FCC 96-367

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 402(b)(1)(A)	)	CC Docket No. 96-187
of the Telecommunications Act of 1996	)	
	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: August 30, 1996 Released: September 6, 1996

Comments Date: October 9, 1996
Reply Comment Date: October 24, 1996

By the Commission:

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I. INTRODUCTION

1. On February 8, 1996, the "Telecommunications Act of 1996" became law.[1] This legislation makes sweeping changes affecting all consumers and telecommunications service providers. The intent of this legislation is "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[2] Section 402(b)(1)(A)(iii) of the 1996 Act adds Section 204(a)(3) to the Communications Act,[3] which provides for streamlined tariff filings by local exchange carriers (LECs). In this Notice of Proposed Rulemaking, we propose measures to implement the specific streamlining requirements of Section 204(a)(3) as well as additional steps for streamlining the tariff process that are designed to advance the broader goals of the 1996 Act. Among these additional steps, we propose to establish a program for the electronic filing of tariffs that will permit carriers to file, and the public to access, tariffs by means of dial-up "on line" access.

II. THE 1996 ACT

A. Statutory Provisions

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

> (3) A local exchange carrier may file with the Commission a new or revised charge, classification, regulation, or practice on a streamlined basis. Any such charge, classification, regulation, or practice shall be deemed lawful and shall be effective 7 days (in the case of a reduction in rates) or 15 days (in the case of an increase in rates) after the date on which it is filed with the Commission unless the Commission takes action under paragraph (1) before the end of that 7-day or 15-day period as appropriate.[5]

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[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act) *to be codified at* 47 U.S.C. §§ 151 *et seq.* (Hereinafter, all citations to the 1996 Act will be to the 1996 Act as it will be codified in the United States Code.) The 1996 Act amended the Communications Act of 1934 (Communications Act).

[2] *See* Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. Preamble (1996) (Joint Explanatory Statement); *see also* 47 U.S.C. § 706(a) (encouraging the deployment of advanced telecommunications capability to all Americans).

[3] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (hereinafter 1996 Act).

[4] Communications Act, § 204(a), 47 U.S.C. 204(a).

[5] 1996 Act, § 402(b)(1)(A)(iii).

Section 402 of the 1996 Act also amends Section 204(a) of the Act to provide that the Commission shall conclude any hearings initiated under this section within five months after the date the charge, classification, regulation, or practice subject to the hearing becomes effective.[6] Section 402(b)(4) of the 1996 Act provides that these amendments shall apply to any charge classification, regulation, or practice filed on or after one year after the date of enactment of the Act (*i.e.*, February 8, 1997).[7]

3. Under the 1996 Act, a local exchange carrier is defined as "any person that is engaged in the provision of telephone exchange service or exchange access."[8] A LEC "does not include a person insofar as such person is engaged in the provision of commercial mobile radio service under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of such term."[9]

B. Legislative History

4. The tariff streamlining provisions appeared in amendments to S. 652[10] that were incorporated into the draft Conference Report that subsequently became the 1996 Act.[11] The Joint Explanatory Statement of the Managers Committee of Conference accompanying the 1996 Act states that "[n]ew subsection (b) of Section 402 of the conference agreement addresses regulatory relief that streamlines the procedures for revision by local exchange carriers of charges, classifications and practices under section 204 of the Communications Act."[12]

III. STREAMLINED LEC TARIFF FILINGS UNDER SECTION 402 OF THE 1996 ACT

5. By the 1996 Act, Congress sought to establish "a pro-competitive, de-regulatory

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[6] 47 U.S.C. § 204(a)(2)(A).

[7] 1996 Act, § 402(b)(4).

[8] 1996 Act, § 3(a)(44).

[9] *Id.*

[10] S. 652, 104th Cong. 2d Sess. (1996).

[11] 142 Cong. Rec. H1078, H1098 (January 31, 1996). Senator Robert Dole, sponsor of the amendments, stated on the Senate floor when these provisions were first proposed that they would "[s]peed up FCC action for phone companies by making any revised charge that reduces rates effective seven days after it is filed. Rate increases will be effective fifteen days after submission. To block such changes, the FCC must justify its actions." *See* 141 Cong. Rec. S7926-27 (June 7, 1995) and 141 Cong. Rec. S7898 (June 7, 1995) (statement of Sen. Dole).

[12] *See* S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 69 (1996) [hereinafter Joint Explanatory Statement].

national policy framework" for the telecommunications industry.[13] Consistent with that goal, Section 402 is intended to streamline the LEC tariff filing process by truncating the period for pre-effective review of certain LEC tariffs.[14] In this proceeding we seek to identify, and propose, ways to streamline LEC tariff filings in accordance with the statute. We solicit comment generally on how to implement Section 402(b)(1)(A) as well on specific issues.

6. Section 204(a)(3) provides that LECs may file tariffs on seven and fifteen days' notice. We believe that by this provision Congress intended to streamline LEC tariff filings by providing that they would generally become effective within seven or fifteen days unless suspended and investigated by the Commission. We believe that Congress did not intend for the Commission to be able to defer tariffs eligible for streamlined filing. Accordingly, we tentatively conclude that Congress intended to foreclose Commission exercise of its general authority under Section 203(b)(2) to defer up to 120 days tariffs that LECs may file on seven or fifteen days' notice. We solicit comment on this tentative conclusion.

7. Section 204(a)(3) of the Act also provides that LEC tariffs filed on a streamlined basis shall be "deemed lawful."[15] The 1996 Act and the legislative history are silent regarding the specific legal consequences of this provision.[16] We tentatively conclude that, by specifying that LEC tariffs shall be "deemed lawful," Congress intended to change the current regulatory treatment of LEC tariff filings.

8. We have identified at least two possible interpretations of "deemed lawful" that would alter the current regulatory treatment of LEC tariff filings. First, this language could be interpreted to change the legal status of LEC tariffs that become effective without suspension and investigation. Under current practice, a rate that goes into effect without suspension and investigation is the "legal" rate, that is, the rate that the LEC is required to collect and the customer to pay under the filed rate doctrine.[17] Under that doctrine, the decision by the Commission not to suspend and investigate is not a determination of the lawfulness of the rate.[18] Rather, it is merely a determination that the proposed rate does not raise questions of lawfulness

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[13] Joint Explanatory Statement at 1.

