

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 31, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[CC Docket No. 98-137, CC Docket No. 99-117, AAD File No. 98-26; FCC 00-119]

1998 Biennial Regulatory Review—Review of Depreciation Requirements for Incumbent Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the primary goal of the Commission is to determine whether there are circumstances under which Commission depreciation requirements could be eliminated for price-cap carriers in a manner that serves the public interest. In reaching this goal it is important to ensure that the consumers are protected against harmful rate impacts that could result from unregulated depreciation practices. The Commission remains concerned, and seeks to assure, that any changes in depreciation practices do not adversely impact consumers and competition.

DATES: Written comments by the public on the proposed information collections are due April 17, 2000. Reply comments must be received on or before April 28, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before June 12, 2000.

ADDRESSES: Federal Communications Commission, 445-12th Street, SW, TW-A325, Washington, DC 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward C.

Springer, OMB Desk Officer, 10236 NEOB, 725-17th Street, NW, Washington, DC 20503 or via the Internet to Edward.Springer@omb.eop.gov. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202-418-0214, or via the Internet at jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT:

JoAnn Lucanik, Accounting Safeguards Division, Common Carrier Bureau at (202) 418-0873 or Andy Multz, Chief, Legal Branch, Accounting Safeguards Division, Common Carrier Bureau at (202) 418-0827. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202-418-0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: The Further Notice of Proposed Rulemaking (FNPRM) in CC Docket No. 98-137, CC Docket No. 99-117 and AAD File No. 98-86, adopted on March 31, 2000 and released on April 3, 2000, is available for inspection and copying during normal business hours in the FCC Reference Information Center (RIC), 445 12th Street, SW, TW-A325, Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20036 (202) 857-3800.

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

Paperwork Reduction Act

This FNPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this FNPRM; OMB notification of action is due 60 days from date of publication of this FNPRM in the **Federal Register**.

Comments should address: (a) whether the proposed collection of information is necessary for the proper

performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060-0168.

Title: Reports of Proposed Changes in Depreciation Rates—Section 43.43.

Form No.: N/A.

Type of Review: Revision of existing collection.

Respondents: Business or other for-profit.

Number of Respondents: 10.

Estimated Time Per Response: 4000 hours (avg).

Total Annual Burden: 40,000 hours.

Cost to Respondents: \$0.

Needs and Uses: The FNPRM seeks comment on a proposal to provide relief from the Commission's depreciation prescription process for price cap incumbent LECs. Generally, the proposal provides for a price cap incumbent LEC to adjust the net book costs on its regulatory books to its financial book levels and amortize the difference over a five year period; forego the opportunity to seek recovery of the amortized difference in any state and/or interstate rates through a low-end adjustment, an exogenous adjustment, an above-cap filing or any other recovery mechanism; use the same depreciation factors and rates for both regulatory and financial accounting purposes; submit information concerning its depreciation accounts, including forecast additions and retirements for major network accounts and replacement plans for digital central offices; use the amortized amount in the calculation of regulated earnings; and report costs that reflect both amortization as a one time write-off and as amortized over the five year period. If adopted, the proposal would most likely eliminate the waiver process set forth in the R&O.

Synopsis of Notice

In their *March 3, 2000 letter*, Incumbent Local Exchange Carriers (ILECs) participating in the Coalition for Affordable Local and Long Distance (CALLS) modified plan identified a potential alternative joint waiver approach to achieving the objectives set forth in the *Depreciation Order* released on December 30, 1999 (FCC 99-397), 65 FR 18926 (April 7, 2000). Specifically,

the letter outlines steps that the ILECs propose to take to achieve freedom from depreciation requirements, including: (1) use of the same depreciation factors and rates for both federal regulatory and financial accounting purposes; (2) submission of information concerning their depreciation accounts when significant changes to depreciation factors are made; and (3) use of a straight-line amortization over a five-year period to account for the difference between the reserve balances on their regulatory books and the corresponding balances on their financial books. The ILECs indicated that, under their proposal, the amortization expense for each year would be included in the calculation of regulated earnings (treated as an above-the-line expense) when reporting to the Commission. The ILECs would agree, however, that the amortization would have no effect on interstate price caps or their interstate rates and would commit not to seek recovery of the amortization expense through a low-end adjustment, an exogenous adjustment, or an above-cap filing. Also, under this proposal, the ILECs would commit not to seek recovery of the interstate amortization expense through any action at the state level, including any action on UNE rates.

The primary goal of this proceeding is to determine whether there are circumstances under which our depreciation requirements could be eliminated for price-cap carriers in a manner that serves the public interest. In reaching this goal, it is important to ensure that consumers are protected against harmful rate impacts that could result from unregulated depreciation practices. Further, while we seek to eliminate burdensome regulatory requirements, we remain committed to assuring that such elimination does not have any adverse impact on the development of local competition. Also, because many of the state regulatory commissions use our cost models and often rely on our depreciation prescriptions for state ratemaking purposes, we seek to ensure that elimination of our depreciation requirements will not have any adverse impact at the state level.

The conditions we established in the *Depreciation Order*, pursuant to which a carrier could seek a waiver from the depreciation requirements, were found to largely mitigate any adverse impacts that could occur when carriers are given freedom from depreciation regulation. Prominent among these conditions was a requirement to write-off, below-the-line, the difference between the carriers' regulatory and financial book costs. The

Depreciation Order identified this one-time write-off as one means to eliminate the disparity that exists between financial and regulatory books and to ensure that these expenses would not be unjustifiably recovered in consumer rates. Under a five-year amortization proposal, the differential between the carriers' financial and regulatory books would be eliminated in five years.

We seek comment on whether an above-the-line amortization of the difference between the price-cap carriers' regulated and financial book costs over a five-year period, combined with a commitment not to seek recovery of the amortization and not to base any application for federal or state rate increases (through a low-end adjustment or other means) on any portion of the amortization over the course of the five year period adequately protects consumers from adverse rate impacts and otherwise meets the policy goals of the *Depreciation Order*. If not, are there additional steps that would eliminate or minimize these concerns? We specifically invite state commissions to comment on whether the depreciation changes discussed herein will have an adverse impact on local rates or competition. If so, we seek comment from states on specific actions we might take to protect against such adverse impacts.

We also seek comment on whether it is appropriate, under a five-year amortization approach, coupled with a commitment not to seek recovery of any portion of the amortization from federal or state rates, to include the amortization amount in the calculation of regulated earnings in the carriers' reports to the Commission. If so, what protections, if any, will ensure that the carriers' reported earnings, which would include the amortization expense, are not used in applications for rate increases under low-end adjustment, above cap price filings, or other mechanisms to justify rate increases. For example, should price-cap ILECs be required to periodically report costs that reflect what their costs would have been had the write-off been taken as a one-time below-the-line event or maintain records that reflect the amortization factored-in and factored-out, particularly where the carrier may be seeking price increases under low-end adjustments or some other mechanism? We seek comment on whether a five-year amortization accounting treatment has an adverse impact on reported earnings, and if so, what, if any, action the Commission should take to address these impacts. We also seek comment on what measures we should take to account for

and monitor the proposed amortization process.

In the *Depreciation Order*, we found that, in order to prevent any inappropriate and undesirable fluctuations in high cost support or the rates for interconnection and UNEs due to changes in depreciation factors or rates caused by carriers no longer subject to the Commission's depreciation requirements, we would continue to maintain realistic ranges of depreciable life and salvage factors for each of the major plant accounts for use in the cost models. Thus, we required that carriers agree to provide information about their depreciable plant accounts, including forecast additions and retirements for major network accounts, replacement plans for digital central offices, and information concerning relative investments in fiber and copper cable. We seek comment on the timing of the carriers' data submissions to the Commission and the scope of such submissions that will be needed to periodically update depreciation factors for use in the cost models.

