

CORRECTED VERSION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Defining Primary Lines) CC Docket No. 97-181

NOTICE OF PROPOSED RULEMAKING

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Comment Date: September 25, 1997
Reply Comment Date: October 9, 1997

By the Commission:

I. INTRODUCTION

1. In the *Universal Service Order*¹ and the *Access Charge Reform Order*² we concluded that the \$3.50 cap on the subscriber line charge (SLC) for primary residential and single-line businesses should remain unchanged.³ In the *Access Charge Reform Order*, however, we adjusted the SLC caps for additional residential and business lines.⁴ We also created a presubscribed interexchange carrier charge (PICC) that will, over time, supplant the traffic-sensitive carrier common line charge (CCLC).⁵ Under our new access charge rules, in 1998 SLC and PICC levels for primary residential and single-line business lines will be lower than the levels prescribed for secondary residential and multi-line business lines.⁶ As a result of these changes,

¹ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report & Order*, FCC 97-157 (rel. May 8, 1997) (*Universal Service Order*); see also Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Recommended Decision*, 12 FCC Rcd 87, 132 (1996) (*Universal Service Recommended Decision*).

² Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, CC Docket Nos. 96-262, 94-1, 91-213, and 95-72, *First Report and Order*, FCC 97-158 (rel. May 16, 1997) (*Access Charge Reform Order*).

³ *Universal Service Order* at para. 762; *Access Charge Reform Order* at paras. 75-86.

⁴ See *Access Charge Reform Order* at paras. 75-86.

⁵ *Id.* at para. 44.

⁶ *Access Charge Reform Order* at paras. 55-59.

we must establish criteria to identify primary residential lines⁷ for the purpose of determining SLC and PICC levels.

2. In this Notice of Proposed Rulemaking (NPRM), we seek comment on whether we should retain the definition of "single line-line business line" set forth in the Commission's rules. In addition, we seek comment on how we should define "primary residential line." We tentatively conclude that end user self-certification should be used to identify primary lines. We also tentatively conclude that we should use audits to verify primary residential line counts. We also discuss enforcement of our rules, consider a mandatory uniform consumer disclosure statement, and seek comment on privacy issues raised by the proposals we present.

II. BACKGROUND

3. In our *Access Charge Reform Order*, we changed our access charge rules so that non-traffic sensitive costs would no longer be recovered through traffic-sensitive interstate access charges. We directed incumbent local exchange carriers (ILECs) to recover non-traffic sensitive costs through non-traffic sensitive charges because this method of recovery is more economically efficient.⁸ One non-traffic sensitive cost of providing interstate access is the common line, or "local loop," which connects an end user's home or business to an ILEC's central office.⁹ The jurisdictional separations process divides certain ILEC costs between interstate and intrastate operations. The Commission's separations rules currently assign 25 percent of ILECs' loop costs to the interstate jurisdiction. The state public utility commission then specifies how rate-regulated ILECs may recover the costs assigned to intrastate operations. We provide for an opportunity to recover the revenue assigned to the interstate operations through our access charge rules.¹⁰ ILECs subject to the Commission's price cap rules (price cap ILECs) currently recover the costs of the loop through a combination of SLCs and CCLCs.¹¹

⁷ We note that, for reasons of competitive neutrality, we referred to the primary "connection" in the Universal Service proceeding. In the case of SLCs and PICCs, the term "line" is more accurate, and thus we use this terminology.

⁸ *Access Charge Reform Order* at para. 6.

⁹ See *Universal Service Order* at para. 750 & n.1932.

¹⁰ 47 C.F.R. § 69.154(c).

¹¹ Prior to the effective date of the rule changes instituted in our *Access Charge Reform Order*, incumbent LECs have recovered their interstate-allocated loop costs through SLCs and CCLCs. The SLC is a flat, monthly charge that incumbent LECs assess directly on end users of telecommunications services. CCLCs are per-minute charges assessed by incumbent LECs on interexchange carriers, and are ultimately recovered by interexchange carriers from end-users through long-distance toll charges. As of July 1, 1997, the SLC levels are currently the lesser of the per-line average common line costs allocated to the interstate jurisdiction or \$3.50 per month for residential and single-line businesses, and \$9.00 per month for multi-line businesses. *Access Charge Reform*

4. Under the rules we established in our *Access Charge Reform Order*, the traffic-sensitive CCLC for price cap ILECs will be gradually eliminated, replaced by the flat-rated, non-traffic sensitive PICC. We prescribed the PICC because we adopted the recommendation of the Federal-State Joint Board on Universal Service (Joint Board) to retain the current SLC cap of \$3.50 for primary residential and single-line businesses because such lines "are central to the provision of universal service," and the SLC "has an impact on universal service concerns such as affordability."¹² Because of the level of the cap on SLCs for those lines, most price cap ILECs will not be able to recover, through the SLC, all of the common line revenues permitted under our price cap rules.¹³ Thus, to allow price cap ILECs to recover the remaining non-traffic sensitive common line revenues through a non-traffic sensitive charge, we created the PICC, which is a flat, per-line charge assessed on the end user's presubscribed interexchange carrier (PIC).¹⁴ In order to eliminate the incentive for customers to avoid the PICC by using "dial-around" long distance carriers instead of presubscribing to an interexchange carrier, we concluded that price cap ILECs may charge the PICC directly to an end user that does not select a PIC.¹⁵ Only price cap ILECs will charge SLCs that have a higher cap for lines other than the primary residential and single-line businesses lines and only these ILECs will charge PICCs.¹⁶ ILECs that are not subject to the Commission's price cap rules will continue to charge a SLC that is capped at \$3.50 for residential lines and \$6.00 for business lines and will not charge a PICC.¹⁷ Moreover, the cost recovery of competitive LECs, and therefore the fee structures of competitive LECs, are not regulated by the

Order at para. 68.

¹² *Universal Service Order* at para. 762 (citing *Universal Service Recommended Decision*, 12 FCC Rcd at 472-73); *Access Charge Reform Order* at para. 73 (citing *Universal Service Recommended Decision*, 12 FCC Rcd at 472-73).

¹³ *Access Charge Reform Order* at para. 88.

¹⁴ *Id.* at para. 91. As the new rate structure is phased in, SLCs will be higher and PICCs will become lower for secondary residential lines and multi-line business lines than for primary residential lines and single-line business lines. *See id.* at para. 94.

¹⁵ *Id.* at para. 92.

¹⁶ *See Access Charge Reform Order* at n.37 and para. 81 (with limited exceptions, the scope of access charge reform in that order is limited to price cap ILECs). Price cap ILECs are: Ameritech Operating Companies; Bell Atlantic Telephone Companies; Bell South Telecommunications, Inc.; NYNEX Telephone Companies; Pacific Telesis; Southwestern Bell Telephone Company; U S West Corporation; Aliant Communications; Frontier Corporation; Southern New England Telephone; Sprint Local Telephone Companies; Citizens Telecommunications Companies; Cincinnati Bell Telephone Company.

¹⁷ *See Access Charge Reform Order* at n. 37 and para. 81.

Commission.¹⁸ Accordingly, although this NPRM focuses on price cap ILECs, we also solicit comment on whether the various proposals set forth in this NPRM for defining, identifying, and verifying primary lines for price cap ILECs could also be applied for rate-of-return ILECs if, in a future proceeding, the Commission concludes that all ILECs should assess SLCs and PICCs that are higher for secondary lines.¹⁹

III. DISCUSSION

A. Defining Single-line Business Lines and Primary Residential Lines

5. *Single-line businesses.* Our access rules already require price cap ILECs to distinguish between multiple-line businesses and single-line businesses in order to charge different SLCs for these entities.²⁰ In addition, we note that ILECs currently distinguish between residential and business customers to charge different rates embodied in state tariffs. We invite parties to describe the methods carriers use to distinguish multiple-line businesses from single-line businesses and to distinguish between residential and business customers, and seek comment on whether the Commission should revise its rules or policies to ensure the correct SLCs and PICCs are assessed on these lines. In particular, we note that section 69.104(h) defines a single-line business line. It states: "A line shall be deemed to be a single line business line if the subscriber pays a rate that is not described as a residential rate in the local exchange service tariff and does not obtain more than one such line from a particular telephone company."²¹ In the *Access Charge Reform Order*, we defined the term "telephone company" for the purposes of part 69 of our rules, to mean an "incumbent LEC" as that term is defined in section 251(h)(1) of the Act.²² We seek comment on whether we should alter this definition. We seek comment on whether maintaining

¹⁸ We will address revenue recovery of incumbent LECs not subject to the Commission's price cap rules in a later proceeding in the *Access Charge Reform* docket. See *Access Charge Reform Order* at para. 35, n.90 and paras. 329-335.

¹⁹ In addition, although the Joint Board recommended limiting universal service support to primary residential lines and single-line business lines, the *Universal Service Order* concluded that support levels during 1998 should be based on existing support mechanisms, and therefore that support would be provided for all lines. *Universal Service Recommended Decision*, 12 FCC Rcd 87, 132; *Universal Service Order* at para. 96. Therefore, we do not address this issue at this time. See generally *Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket 96-45, CC Docket No. 97-106, *Further Notice of Proposed Rulemaking*, FCC 97-256 (rel. July 18, 1997) (seeking comment on models that will be used to calculate forward-looking costs for non-rural LECs after Jan. 1, 1999).

²⁰ 47 C.F.R. §§ 69.104(d), (e), 69.203(a) (rules currently in effect); see also 47 C.F.R. 69.152(d), (e) (rules in effect as of January 1, 1998).

²¹ 47 C.F.R. § 69.104(h).

²² 47 C.F.R. § 69.2; *Access Charge Reform Order* at para. 396.

this definition would be favorable because, given that only price cap ILECs will assess different SLCs and PICCs on multi-line businesses, maintaining this definition would allow incumbent LECs to assess the correct SLCs and PICCs without determining whether a customer receives service from other carriers. We note however, that if we maintain this definition, a business that obtains one line from an ILEC and one line from a competitive LEC or a wireless carrier would be treated as a single-line business for the purposes of its SLC and PICC. We seek comment on whether this outcome would be competitively neutral and whether it would be consistent with the Joint Board's recommendations with respect to the level of the primary line SLC.²³ We further seek comment on whether a business with a single line in each of two locations should be considered a single-line business.

6. *Primary residential line.* We seek comment on how we should define "primary residential line." Specifically, we seek comment on whether the primary residential line should be defined as the primary line of an individual subscriber, of a residence, of an individual household, or on another basis.²⁴ We note, for example, that the current Lifeline rules limit Lifeline support to "a single telephone line to the household's primary residence."²⁵ Commenters should identify the relative costs and benefits of adopting a particular definition. For example, defining the primary line as the primary line to a primary residence would not allow two households in a single residence each to subscribe to a line that is subject to the primary-line level SLC and PICC (i.e., one of the two lines would be subject to the higher SLC and PICC). Conversely, defining the primary line in terms of a subscriber's residence may have the advantage of being administratively simple and less invasive of subscribers' privacy because it does not require the gathering of information regarding subscriber living arrangements that would be needed to identify households. We seek comment on these issues.

7. Parties that favor defining the primary residential line in terms of "subscribers," "residences," "households," or any other term, should propose definitions of such terms, including definitions used by other entities. For example, if we defined the primary residential line in terms of households, we could base our definition on the definition of "household" used by either the U.S. Census Bureau²⁶ or the Internal Revenue Service (IRS).²⁷ We seek comment on whether to

²³ See *supra* paragraph 4 (noting that the Joint Board found that primary lines "are central to the provision of universal service," and the SLC "has an impact on universal service concerns such as affordability").

²⁴ We note that the Joint Board found that "a single residential connection will permit a household complete access to telecommunications and information services," including "access to emergency services." *Universal Service Recommended Decision*, 12 FCC Rcd at 132.

²⁵ 47 C.F.R. § 69.104(k)(2)(i). See also 47 C.F.R. § 54.411(a)(1) (limiting Link Up support to "a single telecommunications connection at a consumer's principal place of residence").

²⁶ For the 1990 census, the U.S. Census Bureau defined a "household" as:

use either definition. Because individuals complete income tax returns annually and census forms decennially, we find it likely that consumers have more experience applying the definition of a household used by the IRS than they do applying the definition used by the U.S. Census Bureau. We seek comment on whether consumer familiarity should be a factor in deciding what definition to adopt. We ask parties to identify other definitions that may be easily applied by consumers and carriers alike. Additionally, we ask parties to estimate, to the extent possible, the number of lines that will be classified as primary residential lines under any definition that they support. Parties should also discuss how the definition of the primary residential line we select will affect the Commission's ability to verify the number of such lines, as discussed below.

B. Identification of Primary Residential Lines

8. *Information Required to Identify Primary Residential Lines.* We tentatively conclude that, although an ILEC's business records likely distinguish between single-line and multi-line customers, and between residential and business customers, those records may be inadequate to identify the primary residential line.²⁸ For example, if we define primary residential line in terms of households, if one household has multiple residences served by different carriers, or if a household has multiple lines to the same location served by different carriers, the records of one price cap ILEC will be insufficient to identify the single line to the subscriber's primary residence for which the lower SLC and PICC will be charged. Furthermore, depending on the definition of primary line we adopt, we tentatively conclude that carriers' records may be insufficient to identify when they are allowed to charge primary-line level SLCs and PICCs for

A household consists of all the persons who occupy a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied (or if vacant, is intended for occupancy) as separate living quarters. Separate living quarters are those in which the occupants live and eat separately from any other persons in the building and which have direct access from the outside of the building or through a common hall. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

U.S. Department of Commerce, Bureau of the Census, *Census of Population and Housing, 1990, Technical Documentation* (May 1992) at B-14.

²⁷ A person is considered a "head of household" under IRS regulations, if he, *inter alia*, "maintains as his home a household which constitutes for such taxable year the principal place of abode, as a member of such household, of at least one of" the individuals named in 26 C.F.R. § 1.2-2(b)(3) or (4). These individuals include: a son, stepson, daughter, or stepdaughter, including an adopted child, of the taxpayer, or a descendant of a son or daughter of the taxpayer; any dependent of the taxpayer, as defined under 26 C.F.R. § 151; or, subject to certain limitations, the parent of a taxpayer. *See* 26 C.F.R. §§ 1.2-2(b).

²⁸ *See Universal Service Recommended Decision*, 12 FCC Rcd at 132.

more than one line to a single location.²⁹ For these reasons, we tentatively conclude that identifying a primary residential line requires: (1) identification of the subscriber, residence, or household (depending on the definition adopted); (2) identification of the primary residence of the subscriber or household; and (3) identification of the primary line, and of the incumbent LEC and interexchange carrier serving that line.³⁰ We seek comment on these tentative conclusions.

9. *Using Customer Self-Certification to Collect Information.* In response to the Joint Board's recommendation to provide high cost support only for primary residential lines, several commenters, including Sprint and Teleport, proposed, in the Universal Service proceeding, that the Commission use a method of customer self-certification to identify primary lines.³¹ We tentatively conclude that the Commission should permit price cap ILECs to use customer self-certification to identify primary lines for access charge purposes. We make this tentative conclusion because such an approach presumably would minimize the substantial administrative costs that would be inherent in any effort to require carriers or the Commission to identify primary residential lines without information from the customer. The burden that self-certification will impose on individual customers would be significantly less than the burden that ILECs would otherwise bear to identify each of their customers' primary line independent of the customer.

10. We seek comment on the language that would have to be posed to subscribers to determine which is their primary residential line under such a self-certification proposal. We seek comment on whether we should adopt uniform language, or whether carriers should devise their own method of acquiring this information. For example, a uniform statement might prevent ILECs from intentionally or inadvertently wording the question in a way that encourages incorrect responses from their customers. We seek comment on whether LECs should be required to inform customers of the consequences of providing false information or designating more than one line as a primary line.³² We seek comment on how often this information should be collected. We tentatively conclude that this information should be collected once from all customers currently being served by price cap ILECs, and thereafter only at the time a customer orders service from a price cap ILEC. We seek comment on procedures that could be used to identify when customers switch service to a competing carrier. We also tentatively conclude that price

²⁹ This may occur, for example, if we adopt a definition of primary lines based on households and multiple households occupy a single residence.

³⁰ Cf. Letter from Paul E. Cain, Teleport, to Pamela Gallant, Common Carrier Bureau, dated Feb. 18, 1997 (Teleport Feb. 18 *ex parte*) at 2 (suggesting that each carrier receive support for each customer that has designated it as their primary local exchange carrier).

³¹ Sprint universal service reply comments at 5; Teleport universal service reply comments at 4. *See also* GTE universal service comments at 81; Time Warner universal service reply comments at 18.

³² *See infra* section D.

cap ILECs should be required to maintain documentation of their customers' self-certification that is adequate to permit verification of the number of primary lines an ILEC reportedly serves. We seek comment on whether documentation could be accomplished by permitting customers to provide oral certification that is noted in the price cap ILEC's records or whether customers should be required to self-certify in writing. We also seek comment on how long these ILECs should be required to maintain documentation of customer self-certification. In addition, we seek comment on what action the price cap ILEC should take if a customer fails to provide a self-certification. We seek comment on any other administrative procedures parties recommend to implement a self-certification method of identifying primary residential lines, and are particularly interested in proposals that will reduce the administrative burden on carriers and customers.

11. *Resellers.* In our *Access Charge Reform Order*, we concluded that, to address the concerns of some commenters that charging a higher SLC for second and additional residential lines might encourage subscribers to order additional lines from non-ILECs, price cap ILECs would be permitted to charge the higher SLC to competitive LECs providing secondary lines to a customer by reselling the price cap ILECs' wholesale service.³³ We seek comment on how to identify secondary lines for this purpose. We seek comment on whether the Commission should require resellers to identify the primary and secondary lines of their customers and relay that information to price cap ILECs, or, whether price cap ILECs should identify the primary and secondary lines for resellers' customers directly. We seek comment on whether, if, for example, a reseller collected customer certifications, the reseller should pass along the original copies of its customers' certifications to the price cap ILEC from which it is purchasing wholesale service. We invite alternative proposals, and encourage parties to suggest proposals that will accurately identify the secondary lines served by resellers and will be administratively simple to implement.

12. *National Database Proposals.* We request comment on other methods for identifying primary residential lines for purposes of our access charge rules. For example, in discussing the Joint Board's proposal to identify primary lines for purposes of universal service support,³⁴ Teleport suggested that the Customer Account Record Exchange (CARE) database, which is maintained by each LEC and includes the service address for every customer in the LEC's service territory, serve as the basis for a database that lists customer addresses and whether the customer at each address subscribes to one line or more than one line.³⁵ Under the Teleport proposal, customers that are served by more than one carrier would designate one of those

³³ *Access Charge Reform Order* at para. 85.

³⁴ As discussed above, in this NPRM we do not address the Joint Board's recommendation to restrict universal service support to certain connections.

³⁵ Teleport Feb. 18 *ex parte* at 2.

carriers as their primary local exchange carrier.³⁶

13. Similarly, MFS submitted a proposal for tracking lines in order to determine universal service support levels.³⁷ MFS suggested the compilation of a national database of the nine-digit zip codes corresponding to the location of subscribers in high cost areas.³⁸ In instances in which the nine-digit zip code is insufficient to identify a specific household, MFS recommended that the database should also include the customer's last name and street address.³⁹ Like Teleport, MFS proposed that customers who are served by more than one carrier designate one carrier as their primary local exchange carrier and that this information be included in the database.⁴⁰ MFS contends that a system using zip codes would be automated and auditable.⁴¹

14. We note that both of these proposals assume that "primary residential line" will be defined as the primary line to a consumer's residence. As discussed above, we seek comment on the appropriate definition of "primary residential line." In addition, both proposals require customers who subscribe to more than one line to designate their primary line. Thus, a database would have to be used in conjunction with customer self-certification and could not be used independently to identify primary residential lines regardless of how that term is defined. Although databases maintained by price cap ILECs could be useful to those ILECs for retaining customer records, we tentatively conclude that we will not use a national database, maintained by the Commission or another entity on a nation-wide basis, to track primary residential lines or single-line businesses for two reasons. First, such a database is not necessary to implement our

³⁶ *Id.* Teleport also suggested that, for universal service purposes, the universal service administrator verify each carrier's request for funding by comparing the subscriber address provided by the carrier in its request for support against the records of the database. *Teleport Feb. 18 ex parte* at 2. See also Changes to the Board of Directors of the National Exchange Carrier Association, Inc., CC Docket Nos. 97-21 and 96-45, *Report and Order and Second Order on Reconsideration*, FCC 97-253 (rel. July 18, 1997) (requiring the creation of an independent subsidiary to administer portions of the universal service mechanisms).

³⁷ Letter from Mark Sievers, Swidler & Berlin, Chtd., on behalf of MFS, to William F. Caton, FCC dated Feb. 27, 1997 (MFS Feb. 27 *ex parte*).

³⁸ *Id.* at 3 (indicating that nine-digit zip codes would generally identify a single subscriber except in the highest-density areas, and that such a method would be workable because carriers use nine-digit zip codes for billing purposes). Similar to the Teleport proposal, MFS recommended that the universal service administrator develop the database and either provide carriers with an electronic list generated by the database, or perform the matching after carriers submit their electronic listings. *Id.* at 2.

³⁹ *Id.* MFS suggests using billing addresses, rather than service addresses, because MFS contends that billing addresses are more likely to identify consumers with two homes. *Id.*

⁴⁰ *Id.* at 4.

⁴¹ *Id.*

access charge rules. Second, the administrative resources necessary to create such a database might outweigh any additional accuracy gained from this approach.

15. *Other proposals.* We tentatively conclude that we will not pursue several other approaches presented by commenters in the Universal Service proceeding. We tentatively conclude that we will not adopt Teleport's proposal to use county and municipal records and databases to identify addresses of individuals.⁴² We tentatively conclude that, because this information is dispersed throughout the country in a variety of formats, it would be administratively burdensome to use this information. Because these records are maintained primarily for deed ownership and property tax purposes, we also tentatively conclude that such records are unlikely to reveal unequivocally a customer's primary residence or whether a customer subscribes to more than one telephone line. We also tentatively conclude, for the reasons articulated by MFS⁴³ and to protect the privacy of consumers, that social security numbers should not be used to track primary residential lines.

16. *Privacy Issues.* We encourage parties to comment on any potential issues related to subscriber privacy that may be raised by the customer self-certification proposal discussed above. Specifically, we seek comment on whether requiring consumers to provide information to their price cap ILECs regarding the identification of their households and primary residences would be consistent with those consumers' reasonable expectations of privacy and whether the Privacy Act would apply to the collection of self-certifications by ILECs.⁴⁴ We tentatively conclude that we should require ILECs that collect this information to use this information only for the purposes of determining the correct SLC and PICC for individual consumers' lines, and not disclose it or permit access to it for any other purposes. We request comment on whether primary line information would constitute customer proprietary network information as defined in section 222(f)(1) of the Act.⁴⁵ We seek comment on whether sections 222(c)(1), (d)(1), (d)(2),

⁴² See Teleport Feb. 18 *ex parte* at 2.

⁴³ MFS Feb. 27 *ex parte* at 3 (stating that carriers do not track social security numbers and that social security numbers are not easily matched with high cost areas).

⁴⁴ 5 U.S.C. § 552a (requiring, *inter alia*, a Privacy Act disclosure statement when information is collected; publication in the Federal Register of the nature and scope of the database; any use of a "record" contained in a "system of records" be limited to the purpose which it was collected; that individuals be allowed access to records pertaining to themselves and be allowed an opportunity to correct any errors; and record-keeping of any disclosure of a record that is not a routine use).

⁴⁵ 47 U.S.C. § 222(f)(1). CPNI is defined as:

(A) information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and

(B) information contained in the bills pertaining to telephone exchange service or telephone toll

other parts of section 222, or other sections of the Act present exceptions that would allow carriers to disclose primary line information to the Commission, or another entity selected by the Commission, without customer approval.⁴⁶

C. Verifying Primary Residential Line Information

17. We tentatively conclude the Commission should implement a method to verify the number of primary lines served by a carrier, identified through customer self-certification. We note that, under our access charge rules, if a price cap ILEC chooses not to charge customers with second residential lines the higher SLC allowed by our rules, we do not permit them to recover these foregone revenues through the PICCs or CCLCs.⁴⁷ Verification might be warranted if a PIC files a complaint with the Commission articulating its suspicion that a price cap ILEC is over-reporting the number of primary lines in its service area. For example, a price cap ILEC might attempt to market secondary lines to end users as primary lines, on which the lower SLC would be assessed, and make up the difference in other rates. This potential incentive may be intensified because, as the new access charge rate structure is phased in, PICCs for primary lines will be higher than PICCs for secondary residential lines and multi-line business lines. In addition, verification might be warranted if the Commission, during the course of analyzing statistical data, identifies erratic numbers that would indicate that a price cap ILEC might have misreported the number of primary lines it serves. In light of the potential incentives for carriers to misreport the number of lines to which the end users subscribe, we tentatively conclude that we should adopt a method of verifying the number of primary lines served by price cap ILECs.

18. *Audits.* One method of verifying the number of primary-line SLCs and PICCs assessed by price cap ILECs would be to audit the ILECs' records. As discussed above, we tentatively conclude that price cap ILECs should retain records of customer self-certification sufficient to permit verification of the number of primary lines that they serve. Although the Commission has broad authority to audit telecommunications carriers' records,⁴⁸ we seek comment on whether audits would be an effective way to examine discrepancies in the number of primary lines a carrier serves and the number of primary-line SLCs and PICCs the carrier charges. Such audits would utilize appropriate auditing techniques and procedures to verify the number of primary-line SLCs and PICCs assessed by price cap ILECs. We tentatively conclude that audits

service received by a customer of a carrier;
except that such term does not include subscriber list information.

⁴⁶ 47 U.S.C. § 222(c)(1), (d)(1), and (d)(2).

⁴⁷ *Access Charge Reform Order* at para. 86; see also 47 C.F.R. § 69.104 (preventing ILECs from transferring SLC costs to the CCL charge).

⁴⁸ See 47 U.S.C. § 220(c).

of the ILEC's records could be performed to determine whether the ILEC misreported primary lines. We seek comment on our tentative conclusion to use audits to verify primary lines and on the type of audit that would be most effective and efficient. We also seek comment on what controls or procedures should be implemented that would protect against the possibility of a price cap ILEC misreporting primary lines.

19. *Models.* In the context of formulating a forward-looking economic cost mechanism to estimate the cost of providing service in high cost areas, the proponents of the Hatfield model have developed a method for estimating the number of primary lines in a census block.⁴⁹ Starting from a 1995 estimate of households by the Census Bureau, Hatfield 3.1 estimates the residential line counts for each census block group (CBG).⁵⁰ It removes from the total number of households those without telephones (according to 1990 Census information) and adds second lines for some households using an estimated correlation between second lines and CBG data about the income and age of consumers.⁵¹ We seek comment on whether this method, or another modeling approach, could assist the Commission in verifying the number of primary lines served by price cap ILECs. Specifically, we seek comment on whether the Commission could use the estimates generated by the Hatfield model in conjunction with an audit. For example, the Commission could compare the estimates of primary lines in certain CBGs within a price cap ILEC's service area and audit those CBGs in which the Hatfield estimates are not within a certain range of the ILEC's reported number of primary lines. We also seek comment on whether the Hatfield approach would have to be modified to account for second homes. In addition, we note that the Commission recently collected data on, *inter alia*, the number of loops served by carriers and the number of residential customers that subscribe to more than one line.⁵² We seek comment on whether these data would assist in verifying primary line counts.

D. Enforcement

20. We seek comment on available methods for the Commission to enforce its access charge rules, which impose different maximum SLCs and PICCs depending on whether a line is a primary or secondary line. We seek comment on whether the Commission's authority under

⁴⁹ See Letter from Richard N. Clarke, AT&T, to William F. Caton, FCC, dated Feb. 28, 1997 (Hatfield Feb. 28 submission) at 21-27. The Hatfield model was submitted by AT&T and MCI.

⁵⁰ Hatfield Feb. 28 submission at 21-27.

⁵¹ *Id.*

⁵² Federal-State Joint Board on Universal Service, CC Docket 96-45, *Order*, DA 97-1433 (rel. Jul. 9, 1997) at 3 (asking carriers for the number of loops per wire center in each of their study areas), 5 (requesting the number of residential customers who subscribe to multiple lines).

sections 4(i),⁵³ 206-209,⁵⁴ 312,⁵⁵ 403,⁵⁶ and 503⁵⁷ of the Communications Act of 1934, and the provisions of Title 18 of the United States Code⁵⁸ is sufficient to deter fraud or misrepresentation by carriers or consumers that may arise under the customer self-certification approach. We tentatively conclude that we should require carriers to notify their customers of the requirement to identify a single primary local exchange carrier and a single primary residence. We request comment on this tentative conclusion. We also seek comment on whether we should adopt measures to deter consumers from identifying more than one primary line.

21. We also seek comment on what types of sanctions would be appropriate and consistent with the Commission's statutory authority to punish violations of our rules regarding the identification of primary lines and request comment on whether section 222(c)(1) or any other portion of section 222 provides adequate authority to prevent misuse of the information that carriers collect.⁵⁹ We tentatively conclude that, if the Commission, as a result of an audit or other method of verifying primary line counts, discovered that a price cap ILEC had misreported the number of primary lines it serves, the Commission could take the following actions: (1) order the price cap ILEC to correct its billing practices and assess SLCs and PICCs at the correct level; (2) impose forfeitures pursuant to 47 U.S.C. §§ 220(d) or 503(b) for violations of the Commission's rules; and (3) require the price cap ILEC to have an independent auditor conduct audits of its records at regular intervals determined by the Commission. We seek comment on these tentative conclusions.

E. Consumer Disclosure

22. The new distinction between primary and secondary residential lines may cause customer confusion. We seek comment, therefore, on whether the Commission should require carriers to provide consumers with a uniform disclosure statement describing this distinction. We

⁵³ 47 U.S.C. § 154(4)(i) (Commission's general authority).

⁵⁴ 47 U.S.C. §§ 206-209 (establishing complaints and damages provisions against common carriers).

⁵⁵ 47 U.S.C. § 312 (Commission authority to order a person to cease and desist from violating the Act or Commission rule).

⁵⁶ 47 U.S.C. § 403 (Commission authority to institute inquiries on its own motion).

⁵⁷ 47 U.S.C. § 503 (imposing forfeiture penalties for violations of the Act).

⁵⁸ 18 U.S.C. § 1001(a) (imposing penalty of fine or imprisonment penalties for one who, *inter alia*, "knowingly and willfully" misrepresents a material fact or who makes a materially false, fictitious statement or representation regarding any matter within the jurisdiction of the executive branch of the United States government).

⁵⁹ 47 U.S.C. § 222.

tentatively conclude that such a disclosure requirement would be consistent with applicable First Amendment standards and invite comment on that conclusion. We seek comment on whether, for example, all local exchange carriers that charge a SLC should be required to make the following statement:

The subscriber line charge is a fee collected by your local telephone company to defray part of the costs of providing telephone service. The subscriber line charge covers the costs that can be attributed to providing customers with the ability to place telephone calls across state lines. In order to ensure that all customers have affordable access to local telephone service, the Federal Communications Commission allows your local telephone company to charge no more than \$3.50 for the subscriber line charge for each primary residential line. For additional lines, the Federal Communications Commission allows local telephone companies to charge no more than \$5.00 per line for the subscriber line charge in 1998.

We seek comment on whether this statement will be easily understood by all consumers. We invite alternate suggestions for a uniform consumer disclosure statement. We seek comment on whether this statement should be given orally at the time when a subscriber orders telephone service. We seek comment on whether this statement should be provided in writing to all consumers when the change takes effect. We seek comment on how, if we adopt a consumer disclosure statement including a reference to the SLC cap on secondary lines, such disclosure statement should indicate the annual increases in the SLC cap. We seek comment on whether such a statement would be compatible with marketing and consumer information campaigns that carriers may have instituted or that they may be formulating in preparation for the Commission's new access charge rules.

IV. PROCEDURAL MATTERS AND ORDERING CLAUSE

A. *Ex Parte* Presentations

23. This is a permit-but-disclose notice-and-comment 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.⁶⁰

B. Initial Regulatory Flexibility Analysis

24. Pursuant to the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact of these proposed policies and rules on small entities. Written public comments are requested on the

⁶⁰ See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1206.

IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this NPRM, and should have a separate and distinct heading designating them as responses to the IRFA. The Commission will send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA) in accordance with the RFA.⁶¹

25. *Need for and Objectives of the Proposed Rules.* Three principal goals of the Telecommunications Act of 1996 are: (1) opening local exchange and exchange access markets to competition; (2) promoting increased competition in telecommunications markets that are already open to competition, particularly long distance services markets; and (3) reforming our system of universal service so that universal service is preserved and advanced as local exchange and exchange access markets move from monopoly to competition. The Commission's access charge and universal service rules were adopted at a time when interstate access and local exchange services were offered on a monopoly basis, and in many cases are inconsistent with the competitive market envisioned by the 1996 Act. This NPRM is necessary to implement the rules the Commission adopted in its *Universal Service Order* and *Access Charge Reform Order* because, without a definition and a means of identifying and verifying primary residential lines, price cap ILECs will not be able to assess the appropriate charges for these lines. With this NPRM, we seek to identify primary residential lines in order to make the Commission's access charge and universal service rules consistent with Sections 251 and 254 of the Telecommunications Act of 1996.

26. *Legal Basis.* The proposed action is supported by Sections 4(i), 4(j), 201-205, 251, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201-205, 251, 254, and 403.

27. *Description and Estimate of the Number of Small Entities That May Be Affected by this NPRM.* The RFA directs the Commission to provide a description of, and where feasible, and estimate of the number of small entities that might be affected by proposed rules. The RFA defines the term "small entity" as having the same meaning as the term "small business," "small organization," and "small business concern" under section 3 of the Small Business Act (SBA).⁶² To be a small business concern, an entity must: (1) be independently owned and operated; (2) be not dominant in its field of operation; and (3) meet any additional criteria established by the

⁶¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 et seq., has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

⁶² See 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). The Commission may also develop additional definitions that are appropriate to its activities.

SBA.⁶³

28. We believe that small ILECs are not small businesses for IRFA purposes because each is either dominant in its field of operation or is not independently owned and operated. We have found ILECs to be "dominant in their field of operation" since the early 1980s, and we consistently have certified under the Regulatory Flexibility Act⁶⁴ that ILECs are not subject to regulatory flexibility analysis requirements because they are not "small business concerns."⁶⁵ Out of an abundance of caution, for regulatory flexibility analysis purposes we will consider small ILECs within this present analysis and use the term "small ILECs" to refer to any incumbent LEC that arguably might be defined by SBA as a small business concern.

29. The proposals under consideration in this NPRM, if adopted, would affect the fourteen (14) ILECs subject to price cap regulation by the Commission. Neither the Commission nor the SBA has developed a definition of small providers of local exchange service. The closest applicable definition under SBA rules is for telephone telecommunications companies other than radiotelephone (wireless) companies.⁶⁶ The SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be an entity with no more than 1,500 employees.⁶⁷ Of the fourteen ILECs subject to price cap regulation, we estimate that, at a maximum, six (6) of them have no more than 1,500 employees. Of these six, we estimate that at least one is not independently owned and operated. We seek comment on these estimates.

30. In addition, the proposals in this NPRM may also affect providers of local exchange service that purchase wholesale services from the 14 incumbent price cap LECs and resell that service to customers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company except radiotelephone (wireless) companies.⁶⁸ However, the most reliable source of information regarding the number of resellers nationwide is the data that the Commission collects annually in connection with the *TRS Worksheet*. According

⁶³ See 15 U.S.C. § 632.

⁶⁴ See 5 U.S.C. § 605(b).

⁶⁵ See, e.g., Expanded Interconnection with Local Telephone Companies, *Supplemental Notice of Proposed Rulemaking*, 6 FCC Rcd 5809 (1991); MTS and WATS Market Structure, *Report and Order*, 2 FCC Rcd 2953, 2959 (1987), citing MTS and WATS Market Structure, *Third Report and Order*, 93 FCC 2d 241, 338-39 (1983).

⁶⁶ Standard Industrial Classification (SIC) Code 4813.

⁶⁷ 15 U.S.C. § 632 (citing 13 C.F.R. § 121.201).

⁶⁸ 13 CFR § 121.201, SIC 4813.

to our most recent data, 260 companies reported that they were engaged in the resale of telephone service. We estimate that between 50 and 150 of these companies offer local exchange service on a resale basis, but we do not have data regarding how many of these carriers purchase service from price cap ILECs. We also do not have information on the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus we are unable at this time to estimate with greater precision the number of resellers that would qualify as small entities or small incumbent LEC concerns under the SBA's definition. Consequently, we estimate that there are fewer than 150 small entity resellers.

31. *Reporting, record keeping, and other compliance requirements.* The proposals to establish a customer certification system may require price cap ILECs to ask customers to identify their primary lines,⁶⁹ maintain records verifying a customer's primary line designation,⁷⁰ submit their records to Commission audits to verify accuracy of primary line counts,⁷¹ and publish a consumer disclosure statement in their monthly bills.⁷²

32. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Alternatives Considered.* Throughout this NPRM, we seek comment on alternatives that will reduce the impact on all entities affected by these proposals, including small ILECs. We tentatively adopt a definition of single-line business lines that, we believe, will result in a smaller administrative burden for ILECs as they identify primary and secondary lines in order to charge the correct SLC or PICC. In addition, we ask commenters to identify the relative costs and benefits, including administrative costs, of adopting a particular definition of primary residential line. We ask parties to identify a definition of primary residential line that will be easy for carriers and customers to apply. We tentatively adopt customer self-certification as a means to identify primary lines because this method of identification is less administratively burdensome for ILECs than a method that does not include customer input. We seek comment on whether, and if so, the amount of time, ILECs must keep records of customer self-certification. We particularly encourage parties to submit proposals that will reduce the administrative burden on carriers and customers. We seek comment on whether we should include a standardized customer disclosure statement, and if so, whether that disclosure should be made in writing or may be made orally.

33. At this time, we tentatively conclude to eliminate several options because they

⁶⁹ See *supra* paras. 7-10.

⁷⁰ See *supra* paras. 10-11.

⁷¹ See *supra* paras. 17-19.

⁷² See *supra* para. 22. In addition, parties may wish to consult the supporting statement, prepared in accordance with the Paperwork Reduction Act, that is available from the Commission or from the Office of Management and Budget.

would be too administratively burdensome. The proposals we tentatively reject include: creating and maintaining a national database of primary line designations; using local property records to identify and track primary lines; and using social security numbers to track primary lines.

34. *Federal rules which overlap, duplicate or conflict with this rule.* None.

C. Initial Paperwork Reduction Act Analysis

35. This NPRM contains a proposed information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13.⁷³ Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other form of information technology.

D. Deadlines and Instructions for Filing Comments

36. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before September 25, 1997, and reply comments on or before October 9, 1997.

37. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. Comments and reply comments also must clearly identify the specific portion of this NPRM to which a particular comment or set of comments is responsive. If a portion of a party's comments does not fall under a particular topic listed in the outline of this NPRM, such comments must be included in a clearly labelled section at the beginning or end of the filing. Irrespective of the length of their comments or reply comments, parties shall include a table of contents in their documents.⁷⁴

38. Parties should send their comments or reply comments to Office of the Secretary,

⁷³ A supporting statement, prepared in accordance with the Paperwork Reduction Act, that details the Commission's estimates with respect to the burdens imposed by the proposals in this NPRM is available from the Commission or from the Office of Management and Budget.

⁷⁴ Cf. 47 C.F.R. § 1.49(b).

Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Parties filing on paper should also send three (3) copies of their comments to Sheryl Todd, Federal Communications Commission, Accounting and Audits Division, Universal Service Branch, 2100 M Street, N.W., Room 8611, Washington, DC 20554. Parties filing in paper form should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW, Washington, D.C. 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

39. Commenters may also file informal comments or an exact copy of formal comments electronically via the Internet at:
<<http://gullfoss.fcc.gov/cgi-bin/websql/cgi-bin/comment/comment.hts>>. Only one copy of electronically filed comments must be submitted. A commenter must note whether an electronic submission is an exact copy of formal comments on the subject line. A commenter also must include its full name and Postal Service mailing address its submission.

40. Parties not submitting an exact copy of their comments via the Internet are also asked to submit their comments and reply comments on diskette. Such diskette submissions are in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Sheryl Todd of the Common Carrier Bureau, 2100 M Street, N.W., Room 8611, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using WordPerfect 5.1 for Windows or compatible software. The diskette should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. Each diskette should contain only one party's comments in a single electronic file. The diskette should be accompanied by a cover letter.

41. Written comments by the public on the proposed information collections are due September 25, 1997. Written comments must be submitted by OMB on the proposed information collection on or before 60 days after the date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain_t@al.eop.gov.

E. Ordering Clause

42. IT IS ORDERED, pursuant to Sections 1, 4(i) and (j), 201-209, 218-222, 251, 254, and 403 of the Communications Act as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-209, 218-222, 251, 254, and 403 that this Notice of Proposed Rulemaking IS HEREBY ADOPTED

and comments ARE REQUESTED as described above.

43. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary