network elements that no longer are required to be provided on an unbundled basis.

7. In the universal service proceeding, the Commission determined that funding should be based on the forward-looking cost of providing universal service, and identified criteria to guide in the selection of a forward-looking universal service cost model. *Universal Service Order*, 62 FR 32862, June 17, 1997. The Commission applied these criteria to develop a computer cost model and to select the inputs necessary to develop forward-looking costs using this model. *USF Platform Order*, 63 FR 63993, November 18, 1998; *USF Inputs Order*, 64 FR 67372, December 1, 1999. In developing the universal service cost model and inputs, the Commission did not intend to provide any systematic guidance for TELRIC rate-setting, and emphasized that universal service cost inputs may not be appropriate for use in determining UNE prices. The Commission continues to discourage states from using the universal service nationwide inputs for the purpose of developing UNE rates. We invite parties to comment on the relationship between universal service cost rules and UNE pricing rules.

8. *Network Assumptions—General Theory*. One of the central internal tensions in the application of the TELRIC methodology is that it purports to replicate the conditions of a competitive market by assuming that the latest technology is deployed throughout the hypothetical network, while at the same time assuming that this hypothetical network benefits from the economies of scale associated with serving all of the lines in a study area. In the real world, however, even the most efficient carrier's network will reflect a mix of new and older technology at any given time. We thus seek comment on whether TELRIC's technology assumptions may result in forward-looking costs that are not achievable even in the most competitive markets and whether the TELRIC methodology, therefore, may undermine the incentive for either competitive

LECs or incumbent LECs to build new facilities.

9. We tentatively conclude that the TELRIC rules should more closely account for real-world attributes of the routing and topography of an incumbent LEC's network in the development of forward-looking costs. We seek comment on this approach and, in particular, on how such an approach may differ from the practices of state commissions in UNE pricing proceedings. We also ask parties to comment on proposals that would achieve these objectives. We seek comment on whether it is appropriate to assume that the cost of an existing element is the cost of that element if it were being replaced today. We also seek comment on whether we should define the relevant network as one that incorporates upgrades planned by the incumbent LEC over some objective time horizon (e.g., three or five years), as documented, for example, in an incumbent LEC's actual engineering plans. We request parties comment on any other alternatives that would ground the TELRIC rules in the attributes of an incumbent LEC's existing network. Further, we seek comment on whether any of these approaches would produce results that are more consistent across states and send better entry and investment signals to both incumbents and competitors.

10. The TELRIC methodology currently defines the term "long run" to mean a period long enough for all of a firm's costs to be variable or avoidable. We seek comment on whether our tentative conclusion compels us to shift away from a long run average cost methodology to a short run average cost methodology and, if so, what are the consequences of such a shift. We request parties comment on whether such an approach is consistent with the statute's heavy presumption against the use of embedded costs.

11. We ask the parties to suggest other ways of defining the network that is to be modeled in a UNE pricing proceeding. To what extent should network assumptions reflect evidence of the network decisions made by competitive LECs? Parties should explain in detail the network assumptions they advocate and the competitive assumptions implicit in their proposals. Parties should also explain whether they are proposing a theory based on short-run costs or long-run costs, and how their proposed definition of the network will produce more accurate economic signals and more consistent results than the current pricing regime.

12. The dispute as to the relevant network for pricing purposes is in large part a dispute over what constitutes efficiency. We seek comment on the efficiency standard that the Commission should use in order to achieve UNE prices that send correct economic signals regarding investment, while still achieving the necessary level of cost recovery. A central principle of the current UNE pricing rules is that competitive LECs should not pay rates that compensate incumbent LECs for past inefficiencies. Given that many incumbent LECs have been subject to price cap regulation for some time, we seek comment on whether we should find an incumbent LEC's practices presumptively efficient. Would the adoption of a productivity factor be necessary as part of a transition to a regime based more on the network assumptions of an existing network? We also ask parties to identify the evidence that would be necessary to overcome a presumption of efficiency by an incumbent LEC and what effect any asymmetry in access to information about an incumbent's practices and costs should have on any presumption we create. We ask parties to be very specific in defining the standard of efficiency and explaining how to determine whether a network is optimized for economic efficiency. We further ask parties that favor a change in network assumptions to identify how such a change would affect each component of the pricing rules (e.g., operating expenses, cost of capital, depreciation).

13. We ask parties to discuss whether a regime focused more closely on the existing network of an incumbent would be easier for state commissions to implement than the current TELRIC regime. For example, we seek comment on whether there would be issues of transparency and verifiability in placing a greater reliance on the attributes of an incumbent LEC's existing network. We seek comment on whether focusing the cost inquiry on an incumbent's existing network might place competitive LECs at an informational disadvantage in litigating any factual issues about which the incumbent LEC, as owner of that network, may have better information. We request parties propose concrete procedural safeguards designed to minimize risks of an informational imbalance resulting from methodological reforms discussed in the NPRM. We also ask parties to comment on ways in which UNE pricing proceedings can be streamlined without placing any party at a material informational disadvantage.

14. *Network Assumptions—Specific Network Inputs.* In addition to our tentative conclusion that a forward-looking pricing methodology should more closely account for the real-world attributes of the routing and topography of an incumbent LEC's network, we believe there are a number of aspects of the current efficient network assumption that might benefit from clarification or modification. We discuss some of these issues below, and we encourage parties to identify additional steps we might take to produce prices that satisfy the objectives we have identified.

15. We seek comment on the network routing assumptions that would be consistent with our tentative conclusion that prices should account for the real-world attributes of the routing and topography of an incumbent LEC's network. Specifically, we seek comment on the importance of the locations of existing rights-of-way, existing poles, and existing conduit for all wireline carriers when new facilities are built. We also seek comment on whether there is any theoretical basis for an approach that does not assume the existence of current roads, buildings, and natural obstacles. We request parties to comment on whether and how existing rights-of-way should be accounted for in network routing assumptions. Parties supporting the use of existing rights-of-way as a basis for network routing assumptions should explain how states can best determine current rights-of-way routes, and how such routes can be compared to the routes of incumbent LEC facilities and of the routes generated by computer cost models. We ask parties to explain how their proposed network principles reflect the variables than incumbent and competitive LECs consider in making routing and construction decisions. To the extent parties propose principles based on the real-world attributes of an incumbent LEC's existing network, they should explain in detail how a state commission would establish the forward-looking cost of an existing network, and how such a costing approach differs from "rate-of-return or other rate-based" methodologies prohibited under section 252(d)(1). 47 U.S.C. 252(d)(1). We also ask parties to comment on the applicability, if any, of the Commission's conclusion in the *USF Platform Order* that incumbent LEC networks are an inappropriate basis to use to determine outside plan design because they "may not represent the least-cost, most-efficient design in some cases." Finally, we invite parties, and in particular state commissions, to

comment on whether, and how, our tentative conclusion to account more closely for the real-world routing and topography of an incumbent's network would affect the ability of carriers to use computer cost models.

16. We seek comment on the technology assumptions that should be assumed in developing UNE prices. We invite parties to comment on how our tentative conclusion above affects the technology assumptions used to develop UNE prices. We request parties to comment on the relevance to the development of UNE prices of the Commission's statement in the *USF Platform Order* that existing incumbent LEC plant likely does not reflect forward-looking technology choices. We seek comment on how to determine prices for equipment types that are no longer widely used in the industry, such as analog switches or older versions of digital loop carrier systems. We also seek comment on how an approach that replicates an incumbent LEC's existing technology compares to a reproduction cost methodology.

17. We encourage parties to identify the specific factors that influence their decisions with respect to how quickly to deploy new technology. How, if at all, should we factor in the uncertainty associated with the timing and efficiency of new technology? Of what relevance, if any, is the pace at which incumbent LECs have deployed new technologies in the past? Is there evidence of the diffusion rates of new technology in competitive markets as opposed to monopoly markets that might inform our analysis?

18. We seek comment on certain specific cost input issues. Structure sharing refers to how much of the cost of installing poles, digging trenches, and placing conduit would be shared on a forward-looking basis by the incumbent LEC with other entities. The more sharing that is assumed, the lower the cost to the incumbent LEC of providing the element. We seek comment on the guidance the Commission should provide to state commissions on the method for establishing structure sharing percentages, particularly in light of our tentative conclusion, above. Should sharing opportunities that were available at the time plant was built be considered? How relevant are an incumbent LEC's actual sharing percentages? What other sources of data might be relevant? We request parties identify factors that either encourage or discourage parties from sharing construction costs today and explain how these factors should be reflected in determining UNE prices. Parties should provide empirical data with respect to

their experiences sharing construction costs with other entities.

19. A fill factor represents the percentage of capacity of a particular facility or piece of equipment that is used on average over its life. Increasing fill factors effectively lowers costs by reducing the amount of spare capacity allocated to working units. We seek comment on the appropriate guidelines for states to follow in establishing fill factors. What factors do states currently consider in developing fill factors? How relevant are an incumbent's existing fill factors in establishing forward-looking fill factors? Should they be dispositive in light of our tentative conclusion, above? If not, what other evidence should be considered? Are carrier of last resort obligations relevant to determining the appropriate fill factors? Would the fill factors of other incumbent LECs be relevant to demonstrate achievable efficiencies? We seek comment whether carriers would operate at higher or lower fill factors as the level of facilities-based competition increases in a market. We request that parties submit empirical evidence that distinguishes between the fill factors that carriers experience in competitive markets and monopoly markets. We also seek comment on how fill factors are likely to vary as the rate of demand growth varies. Finally, we seek comment on methods for quantifying dynamically efficient fill factors on a forward-looking basis.

20. One of the key issues in determining unbundled switching prices is the switching discounts. In setting switching rates, state commissions have had to determine the appropriate mix of new switches, growth switching equipment, and technology upgrades to existing equipment. This issue arises because switch manufacturers typically offer a relatively large price discount for an entirely new switch and a smaller discount on growth or upgrade equipment added to an existing switch. The Commission has rejected assumptions of both 100 percent new switches and 100 percent growth equipment.

21. Because switching equipment has a high degree of modularity, carriers over time grow their switches and upgrade them with new technology as it evolves over time on the premise that this is a better way to minimize costs than purchasing a switch large enough to satisfy anticipated demand over the entire life of the switch. We seek comment on whether unbundled switching costs should be based on the prices that an efficient incumbent LEC or other entrant would pay for switching

equipment over the life of the switch and not at a particular point in the switch's life cycle. In addressing this question, parties should explain the assumptions they make with respect to line demand and technology improvements, and their assumptions regarding vendor pricing strategies.

22. The basic formula for developing a price for an element is to divide total cost by total demand. We ask for comment on the use of this principle in developing a price that is based on costs of equipment installed in increments over the life of the switch. Parties should also explain whether, and how, these calculations should account for the time value of money. Is the appropriate discount rate for use in determining the time value of money the cost of capital used in calculating UNE prices generally?

23. Assuming that unbundled switching prices should reflect vendor prices for switch equipment that is installed in increments over the life of the switch, we seek comment on whether the starting point for calculating costs should be a new switch that is installed today. We also seek comment on whether unbundled switching prices should reflect, in addition to costs for the initial switch equipment, costs of growth additions and technology upgrades, growth additions alone, or upgrades alone for the years following the initial installation. Commenters that believe current prices should recover costs of future upgrades should explain why current competitive LECs should pay for benefits that they do not yet receive. In light of our conclusion that UNE pricing should continue to be based on a forward-looking methodology, we ask commenters to describe in detail any rationale for supporting or rejecting UNE prices based on vendor prices that incumbent LECs currently pay for equipment they are installing today in existing switches.

24. We ask parties to explain in detail the methodology that should be used to develop total cost and total demand under this approach. We also invite parties to submit studies showing how to develop an unbundled switching price. These studies should assume that service is provided using modern digital switches that are installed today. We ask that commenters develop this price for either an incumbent LEC's study area or a UNE zone within a study area. One study should develop the costs of initial new equipment and all future growth equipment that is expected to be installed periodically over the life of the switch. A second study should develop costs for these two components plus

costs of all future technology upgrade equipment that is expected to be installed periodically over the life of the switch. Parties should explain and fully document the methodology, assumptions, and data they use to estimate these costs and the demand over which these costs are spread. If a commenter believes UNE prices should be based on a switch technology other than digital technology, that party may submit other studies in addition to, rather than in place of, the studies requested above.

25. *Cost of Capital.* The cost of capital is the cost a firm will incur in raising funds in a competitive capital market. It is generally estimated as a weighted average of the cost of equity and the cost of debt. In the *Triennial Review Order*, the Commission clarified that the TELRIC-based cost of capital should reflect the risks of a competitive market. Because the objective of TELRIC is to establish a price that replicates the price that would exist in a market in which there is facilities-based competition, the Commission held that TELRIC prices should reflect the risk of losing customers to other facilities-based carriers. The importance of this clarification was to confirm that state commission must use a consistent set of assumptions when they calculate the three main rate components (*i.e.*, operating expenses, cost of capital, and depreciation). We invite parties to comment on whether this principle should apply even if the Commission adopts a UNE pricing methodology that is tied more closely to the existing network of an incumbent LEC.

26. We ask parties to identify the specific variables that determine the cost of capital under the network assumptions that they advocate, and to offer suggestions as to how to quantify the various components of risk that should be reflected in a company's cost of capital. We request parties to identify both the theoretical arguments and empirical evidence supporting the use of these variables. We seek comment on how the cost of debt and equity should be weighted and on how states should determine the appropriate capital structure. We seek comment on whether incremental investment is typically funded through debt or equity and whether the cost of capital should reflect this.

27. One important risk factor is the risk of losing customers to facilities-based competitors. How should this risk be measured? What is the relationship between this risk and the network assumptions we adopt. Is the risk of supplying a product or service always greater in a competitive market than in

a monopoly market? We also seek comment on the role of fixed and sunk costs, assumptions about the level and kind of competition, and entry strategies of competitors in affect risk and cost of capital of incumbent carriers.

28. We seek comment on the relationship, if any, between our unbundling rules and the risk of stranded investment. Have long-term contracts been used in the provision of UNEs and how does this answer affect the cost of capital? How can the risks associated with month-to-month contracts be quantified? Does the use of economic depreciation eliminate the need to compensate separately an incumbent LEC for any additional risk of stranded investment?

29. We ask parties to comment on ways in which the Commission might simplify the task of setting the cost of capital. For example, if we retain our current rules, should the cost of capital vary among different states or among different companies, and, if not, should the Commission establish a particular cost of capital for states to employ? If we move to a pricing regime that looks more closely at the incumbent LEC's actual network, are there any presumptions we could establish to facilitate selection of a cost of capital? We ask parties to provide studies in support of their proposals. Regardless of our network assumptions, are there particular models for projecting cost of capital that should or should not be used and are there particular data sources that should or should not be given deference? We ask parties to identify proxy companies or industries for use in estimating UNE cost of capital.

30. We ask parties to comment on when it would be appropriate for a state commission to establish different costs of capital for different UNEs and, in those situations, to identify what types of risks distinguish one element from another. Would such an approach accurately reflect how incumbent LECs actually raise capital and, if not, is this relevant? We also seek comment on why such an approach has not been implemented in the states. We seek comment, particularly from state commissions, on whether and, if so, why such an approach has been considered and rejected. Are there steps the Commission could take to facilitate the ability of states to establish UNE-specific costs of capital? Do the benefits of using a cost of capital that more accurately reflects the risk associated with providing a particular UNE outweigh the administrative burden of such an approach?

31. We ask parties to explain whether different proxy groups should be used to estimate the cost of capital for different UNEs. Parties should identify these proxy groups and explain in detail why they are appropriate. Alternatively, parties that advocate using a single proxy group and then adjusting that cost of capital according to the relative risk of the particular UNE should explain in detail how to make the relevant adjustments.

32. *Depreciation Expense.* Economic depreciation is a method of reflecting anticipated declines in the net present value of an asset of the course of its useful life. Calculating the appropriate rate of a price decline is complicated because it is based largely on projections about future events. In UNE pricing cases, the task is even more difficult because most models include a levelization function that imposes a constant price schedule over the life of the asset. There are two components of depreciation—the useful life of the asset and the rate at which the asset is depreciated over that useful life. Although the Commission has yet to provide guidance regarding the use of economic depreciation or to mandate a specific set of economic lives, in the *Triennial Review Order*, the Commission clarified that a carrier may accelerate recovery of the initial capital outlay for an asset over its life to reflect any anticipated decline in its value.

33. The useful life of an asset normally is determined by comparing the operating cost of the existing asset with the operating cost plus investment cost of a new asset that performs the same functions (assuming the new equipment will generate the same revenue as the existing equipment). Estimating asset lives is difficult because the estimate depends on the physical life of the existing asset, the expected operating costs of the existing asset, and the expected investment and operating cost of new assets, some of which may not yet have been invented.

34. We seek comment on the guidance that we may provide to the states on the issue of asset lives. For example, is the Commission's past reluctance to rely solely on Generally Accepted Accounting Principles (GAAP) financial reporting lives warranted in the context of UNE ratesetting? We seek comment on the relationship between the financial lives used to develop earnings reported to shareholders and the financial lives those that companies use to plan their future capital expenditures? If those lives differ, we request that parties explain why. We also request that competitive LECs and incumbent LECs submit the lives that

they use to plan their capital expenditures. We further seek comment on whether compliance with GAAP results in any systematic bias.

35. We seek comment on how financial reporting lives are developed and whether they accurately represent the anticipated economic lives of assets. For example, how do financial lives reflect the potential impact of future technologies? What asset lives are appropriate for equipment in the existing incumbent LEC network that is, or soon will be, obsolete? How relevant, if at all, is the actual retirement experience of an incumbent LEC, its depreciation reserves, or its projected investment plans for the near future? Is there other objective evidence the Commission should consider in this regard? We encourage parties to provide studies forecasting the economic lives of the major local exchange carrier assets in support of their proposals.

36. We also ask parties to comment on whether FCC regulatory lives reflect the competition and technology assumptions required under a forward-looking costing methodology. We seek comment on whether these lives, first established a decade ago, are still accurate. We ask parties to explain whether the validity of FCC asset lives depends in part on whether the Commission retains a scorched node approach to network design or instead adopts its tentative conclusion that forward-looking costs should more closely account for the real-world attributes of the routing and topography of an incumbent LEC's network.

37. The second component of depreciation is the depreciation rate. Where equipment prices are expected to decline over time, the value of existing network assets (and therefore prices under a forward-looking methodology) should decline at the same rate. We seek comment on the relationship between the rate of change in equipment prices and the rate of change in final product prices. To what extent do companies in competitive markets consider changes in the economic efficiency of assets (e.g., price changes, technological advances) in deciding how quickly to recover investments? How can we measure anticipated changes in the efficiency of equipment? Must any measure of equipment price also reflect advances in the capabilities of the equipment? What sources of information would be appropriate for use in establishing rates based on a forward-looking costing methodology? We request that parties explain how different sources of data address changing capabilities of equipment over time. We also request that parties

explain whether recent declines in equipment costs, if any, are useful in establishing a general approach, or are they instead extraordinary events caused by the recent sudden decline in markets for telecommunications equipment generally and therefore not reliable indicators of general trends in equipment pricing.

38. We seek comment on whether, if the investment cost of equipment changes from year to year, should UNE prices also similarly change from year to year, all else being equal. We ask parties to comment on the costs and benefits of using a wholesale pricing regime responds to a market where investment costs are changing and facilities-based competition exists or is expected to exist. We also ask parties to address whether adjustments to depreciation expense are the best mechanism for reflecting anticipated equipment price changes in UNE rates.

39. Although carriers continually invest in new assets and depreciate old assets, UNE cost models typically assume that the entire investment in the network is made at a single point in time, and that no additional investment is made in subsequent periods. This same process is repeated each time a state commission sets new rates. Because the return on investment will decline in each period as the base of undepreciated investment declines, even straight-line depreciation will result in rapidly declining prices over time unless recovery is levelized across time periods. Consequently, a "levelization" function is included in most cost models to replicate real-world investment and recovery patterns.

40. The levelization of rates that occurs in most cost models appears to be inconsistent with the concept of adjusting UNE prices to reflect anticipated changes in equipment prices. We ask parties to comment on this statement and to discuss the consequences of running current cost models without the levelization function. Would there be dramatic variation in rates from year to year if rates were not levelized? Does the use of levelization send incorrect signals to the extent that it produces UNE prices that do not vary over time even when input prices are rising or falling? We seek comment on whether a better approach might be to recover through depreciation expense the difference between the current value of the asset and the anticipated value of the asset at the next rate proceeding. We request that parties explain how such an approach would work as a practical matter, including whether and how prices should be adjusted if a state

commission's expectation regarding equipment prices prove to be incorrect. We ask parties to identify any other approaches to economic depreciation that might be used.

41. We also seek comment on whether a reduction in asset lives might be used as a proxy for changing investment costs. Under what circumstances would a carrier retire an asset before the end of its useful life? We ask parties to comment on how unregulated companies account for the uncertainties associated with equipment price changes and other consequences of advancing technologies.

42. *Expense Factors.* Regulators often estimate projected operating expenses by multiplying the projected investment in the network by an annual cost factor (ACF). An ACF typically is a ratio of current expenses to current investment for a particular account. The ratio is multiplied by the projected investment to obtain the projected expenses. An alternative method of calculating monthly operating costs is to look at current operating expenses and make any adjustments that reflect anticipated experience in the period for which the projection is made, such as adjustments for productivity and inflation. We seek comment on these approaches to estimating expenses. Is one approach superior to the others? Under the network assumptions required by our TELRIC rules, is it correct to assume that expenses will be reduced in proportion to reductions in investment? Would such an assumption be more acceptable if we changed the network assumptions to more closely track an incumbent LEC's existing network? We request parties to explain whether it would be reasonable to assume that an incumbent LEC's current expenses represent the forward-looking costs of operating a network. We also request parties to identify if there are other approaches to projecting expenses that do not rely on an incumbent LEC's past experience. We invite parties to provide empirical evidence that demonstrates the factors that most influence the level of expenses.

43. If we find that the best method of projecting expenses is to make forward-looking adjustments to actual expenses, we seek comment on the type of adjustments that would be appropriate. If adjustments are made for inflation and productivity, how should those factors be measured? From what sources should this information be developed?

44. We ask parties to address any specific issues that arise in connection with estimating non-plant specific expenses, such as customer care or common overhead. How should these

costs be allocated among different elements? Is it appropriate to allocate these costs to non-recurring charges, or should they be recovered only through recurring charges.

45. *Non-Recurring Charges.* Non-recurring costs may be thought of as the "installation" or "set-up" costs an incumbent LEC incurs processing and provisioning a competitive LEC order for a UNE. Non-recurring charges (NRCs) constitute an up-front cost to the competitive LEC that is generally not recoverable if it subsequently loses the end-user customer served with the UNE. Consequently, NRCs can be a barrier to entry, especially if they are unduly high.

46. There are two primary sets of issues that pertain to NRCs. The first set of issues relates to the costs an incumbent LEC should be permitted to recover for the activities needed to initiate service to a competitive LEC. We believe that consistency among the various components of rates is important. Using one set of network assumptions for recurring charges and a different set of network assumptions for NRCs potentially results in some over-recovery or under-recovery. Nevertheless, we are sensitive to the practical concern that network assumptions that depart significantly from an incumbent LEC's existing network might preclude recovery of the cost of non-recurring activities that would be required in establishing a competitive market. We ask parties to address whether our tentative conclusion that the pricing rules should more closely account for the real-world attributes of the routing and topography of an incumbent's network should apply with respect to NRCs and, if it does, whether this ensures that incumbent LECs will be able to recover all of their forward-looking costs of non-recurring activities.

47. A related issue is the relationship between NRCs for manual activities and an incumbent LEC's operational support systems (OSS). In light of our tentative conclusion, above, we seek comment on what assumptions should be made with respect to the capability of the incumbent LEC's OSS. Should OSS costs be recovered through expense factors or through a separate charge? If through a separate charge, how should that charge be calculated? Should incumbent LECs be permitted to recover through separate OSS charges the costs associated with systems that are used for both wholesale and retail services and, if so, how should regulators allocate OSS costs between these functions? Should all costs of making OSS available to competitors be borne by them or are there costs more

appropriately spread among the incumbent LEC's retail customers as well?

48. We seek comment on which activities are susceptible to automation and on how state commissions should determine the costs of performing these activities. We request that parties comment on how, in addition to subjective opinions of subject matter experts, state commissions might develop more objective evidence on non-recurring costs. Would a shift to network assumptions that more closely track the incumbent LEC's existing network eliminate some of the speculation that often characterizes state proceedings? Is it appropriate to establish a presumption that an incumbent LEC's current practices with respect to non-recurring activities are efficient, or are an incumbent LEC's incentives to be efficient diminished when competitive LECs are the primary users of a particular activity?

49. The second main set of NRC issues relates to whether non-recurring costs should be recovered through NRCs or through recurring charges. Generally, the non-recurring costs at issue are labor costs, such as the cost of sending a technician to a particular location to enable the competitive LEC to provide service to a particular end-user. One possible solution to this issue would be to limit recovery through NRCs to those costs that exclusively benefit the competitive LEC ordering the UNE. The cost of activities for which NRCs would not be permitted generally would be recovered in recurring charges through expense factors. We seek comment on this approach. What affect would this approach have on the number of activities for which NRCs would be permitted? How would such an approach be implemented by the states? Although such an approach would reduce the likelihood that NRCs would impose a barrier to competitive entry, would it also provide incumbent LECs with full recovery of their forward-looking costs? Under this approach to NRCs, would there be cost double recovery issues between expenses and NRCs with regard to carriers that already paid the NRCs and would now be paying for the costs again through ACFs in recurring charges?

50. We solicit comment on whether a contrary approach, allowing NRCs for every activity related to a competitive LEC order, would provide sufficient incentive for incumbent LECs to use mechanized processes when it is efficient to do so. Would such an approach increase the risk of over-recovery by the incumbent? Would regulators need to develop mechanisms

to back out these costs in developing expense factors? Would it be necessary to develop some type of refund mechanism if other carriers also benefit from the work? Parties that oppose limiting the activities for which NRCs are permitted should suggest practical methods for making such adjustments.

51. We invite parties to offer other suggestions on principles that states could apply to identify when it is appropriate to recover costs through NRCs, and the consequences of those principles on competitive entry and cost recovery. For example, of what relevance are the NRCs imposed by incumbent LECs on retail customers? Would eliminating or reducing the allocation of common costs and overhead to activities for which NRCs are imposed resolve concerns about the level of NRCs?

52. Beyond these general NRC issues, we seek comment on some specific issues. We request that parties comment on whether disconnection costs should be recovered as a separate cost at the time of disconnection or if they should be recovered through a NRC imposed at the time of installation. We ask that parties provide empirical evidence with respect to the frequency with which facilities actually are disconnected and the costs are not recovered through other charges. We ask parties that favor recovering disconnection costs at the time of installation to explain how to reflect the time value of money in calculating the costs at the time of installation and to explain whether there are other factors that outweigh the consequences of having an intentional mismatch between costs and revenues (caused by recovering the costs before they are incurred).

53. A second specific issue on which we seek comment is loop conditioning. In the *Triennial Review Order*, the Commission stated that state commissions have discretion to determine whether loop conditioning costs are forward-looking costs, and whether those costs should be recovered through recurring or non-recurring charges. We ask parties to comment on when and how the costs associated with loop conditioning should be recovered through recurring or non-recurring charges. We noted in the *Triennial Review Order* that one option available to state commissions would be to permit NRCs for loop conditioning only in extraordinary circumstances, such as copper loops that are longer than 18,000 feet. We seek comment on whether this is a useful distinction. We also seek comment on how, if at all, should such NRCs be distributed among the competitive LEC requesting

conditioning and the future carriers that provide digital subscriber line service over the conditioned loop.

54. *Rate Structure*. The current rules contain a variety of requirements regarding how UNE rates should be structured. 47 CFR 51.509. We seek comment on whether, and under what circumstances, changes are needed to our rate structure requirements. For example, would it be appropriate to require switching costs or shared transport costs to be recovered solely through flat-rated charges?

55. *Rate Deaveraging*. The Commission's current rules require that UNE rates be geographically deaveraged into at least three cost-based rate zones, and do not permit "class-of-service" deaveraging. We seek comment on whether, given the Commission's limited ability to influence or control retail local exchange rates, changes to our deaveraging policies with respect to UNEs are necessary to achieve the Commission's goal of sending appropriate economic signals with respect to competitive entry and investment or are there alternative steps the Commission might take. We seek comment on whether, and under what circumstances we should retain the requirement of geographic deaveraging. What are the consequences of deaveraging UNE prices in states where retail rates are not similarly deaveraged? Would it be appropriate to require deaveraging only in states where retail rates are deaveraged? Can such an approach be reconciled with the cost-based pricing standard contained in section 252(d)? We also seek comment on whether, and under what circumstances, to retain the requirement to average rates across different classes of service. Parties that favor elimination or modification of this requirement should present evidence demonstrating that the costs of serving different classes of customers are sufficiently different to warrant deaveraging of those rates. Also, we seek comment on whether deaveraging UNE rates across classes of customers is appropriate if retail rates do not reflect these same cost differences.

56. *Rate Changes Over Time*. UNE pricing proceedings require a substantial commitment of resources from everyone involved and typically take a considerable time to complete. We ask parties to comment on whether there might be mechanisms that could be used to adjust prices over time, thereby reducing the need for state commissions to conduct a full UNE pricing proceeding every few years. Would an approach, similar to many price cap regimes, which periodically

adjust rates based on productivity and inflation factors work for UNE prices and, if so, how? In particular, we ask parties how productivity factors might be calculated. We invite parties to produce empirical evidence regarding productivity, such as productivity studies, that could be used to establish productivity factors if we pursue this approach. We also seek comment on, if the use of productivity factors to adjust rates periodically is feasible, whether it should be mandatory and whether it satisfies a state's legal obligations under section 252. Are there methods other than the use of productivity factors that could be used to make periodic rate adjustments?

57. *Resale Pricing*. Section 252(d)(3) of the Telecommunications Act of 1996 requires that state commissions establish wholesale rates for resold services based on the incumbent LEC's retail rates, "excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." 47 U.S.C. 252(d)(3). The Commission's original resale pricing rules were vacated by U.S. Court of Appeals for the Eighth Circuit, which found that the appropriate standard for determining avoided costs is not those costs that "can be avoided," but rather "those costs that the [incumbent LEC] will actually avoid in the future." *Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 755 (8th Cir. 2000). In light of this decision, we ask parties to comment on the need for the Commission to adopt new rules implementing section 252(d)(3). Is the statutory language, as interpreted by the Eighth Circuit, sufficiently clear that further guidance from the Commission is unnecessary? Parties that favor the establishment of national rules should explain what those rules would require. Is it necessary or helpful for the Commission to identify categories of costs that either are or are not presumptively avoided? Parties that favor the Commission establishing this type of presumption should provide objective evidence demonstrating the type of costs that incumbent LECs actually avoid when they provide services to competitors for resale. For example, how should common costs be treated?

58. We ask parties to discuss whether it is necessary, or helpful, for the Commission to establish evidentiary guidelines with respect to the resale discount. Should incumbent LECs be obligated to file cost studies in support of their proposed discounts, or are there alternative showings that might be sufficient? If studies are required, what level of detail should they contain?



Must direct and indirect costs be specifically identified?

59. Finally, we ask parties to address whether the subscriber line charge should be subject to the resale discount.

60. *Interconnection Pricing and Reciprocal Compensation.* Under section 252(d)(1), interconnection is subject to the same cost-based pricing standard as UNEs. We ask parties to comment on whether there is any reason that changes to the current pricing rules for UNEs should not also apply to interconnection provided pursuant to section 251(c)(2). We note that the Commission is considering issues related to the costs associated with interconnecting networks in the pending *Intercarrier Compensation NPRM*, 66 FR 28410, May 23, 2001. Parties are invited to comment on the relationship between the section 251(d)(1) pricing standard and the proposals for recovery of interconnection costs that are now under consideration in that proceeding. We also invite parties to comment on issues related to the pricing of collocation, which is also subject to the section 252(d)(1) pricing standard. For example, we solicit comment on whether charges for direct current (DC) power should be based on the number of amps consumed or the number of amps fused. Finally, we ask parties to address whether the Commission should continue to apply the same pricing rules to UNEs and to reciprocal compensation. What would be the consequences of having different pricing regimes for these two different functions?

61. *Implementation Issues.* We ask parties to comment on how any changes to the Commission's UNE pricing rules should be implemented by the states. We ask parties to explain how state commissions have proceeded in establishing prices under section 252(d)(1).

62. We seek comment on whether we should establish a national timetable pursuant to which states will conduct new UNE cost proceedings to reset all rates in accordance with any new rules. If we establish a timetable for initiating new UNE rate proceedings, should we require that such proceedings be resolved within a certain time period, consistent with our direction to the states to perform the granular inquiries set forth in the *Triennial Review* proceeding? If so, is a nine-month time period sufficient to establish new UNE prices? What recourse should carriers have if a state fails to act in the allotted time?

63. We also seek comment on whether to establish a true-up mechanism for the

difference between what a competitor pays for network elements under rates established pursuant to the current TELRIC rules and what that competitor would pay for the same facilities or services under rates established pursuant to any new rules we may adopt in this proceeding. If a true-up mechanism is appropriate, to what period should any true-up be applicable? Should the beginning of the true-up period be the effective date of the final Commission order in this proceeding? Or is some other true-up period more appropriate?

#### Procedural Matters

##### *Paperwork Reduction Act*

64. This Notice of Proposed Rulemaking (NPRM) does not contain proposed or modified information collection requirements.

##### *Initial Regulatory Flexibility Act Analysis*

65. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 603, the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided below. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the NPRM and IRFA (or summaries thereof) are being published in the **Federal Register**.

##### *Need for, and Objectives of, the Proposed Rules*

66. In this NPRM, the Commission initiates the first comprehensive review of TELRIC pricing rules since they were adopted. Section 252(d)(1) of the Act sets forth the pricing standard for UNEs. Section 252(d)(3) of the Act requires that state commissions establish wholesale rates for resold services based on the incumbent LEC's retail rates. Seven years ago, the Commission adopted its current rules that base UNE prices on the Total Element Long Run Incremental Cost (TELRIC) of a UNE. *Local Competition First Report and*

*Order*, 61 FR 52706, October 8, 1996. The Commission stated at that time that it would continue to review its pricing rules based on the results of state arbitration proceedings and provide additional guidance as necessary.

67. Based on the wealth of experience that has been developed over the last seven years, the Commission initiates this proceeding to consider whether the TELRIC methodology for pricing UNEs under the Act is working as intended and whether it is conducive to efficient facilities investment. The Commission also requests comment in this proceeding on its resale pricing rules. Incumbent LECs are required to resell retail services pursuant to section 251(c)(4) of the Act. This NPRM seeks to preserve the forward-looking emphasis and pro-competitive purposes of TELRIC, while simplifying this methodology. The Commission's objective is to help state commissions more easily develop UNE prices and resale discounts that meet the statutory standards established by Congress in section 252(d) and to provide more certainty and consistency in the results of these state proceedings.

68. Although the Commission has addressed some specific TELRIC cost input disputes as they have arisen in section 271 proceedings, the Commission's disposition has provided no systematic guidance on pricing issues. This proceeding will provide states and interested parties comprehensive guidance lacking in our consideration of section 271 applications. In the *Triennial Review Order*, the Commission clarified the existing rules regarding two key components of TELRIC—cost of capital and depreciation.

69. Because of the general nature of the Commission's rules and the hypothetical and complex nature of the TELRIC inquiry, it is often difficult to understand how actual UNE rates are derived. Uncertainty or inconsistency in how to apply TELRIC rules may also result in rates that significantly vary from state to state without regard to genuine cost differences. This lack of predictability in UNE rates is difficult to reconcile with the Commission's desire that UNE prices send correct economic signals for competitive and investment purposes. This NPRM seeks to simplify TELRIC pricing, provide more specific guidance to make the TELRIC rate-setting process less speculative and improve the accuracy of its pricing signals.

##### *Legal Basis*

70. This NPRM is adopted pursuant to sections 1, 4(i), (4j), 201-205, 251, 252,



and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), (j), 201–205, 251, 252, and 303.

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

71. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The term “small governmental jurisdiction” is defined as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” 15 U.S.C. 632. As of 1997, there were about 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer. We also note that the term “small governmental jurisdiction” includes state regulatory bodies commonly known as state public utilities commissions or public service commissions which may be directly affected by this NPRM.

72. In this section, we further describe and estimate the number of small entity licensees and regulatees that may also be indirectly affected by rules adopted pursuant to this NPRM. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has

1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

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

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

75. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,329 carriers reported that they were engaged in the provision of local exchange services. Of these 1,329 carriers, an estimated 1,024 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

76. *Competitive Local Exchange Carriers (CLECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to

“Other Local Exchange Carriers,” all of which are discrete categories under which TRS data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 532 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees. In addition, 55 carriers reported that they were “Other Local Exchange Carriers.” Of the 55 “Other Local Exchange Carriers,” an estimated 53 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and “Other Local Exchange Carriers” are small entities that may be affected by the rules and policies adopted herein.

77. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 229 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 229 companies, an estimated 181 have 1,500 or fewer employees and 48 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the rules and policies adopted herein.

78. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to operator service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 22 companies reported that they were engaged in the provision of operator services. Of these 22 companies, an estimated 20 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission

estimates that the great majority of operator service providers are small entities that may be affected by the rules and policies adopted herein.

79. *Payphone Service Providers (PSPs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to payphone services providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 936 companies reported that they were engaged in the provision of payphone services. Of these 936 companies, an estimated 933 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the great majority of payphone service providers are small entities that may be affected by the rules and policies adopted herein.

80. *Prepaid Calling Card Providers*. The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 32 companies reported that they were engaged in the provision of prepaid calling cards. Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the great majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

81. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 42 companies reported that their primary telecommunications service activity was the provision of payphone services. Of these 42 companies, an estimated 37 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most "Other Toll Carriers" are small entities that may be

affected by the rules and policies adopted herein.

82. *Wireless Service Providers*. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of Paging and Cellular and Other Wireless Telecommunications. Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1320 firms in this category, total, that operated for the entire year. Of this total, 1303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

83. *Broadband Personal Communications Service*. The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years." These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction

of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Based on this information, the Commission concludes that the number of small broadband PCS licenses will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F Block auctions, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. Consequently, the Commission estimates that 260 broadband PCS providers are small entities that may be affected by the rules and policies adopted herein.

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

the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

85. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This standard provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

86. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas:

Three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

87. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million in each of the previous calendar years. The SBA has approved these size standards. The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz bands to firms that had revenues of no more than \$40 million in each of the three previous calendar years, or that had revenues of no more than \$15 million in each of the previous calendar years. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted herein.

88. *Paging.* In the *Paging Third Report and Order*, we developed a small

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

89. *700 MHz Guard Band Licensees.* In the 700 MHz Guard Band Order, we adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

90. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to

the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

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

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

three years not to exceed \$15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

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

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

95. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital

audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A "small business" is an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" is an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as "very small business" entities, and one that qualified as a "small business" entity. We conclude that the number of geographic area WCS licensees affected by this analysis includes these eight entities.

96. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of \$40 million or less in the three previous calendar years. An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies adopted herein.

97. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program

Distribution, which includes all such companies generating \$12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under \$10 million and an additional 52 firms had receipts of \$10 million or more but less than \$25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

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

99. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates,

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

100. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

101. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million. "Very small business" in the 24 GHz band is

an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

102. *Internet Service Providers.* While internet service providers (ISPs) are only indirectly affected by our present actions, and ISPs are therefore not formally included within this present IRFA, we have addressed them informally to create a fuller record. The SBA has developed a small business size standard for Online Information Services, which consists of all such companies having \$21 million or less in annual receipts. According to Census Bureau data for 1997, there were 2,751 firms in this category, total, that operated for the entire year. Of this total, 2,659 firms had annual receipts of \$9,999,999 or less, and an additional 67 had receipts of \$10 million to \$24,999,999. Thus, under this size standard, the great majority of firms can be considered small.

#### *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

103. We do not intend that any proposal we may adopt pursuant to this NPRM will increase existing reporting, recordkeeping or other compliance requirements. Rather, we seek to simplify TELRIC pricing and modify or clarify the Commission's rules to help state commissions more easily develop UNE prices and resale discounts that meet the statutory standards established by Congress in section 252(d) and to provide more certainty and consistency in state proceeding outcomes.

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

104. The RFA requires an agency to describe any significant, specifically small business, 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.

105. We will consider any proposals made to minimize significant economic

impact on small entities. The overall objective of this proceeding is to simplify TELRIC pricing while simultaneously improving the accuracy of its pricing signals. The NPRM seeks comment on an approach that bases UNE prices on a cost inquiry that is more firmly rooted in the real-world attributes of the existing telecommunications network, rather than the speculative attributes of a purely hypothetical network. This may change the standards applicable to cost studies on which UNE prices are based and indirectly result in changes to rates for UNEs that competitive LECs, including small carriers, order from incumbent LECs.

106. State commissions stand to benefit directly to the extent that we clarify our TELRIC rules and provide more specific guidance so that state proceedings to determine UNE pricing and the resale discount become a less complex and speculative process. Providing greater certainty and consistency in how to apply our rules could help make the regulatory process throughout states more efficient and streamlined, indirectly benefiting small entities which participate in these proceedings. Complicated and time-consuming proceedings may work to divert scarce resources from small carriers that otherwise would use those resources to compete in local markets. Moreover, to the extent that we may be able to enhance the TELRIC ratemaking process, we may better be able to achieve the Commission's goal of sending appropriate economic signals to the marketplace for efficient competition and entry among providers that include small entities.

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

107. None.

*Ex Parte Presentations*

108. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules. 47 CFR 1.1206(b).

*Comment Filing Procedures*

109. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments not later than December 16, 2003, and may file reply comments not later than January 30, 2004. In order to facilitate review of comments and reply comments, parties should include the name of the filing party and the date of the filing on all pleadings. Comments and reply comments must clearly identify the specific portion of the NPRM to which a particular comment or set of comments is responsive. Each new section should begin on a new page. If a portion of a party's comments does not fall under a particular topic listed in the Table of Contents, such comments should be included in a clearly labeled section at the beginning or end of the filing.

110. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs>. 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, U.S. 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](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply.

111. Parties who choose to file by paper must file an original and five copies of each filing. Two (2) copies of the comments should also be sent to the Chief, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

112. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110,

Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than United States Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be sent to 445 12th Street, SW., Washington, DC 20554. The Commission advises that electronic media not be sent through USPS. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

113. Documents in this docket are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The documents may also be purchased from Qualex International, telephone (202) 863-2893, facsimile (202) 863-2898.

**Ordering Clauses**

114. *It is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 201-205, 251, 252, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), (j), 201-205, 251, 252, and 303, notice is hereby given of the rulemaking described above and comment is sought on those issues.

115. *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.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

[FR Doc. 03-26107 Filed 10-16-03; 8:45 am]

**BILLING CODE 6712-01-P**