Finally, we note that audits of the continuing property records (CPR) of the Regional Bell Operating Companies (RBOCs) are before the Commission, as are the results of a joint State-Federal audit of GTE's CPRs. The CPR audits found that, combined, these carriers could not account for approximately \$5 billion of central office equipment and recommended that these amounts be written-off their regulatory books of account. We estimate that a five-year amortization, if applied to these carriers, would result in a reduction of approximately \$28 billion in asset value from their regulated books of accounts. Given the size of the write-off proposed by the audits, we seek comment on whether, if the RBOCs and GTE bring their regulatory book balances to the levels of their financial book levels, the CPR audit findings are rendered moot. In particular, we seek comment on whether an accounting treatment that results in a non-recoverable amortization of a substantial portion of a carrier's investment provides a legitimate basis to terminate the CPR audits.

Procedural Issues

A. *Ex Parte* Presentations

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

generally 47 CFR 1.1202, 1.1203, and 1.1206.

B. Supplemental Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines "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. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. This rulemaking action is supported by sections 4(i), 4(j), 201–205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 254, and 403.

This Further Notice seeks comment on what conditions would be appropriate to eliminate the prescription of depreciation rates for price-cap ILECs. As noted, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small ILECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small ILECs in the RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts. We note, however, that the action we propose in this rulemaking proceeding does not apply to small ILECs, but would apply only to price-cap ILECs subject to Commission depreciation requirements.

We certify that the proposal in this Further Notice, if adopted, will not have a significant economic impact on a substantial number of small entities.

Pursuant to long-standing rules, ILECs with annual operating revenues exceeding the indexed revenue threshold must comply with the Commission's depreciation prescription process. This Further Notice proposes, under appropriate conditions, to eliminate these depreciation requirements. These changes should be easy and inexpensive for ILECs to implement and will not require costly or burdensome procedures. We therefore expect that the potential impact of the proposed rules, if such are adopted, is beneficial and does not amount to a possible significant economic impact on affected entities. If commenters believe that the proposals discussed in the Further Notice require additional RFA analysis, they should include a discussion of these issues in their comments.

The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this Further Notice, including this initial certification, to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

This Further Notice seeks comment on the timing of price-cap ILECs' data submissions to the Commission and the scope of such submissions that are needed by the Commission to periodically update depreciation factors for use in the cost models. As part of our continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on information collections contained in this Further Notice of Proposed Rulemaking, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this Further Notice of Proposed Rulemaking. 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 Procedures

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 17, 2000. Interested parties may file reply

comments on or before April 28, 2000. 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/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW Room TW–A325, Washington, DC 20554.

Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Debbie Byrd, Accounting Safeguards Division, 445 12th Street, SW, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case CC Docket No. 98–137, CC Docket No. 99–117, and AAD File No. 98–26), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the

Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20037.

Written comments by the public on the proposed information collections are due on or before April 17, 2000 and reply comments or due on or before April 28, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before June 12, 2000. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725-17th Street, NW, Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

Ordering Clauses

Pursuant to the authority contained in sections 4(i), 4(j), 201(b), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201(b), 303(r), and 403, this Further Notice of Proposed Rulemaking is adopted.

The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration, 5 U.S.C. 605(b).

Federal Communications Commission.

Kenneth P. Moran,

Chief, Accounting Safeguards Division.

[FR Doc. 00-9230 Filed 4-11-00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AG02

Endangered and Threatened Wildlife and Plants; Proposed Determination of Endangered Status for *Astragalus Holmgreniorum* (Holmgren Milk-Vetch) and *Astragalus Ampullarioides* (Shivwits Milk-Vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service (Service), propose to determine endangered species status under the Endangered Species Act (Act) of 1973, as amended, for two perennial herbs, *Astragalus holmgreniorum* (Holmgren milk-vetch) and *Astragalus ampullarioides* (Shivwits milk-vetch). Three small populations of *A. holmgreniorum* exist in Washington County, Utah and adjacent Mohave County, Arizona. Five small populations of *A. ampullarioides* exist in Washington County, Utah. Significant portions of the habitat of both species are subject to disturbance from urban development, off-road vehicles (ORVs), grazing, displacement by exotic weeds, and mineral development. A determination that *A. holmgreniorum* and *A. ampullarioides* are endangered species would implement the Federal protections provided by the Act for these plants.

DATES: Comments from all interested parties must be received by June 12, 2000. Public hearing requests must be received by May 30, 2000.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Lincoln Plaza, Suite 404, 145 East 1300 South, Salt Lake City, Utah 84115. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John L. England, Botanist, Utah Field Office, at the address listed above (telephone: 801/524-5001).

SUPPLEMENTARY INFORMATION:

Background

Astragalus holmgreniorum (Holmgren milk-vetch) was first collected as a scientific specimen in 1941 by Melvin Ogden. Rupert Barneby and Noel and Patricia Holmgren rediscovered the species in 1979. Barneby (1980) recognized the species as a unique taxon occurring in a localized area on the Arizona-Utah border, and named it for its co-discoverers. *A. ampullarioides* (Shivwits milk-vetch) was first collected near Shem in Washington County, Utah by Duane Atwood in 1976. The species was originally described by Stanley Welsh (1986) as a variety of *A. eremiticus*. Barneby (1989) questioned the taxonomic significance of the species and submerged *A. eremiticus* var. *ampullarioides* within typical *A. eremiticus*. Later research work by Harper and Van Buren (1998), and Stubben (1997) demonstrated significant genetic and ecological differences

between typical *A. eremiticus* and *A. eremiticus* var. *ampullarioides*. Welsh (1998) revised the species' taxonomy elevating the taxon to full species status as *A. ampullarioides*. Both species are narrowly distributed Mojave Desert endemics restricted to the immediate vicinity of St. George, Utah.

A member of the pea family (Fabaceae), *Astragalus holmgreniorum* grows close to the ground and is a herbaceous (non-woody) perennial that produces small purple flowers in the spring, and dies back to its root crown (base of the stalk where roots begin) after the flowering season. The plant's pinnately compound (arranged on opposite sides of the stem in a row) leaves arise directly from the root crown. The leaves are pressed close to the ground, and are 4 to 13 centimeters (cm) (1.5 to 5.1 inches (in)) long, and have 9 to 15 leaflets. The leaflets are 0.8 to 1.6 cm (0.3 to 0.6 in) long and are broadly obovate (oval with the narrow end towards the base of the leaf) in shape. The flowers of *A. holmgreniorum* are purple, 1.8 to 2.4 cm (0.7 to 0.9 in) long, and 0.6 to 0.9 cm (0.2 to 0.4 in) wide and have the distinctive papilionaceous flower shape of a legume (pea-like flower with 5 petals that include a large petal on top enclosing 2 lateral petals and 2 smaller lower petals). The flowers are borne in a raceme inflorescence (flowers occur along a stalk), commonly with 6 to 16 flowers. The peduncle (flower stalk) is 2 to 8.5 cm (0.8 to 3.6 in) long and arises directly from the root crown. The peduncle is erect during anthesis (period the flower is open) and is prostrate, with the plant's leaves in fruit (Barneby 1980; 1989; Welsh, *et al.* 1987; Stubben 1997). The fruits are pods 3 to 5 cm (1 to 2 in) long and 0.6 to 0.9 cm (0.2 to 0.4 in) across. The pods retain seeds even after the pods fully open up along the margin. With age, each pod eventually dries out and opens up at both the top and bottom ends (Barneby 1989; Stubben 1997).

Astragalus holmgreniorum grows on the shallow, sparsely vegetated soils derived primarily from the Virgin limestone member of the Moenkopi Formation. The species is a principal member of a warm-desert shrub vegetative community dominated by the following perennial shrubs: desert goldenhead (*Acamptopappus sphaerocephalus*), white burrobush (*Ambrosia dumosa*), range ratany (*Krameria parvifolia*), and Anderson wolfberry (*Lycium andersonii*). In addition, plant species associated with *A. holmgreniorum* include several perennial and annual forbs and grasses; most significant are the introduced