[14] *See* para. 4, *supra*.

[15] 47 U.S.C. § 204(a)(3).

[16] See para. 4, *supra*.

[17] *Arizona Grocery Co. v. Atchison, T. & S.F. Ry. Co.*, 284 U.S. 370, 384 (1932); *Las Cruces TV Cable v. F.C.C.*, 645 F.2d 1041, 1044 (D.C.Cir. 1981).

[18] Because a decision not to suspend and investigate is not a final determination of a rate's lawfulness, it is generally not subject to judicial review. *Direct Marketing Assoc., Inc. v. F.C.C.*, 772 F.2d 966, 969 (D.C. Cir. 1985).

sufficient to warrant institution of an investigation prior to the tariff's effective date.[19] Thus, the lawfulness of the tariff subsequently may be challenged either in a complaint proceeding, commenced pursuant to Section 208(a), or in an investigation commenced pursuant to Section 205.[20] If a complaint is filed and the Commission determines that some element of the tariff is unlawful, the carrier may be required to pay damages pursuant to Section 207.[21] An investigation or complaint proceeding can also result in rate prescriptions for the future.[22] We solicit comments generally on the how Congress intended to revise this treatment of LEC tariffs that become effective without suspension and investigation.

9. Under our first possible interpretation, the "deemed lawful" language would mean that the Commission is precluded from awarding damages for the period that a streamlined tariff is in effect prior to a determination that the tariff is unlawful. The Supreme Court has held that once an agency has determined a rate to be lawful, the agency may not retroactively subject a carrier to reparations for charging that rate if the agency subsequently declares the rate to be unreasonable.[23] This restriction is based on the adjudicative nature of an agency decision addressing past rates; the decision determines whether the carrier has violated the rules that governed its actions at the time the actions occurred. Ordering reparations where rates had previously been "deemed lawful" therefore would penalize a carrier for conforming its actions to standards in effect at the time the rates took effect. Prescriptions for future rates, on the other hand, are legislative activities. Like a legislature, an agency may modify standards governing future actions, but may not legislate retroactively so as to penalize past activities.[24]

10. The situation of LEC tariffs becoming effective with only a cursory, or no review, is very different from the situation where the agency has made a determination of lawfulness, and

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[19] *Cf.* 47 U.S.C. 204(a)(1) ("Whenever there is filed with the Commission any new or revised charge, classification, regulation, or practice, the Commission *may* either upon complaint or upon its own initiative . . . enter upon a hearing concerning the lawfulness thereof.") (emphasis added).

[20] *See MCI Telecommunications Corp. v. F.C.C.*, 561 F.2d 365, 375 (D.C. Cir. 1977), *cert. denied*, 439 U.S. 980 (1978).

[21] 47 U.S.C. § 207.

[22] The Commission has authority to judge the reasonableness of, and to prescribe for future application, "practices, classification, and regulations" as well as rates. *See, e.g.*, 47 U.S.C. § 201(b).

[23] *Arizona Grocery*, 284 U.S. at 390. *Arizona Grocery* construed the Interstate Commerce Act, which was the forerunner of the Communications Act and which provided for the same scheme of rate regulation. *See Las Cruces TV Cable v. F.C.C., supra; American Tel. & Tel. Co. v. F.C.C.*, 836 F.2d 1386, 1394 (D.C. Cir. 1988) (concurring opinion).

[24] *Arizona Grocery*, 284 U.S. at 389.

is thus distinguishable from *Arizona Grocery*.[25] Nonetheless, under this possible interpretation of "deemed lawful," a tariff revision that becomes effective under the streamlined procedures would be the lawful rate until the Commission concluded in a rate prescription under Section 205,[26] or a complaint proceeding under Section 208,[27] that a different "charge, practice, classification, or regulation" will be lawful for the future. Under this statutory interpretation a LEC would be liable for damages and other possible relief if it continued to apply the challenged rate or other term after the effective date of the Commission Order finding a tariff unlawful. This interpretation appears to be consistent with the language of the 1996 Act. The ordinary starting point for statutory interpretation is the text of the statute.[28] Black's Law Dictionary defines "deem" as "to hold; consider; adjudge; believe; condemn; determine; treat as if; construe."[29] Nothing in these definitions suggests that "deemed lawful" would be an immutable status.

11. This interpretation of the statutory language would treat tariffs that have been "deemed lawful" similar to the way that we currently treat tariffs found lawful by the Commission after investigation in that, as noted, damages could not be awarded for the period prior to the time the Commission determined in a Section 205 or 208 proceeding that a different rate, charge, classification, or practice would be lawful in the future. Under this interpretation of "deemed lawful," however, we would not view a decision not to suspend as completely equivalent to a finding of lawfulness based on a complete record. Unlike findings in tariff investigations, which are based on the record gathered during the course of the investigation, a decision not to suspend a streamlined LEC tariff filing will be based on a much abbreviated record and there will be no written decision. Thus, under this alternative, the Commission's review of a complaint challenging a LEC tariff that had become effective without suspension and investigation would present a case of first impression and the Commission would not be limited in any respect by previous decisions concerning the tariff. This interpretation, however, absent a suspension and investigation within 7/15 days, would limit the remedies available to LEC customers for rates, terms, and conditions that violate Section 201-202 of the Act. Thus, LECs' customers would not be able to obtain damages for inadequately supported tariffs prior to the resolution of a subsequent Section 205 or 208 proceeding. We also note that LEC tariffs becoming effective on 7 or 15 days notice without an agency determination of lawfulness would be distinguishable from *Arizona Grocery*. There, the agency could not award damages retroactively because the agency had previously declared the carrier's rate to be lawful. We solicit comment on this interpretation of "deemed lawful" and whether Congress intended "deemed lawful" to have the effect of limiting customers' remedies.

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[25] *See* n. 23, *supra*.

[26] 47 U.S.C. § 205.

[27] 47 U.S.C. § 208.

[28] *United States v. Gunderson*, 114 S. Ct. 1259, 1277 (1994).

[29] BLACK'S LAW DICTIONARY 374 (5th ed. 1981).

12. As an alternative approach, "deemed lawful" could be interpreted, not to change the status of tariffs that become effective without suspension and investigation, but only to establish higher burdens for suspensions and investigation, such as by "presuming" LEC tariffs "lawful." Under this interpretation, the statutory language "unless the Commission [suspends and investigates] before the end of that 7-day or 15-day period," would not apply to the "deemed lawful" phrase, but only to the "shall be effective" phrase. Currently, price cap limits and pricing bands form a "no-suspension zone," and LEC rate filings that conform with these limits are "presumed lawful" after only limited review. If a LEC files rates outside the no-suspension zone, the presumption of lawfulness disappears, and the filing is subject to more rigorous scrutiny in the pre-effective-date tariff review process.[30] Similarly, under Section 1.773 of the rules,[31] non-dominant carrier tariffs are considered "prima facie" lawful and will not be suspended unless a petitioner shows: (1) a high probability that the tariff would be found unlawful; (2) irreparable injury to the petitioner; and (3) that the suspension would not be contrary to the public interest.[32] A tariff that is reviewed under these presumptions of lawfulness is still subject to complaint and investigation under Sections 208 and 205. Damages may also be awarded for any period the tariff was in effect. We solicit comment on whether we should interpret "deemed lawful" to create a presumption of lawfulness in the pre-effective tariff review process.

13. Any interpretation of "deemed lawful," of course, must be consistent with other provisions of the Communications Act. Section 402(b)(1)(A)(iii) of the 1996 Act adds new Section 204(a)(3) concerning LEC tariff streamlining, but does not otherwise amend the statutory scheme for tariffing of interstate common carrier communications services. Thus, LECs and other carriers continue to be required to file tariffs pursuant to Section 203, and the rates, terms, and conditions of service must be just and reasonable under Section 201(b) of the Act, and not unreasonably discriminatory under Section 202(a) of the Act.[33] Similarly, the 1996 Act did not amend Section 203(b)(2) of the Act, which permits the Commission to defer the notice period for tariff filings to a maximum of 120 days.[34] Pursuant to Section 204(a) of the Act,[35] the

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[30] *In the Matter of Policy and Rules Concerning Rates for Dominant Carriers*, 6 FCC Rcd. 2637, 2643 (1991). Tariffs within the no-suspension zone become effective on only 14 days' notice. More extensive documentation and longer notice periods are required for rates outside the non-suspension zone.

[31] 47 C.F.R. § 1.773.

[32] BellSouth has contended that "deemed lawful" extends to all LEC filings the presumptions of lawfulness currently extended to non-dominant carrier tariffs under Section 1.773. *See* BellSouth *ex parte* filing of June 6, 1996.

[33] *See In the Matter of Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, Second Report and Order, FCC 82-350, 91 FCC 2d 59, 70-71 (1982).

[34] Section 203(b)(2) provides:

> The Commission may, in its discretion and for good cause shown, modify any requirement made by or (continued...)

Commission may suspend and investigate proposed tariffs if they raise substantial questions of law and fact and there is substantial risk that ratepayers or competitors would be harmed if the proposed tariff revisions were allowed to take effect.[36] The 1996 Act also does not alter the Commission's authority to reject tariff filings, which derives from Section 201 of the Act.[37] Accordingly, the 1996 Act leaves in place the statutory scheme governing interstate common carrier tariff filings, but permits LECs to file tariffs on a streamlined basis.

14. We believe that both of our possible interpretations are consistent with this statutory scheme. Thus, our interpretations would not appear to conflict with any of the statutory provisions left in place by the 1996 Act. Further, as noted, the 1996 Act Congress sought to establish "a pro-competitive, de-regulatory national policy framework" for the telecommunications industry,[38] and Section 402 in particular was intended to speed up implementation of LEC tariffs.[39] We believe that these interpretations balance faster tariff implementation with continued safeguards for customers of dominant companies by providing for post-effective tariff review.

15. We additionally solicit comment on other possible interpretations of "deemed lawful." We will adopt the interpretation that will best meet the text and intent of the 1996 Act's tariff streamlining provisions. We also solicit comment on the impact of these interpretations of "deemed lawful" on small entities, both LECs and other small entities that might be customers of LEC tariffed services. We solicit comment on the relative burdens that would be imposed on small entities by possible interpretations of "deemed lawful."

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[34](...continued)
under the authority of this section either in particular instances or by general order applicable to special circumstances or conditions except that the Commission may not require the notice period specified in paragraph (1) to be more than 120 days.

47 U.S.C. § 203(b)(2). As noted above, however, *see* para. 6, we believe that Congress intended to foreclose the exercise of deferral authority for LEC streamlined tariffs.

[35] 47 U.S.C. § 204(a).

[36] *See, e.g.*, 1995 Annual Access Tariff Filings of Price Cap Carriers, Memorandum Opinion and Order Suspending Rates, DA 95-1631 (rel. July 21, 1995) (*Price Cap Carriers' 1995 Access Order*); Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, Transmittal Nos. 4233 and 2449, Order, DA 95-1445 (rel. June 26, 1995) (*Suspension Order*); and Bell Atlantic, Tariff F.C.C. No. 1, Transmittal No. 704, Memorandum Opinion and Order Suspending Rates, DA 95-193, CC Docket No. 94-139 (rel. February 9, 1995).

[37] 47 U.S.C. § 201. *See Municipal Light Boards v. FPC*, 450 F.2d 1341, 1345 (D.C. Cir. 1971). *See also American Broadcasting Cos. v. FCC*, 663 F.2d 133, 138 (D.C. Cir. 1980).

[38] Joint Explanatory Statement at 1.

[39] *See* para. 1 and note 11, *supra*.

IV. LEC TARIFFS ELIGIBLE FOR FILING ON A STREAMLINED BASIS

16. We next consider the types of LEC tariff filings that are eligible for streamlined treatment. On the one hand, the first sentence of Section 204(a)(3) provides that LECs may file "a new or revised charge, classification, regulation, or practice on a streamlined basis."[40] This suggests that any LEC tariff filings may be eligible for streamlined treatment. On the other hand, the second sentence of Section 204(a)(3) refers only to tariffs proposing rate increases or decreases. This language raises several questions.

17. First, the language of Section 204(a)(3) raises the possibility that only tariffs that involve rate increases or decreases are eligible for streamlined filing. Under a strict reading of the statute, the 7/15 day streamlining provision applies to a new or revised charge, classification, regulation, or practice only when there is a rate reduction or increase. Under this reading, tariff filings that do not involve a rate increase or decrease, such as where only the terms and conditions change, would not be eligible for streamlined filing. Alternatively, as noted above, the first sentence of Section 204(a)(3) could be interpreted more broadly to apply to any revision to terms and conditions including where there is no rate increase or decrease. We tentatively conclude that all LEC tariff filings that involve changes to the rates, terms and conditions of existing service offerings are eligible for streamlined treatment. We believe that this would be most consistent with the purposes of Section 204(a)(3), and would simplify the administration of the LEC tariffing process as a whole. We solicit comment on this tentative conclusion.

18. Second, we solicit comment on the appropriate treatment of tariffs for new services. Section 204(a)(3) provides that a "new or revised charge, classification, regulation, or practice" shall be eligible for streamlined filing. That language could be read to apply only to "new or revised" charges, classifications, or practices associated with existing services. For instance, a LEC could introduce a "new" charge for a formerly non-chargeable feature of an existing service.[41] Charges for new services have often been treated by the Commission differently than new or revised charges for existing services. Price cap carriers, for example, are required to make a special showing in order to establish the rate for a new service.[42] Under this reading of the statute, a charge associated with a new service would not receive the same

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[40] 47 U.S.C. § 204(a)(3).

[41] Another example would be a revision of an existing individual case basis (ICB) tariff by adding one location and increasing rates on account of that addition.

[42] When a price cap carrier introduces a new service, the Commission must review the proposed rate, and establish historical demand before the service can be incorporated into the price cap formulas. Thus, new services are kept outside of price cap baskets for a period of time (usually 6-18 months) in order to develop historical demand data needed to compute the actual price index. *Policy and Rules Concerning Rates for Dominant Carriers*, 5 FCC Rcd 6786, 6824-25, (1990), *recon.*, 6 FCC Rcd 2637 (1991), *aff'd, National Rural Telecom Assoc. v. FCC*, 988 F.2d 174 (1993). For a discussion of the LEC new services price cap test, see *Telephone Company -Cable Television Cross-Ownership Rules*, Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking, CC Docket 87-266, FCC 94-269 (rel. Nov. 7, 1994).

regulatory treatment as a "new or revised charge" for an existing service. We solicit comment on whether Section 204(a)(3) applies to new or revised charges associated with existing services, but not to charges associated with new services. We believe that this approach may be preferable, to the extent permissible under the statute, as a matter of policy because it would permit the Commission and interested parties a fuller opportunity to review tariff changes that are more likely to raise sensitive pricing issues than revisions to services that have already been subject to review. Parties that support this reading of the statute should explain how this would be consistent with the plain language of the statute and should propose an administratively simple method for determining whether or not specific LEC tariff filings are eligible for streamlined filing.

19. Section 204(a)(3) states that LECs "may" file under streamlined provisions. We further tentatively conclude that LECs may elect to file on longer notice periods, but that if they chose to do so, such tariffs would not be "deemed lawful." We also tentatively conclude that Section 204(a)(3) does not preclude the Commission from exercising its forbearance authority under Section 10(a) of the Act to establish permissive or mandatory detariffing of LEC tariffs, should the Commission choose to do so.[43] We solicit comments on these tentative conclusions.

V. STREAMLINED ADMINISTRATION OF LEC TARIFFS

20. In this portion of this NPRM, we discuss additional measures that could more fully achieve a streamlined and deregulatory environment for administration of LEC tariff filings, without undermining the statutory requirement that LEC tariffs contain reasonable rates, terms, and conditions.

21. Electronic Filing. We believe that electronic filing of tariffs could significantly further the Congressional purpose of streamlining the tariff process. Accordingly, we have decided to establish a program for the electronic filing of tariffs and associated documents, and propose to require that carriers file tariffs electronically in accordance with rules that we will establish in this proceeding. We envision that electronic filing would permit carriers to file, and the public to obtain access to, tariffs, tariff transmittal letters, and tariff support by means of dial-up access or through the Internet. This should significantly reduce burdens on carriers and the Commission, and facilitate access to tariffs and associated documents by the public, especially by interested persons who do not have ready access to the Commission's public reference rooms. Ready electronic access to carrier tariffs should also facilitate the Commission's ability to make tariff information available to state and other federal regulators. Finally, electronic filing should facilitate compilation of aggregate carrier data for industry analysis purposes without imposing new reporting requirements on carriers.

22. We solicit comment on a number of issues that are important to ensuring that the

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[43] The Commission is currently considering issues concerning permissive and mandatory detariffing of interstate interexchange services. *Interexchange NPRM*, CC Docket 96-61, 11 FCC Rcd 7141 (1996).

electronic filing of tariffs is implemented in a speedy, reliable, and cost-effective manner. First, we seek comment on whether the Commission should be responsible for organizing, posting, and supervising the tariff electronic filing system, or, whether each carrier should be given the responsibility for posting, managing, and maintaining its electronic file of tariffs, subject to Commission requirements. Under this latter approach, each carrier would be assigned a portion of the space on the electronic filing system, with its own security access code for entry of new or revised data, and would be responsible for the posting of pending and effective tariff transmittals as well as other relevant documents. We tentatively conclude that carrier administration of the electronic filing system, subject to Commission oversight, would lead to a more streamlined administration of tariffs. We envision that, under either alternative, the filing system would provide "user friendly" guides and indexes so that the public could access each carrier's tariffs easily. We also contemplate that our electronic filing system would permit parties to file petitions, and responsive pleadings, electronically. System security, including the integrity of the electronic tariffs, is absolutely critical, and we solicit comments on how best to provide for system security under each of these alternatives. We propose to require that tariffs as well as tariff support material be submitted electronically in a specified database software program. We invite parties to submit detailed proposals for implementing an electronic system for tariff filings, consistent with the criteria outlined in this paragraph.

23. Exclusive Reliance on Post-Effective Tariff Review. The Commission currently relies primarily on pre-effective review of tariffs to assure LEC compliance with Title II of the Communications Act. We solicit comment on whether the Commission can, and should, in implementing the tariff streamlining provisions of the 1996 Act, adopt a policy of relying exclusively on post-effective tariff review, at least for certain types of tariff filings, to police LEC compliance with Title II of the Communications Act. Under this approach, instead of reviewing LEC tariff filings before they become effective, the Commission would review these tariffs after their effective date and at that time determine whether it is necessary to initiate a tariff investigation pursuant to Section 205 of the Act.[44] This approach would preserve the Commission's ability to review these tariffs to determine whether they comply with the Commission's rules and regulations, but LEC tariff revisions could become effective more quickly on a routine basis. Reliance on post-effective review for some categories of LEC tariff filings could significantly streamline the tariff review process while continuing to provide for post-effective-date evaluation of the lawfulness of tariffs. On the other hand, this approach could limit remedies available for redress of unlawful LEC tariffs especially if we adopt the view that "deemed lawful" means that damages may not be awarded retroactively with respect to a LEC tariff that becomes effective without suspension and investigation. We solicit comment on whether we should establish a practice of relying on post-effective review. If parties conclude that we should adopt this practice for certain classes of tariff transmittals, such as those filed under Section 204(a)(3), they should identify the classes and explain why post-effective review would best serve the public interest. We also seek comment on whether under such a general policy, the Commission should retain the discretion to conduct a pre-effective tariff review in

[44] Under 47 U.S.C. § 205(a), the Commission may prescribe rates after investigation.

individual cases.

24. We also note that Section 204(a) of the Act provides that, when a tariff is filed, the Commission may either on its own initiative or "upon complaint" suspend and investigate the tariff.[45] We solicit comment on the extent to which Section 204(a) limits our ability to rely on post-effective tariff review. Finally, we also solicit comment on whether we should establish specific rules and procedures governing requests to review effective tariffs if we decide to place greater emphasis on such reviews in administering LEC tariffs.

25. Pre-Effective Tariff Review of Streamlined Tariff Filings. Assuming that we continue to undertake a pre-effective review of tariffs filed on a streamlined basis under Section 204(a)(3), we solicit comment on what measures, if any, the Commission should establish in order to be able to decide whether to suspend and investigate a transmittal within seven or fifteen days. We propose to require that LECs file summaries of the proposed tariff revisions with their tariff filings that provide a more complete description than under current requirements.[46] This summary would, in addition to a summarizing basic terms and conditions, describe how proposed changes, if any, differ from current terms and conditions and also describe the expected impact on customers. We also propose to require that LEC tariffs filed on a streamlined basis be accompanied by an analysis showing that they are lawful under applicable rules. We believe that the filing of a summary and legal analysis could expedite the review of LEC tariff filings by the Commission and interested parties. We solicit comment on whether the benefits of such a requirement would outweigh the burden that it would impose on the filing carriers. We solicit comment additionally on whether we may, consistent with the Act, and should, establish in our rules presumptions of unlawfulness for narrow categories of tariffs, such as tariffs facially not in compliance with our price cap rules, that would permit suspension and designation of issues for investigation through abbreviated orders or public notices. We solicit comment on what kinds of tariffs could be accorded this presumption.

26. We request comment on the appropriate treatment of tariff transmittals that contain both rate increases and decreases. We tentatively conclude that the 15-day notice period should apply. Carriers wishing to take advantage of a 7-day period may file rate decreases in separate transmittals. Moreover, because of the short notice periods, we propose to require carriers to identify specifically transmittals filed pursuant to Section 204(a)(3), and whether the transmittals contain rate increases, rate decreases, or both. We propose to require either a label on the front of the tariff or a statement in the transmittal letter. We request comment on the best mechanism for alerting Commission staff and interested parties about the contents of the tariff transmittal. We additionally solicit comment on whether we should, as a convenience to interested parties, maintain a list of interested parties and provide affirmative notice to them by e-mail when a LEC tariff is filed. We would envision that this affirmative notice would not constitute legal notice

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[45] 47 U.S.C. Sec. 204(a)(1).

[46] Section 61.33(b)(1) of the Commission's rules already requires that LEC tariff filings include a summary of the filing's basic rates, terms and conditions. 47 C.F.R. § 61.33(b)(1).

of filings, and that failure of the Commission to provide the affirmative notice for any reason would not extend the comment periods. Nonetheless, this could provide a convenient way for interested parities to learn about LEC tariff filings. We solicit comment on whether we should adopt this proposal before or, only when electronic filing of tariffs is implemented. Finally, we tentatively conclude that the statutory notice periods of 7 and 15 days refer to calendar days, not working or week days.

27. To the extent we rely on pre-effective review, we will need to establish new filing periods for petitions to suspend and reject LEC transmittals filed on 7/15 days' notice. Under Section 1.773(a)(2)(1) of our rules, petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on less than fifteen days' notice must be filed and served within 6 days after the date of the tariff filing.[47] Section 1.773(b)(1)(i) allows parties to file reply comments to the above petitions within 3 days after the date the petition is filed. This pleading cycle, although the most abbreviated available under the Commission's rules, would not accommodate the filing of petitions and replies to LEC tariff changes made on seven days' notice. The abbreviated schedule also would not allow for resolution of any issues raised in the petitions before the effective date of such a tariff. Section 1.773(a)(2)(ii) of the Commission's rules requires that petitions seeking investigation, suspension or rejection of a new or revised tariff filing made on more than 14 days' and less than 30 days' notice shall be filed and served within seven days of the tariff filing.[48] Section 1.773(b)(1)(ii) of the rules allows parties to file replies to such petitions within 4 days after service of the petition.[49]

28. We propose to require that petitions against those LEC tariff filings that are effective within 7 or 15 days of filing must be filed within 3 days after the date of the tariff filing and replies 2 days after service of the petition. We propose that determinations of due dates will be made under Section 1.4(j) of the rules, which provides that when a due date falls on a holiday or weekend, the document shall be filed on the next business day.[50] We also propose to require that all such petitions and replies be hand-delivered to all affected parties, at least where the filing party is a commercial entity. In addition, we propose that in computing time periods, parties should be required to include intermediate holidays and weekends. We solicit comment on these proposals.[51] Tariff filings by carriers other than LECs would continue to be governed by existing rules. We seek comment on whether we should not provide a public comment period during the 7/15 days' notice period. Instead, we would provide for comment only where a LEC tariff is suspended or investigated. We solicit comment on whether Section 204(a) establishes a right for

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[47] 47 C.F.R. § 1.773(a)(2)(i).

[48] 47 C.F.R. § 1.773(a)(2)(ii).

[49] 47 C.F.R. § 1.773(b)(1)(ii).

[50] 47 C.F.R. § 1.4(j).

[51] *See* 47 C.F.R. § 1.773(b).

interested persons to request suspension and investigation of tariffs that may not be foreclosed.[52]

29. The Commission regularly receives requests by carriers for confidential treatment of cost data filed with tariff transmittals. In many cases, we additionally receive requests under the Freedom of Information Act for cost data for which the carrier has requested confidential treatment. We believe that the Commission will be unable to resolve these controversies on a case-by-case basis within the seven and fifteen day tariff review periods established by the 1996 Act. Thus, interested parties will be unable during the review period to assess the lawfulness of the tariff based on any cost data held under a request for confidential treatment. We here solicit comment on whether we should routinely impose a standard protective order whenever a carrier claims in good faith that information qualifies as confidential under relevant Commission precedent. We solicit comment on what terms such a standard protective order should include,[53] whether we should identify in our rules the types of data that would not be eligible for confidential treatment, and what those types of data would be. Should the tariff be suspended and investigated, the issue of confidentiality would, of course, be resolved during the course of the investigation.

30. Annual Access Tariff Filings. Section 69.3(a) of the Commission's rules requires LECs and the National Exchange Carrier Association (NECA) to submit revisions to their annual access tariff on 90 days' notice to be effective on July 1.[54] These revisions are limited to changes in rate levels, and, therefore, are eligible for filing on a streamlined basis.[55] As part of the annual access tariff filings, LECs are encouraged to file certain summary material, known as tariff review plans (TRPs), to support the revisions to their rates in the interstate access tariffs. The TRPs partially fulfill the requirements of Section 61.38, 61.39, and 61.41 through 61.50 of the Commission Rules regarding the supporting information that the LECs must provide with their tariff filings.[56] The Commission uses the TRPs to monitor the LECs' implementation of Part 61

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[52] As noted, Section 204(a) of the 1934 Act, 47 U.S.C. § 204(a), provides that, when a tariff is filed, the Commission may either on its own initiative or "upon complaint" suspend and investigate the tariff.

[53] *In re* Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, GC Docket No. 96-55, FCC 96-109 (rel. March 13, 1996) (notice of inquiry and notice of proposed rulemaking).

[54] 47 C.F.R. § 69.3(a).

[55] Section 69.3(h) of the rules provides that with respect to the LECs subject to price cap regulations, the annual filings are limited to changes in the Price Cap Indices (PCIs), rate level changes (with corresponding adjustments to the affected Actual Price Indexes and Service Band Indexes), and the inclusion of new services into the affected indices. *See* 47 C.F.R. § 69.3(h). Carriers not electing price cap regulation are required to file access tariffs pursuant to Section 61.38 of the Rules (rate-of-return companies), Section 61.39 of the Rules (small telephone companies), and Section 61.50 of the Rules (optional-incentive-regulation companies). 47 C.F.R. §§ 61.38, 61.39, 61.50.

[56] 47 C.F.R. §§ 61.38, 61.39, and 61.41- 61.50.

of the rules.

31. We propose to modify the annual access filing process in light of requirements of the 1996 Act. Because annual access tariffs involve rate increases and decreases, they appear to be eligible for streamlined filing under Section 204(a)(3), and thus, at the carrier's option, could be filed seven or fifteen days prior to July 1. With respect to carriers subject to price cap regulation, we propose to require carriers to file a TRP prior to the filing of the annual tariff revisions absent any information on the carriers' proposed rates, and to make it available to the public. For price cap carriers, the TRP will thus involve an annual updating of the various price cap constraints on the LECs' prices. Only in the subsequent tariff revision will a LEC file its rates, charges, classifications, and practices, such as how far below the price cap it proposes to set its rates. Under this approach, the Commission and the public could examine the carriers' current and proposed price cap indices, exogenous cost adjustments, and supporting information in advance of the LECs' submissions of their prospective rates and required supporting documents. We seek comment on this approach and on whether we may under the 1996 Act require price cap LECs to submit their TRP prior to the date that they file their annual access tariffs. Because the price cap TRP would not include information regarding a LEC's tariffed rates, charges, classifications, or practice, we tentatively conclude that the TRP would not be subject to Section 204(a)(3) and thus that we may require its filing prior to its filing of the annual access tariffs. Since a price cap LEC's annual access tariff filing appears subject to the statutory streamlined procedures and could be filed by the LEC fifteen days prior to the scheduled effective date of July 1, we also solicit comment on the filing date we should establish for the related TRP if we adopt this approach.[57] With respect to carriers subject to rate-of-return regulation, we propose to require them to file their TRPs and annual access filings that propose rate increases fifteen days prior to the scheduled effective date of July 1.

32. Investigations. As noted, Section 402 of the 1996 Act amends section 204(a) of the Act, effective February 8, 1997, to provide that the Commission shall conclude all hearings initiated under this section within five months after the date the charge, classification, regulation, or practice subject to the hearing becomes effective. The Commission does not currently have procedural rules governing tariff investigations; instead, the procedures are established in the orders designating issues for investigation.

