increase incumbent LECs' overall regulatory burdens.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

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

15. A key objective of this proceeding is to adopt performance measurements and reporting requirements that will not ultimately increase the overall regulatory burdens on carriers, particularly small entities. As explained in detail, a primary goal in considering whether to establish national performance measurements and standards is whether such requirements can serve to rationalize the multiple regulatory requirements imposed on carriers. Additionally, the document expressly seeks comment on how adopted rules should be modified to take into account any particular concerns of small, midsized or rural incumbent LECs. The document also requests comment on how measurements could be tailored to address the unique characteristics of the areas in which these carriers are located. Finally, we seek comment on whether, as an alternative, small entities should file reports less frequently than larger incumbent LECs and whether the Commission should delay the implementation of any new reporting requirements for small entities.

Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

16. A modest amount of duplication, overlap, or conflict may exist between the measurements offered for comment in this document and the measurements that certain BOCs report as part of their merger conditions. This document requests comment on whether and how federal performance requirements could be harmonized and possibly streamlined through the adoption of national measurements and standards, expressly mentioning the Commission's Merger Orders. Again, a goal of this proceeding is to minimize inconsistent or redundant federal requirements.

Ordering Clauses

17. Accordingly, pursuant to Sections 1, 2, 4, 201, 202, 251, 252 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 201, 202, 251, 252 and 303(r), *a Notice of Proposed Rulemaking is Adopted.*

18. CC Docket No. *98–56 is hereby Terminated.*

19. Commission's Consumer Information Bureau, Reference Information Center, *Shall Send* a copy of this document, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission

Magalie Roman Salas,

Secretary.

[FR Doc. 01–29746 Filed 11–29–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 54 and 69

[CC Docket No. 00–256; FCC 01–304]

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

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rule.

SUMMARY: In this document, the Commission considers methods by which to build on the access charge reforms adopted for rate-of-return carriers in the companion Report and Order. Second, the Commission will consider the appropriate degree and timing of pricing flexibility for rate-of-return carriers. Third, the Commission seeks further comment on the MAG's proposed changes to the Commission's ''all-or-nothing'' rule. In these ways, the Commission seeks to improve the efficiency of the provision of telecommunications services in rural America by ultimately relying on markets to discipline prices and service quality and, whenever possible, to reduce regulatory oversight. Finally, the Commission seeks comment on merging the Long Term Support (LTS) mechanism into Interstate Common Line Support as of July 1, 2003, when the Carrier Common Line (CCL) charge will be eliminated.

DATES: Comments are due on or before December 31, 2001. Reply comments are due on or before January 29, 2002.

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

FOR FURTHER INFORMATION CONTACT: Douglas Slotten, Attorney, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1520. Regarding LTS, contact William Scher, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in CC Docket No. 00–256 released on November 8, 2001. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554 or at <*http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–01–304A1.doc.*>

I. Further Notice of Proposed Rulemaking

A. Alternative Regulation

1. In this section, we critique the MAG proposal for introducing incentive regulation for rate-of-return carriers. This evaluation will form a foundation on which to discuss the development of an appropriate alternative regulation plan for rate-of-return carriers. We then explore several options for alternative regulation and seek input to assist in setting the parameters of any plan to be adopted.

a. Critique of MAG's Incentive Regulation Proposal

2. Based on the present record, we are unable to conclude that the MAG's incentive regulation plan should be adopted. The MAG's incentive regulation plan does not properly balance carrier and customer interests given the current regulatory environment for those carriers. In addition to the broad concerns we identify in this section with the plan as proposed, other issues will be raised in the discussion addressing the development of an alternative regulatory structure for rate-of-return carriers.

3. Initially, we agree with those parties asserting that the inflation-adjusted Revenue Per Line (RPL) component of the MAG's incentive plan would allow carriers to increase their revenues without any recognition of the productivity gains that historically have been realized by the telephone industry. Thus, it is not clear that rates under the MAG incentive plan would be just and reasonable, as required by section 201(b) of the Act. Under the MAG plan, all the benefits of productivity or efficiency improvements would accrue to the carrier in the form of higher returns and none of the benefits accrue to access customers.

4. One possible solution would be to establish one or more productivity offsets or X-factors. The record, however, is not adequate to determine an X-factor or factors that would be appropriate for all rate-of-return carriers that might elect incentive regulation. This task is particularly difficult because of the diversity of rate-of-return carriers. Therefore, an optional alternative regulation plan might be appropriate for rate-of-return carriers, as urged by a number of commenters. An X-factor could be needed to keep rate-of-return carriers' rates reasonable because competitive conditions in most rate-of-return carrier markets cannot be relied upon to act as a check on rate-of-return carriers' ability to implement anti-competitive prices.

5. We also find that the plan as structured does not insure that adequate investment or service quality levels will necessarily be maintained. Several parties have alleged that any incentive plan must contain controls to ensure that consumers are not harmed in this regard. Rate-of-return carriers electing incentive regulation, as proposed, might have the incentive to reduce costs by reducing investment (and therefore depreciation) and maintenance levels in order to achieve greater profits that it may then retain, without there being any benefit to consumers in the form of assurances of continued investment and maintenance of rate-of-return carrier facilities, or of the sharing of any efficiency gains with customers.

b. Principles

6. An alternative regulation plan initially must ensure that rates remain just and reasonable, as required by section 201(b). This is the fundamental underpinning of all regulatory models. To ensure that rates remain just and reasonable and that a carrier not receive a windfall from the elimination of any existing inefficiencies, the benefits to be realized from the adoption of an alternative regulation plan should be shared equitably between the carrier and its customers. Under price cap regulation, the Commission initialized rates after reviewing the cost of capital and employed an X-factor productivity adjustment to ensure that price cap carrier rates reflected industry average productivity improvements, while permitting price cap carriers that could be more efficient to keep some or all of any increased earnings. We invite parties to comment on how this goal might be realized most effectively with regard to rate-of-return carriers, and whether something akin to the price cap methods should be used, or whether some other effective alternative exists.

7. We seek comment on whether the rewards a rate-of-return carrier electing an alternative regulation plan might realize should be related to the risk the carrier assumes. Under such an approach, the less stringent the X-factor offset, the smaller the increased profits the carrier would be permitted to retain. We also ask parties to comment on whether a range of options should be offered to rate-of-return carriers, and whether the same set of options should be offered to all rate-of-return carriers. If only a limited set of options is to be offered to some rate-of-return carriers, what characteristics of a carrier or its environment should determine the set of options to be offered? We invite parties to comment on these considerations generally and on how the correct relationships might be determined to ensure that rates remain just and reasonable.

8. The design of an alternative regulation plan must also address the incentives an alternative regulation plan gives rate-of-return carriers to reduce investment in plant and equipment, or to reduce expenditures on maintaining service quality, in order to increase profits at the expense of maintaining adequate investment or service quality. Section 254(b) identifies the availability of comparable services in rural areas as a criteria in assessing universal service. The achievement of these goals clearly requires investment in rural areas, which must therefore be supported by any alternative regulation plan we adopt.

9. Rate-of-return regulation has worked well in extending service to rural America, along with our universal service program and the work of state commissions to support service in these areas. We seek comment on how to maintain quality assurance and expansion of new and advanced services in rural and non-rural areas served by rate-of-return carriers under any alternative regulatory plan we might adopt. As we develop an alternative regulation plan for rate-of-return carriers, are there state programs we can rely on as means to ensure that adequate investment and service quality will be maintained? Such programs could include various types of state programs that oversee small company activities and focus on investment and service quality. In addition, certain indicia of competition, such as the designation of an eligible telecommunications carrier in the rate-of-return carrier's service area, might also permit us to conclude that the incentives to invest and maintain service quality are present. We invite parties to comment on the extent to which regulatory and competitive conditions could be effective tools in developing a workable alternative regulatory mechanism. Parties should address how the different possible components of an alternative regulatory plan discussed below might be modified as regulatory or competitive conditions change.

10. Finally, we believe that an alternative regulatory plan must minimize the administrative burdens on small carriers and regulatory intervention in their operations, while achieving the other principles noted. In this regard, an alternative regulation plan should consider the size of the carriers that will be subject to the plan and be no more restrictive than necessary to achieve the necessary public interest objectives. We therefore invite parties to address the impact any alternative regulation plan might have on small incumbent local telephone companies, as required by the Regulatory Flexibility Act.

11. As we proceed, it will be with a focus on these objectives. We invite parties to comment on the validity of these objectives and how they apply to the different measures of any alternative regulation plan proposed. We also ask parties to identify additional principles that should be applied to the development of an alternative regulatory mechanism. In the following section we address several specific considerations associated with developing an alternative regulatory plan.

c. Issues in Developing an Alternative Regulatory Plan

12. *Optionality.* The scope of an alternative regulation plan affects in significant ways the design of that plan. Several rate-of-return carrier interests assert that any alternative regulation plan must be optional because of the diversity among rate-of-return carriers in their operating conditions. On the other hand, AT&T urges us to make an alternative regulation plan applicable to the largest rate-of-return carriers on a

mandatory basis. Given the wide variations among rate-of-return carrier operating conditions, we believe it would be extremely difficult to establish a mandatory alternative regulatory plan for all rate-of-return carriers. We invite parties to comment on the extent to which an alternative regulation plan should be completely optional, or whether it should be mandatory for a subset of larger rate-of-return carriers. Parties should address what criteria should be used to determine which carriers would be subject to alternative regulation on a mandatory basis. We also seek comment on whether any optional alternative regulation plan should be one-way, so that, once made, a carrier could not return to rate-of-return regulation. Alternatively, are there certain conditions, such as when earnings are sufficiently low for a sufficiently long period of time, or simply after a specified period of time, or after each review period, when a carrier could be permitted to return to rate-of-return regulation? Parties are invited to address what those conditions might be and how rates should be determined upon return to rate-of-return regulation.

13. *Alternative regulation in a pooling context.* The MAG's incentive regulation plan was designed to work within the National Exchange Carrier Association (NECA) pooling structure. Today, nearly all rate-of-return carriers participate in the NECA common line pool, and more than sixty percent of the minutes of rate-of-return carriers are charged at NECA rates. This offers many administrative benefits to carriers and to the Commission, particularly in the form of tariff administration. It may, however, blunt some of the benefits that may be realized from an alternative regulatory plan. If cost savings that a carrier realizes are included in the pool settlements process, rather than being retained by the carrier achieving the efficiency gains or reflected in lower rates to the customers, the carrier will have little incentive to pursue cost efficiencies. We invite parties to comment on whether an alternative regulation plan can and should be designed to work within the NECA pooling structure, whether there are ways for NECA to revise its pooling procedures to facilitate meaningful incentive regulation, or whether rate-of-return carriers should be required to leave the pool to avail themselves of any alternative regulatory plan. Parties should also address how an alternative regulatory plan would apply to those rate-of-return carriers outside the NECA pools, including any problems created if a rate-of-return carrier was, for example, in the common line pool but not the traffic sensitive pool.

14. *Use of revenue per line (RPL).* The MAG proposes to use a RPL amount as the basis for establishing its incentive plan, adjusting the RPL amount annually for inflation. Thus, a rate-of-return carrier electing incentive regulation would settle with the NECA pool on the basis of its inflation-adjusted RPL amount. A rate-of-return carrier's costs and its settlement amount from NECA would therefore no longer be linked. The rate-of-return carrier would thus have the incentive to reduce its operating costs since it could retain the difference between the RPL amount and its actual costs, if lower. On the other hand, if its costs were higher than the RPL amount, it would not receive additional settlements. Several commenters oppose the use of a revenue cap, alleging that a rate-of-return carrier would have every incentive to reduce its investment and expenses since these no longer affect their settlements with the NECA pool. In response, the MAG argues that Path A incentive regulation under its plan differs from both price cap regulation and revenue cap regulation.

15. We invite parties to comment on the use of an RPL amount as a starting point for an alternative regulatory plan. We specifically invite comment on whether the MAG's contention that RPL is different from a revenue cap is correct. We ask parties to comment on the extent to which the presence of competition or an external check would affect a carrier's incentives in an RPL system, and how such factors could be included in an alternative regulatory system for rate-of-return carriers. Parties should also address how to respond to the concern expressed in the record that rate-of-return carriers would have every incentive in the year they choose to enter an alternative regulation program to maximize their costs and plant investment, in order to maximize their initial rates.

16. We also ask parties to address whether there are other approaches to establishing an alternative regulatory mechanism that would work better than RPL over a broader range of competitive and regulatory landscapes. For example, would it be possible and preferable to use baskets of traffic-sensitive and non-traffic-sensitive service revenues or prices as the baseline against which to measure rate-of-return carrier productivity? Parties proposing alternatives should be specific in laying out their plan and should address how their plan is consistent with the principles enumerated. Parties should also address what an appropriate alternative regulatory plan should be if we were to conclude that a rate-of-return carrier must leave the NECA pool to participate in such a plan.

17. In addition, we invite parties to address whether, rather than developing a new alternative regulatory plan for rate-of-return carriers, we should establish a method by which rate-of-return carriers would be eligible to adopt the CALLS plan. Parties should particularly address what modifications if any, would be necessary in the indexing and universal service aspects of the CALLS plan to make it appropriate for rate-of-return carriers, without jeopardizing the position of any party currently subject to the CALLS plan.

18. *Productivity and sharing considerations.* The MAG incentive plan does not contemplate any initial rate reduction, or a recurring productivity offset (X-factor). Under the MAG plan, rates initially would be based on a rate-of-return carrier's settlements from the NECA pools at the time the carrier elected incentive regulation, and increased by inflation in future years. Several parties assert that any plan must have a productivity factor in order to keep rates just and reasonable, contending that the telephone industry traditionally has achieved greater productivity than that reflected in the GDP–PI. Several parties also contend that an incentive plan for rate-of-return carriers must include a sharing mechanism, as the original price cap plan did.

19. We invite parties to comment on the extent to which a productivity offset or initial rate reduction should be part of any alternative regulatory plan for rate-of-return carriers. This is a difficult issue for rate-of-return carriers due to the variations in their operating conditions. Many smaller rate-of-return carriers' investment patterns are lumpy, with only occasional significant new investments, as when they replace a switch or a major trunking facility. Some rate-of-return carriers may not realize sufficient demand growth to realize any scale economies. These smaller carriers might not be interested in an alternative regulation plan that included a productivity offset. It would be helpful if parties addressed the means by which we should establish any productivity offset and the level at which it should be set. These comments should take into account the possibility that the alternative plan would, for some or all rate-of-return carriers, be optional. Thus, only those rate-of-return carriers that thought they could exceed

the productivity threshold might elect the alternative regulatory plan.

20. Several uncertainties exist in initiating an alternative regulatory plan if it is optional. It will be unclear how many rate-of-return carriers may elect any plan until such time as they are required to exercise that option. Furthermore, calculation of a productivity offset will be imprecise due to lack of knowledge of which carriers would be participating. We therefore invite parties to comment on whether an alternative regulatory plan for rate-of-return carriers should include a sharing mechanism to account for the difficulty in the calculation of an appropriate X-factor. Parties should also address the level at which, and the extent to which, any sharing should be required, whether sharing requirements should be linked to service quality levels, and the relationship between the levels of any X-factor and sharing obligations.

21. As the Commission has noted previously, sharing mechanisms have significant incentive-blunting characteristics caused by the reduced incentive to increase efficiency if the carrier can only retain a portion of the savings. We therefore seek comment on whether a system of regulation with a lag might be appropriate for rate-of-return carriers. Under such a plan, a productivity offset would be established based on an appropriate industry grouping. Rate-of-return carriers electing the alternative regulation plan would be permitted to keep any increased profits realized from increased efficiency or line growth. After some period of time, such as three years, the Commission would reexamine the productivity offset and adjust it prospectively, reflecting the realized experience of the previous three years. We invite parties to comment on the use of regulation with a lag. They should address the setting of the productivity offset in this context, as well as the length of time between reviews. We invite parties to comment on whether RPL is the appropriate baseline against which to apply the productivity offset under this scenario and whether the RPL level should be based on an individual carrier's revenues or on some grouping of carriers. Parties should also address whether a sharing or a lag plan introduces the fewest efficiency disincentives and is most likely to create proper incentives.

22. *Low-end adjustment.* As with price cap regulation, the MAG proposes a low-end-adjustment factor. Unlike the low-end adjustment for price cap carriers, however, the low-end adjustment proposed by the MAG would ensure that rate-of-return carriers electing incentive regulation would not earn below the low-end adjustment. It would do this by providing for a prospective revenue payment from the NECA pool that would give it the difference between what it actually earned and the low-end adjustment over a twelve-month period. Price cap carriers, on the other hand, are only permitted to adjust their price cap indexes to allow them to set prospective rates at a level that would allow them to earn at the level of the low-end adjustment. We invite parties to comment on the need for a low-end adjustment and on how to establish the proper level. We specifically ask parties to address whether a low-end adjustment in an alternative regulatory plan should protect against earnings below that level during a particular tariff period, or whether it should be used to retarget rates so that the carrier will have an opportunity to earn that level in the future tariffing period, as is done in the price cap context. We also invite parties to comment on whether there is any need for a higher low-end adjustment for smaller rate-of-return carriers, and if a higher low-end adjustment is necessary, how the higher low-end adjustment should be determined, which carriers should be covered, and the extent to which the low-end adjustment should be higher. Finally, we ask whether, if rate-of-return carriers are granted pricing flexibility, they should be required to forego the automatic low-end adjustment just as price cap carriers do.

23. *Monitoring.* The adoption of an alternative regulatory plan would alter the incentives of carriers, and establish new parameters regulating those carriers electing the alternative plan. We invite parties to comment on whether there is any need to establish reporting requirements to monitor service quality and carrier investment in an alternative regulatory regime, or whether it will be possible to rely on competitive conditions or state investment and service quality standards to control any adverse effects of the new incentives. Finally, we ask parties to comment on how often we should review an alternative regulatory plan. Because conditions change over time, it may periodically be necessary to modify some of the parameters based on the new circumstances, or a better understanding on our part of how they are working with respect to the rate-of-return LECs electing the alternative plan. Parties are also invited to suggest precise methodologies for modifying the relevant parameters.

24. *Other issues.* Finally, we invite parties to comment on other concerns they may have with the Commission's possible adoption of an alternative regulatory plan for rate-of-return carriers. In particular, parties are encouraged to address issues relating to the timing of the election to be governed by the alternative regulatory plan. For example, should the election be available only on one fixed date, or should carriers have the option to elect at a time of their own choosing?

B. Pricing Flexibility

1. Discussion

25. With this FNPRM, we extend our consideration of pricing flexibility to rate-of-return carriers, as we indicated we would do in the *1998 FNPRM.* In this section we seek comment on methods of extending pricing flexibility to rate-of-return carriers in addition to those already available to them under current rules or under the rules adopted in the Companion Order.

a. Types of Pricing Flexibility

26. In this FNPRM, we focus on three types of pricing flexibility for rate-of-return carriers: geographic deaveraging within a study area; volume and term discounts; and contract pricing.

27. These three pricing flexibility options offer incumbent local exchange carriers (LECs) significant ability to price their services closer to cost and to respond to competitive entry. Geographic deaveraging within a study area would permit rate-of-return carriers to price in a manner that reflects cost differences from one geographic location to another. Volume and term discounts would permit rate-of-return carriers to reflect economies related to capacity differences and to the certainties offered by term contracts. Finally, contract pricing would permit rate-of-return carriers to respond to requests for proposals and to address more complex communications needs of customers. These pricing alternatives would, once available, make rate-of-return carriers' pricing structures more efficient and permit them to respond to competition

28. While there are clear benefits from pricing flexibility, there are also competitive concerns raised by their introduction. Thus, if introduced too soon, pricing flexibility might be used to erect a barrier to competitive entry. For example, a rate-of-return carrier could deaverage its rates so that the attractive customers received very low rates, or it could lock up customers before entry began through the use of lengthy term contracts. In addition, in offering

deaveraged rates or volume and term discounts, a carrier could, absent some restriction, increase rates excessively for remote customers or for low-volume customers to offset reductions resulting from the introduction of deaveraged rates or volume discounts for higher-volume customers. Such practices could inhibit competitive entry and deny customers in rate-of-return carrier service areas the benefits of competition.

29. We invite parties to comment on our proposal to extend pricing flexibility to rate-of-return carriers in the forms noted. In doing so, parties should address how the unique characteristics of rate-of-return carriers may affect the benefits and risks associated with pricing flexibility. They should identify any differences in the benefits and risks that may exist in relation to common line, local switching, and transport and special access services separately. Parties should also address whether any special rules for pricing flexibility are needed to prevent anti-competitive behavior from inhibiting the development of competition in these markets. For example, should the number of zones rate-of-return carriers are permitted to establish be fewer than price cap carriers are permitted, or should the degree of deaveraging or volume and term discounts be limited due to the rate-of-return carriers' smaller size? In a recent waiver order, we conditioned the grant of volume and term pricing flexibility for transport and the TIC on the carrier calculating a rate using the requirements of §§ 69.106(b) and 69.124(b) and (c) of the Commission's rules to establish a ceiling rate for the associated non-discounted access service offering. We invite parties to comment on whether such a restriction should be imposed on the introduction of pricing flexibility on rate-of-return carriers to preclude anti-competitive behavior.

30. Parties should also address the impact that permitting pricing flexibility would have on the NECA pooling process. Would NECA need to establish exception rates for those rate-of-return LECs qualifying for pricing flexibility, and, if so, how burdensome would this be on NECA? Are there other ways of handling pricing flexibility within the pooling process that would be less burdensome? Parties also should address whether permitting pricing flexibility within the pooling process would be so burdensome on NECA, or offer anti-competitive opportunities to rate-of-return carriers, that rate-of-return carriers should be required to leave the NECA pool as a condition of obtaining pricing flexibility.

31. We also invite parties to identify other forms of pricing flexibility that may be appropriate for the development of an efficient, competitive exchange access marketplace. Parties suggesting other forms of pricing flexibility should evaluate the benefits and risks of those forms of pricing flexibility, as well as the conditions under which such pricing flexibility might be appropriately granted to rate-of-return carriers.

b. Timing of Pricing Flexibility

32. The determination of when pricing flexibility should be granted to rate-of-return carriers is a more difficult question than which types of pricing flexibility to consider granting. It is the opportunity to exercise pricing flexibility prematurely that presents the greatest anti-competitive risk to the development of competition. To address these concerns for price cap carriers, we granted some pricing flexibility immediately and designed a two-phased approach for determining when further pricing flexibility could be obtained by price cap carriers. Each phase had its own trigger to determine when a price cap carrier qualified for the pricing flexibility offered under each phase. We invite parties to comment on the extent to which pricing flexibility should be granted to rate-of-return carriers immediately, and which types of pricing flexibility should be deferred until some appropriate level of competition in a rate-of-return carrier service area has been established. Parties should comment on whether a two-phased approach for rate-of-return carriers should be used given their small size.

33. The decision to immediately permit geographic deaveraging of transport and special access services within a study area was premised in part on the fact that price cap carriers were facing some degree of competition in their service areas. This is not necessarily the case for all rate-of-return carriers. We therefore ask parties to comment on whether immediate geographic deaveraging of transport and special access services within a study area is warranted, or whether some degree of competition should be required before such pricing flexibility is permitted. We are particularly concerned about an incumbent LEC's ability to use pricing flexibility to preclude competitive entry. Parties should also address what the standard should be for determining when deaveraging should be permitted, if it is not permitted immediately.

34. For pricing flexibility other than geographic deaveraging of transport and special access services, the Commission established competitive criteria for determining when a price cap carrier could qualify for such pricing flexibility. The criteria required price cap carriers to demonstrate that competitors have made irreversible, sunk investments in the facilities needed to provide the services at issue, or that competitors have established a significant market presence (i.e., that competition for a particular service within the MSA is sufficient to preclude the incumbent from exploiting any individual market power over a sustained period) for provision of the services at issue, for Phases 1 and 2, respectively. We believe it is necessary to adopt criteria to determine when rate-of-return carriers may offer services using pricing flexibility plans. To that end, we invite parties to address whether a standard similar to that used for price cap carriers should be used for rate-of-return carriers. To assist us in evaluating different criteria, it would be especially useful if parties would address how they anticipate competition developing in rate-of-return carrier service areas, given their generally small customer base.

35. Parties are invited to address the appropriate competitive criteria that should determine when any particular pricing flexibility should be permitted. We recognize that the competitive levels used for price cap carriers may be overly restrictive for the smaller rate-of-return carriers. We ask parties to suggest appropriate levels. Parties should also address other proposals that have been made in various contexts, including the existence of a carrier in the service area with eligible telecommunications status, the issuance of a request for proposals by a customer in the rate-of-return carrier's service area, the filing by a rate-of-return carrier of a tariff offering UNEs, and the receipt by a rate-of-return carrier of a request for UNEs.

36. For price cap carriers, the Commission used the Metropolitan Statistical Area (MSA) as the geographic scope within which to measure competition to determine if pricing flexibility should be permitted. For most rate-of-return carriers, MSAs are not relevant and thus could not be the measurement base. Given the generally smaller size of rate-of-return carriers, it seems appropriate to use the study area as the basis on which to measure competitiveness in determining whether pricing flexibility is warranted for rate-of-return carriers. We seek comment on the use of study areas as the measurement base. We also solicit

suggestions of other, more appropriate measures.

37. We also invite parties to comment on whether any rate-of-return carrier services should be permitted to be filed on one day's notice and whether any services should be treated as non-dominant services. For price cap carriers, we required that services be removed from price cap baskets when the services were offered under contract to preclude cross-subsidization. A similar mechanism does not exist for rate-of-return carriers. If we were to permit contract pricing, what measures would be necessary to ensure that rate-of-return carriers did not cross-subsidize the non-dominant services with revenues from their other access services?

C. All-or-Nothing Rule

1. Issues for Comment

38. The ''all-or-nothing'' rules were created a little more than ten years ago, and the rationale for the rules has withstood the scrutiny of the United States Court of Appeals for the D.C. Circuit. We would like to explore more precisely whether our regulatory policy—generally not to permit affiliated carriers to operate under different systems of regulation—is still serving the public interest; what, if any, circumstances and conditions that prompted these rules in the past have changed; and whether, or why, the MAG's proposed rule changes would be the correct and necessary solution to address any problems with the rules. We encourage interested parties from all industry segments to expand the discussion of why these rules should be retained, repealed or modified.

39. Further, we invite comment on whether the ''all-or-nothing'' restrictions unreasonably and unfairly limit affiliated companies from selecting regulatory options that would enable them to operate more efficiently, especially in light of the highly diverse service areas of some carriers. In the course of this analysis, some general questions to consider include the following. What, if anything, is different today than when the Commission previously considered this issue? Would customers be better off and would competition be better served with or without the rules? Are the rules working effectively since the waiver process allows the Commission to grant carriers exceptions to the ''all-or-nothing'' restrictions as a means of ''fine tuning'' our regulation here? What impact does an increasingly competitive environment have on whether these rules should be retained or eliminated?

40. Some commenters argue that the ''all-or-nothing'' rules in mergers and acquisitions limit a carrier's ability to choose the most appropriate and efficient form of regulation, to the detriment of both the carrier and its customers. For example, when ALLTEL, a rate-of-return carrier, merged with Aliant, a price cap carrier, the Commission agreed with ALLTEL's reasons for desiring to remain a rate-of-return carrier. But ALLTEL, ''not seeking to maintain separate affiliates under different systems of regulation,'' also was required to revert Aliant, which had elected price cap regulation, to rate-of-return regulation. Aliant, however, subsequently sought a waiver, contending price cap regulation benefited its customers, and was granted permission to continue operating temporarily as a price cap carrier. Does this example suggest that the ''all-or-nothing'' regulatory requirements are overly restrictive, or out of step with marketplace realities? Does it suggest that the purpose served by the rules may be overshadowed by any regulatory inefficiency that may result?

41. Some rate-of-return carriers contend the affiliate withdrawal rule also works against selecting the most appropriate and efficient form of regulation for diverse study areas because they must all elect the same common line pool status as a group and move to price cap regulation together. Some affiliates may be ready to accept the risk and potential reward of incentive regulation, while other affiliates might not be in a position to leave rate-of-return regulation. These incumbent LECs also advocate repeal of this rule in combination with geographic deaveraging as a pricing flexibility measure to enable them to respond to competition from competitive carriers for high-volume business customers. In this way, incumbent LECs would have flexibility to depool and deaverage rates within study areas by filing their own common line tariffs based on their own costs where competition was a threat, and also make decisions for other study areas based on their particular market and service conditions. Opposing parties, however, contend that such pricing flexibility would be premature until local markets become sufficiently competitive to prevent incumbent LECs from engaging in cross-subsidization and predatory pricing. Furthermore, they object to repealing this rule because it would result in parent companies removing their low-cost companies from the pool and leaving their high-cost areas in, thus driving NECA pool rates higher. Are there any other considerations to note in assessing whether the affiliate withdrawal rule is promoting the public interest? What would be the impact and consequences of higher NECA pool rates resulting from the exit of low-cost carriers?

42. We also seek comment on whether the ''all-or-nothing'' restrictions are currently necessary to prevent cost shifting and gaming. Commenters disagreed on this issue and on whether our present accounting and allocation rules provide existing and sufficient safeguards against cost shifting. Some parties contend these rules have outlived their usefulness, and are not needed to address cost shifting and gaming concerns because they are more speculative than real. Others argue that cost shifting and gaming concerns are still valid, and that their elimination would be anti-competitive and could result in cost manipulation. TDS asserts that the rules have begun to erode with no evidence of cost shifting or gaming, citing exceptions adopted by the Commission to the pooling ''all-or-nothing'' rules in mergers and acquisitions, common ownership of cost-based and average schedule companies, the ability of average schedule companies to remain in the pool if their depooling affiliate changes from rate-of-return regulation to price caps, waivers allowing price cap exchanges to revert to rate-of-return regulation following mergers and acquisitions, and common ownership of incumbent and competitive carriers. We invite further comment on whether these examples warrant greater relaxation, or elimination, of the ''all-or-nothing'' requirements. Specifically, is the risk of cost-shifting and gaming outweighed by regulatory efficiency gains that could result from eliminating the ''all-or-nothing'' requirements? Is the Commission's policy behind the rule—to avoid creating cost-shifting incentives as opposed to correcting actual abuses—serving the public interest? Has the competitive environment made cost shifting or gaming concerns less or more relevant? Are there alternative accounting and reporting rules that could substantially reduce cost shifting concerns? Would it be reasonable to impose more stringent reporting requirements on carriers that seek waivers of the ''all-or-nothing'' requirements?

43. We also seek comment to resolve a related issue: how rate-of-return carriers that are required to convert to price cap regulation in a merger or acquisition, or choose to convert to price cap regulation, will receive universal service support. Under the

current rules, a rate-of-return carrier upon converting to price cap regulation is required to withdraw from the NECA common line pool and is no longer eligible for LTS. Interstate access universal service support for price cap carriers is funded by a capped, interstate access support mechanism created in the *Interstate Access Support Order* (65 FR 57739, September 26, 2000), but the Commission in that order ''did not explicitly address how entry of new carriers into price caps affects distribution of interstate access universal service support.'' This question is particularly significant for potential price cap companies like Puerto Rico Telephone Company that could be a large recipient of the support. We invite commenters to address how entry of new carriers into price cap regulation would affect distribution of interstate access universal service support for price cap carriers. As a transitional measure for rate-of-return carriers that convert to price cap regulation, should we allow retention of LTS or Interstate Common Line Support? Instead of receiving the same amount of support that the carrier received under rate-of-return regulation, should the previous support amount be added to the total interstate access universal service support available under the *Interstate Access Support Order* and then divided among all price cap carriers pursuant to the formula established in that order? We seek input on any other related considerations or ideas to resolve this question of universal service support for new price cap carriers on a going forward basis.

D. Consolidation of Long Term Support and Interstate Common Line Support

1. Discussion

44. We tentatively conclude that LTS will be merged with Interstate Common Line Support as of July 1, 2003, after which participation in the NECA common line pool will not be required for receipt of universal service support. We believe that merging LTS with Interstate Common Line Support is warranted in the interest of administrative simplicity, because LTS no longer will serve an independent purpose after the CCL charge is phased out. Because the CCL charge will be eliminated, LTS will not be required to reduce the costs recovered through CCL charges. Moreover, carriers now receiving LTS will be eligible for Interstate Common Line Support to meet their common line revenue requirements not recovered through SLC charges. Most carriers will receive Interstate Common Line Support in an amount equal to or greater than the amount of LTS support they now receive. If retained, LTS's practical effect would be merely to reduce the Interstate Common Line Support received by each pooling carrier.

45. We also believe that merging LTS with Interstate Common Line Support is warranted in the interest of promoting competition. Restricting eligibility for universal service support to pooling carriers hampers the competitiveness of incumbent LECs by forcing them to choose between universal service support and the freedom to set rates outside the NECA common line pool. The Commission previously maintained this restriction in part due to the risk-sharing benefits of pooling, but we believe that this risk-sharing function will be diminished substantially by conversion of the CCL charge to explicit universal service support. The pool's averaged CCL rates spread across pooling companies the risks related to recovery of residual common line costs through a per-minute charge. Unlike a per-minute charge, however, per-line universal service support is not subject to unpredictability and variation.

46. We seek comment on these tentative conclusions. We recognize that the proposed elimination of LTS as a separate, pooling-restricted support mechanism may impact membership in the NECA common line pool. Nevertheless, we anticipate that the pool will continue to perform important administrative functions, such as tariff filings for many small carriers for whom such burdens would be excessive in the absence of the ability to pool, as well as risk-sharing functions related to the recovery of traffic sensitive costs. We invite interested parties to comment on these issues.

II. Procedural Issues

A. Ex Parte Presentations

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

B. Initial Regulatory Flexibility Analysis

48. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the proposals in this FNPRM.

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

49. The Commission consistently has expressed its commitment to providing incentives for smaller telephone companies to become more efficient and innovative. As proposed, however, the MAG incentive plan does not appear to provide incentives for cost efficiency gains that will benefit consumers through lower rates and improved services. The FNPRM seeks additional comment on the MAG incentive plan, and on other means of providing opportunities for rate-of-return carriers to increase their efficiency and competitiveness in the interstate access services market in a manner that would benefit both rate-of-return carriers and their customers. Among other things, the FNPRM seeks comment on the establishment of one or more X-factors, ways to insure that adequate investment and service quality levels are maintained, and whether any incentive regulation adopted by the Commission for small carriers should be optional.

50. The FNPRM also seeks comment on extending additional pricing flexibility to rate-of-return carriers, on the continued need for the ''all-or-nothing'' rule, which provides that if an individual rate-of-return carrier or study area converts to price cap regulation, all of its affiliates or study areas must also do so, except for those using average schedules, and on the Commission's tentative conclusion that LTS should be merged with Interstate Common Line Support as of July 1, 2003, after which participation in the NECA common line pool will not be required for receipt of universal service support. These proposals are intended to enhance the competitiveness of rate-of-return carriers and to ensure that the Commission's rules continue to be consistent with conditions in the telecommunications marketplace.

2. Legal Basis

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

3. Description and Estimate of the Number of Small Entities To Which the FNPRM will Apply

52. In the Final Regulatory Flexibility Analysis (FRFA), the Commission's action in this Order affects local exchange carriers, competitive local exchange carriers, interexchange carriers, competitive access providers, cellular licensees, broadband Personal Communications Services, Rural Radiotelephone Service, Specialized Mobile Radio, fixed microwave services, and 39 GHz licensees. This Initial Regulatory Flexibility Act potentially will affect the same entities discussed in the FRFA, and we incorporate the

descriptions of those entities by reference.

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

53. The FNPRM explores options for developing an alternative regulatory structure that would be available to those rate-of-return carriers electing it. It considers the widely varying operating circumstances of rate-of-return carriers, the implications of competitive and intrastate regulatory conditions on the options available, and the need to facilitate and ensure the deployment of advanced services in rural America. If adopted, alternative regulation may require additional recordkeeping. For example, carriers could be required to file cost studies with this Commission or other appropriate state agency detailing annual revenues, revenues per study area, and effective per-line support for each universal service zone. The FNPRM also addresses the continued need for the Commission's all-or-nothing rule, and the appropriate degree and timing of pricing flexibility for small rate-of-return carriers. Repeal or modification of the all-or-nothing rule might allow carriers to depool and deaverage rates within study areas by filing their own common line tariffs.

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

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

55. The proposals in the FNPRM could have varying positive or negative impacts on rate-of-return carriers, including any such small carriers. Many of the proposals involve elective options, so that a small entity should be able to assess the potential impacts as part of its decision-making process. Public comments are welcomed on modifications to the proposals contained in the FNPRM that would reduce any potential impacts on small entities. Specifically, suggestions are sought on different compliance or reporting requirements that would take into account the resources of small entities; clarification, consolidation, or simplification of compliance and reporting requirements for small entities that would be subject to the rules; and whether waiver or forbearance from the rules for small entities would be feasible or appropriate. How would the establishment of one or more X-factors impact small carriers? How can we insure that adequate investment and service quality levels are maintained? How would the adoption of an alternative regulation plan affect rate-of-return carriers, and how would a low-end adjustment affect such plan? Should we retain, repeal, or modify our ''all-or-nothing rule''? How would potential modification or repeal affect smaller carriers? Finally, what would be the impact on small carriers of eliminating LTS as a separate, pooling-restricted universal service support mechanism? Comments should be supported by specific economic analysis.

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

56. None.

C. Comment Filing Procedures

57. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before December 31, 2001, and reply comments on or before January 29, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

58. 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.

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

60. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Competitive Pricing Division, Common Carrier Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket numbers, in this case CC Docket Nos. 00–256 and 96–45), 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, Qualex International, Portals II, 445 12th Street, SW., Room CYB402, Washington, DC 20554.

61. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document also may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

III. Ordering Clauses

62. It is further ordered that, pursuant to the authority contained in 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 of Proposed Rulemaking in CC Docket No. 00–256 is adopted.

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

shall send a copy of this Further Notice of Proposed Rulemaking in CC Docket No. 00–256, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 01–29740 Filed 11–29–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[DOT Docket No. NHTSA–01–8885; Notice 2]

RIN 2127–AH81

Glare From Headlamps and Other Front Mounted Lamps Federal Motor Vehicle Safety Standard No. 108; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Reopening of comment period for a notice of request for comment.

SUMMARY: This document reopens the comment period on a notice of request for comment on the issue of glare from the front of motor vehicles at night.

DATES: Comments on DOT Docket No. NHTSA–01–8885 must be received by January 28, 2002.

ADDRESSES: Comments should refer to DOT Docket No. NHTSA–01–8885 and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590.

You may call the Docket at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Van Iderstine, Office of Crash Avoidance Standards at (202) 366–5275. His Fax number is (202) 366–4329.

SUPPLEMENTARY INFORMATION: On September 28, 2001, we (NHTSA) published in the **Federal Register** (66 FR 49594) a notice of notice of request for comment on the issues related to glare produced by lamps mounted on the fronts of vehicles. This document had a comment due date of November 27, 2001.

In a letter dated November 8, 2001, North American Lighting, Inc., (NAL) asked for an extra 60 days to comment on the Notice. NAL stated that the 46 questions asked in the Notice were substantially complicated by asking for explanations. NAL stated that many would require searching company records and/or performing additional testing to provide an accurate response. It stated that there is often a 30-day lead time for scheduling laboratory testing, and for scheduling staff work loads. NAL added that with the lean times for the industry, resources are already overcommitted in the effort to forestall workforce reductions. It stated that the extra 60 days would allow it to perform the supporting research and testing to thoroughly answer the questions posed to it in the Notice, while reducing the imposition of the workforce in the forthcoming holiday period.

In a letter dated November 9, 2001, the Advocates for Highway and Auto Safety (Advocates) asked for an extra 30 days to comment on the Notice. Advocates stated that the topics covered by this notice were so extensive that it would be impossible to provide a comprehensive response in a timely fashion. It stated further, that because of the overarching importance of driver safety and adequate nighttime illumination afforded by headlighting, it believes that additional time for comment is justified.

Additionally, because of recent events that have caused disruptions in United States Postal Service deliveries of mail to the Department of Transportation's Docket Management System, the following notice was placed on that System's homepage on October 25, 2001. ''NEW MAIL DELIVERY/DOCUMENT FILING PROCEDURES. Currently, the Department of Transportation (DOT) is not receiving United States Postal Service (USPS) deliveries. It is unclear how long this will continue. We wish to advise the public that we will take this into account, with respect to DOT rulemakings documents that have comment periods that may close before mail delivery resumes. We will do everything that we can to ensure that we consider comments that would otherwise have been received before the close of the comment period. (For example, we generally have the authority to consider late-filed comments and will do so to the extent that we can; we will also take note of the date of the postmark for late-filed comments.)

* * * * *

''Although U.S. mail delivery by the USPS is not being accepted, deliveries are accepted from alternate delivery carriers. * * *

''Where appropriate, filers are encouraged to use the Electronic Submission System on the Dockets web page (dms.dot.gov) by clicking on ES Submit and following the online instructions.''

Because we agree with the two petitioners and because of the events temporarily ending mail delivery, we have decided that it is in the public interest to grant these requests. Accordingly, the public comment closing date for DOT Docket NHTSA–01–8885 is reopen from November 27, 2001 to Monday, January 28, 2002.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: November 26, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–29762 Filed 11–29–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1080–AI17

Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Columbia Basin Distinct Population Segment of the Pygmy Rabbit (*Brachylagus idahoensis*) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the Columbia Basin distinct population segment of the pygmy rabbit (*Brachylagus idahoensis*) as endangered pursuant to the Endangered Species Act of 1973, as amended (Act). An emergency rule listing this population segment as endangered for a period of 240 days is published concurrently in this issue of the **Federal Register**.

Historically, the Columbia Basin pygmy rabbit occurred in dense, shrub steppe habitats in five central Washington counties. Currently, this