205, 215, 218, 220, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 160, 161, 201–205, 215, 218, 220, and 303(r), a further Notice of Proposed Rulemaking is adopted.

58. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–28477 Filed 10–22–98; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32 and 43

[CC Docket No. 98–137; FCC 98–170]

Prescription of Interstate Depreciation Rates

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, request for comments.

SUMMARY: In this document, the Commission proposes to reduce or streamline further its depreciation prescription process by permitting summary filings and eliminating the prescription of depreciation rates for incumbent LECs, provided that the carrier uses depreciation factors that are within the ranges adopted by the Commission, expanding the prescribed range for the digital switching plant account, and eliminating salvage from the depreciation process. It also seeks comment on whether the Commission should permit carriers to set their own depreciation rates if they are willing to waive the automatic low-end adjustment. These proposed modifications are designed to minimize the reporting burden on carriers and to provide incumbent LECs with a greater flexibility to adjust their depreciation rates while allowing the Commission to maintain adequate oversight. This NPRM seeks comment on whether the current procedures for protecting confidential information, are adequate or whether additional safeguards need to be adopted to protect information that carriers regard as confidential. The Commission invites commenters to submit information on the costs and benefits of the rules at issue in this proceeding and of its proposed modifications.

DATES: Comments are due on or before November 23, 1998 and reply comments are due on or before December 8, 1998. Written comments by the public on the modified information collections are due on or before November 23, 1998. Written comments must be submitted by the Office of Management and Budget (OMB) on the modified information collections on or before December 22, 1998.

ADDRESSES: One original and six copies of all comments and reply comments should be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. All filings should refer to 1998 Biennial Regulatory Review—Review of Depreciation Requirements for Incumbent Local Exchange Carriers, CC Docket No. 98–137, and FCC 98–170. Parties also may file comments electronically via the Internet at: <http://www.fcc.gov/e-file/ecfs.html>. Only one copy of an electronic submission must be submitted. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the docket number for this proceeding, which is CC Docket No. 98–137. Parties not submitting their comments via the Internet are also asked to submit their comments on diskette. Parties submitting diskettes should submit them to Ernestine Creech, Accounting Safeguards Division, 2000 L Street, N.W., Room 257, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding (including the docket number in this case, CC Docket No. 98–137), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, parties must send copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037. 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, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Thomas G. David, Attorney, Common Carrier Bureau, Accounting Safeguards Division, (202) 418–7116, or via the Internet at tdavid@fcc.gov, or Wade Herriman, Common Carrier Bureau, Accounting Safeguards Division, (202) 418–0862. For additional information concerning the information collections contained in this NPRM contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document released on October 14, 1998. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. An electronic copy of the document also may be found on the Commission's Web Page at <www.fcc.gov/ccb/XXXXXXX.pdf>.

Paperwork Reduction Act

This NPRM contains a modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due December 22, 1998. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0168.

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

Type of Review: Proposed Revision of Existing Collection.

Respondents: Business or other for profit.

Number of Respondents: 11.

Estimated Time per Response: 6000.

Total Annual Burden: 66,000 Burden Hours.

Estimated Cost Per Respondent: $0.

Needs and Uses: In this NPRM the Commission proposes to reduce or streamline further its depreciation prescription process by permitting summary filings and eliminating the prescription of depreciation rates for incumbent LECs, provided that the carrier uses depreciation factors that are within the ranges adopted by the Commission, expanding the prescribed range for the digital switching plant account, and eliminating salvage from the depreciation process. It also seeks comment on whether carriers should be allowed to set their own depreciation rates.

Background

1. Section 11 of the Communications Act requires the Commission, in every even-numbered year beginning in 1998, to review its regulations applicable to providers of telecommunications service to determine whether the regulations are no longer necessary in the public interest as a result of meaningful economic competition between providers of such service and whether such regulations should be repealed or modified.

2. Although price caps regulation largely eliminated the direct link between costs and prices, a carrier's depreciation remains significant, even under current price cap rules, in the following situations: (1) a calculation of a low-end adjustment; (2) a recalculation of the productivity factor; (3) an exogenous cost determination; (4) a calculation of the Base Factor Portion that is used to determine how much a carrier can recover through End User Common Line charges; or (5) the cost support a carrier would have to provide if it proposed an Actual Price Index (''API'') higher than its Price Cap Index (''PCI''). In addition to these price cap effects, changes in depreciation expense may also affect prices or federal support payments through new mechanisms created to implement the Telecommunications Act of 1996. For example, the Commission required incumbent LECs to use depreciation factors within the FCC authorized ranges when calculating forward-looking economic costs for universal service high cost loop support purposes. Also, state commissions have required incumbent LECs to use interstate depreciation rates or life and salvage factors developed during the Commission's depreciation prescription process when calculating rates for interconnection or unbundled network elements. Finally, depreciation may play a role in a takings claim under the Fifth Amendment.

Issue for Comment

3. In this NPRM, the Commission seeks comment on conditions under which carriers could set their own depreciation rates without compromising the Commission's oversight, even in the absence of full competition. In addition, the document proposal several options for streamlining these depreciation rules by eliminating all unnecessary regulatory requirements. The Commission invites commenters to submit information on the costs and benefits of the rules at issue in this proceeding and of the proposed modifications to those rules.

4. The Commission seeks comment on BellSouth's proposal that carriers be allowed to set their own depreciation rates on the condition that they not seek an automatic low-end adjustment. The Commission also seeks comment on what additional conditions could be imposed to eliminate the need for depreciation prescription in the other contexts upon which the Commission relies on it. If the Commission can identify conditions that would eliminate the need for it to prescribe depreciation in the remaining situations identified in this document, the Commission proposes to allow carriers to set their own depreciation rates.

5. In the event that the Commission continues to set some depreciation rates for some carriers, it tentatively concludes that the depreciation prescription requirements for incumbent LECs subject to the depreciation prescription process should be further streamlined by doing the following: (1) reducing the supporting documentation required for carriers selecting depreciation factors from within the prescribed ranges; (2) eliminating depreciation prescription for carriers that select depreciation factors within the ranges; (3) expanding the range of lives for digital electronic switching equipment; and (4) eliminating net salvage from the depreciation prescription process.

Filing and Prescription Procedures

6. In this NPRM, the Commission proposes to reduce filings to four summary exhibits and the electronic data files used to generate them, provided carriers select depreciation factors from within the ranges and certify that their selections are consistent with their operations. The four summary exhibits are a comparison of existing and proposed depreciation rates; a comparison of existing and proposed annual depreciation expenses; a book and theoretical reserve summary; and the depreciation factors. The Commission further proposes that, if a carrier selects depreciation factors from within the ranges for all of its accounts, the Commission would permit the rates to go into effect without a prescription order. The Commission believes that its proposal to eliminate its prescription of depreciation rates under these conditions will save time and resources for both the Commission and incumbent LECs. It seeks comment on this proposal and on SBC's proposal that the Commission remove itself completely from the prescription of depreciation rates for price cap carriers.

Equipment Life Ranges

7. The Commission expects that the retirement rates for the digital switching will continue to increase and therefore we propose to expand the range for digital switching equipment from a range of 16 to 18 years to a wider range of 13 to 18 years. The Commission's proposal will permit a carrier that can support life estimates between 13 and 16 years to select a new life estimate without an out-of-range filing. It requests comment on this proposal. The Commission has concluded that, except for the digital switching equipment account, it has no evidence indicating that the current ranges are either too long or too short. The Commission asks whether the ranges for any of the accounts other than digital switching require revision. Commenters proposing range changes should propose specific new ranges and should provide justifications for their proposals. The Commission also requests comment about whether the Commission's existing confidentiality procedures, contained in 47 CFR 0.457 and 0.459 of the Commission's rules, are adequate or whether additional safeguards need to be adopted to protect information that carriers regard as confidential.

Proposed Treatment for Salvage and Cost of Removal

8. In order to calculate net salvage, carriers must estimate both gross salvage and cost of removal. Given the speculative nature of these estimates and the burdens associated with their calculation, the Commission tentatively concludes that the prescription of net salvage no longer serves a regulatory purpose and that eliminating that factor from the depreciation prescription formula would significantly reduce the regulatory burden of the depreciation

prescription process. Accordingly, the Commission proposes to eliminate the future net salvage factor from the depreciation formula and to record salvage and cost of removal as a current expense in the period incurred. Alternatively, the Commission could make the elimination of salvage from the depreciation formula optional, allowing each incumbent LEC the option to treat net salvage as either a current expense or a component of depreciation. The Commission seeks comment on these proposals.

9. In commenting on the proposed removal of net salvage from the depreciation process, commenters should address the effect this change could have on the current depreciation rates, whether new rates should be prescribed, whether the elimination of salvage would require adjustment of depreciation reserves, and what accounting changes would be necessary to effectuate the change.

10. The Commission tentatively concludes that, if it removes net salvage from the depreciation process, it should create a new account, Account 6566, Net cost of removal, to record both salvage receipts and removal costs incurred. The Commission also tentatively concludes that it should revise §§ 32.3100, Accumulated depreciation, and 32.2000, Instructions for telecommunications plant accounts, to eliminate the provisions that salvage and cost of removal be recorded in the depreciation reserve account. The Commission requests comment on the tentative conclusions. The Commission also requests comment on whether it should require carriers to keep subsidiary record categories in Account 6566 for salvage and cost of removal.

Reporting Requirements for Mid-Sized LECs

11. In separate proceedings on ARMIS and Accounting Biennial Review, the Commission proposes to create a category of mid-sized incumbent LECs that would be subject to a lighter regulatory burden than would be imposed on large incumbent LECs. Similarly, the Commission proposes in this proceeding, in addition to the streamlined processes proposed for all carriers, that mid-sized incumbent LECs not be required to file annual theoretical reserve studies. Because the Commission would continue to receive theoretical reserve studies from the largest incumbent LECs, which represent over 90 percent of the industry, this proposal would relieve these mid-sized companies of this regulatory burden without seriously encumbering the Commission's ability to monitor its depreciation prescription process. *See* 47 CFR 43.43. To avoid unnecessary complexity, the Commission tentatively concludes that it should apply the definition of mid-sized LEC that is adopted in the ARMIS proceeding[1] to the Commission's depreciation prescription requirements. The Commission requests comments on this proposal.

Low-End Adjustment

12. The Commission seeks comment on whether it should permit carriers to set their own depreciation rates, as proposed by several incumbent LECs, or alternatively, whether such carriers should be permitted to do so only on the condition that they become ineligible for a low-end adjustment.

Conclusion

13. The Commission tentatively concludes that the elimination of depreciation regulation at this time would have an adverse impact in several critical areas, including the calculation of universal service high cost loop support, takings claims, and the low-end adjustment. The Commission tentatively concludes that, if adopted, our proposal would eliminate all unnecessary depreciation prescription requirements and retain only those essential to the sound administration of the universal service high cost loop support and the achievement of the Commission's other regulatory goals. The Commission seeks comment on this tentative conclusion and solicits comment on SBC's alternative proposal that depreciation rates for price cap carriers should be based on ''economic analysis consistent with the procedures called for by Generally Accepted Accounting Principles (''GAAP'').'' The Commission also seeks comment on how it should determine when sufficient competition exists to allow it to eliminate the depreciation prescription process.

Procedural Issues

Ex Parte Presentations

14. This is a permit but disclose rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206.

Regulatory Flexibility Analysis

15. The Regulatory Flexibility Act (''RFA'') requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' See 5 U.S.C. § 601 *et seq.*, amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (''CWAAA''). The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[2] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). See 15 U.S.C. 632.

16. This NPRM proposes to eliminate the prescription of depreciation rates for incumbent LECs in most cases, expand the prescribed range for the digital switching plant account, and eliminate salvage from the depreciation process. This NPRM also asks whether we should permit carriers to set their own depreciation rates if they are willing to waive their right to a low-end adjustment. The NPRM proposes to further reduce the reporting requirements for certain mid-sized incumbent LECs by eliminating their obligation to file an annual theoretical reserve study. Neither the Commission nor SBA has developed a definition of ''small entity'' specifically applicable to LECs. The closest definition under SBA rules is that for establishments providing ''Telephone Communications, Except Radiotelephone,'' which is Standard Industrial Classification (''SIC'') code 4813. Under this definition, a small entity is one that, including affiliates of the entity, employs no more than 1,500 persons. See 13 CFR 121.201, SIC code 4813.

17. The Commission certifies that the proposals in this NPRM, if adopted, will not have a significant economic impact

[1] ARMIS NPRM at 7. In that proceeding, we propose to streamline the depreciation prescription process for certain mid-sized incumbent LECs based on the aggregate revenues of the incumbent LEC and any LEC that it controls, is controlled by, or is under common control with another LEC. If the aggregate revenues of these affiliated incumbent LECs are less than $7 billion, then each LEC within that group would be eligible to not file annual theoretical reserve studies. Incumbent LECs with individual annual operating revenues below the indexed revenue threshold would continue to be exempt from the Commission's depreciation prescription process.

[2] Id. § 601(6).

on a substantial number of small entities. Pursuant to long-standing rules, incumbent LECs with annual operating revenues exceeding the indexed revenue threshold must comply with the Commission's depreciation prescription process. This NPRM proposes to reduce certain of these depreciation requirements. These changes should be easy and inexpensive for incumbent LECs to implement and will not require costly or burdensome procedures. The Commission therefore expects that the potential impact of the proposal rules, if such are adopted, will be beneficial and will not amount to a possible significant economic impact on affected entities. If commenters believe that the proposals discussed in the NPRM require additional RFA analysis, they should include a discussion of these issues in their comments.

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

Ordering Clauses

19. *Accordingly, it is ordered that,* pursuant to Sections 1, 4, 11, 201–205, 215, 218, 220 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 161, 201–205, 215, 218, 220 and 403 that notice is hereby given of proposed amendments to Parts 32 and 43 of the Commission's rules, 47 CFR Parts 32 and 43, as described in this Notice of Proposed Rulemaking.

20. *It is further ordered that* the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

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