33. We solicit comment on whether we should establish procedural rules to expedite the hearing process in light of the shortened period in which the Commission must complete tariff investigations. For example, we seek comment on whether we should establish time periods for pleading cycles, and page limits for pleadings and exhibits. We seek comment on whether we should require the filing of proposed orders. We also note that while Section 204 investigations may be initiated by the Bureau, they must be terminated by the full Commission under Section

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[57] Cincinnati Bell files its access tariff revisions biannually. Cincinnati Bell is an optional incentive regulation company under Section 61.50 of the rules, 47 C.F.R. § 61.50. Under our proposal for streamlining the access tariff review process, if it wished to file its annual access tariff on a streamlined basis, it would also file its TRP containing PCI adjustments and exogenous cost changes at the same time as price cap carriers.

5(c) of the Communications Act.[58] We solicit suggestions for reforms that will permit more expeditious termination of tariff investigations, such as the use of abbreviated orders without extensive findings, especially where we find that the tariff under investigation is lawful. We also solicit comment on whether the Commission can, consistent with Section 5(c) of the 1934 Act, as amended, terminate investigations by a pro forma order that adopts a decisional memorandum or order of the Common Carrier Bureau. We envision that under this approach, the Commission could, at its discretion, issue its pro forma order without previous release or public comment on the Bureau's decision. We solicit comments on this approach to terminating tariff investigations. We also solicit comment on whether we should establish procedures for informal mediation of tariff investigation issues, and what those procedures should be.

34. Notice Requirements. The existing rules specifying notice periods for LEC tariffs must be amended to conform to the streamlined notice periods for LEC tariffs established in Section 204(a)(3). For example, Section 61.58 of our rules specifies the notice requirements that dominant carriers must afford the Commission and the public before new tariff proposals can go into effect.[59] In particular, Section 61.58 states that carriers subject to rate-of-return regulation must, depending of the type of tariff at issue, file a tariff on either 15, 35, or 45 days' notice.[60] Section 61.58(e) states that carriers subject to optional incentive regulation pursuant to Section 61.50 of our rules must, depending of the types of tariffs, file a tariff on either fifteen or 90 days' notice.[61] Finally, Section 61.58(c)[62] states that carriers subject to price cap regulation must, depending on the type of tariff change, file a tariff on either 14, 45 or 120 days' notice.[63] Therefore, we propose to change Section 61.58 of the Commission's existing rules governing notice periods for LEC tariff filings to make this section consistent with the streamlined notice periods of seven and fifteen days required by the 1996 Act. We solicit comment on this proposal. As discussed earlier, we believe that under the 1996 Act LECs may choose to file tariffs on notice periods greater than seven or fifteen days' notice.[64] We propose to permit LECs to file tariffs eligible for streamlined filing on any notice period greater than that permitted under the statute. We solicit comment on this proposal.

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[58] Section 5(c)(1) provides that the Commission may delegate any of its functions to any employee except for certain designated functions, including proceedings under Section 204(a)(2) (tariff investigations).

[59] 47 C.F.R. § 61.58.

[60] *See id.* § 61.58(d).

[61] *Id.* § 61.58(e).

[62] *Id.* § 61.58(c).

[63] *Id.*

[64] See para. 19, *supra*.

VI. PROCEDURAL REQUIREMENTS

A. *Ex Parte* Presentations

35. This is a non-restricted notice and comment proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda Period, provided they are disclosed as provided in the Commission's Rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a). Written submission, however, will be limited as discussed below.[65]

B. Initial Regulatory Flexibility Analysis

36. As required by Section 603 of the Regulatory Flexibility Act,[66] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities of the policies and rules proposed in this Notice of Proposed Rulemaking (Notice) to implement Section 402(b)(1)(a) of the Telecommunications Act of 1996, which provides for streamlined tariff filings by local exchange carriers. Written public comments are requested on the IRFA. Comments must be identified as responses to the IFRA and must be filed by the deadline for comments on the Notice provided below in Section VI(D).

37. Need for and Objectives of the Proposed Rule: The Commission, in compliance with Section 402 of the Telecommunications Act of 1996, proposes to implement streamlined tariff filing requirements for local exchange carriers (LECs) with the minimum regulatory and administrative burden on telecommunications carriers.

38. Legal Basis: The Commission's objective in issuing this Notice is to propose and seek comment on rules streamlining the LEC tariff filing process, consistent with the overriding goals of the 1996 Act. The legal basis for action as proposed in the Further Notice is contained in sections 1, 4(i), 4(j), 201-205, 218, 251(b), 251(e), and 332 of the Communications Act of 1934, as amended. 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 218, 251(b), 251(d), 251(e), 332.

39. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply: For purposes of this Notice, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act (SBA), 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities.[67] Under the SBA, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the

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[65] *See infra* para. 51.

[66] 5 U.S.C. § 603.

[67] *See* 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632).

SBA.[68] SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1500 employees.[69]

40. *Total Number of Telephone Companies Affected.* Many of the decisions and rules adopted herein may have a significant economic impact on a substantial number of small telephone companies identified by SBA. The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone service, as defined therein, for at least one year.[70] This number contains a variety of different category of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. Its seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."[71]

41. Our rules governing the streamlining of the LEC tariff process apply to LECs. We believe, however, that incumbent LECs are not small businesses for IRFA purposes because they are dominant in their field of operation. In this regard, we have found incumbent LECs to be "dominant in their field of operation" since the early 1980's, and we consistently have certified under the RFA[72] that incumbent LECs are not subject to regulatory flexibility analysis because they are not small businesses.[73] In order to remove any possible issue of RFA compliance, we nevertheless tentatively conclude that small incumbent LECs should be included in this IRFA.[74] We seek comment on this tentative conclusion.

42. Under the new competitive provisions of the 1996 Act, however, there could be

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[68] 15 U.S.C. § 632. *See, e.g., Brown Transport Truckload, Inc. v. Southern Wipers, Inc.,* 176 B.R. 82 (N.D. Ga. 1994).

[69] 13 C.F.R. § 121.201.

[70] United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) (*1992 Census*).

[71] 15 U.S.C. § 632(a)(1).

[72] *See* 5 U.S.C. § 605(b).

[73] *See, e.g., Expanded Interconnection with Local Telephone Company Facilities*, Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 5809 (1991); *MTS and WATS Market Structure*, Report and Order, 2 FCC Rcd 2953, 2959 (1987) (citing *MTS and WATS Market Structure*, Third Report and Order, 93 F.C.C. 2d 241, 338-39 (1983)).

[74] *See Implementation of the Local Competition Provisions of the Telecommunications Acto of 1996,* CC Docket No. 96-98, First Report and Order, FCC 96-325, at paras. 1327-30 (rel. Aug. 8, 1996) regarding the treatment of small LECs for purposes of the Commission's analysis of significant issues raised in response to the IRFA.

a number of new LECs entering the local exchange market that would be considered small businesses. To the extent that such carriers file tariffs and would be considered non-dominant, we do not believe that our rules would create any additional burdens because under section 63.23(c), 47 C.F.R. § 63.23(c), non-dominant carriers are permitted to file tariffs on one day's notice. We solicit comment on this analysis. Further, our other proposals that would apply to such carriers, such as streamlined filings, would reduce administrative burdens, to the extent they file tariffs.

43. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small providers of local exchange service (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[75] The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with Telecommunications Relay Service (TRS). According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange service.[76] Although it seems certain that some of these carriers are not independently owned and operated, or have fewer than 1500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Tentatively, we conclude that there are fewer than 1,347 small incumbent LECs that may be affected by the proposals in this Notice. We seek comment on this conclusion.

44. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements: In Section V of this Notice, we request comment on whether LECs should be required to file with their tariffs a summary of the proposed tariff revisions and an analysis showing that the revisions are lawful under applicable rules. These obligations would arise any time a LEC files a tariff revision. We are unable to estimate the number of times LECs would file tariffs annually, but it could vary from none to 20 or more, for a limited number of carriers. We estimate, however, that, on average, it would take approximately three hours for the LECs to prepare the tariff summary and the analysis at a cost of $80 per hour in professional level and support staff salaries. In addition, LECs subject to price cap regulation would be required to file their tariff review plans (TRP) prior to the filing of their annual tariff revisions. This proposal would not impose a significant burden on the LECs because they currently file TRPs, although at the time they file their annual access tariff. Adoption of this proposal would require that the carriers allocate the resources needed to complete the TRPs prior to their filing of the annual access tariffs. In order to comply with these proposed requirements, carriers would need to utilize tariff analysts and legal and accounting personnel. We believe that entities subject to these requirements have the personnel necessary to meet these requirements since LECs are already required to utilize staff with skills necessary to establish tariffs that comply with Sections 201-205

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[75] Standard Industrial Classification (SIC) Code 4813.

[76] Federal Communications Commission, CCB, Industry Analysis Division, *Telecommunications Industry Revenue: TRS Fund Worksheet Data*, Tbl. 21 (Average Total Telecommunications Revenue Reported by Class of Carrier) (Feb. 1996 (*TRS Worksheet*).

of the Communications Act. If adopted, these proposals would constitute new reporting requirements, but we believe they are justified in order to assure compliance with Sections 201-205 of the Communications Act. We seek comment on the impact of these proposals on small entities.

45. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Entities and Small Incumbent LECs, and Alternatives Considered. We believe that our proposed actions to implement the specific streamlining requirements of Section 204(a)(3) of the Communications Act as well as additional steps for streamlining the tariff process minimizes the economic impact on all LEC carriers that are eligible for streamline regulation. For example, our proposal to establish a program for the electronic filing of tariffs will reduce the existing economic burden on carriers who are now required to file paper tariffs with the Commission.

46. We have considered the alternative of not requiring the LECs to submit the information noted above. We believe, however, that these proposals would not impose a significant burden on price cap carriers and that the minimal burden resulting from these proposals is outweighed by the Commission's need to fulfill its statutory duties. We seek comment on this tentative conclusion and any other potential impact of these proposals on small business entities.

47. Federal Rules which Overlap, Duplicate or Conflict with these Rules: None.

C. Initial Paperwork Reduction Act of 1995 Analysis

48. This Notice contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Notice, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

D. Comment Filing Dates

49. Pursuant to applicable procedures set forth in Sections 1.425 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before October 9, 1996, and reply comments on or before October 24, 1996. To file formally in this proceeding, parties must file an original and twelve copies of all comments, reply

comments, and supporting comments. If parties want each Commissioner to receive a personal copy of their comments, parties must file an original plus 16 copies. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington D.C. 20554, with a copy to Jerry McKoy of the Common Carrier Bureau, 1919 M Street, N.W. Room 518, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's commercial copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

50. Written comments by the public on the proposed and/or modified information collections are due October 9, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc:gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

51. *Other requirements.* In order to facilitate review of comments and reply comments, by both parties and Commission staff, we require that comments be no longer than 40 pages for comments and 20 pages for replies. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with Section 1.49 and all other applicable sections of the Commission's rules. We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. Comments and reply comments also must clearly identify the specific portion of this Notice of Proposed Rulemaking to which a particular comment or set of comments is responsive. If a portion of a party's comments does not fall under a particular topic listed in the outline of this Notice, such comments must be included in a clearly labelled section at the beginning or end of the filing. Parties may not file more than a total of ten (10) pages of *ex parte* submissions, excluding cover letters. This 10 page limit does not include: (1) written *ex parte* filings made solely to disclose an oral *ex parte* contact; (2) written material submitted at the time of an oral presentation to Commission staff that provides a brief outline of the presentation; (3) written material filed in response to direct requests from commission staff, or (4) any proposed rule language. *Ex parte* filings in excess of this limit will not be considered as part of the record in this proceeding.

52. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Jerry McKoy of the Common Carrier Bureau, 1919 M Street, N.W., Room 518, Washington, D.C. 20554. Such submissions should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only"

mode. the diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

VII. ORDERING CLAUSES

53. Accordingly, IT IS ORDERED that, pursuant to Sections 1 and 4 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 and 154, a NOTICE OF PROPOSED RULEMAKING IS HEREBY ADOPTED and that COMMENT IS SOUGHT on the issues contained therein. Interested parties may file comments on or before October, 9, 1996, and reply comments on or before October 24, 1996.

54. IT IS FURTHER ORDERED that, the Secretary shall send a copy of this Notice of Proposed Rulemaking, including the regulatory certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Paragraph 605(b) and Paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 114, 5 U.S.C. §§ 601 *et seq* (1981).

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary