

Per diem locality: key city 1 1	County and/or other defined location 2, 3	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate 4 (c)
NEW JERSEY						
Tom's River	Ocean					
(June 1-September 30)	69		38		107
(October 1-May 31)	50		38		88
NEW YORK						
Syracuse	Onondaga	70		34		104
SOUTH CAROLINA						
Charleston	Charleston	95		42		137
WEST VIRGINIA						
Shepherdstown	Jefferson	65		38		103

Dated: March 22, 1999.

David J. Barram,

Administrator of General Services.

[FR Doc. 99-8155 Filed 4-2-99; 8:45 am]

BILLING CODE 6820-34-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 97-181; FCC 99-28]

Defining Primary Lines

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission adopts a location-based definition of "primary residential line." Under this definition, one residential line that a price cap local exchange carrier (LEC) provides to a particular location will be considered primary. Any other residential lines the price cap LEC provides to the same location shall be deemed non-primary residential lines. The Commission maintains the existing definition of "single line business line." These definitions will facilitate implementation of the Commission's access charge rules, which set higher caps for the subscriber

line charges (SLCs) and presubscribed interexchange carrier charges (PICCs) that price cap LECs may assess on non-primary residential lines and multi-line business lines than on primary residential lines and single line business lines. Adopting requirements for differentiating and identifying such lines will promote uniformity in the way price cap LECs assess SLCs and PICCs.

EFFECTIVE DATE: July 1, 1999.

ADDRESSES: The entire file is available for inspection and copying weekdays from 9:00 a.m. to 4:30 p.m. in the Commission's Reference Center, 445 Twelfth Street SW, Washington, DC 20554. Copies may be purchased from the Commission's duplicating contractor, ITS Inc., 1231 Twentieth St., NW, Washington, DC 20036, (202) 857-3800.

FOR FURTHER INFORMATION CONTACT: Neil Fried, Common Carrier Bureau, (202) 418-1520; TTY: (202) 418-0484.

SUPPLEMENTARY INFORMATION:

A. Background

1. To provide interstate telecommunications services, interexchange carriers (IXCs) usually rely on some of the telephone infrastructure that incumbent LECs use to provide local telephone service. The

incumbent LEC's local loop, for example, connects a customer to the LEC network so that the customer can make and receive intrastate calls. The incumbent LEC's local loop also connects the customer to the networks of IXCs so that the customer can make and receive interstate calls. Consequently, a portion of the costs an incumbent LEC incurs in providing this common infrastructure is allocated to intrastate service and recovered pursuant to state regulation, and a portion is allocated to interstate service and recovered pursuant to regulations of the Federal Communications Commission.

2. The Commission adopted uniform access charge rules in 1983 to govern the way incumbent LECs recover that portion of the costs of the common infrastructure allocated to interstate service. Under these rules, the Commission allows incumbent LECs to recover some of the interstate costs of providing the local loop through a flat, monthly end-user common line charge (EUCL)—sometimes called a SLC—that they assess on end users. The Commission limited the amount of the SLC, however, because of concerns that an excessively high SLC might cause end users to disconnect their telephone service. The Commission allowed the incumbent LECs to recover the

remainder of their interstate costs attributable to the local loop through a per-minute carrier common line charge (CCLC) that they assess on IXCs.

3. Under principles of cost-causation, it is most economically efficient for incumbent LECs to recover the costs of providing interstate access in the same way that they incur them. Under such principles, incumbent LECs should recover their traffic-sensitive costs of interstate access through per-minute charges, and should recover their non-traffic-sensitive costs through flat charges. The incumbent LECs' costs of providing the local loop do not change with the number, length, or type of telephone calls customers make, and so are non-traffic sensitive. Because of the cap on SLCs, however, incumbent LECs recover some of these non-traffic-sensitive loop costs through the traffic sensitive CCLC. In its May 1997 *Access Charge Reform Order*, the Commission decided to phase out the CCLC for price cap LECs on the grounds that recovering the non-traffic-sensitive loop costs through traffic-sensitive charges is economically inefficient.

4. To provide price cap LECs with a means to recover some of the loop costs they previously recovered in the CCLC, the Commission raised the price cap LECs' SLC caps for non-primary residential lines and multi-line business lines, but chose not to raise the price cap LECs' SLC caps for primary residential lines and single line business lines. For 1999, the SLC cap for price cap LECs is \$3.50 per month for each primary residential and single line business line, \$6.07 per month for each non-primary residential line, and \$9.20 per month for each multi-line business line. To address concerns that charging a higher SLC for non-primary residential lines sold by price cap LECs might encourage subscribers to obtain their additional residential lines from resellers, the Commission decided in the *Access Charge Reform Order* to allow price cap LECs to charge the higher SLC to carriers that resell price-cap LECs' lines if the lines are non-primary.

5. Because the SLC caps on residential and single line business lines would prevent most price cap LECs from recovering through the SLC all the costs they formerly recovered through the CCLC, the Commission also created the PICC: a flat, per-line charge that price cap LECs may assess on an end user's presubscribed IXC. As with the SLC, the Commission set higher PICC caps for non-primary residential lines and multi-line business lines than for primary residential lines and single line business lines. Through June 30, 1999, the PICC

cap is \$0.53 per month for each primary residential and single line business line, \$1.50 per month for each non-primary residential line, and \$2.75 per month for each multi-line business line. As a result of the various caps, the lines of customers that subscribe to single residential or business lines are not assessed the entire cost of the loops. Until the access reform rate structure is fully phased in, these lines are subsidized by customers that subscribe to multiple business lines.

6. The Commission sought comment in a September 1997 notice of proposed rulemaking (Notice) on whether to modify its rules to provide for the definition, identification, and verification of primary residential lines and single line business lines. 62 FR 48042, September 12, 1997; 12 FCC Rcd 13647. Choosing appropriately balanced definitions is important because as primary residential and single line business line counts increase, so, too, does the subsidy that multi-line business line customers must bear during the phase-in of the access reform rate structure.

B. Definition of Primary Residential Line

1. Background

7. The Commission's rules currently do not define "primary residential line." The Commission sought comment in the Notice on whether to define the primary residential line as the primary line of a residence, of a household, of a subscriber, or on some other basis. Under a residence definition, only one line per service location—such as a house or an apartment—would receive primary line status. Under a household definition, each family unit would receive one primary line, so that if multiple families live in one house, each family would receive one line at rates with the lower caps. Under a subscriber definition, one line would be given primary-line status for each account opened with the carrier.

8. In the meantime, each price cap LEC devised its own definition for the purpose of its 1998 access tariff filings. The Commission concluded in its investigation of those tariff filings that, pending completion of this rulemaking proceeding, defining as a primary line either one line per residence or one line per billing-name account per residence was "not unreasonable" for purposes of the tariff filings. The Commission also found that reasonable definitions of primary and non-primary residential lines should, at a minimum, "categorize a second residential line as non-primary

if the line is billed to the same name at the same location."

9. In the *Notice*, the Commission tentatively concluded that price cap LEC records might be inadequate to identify primary residential lines, particularly if the Commission adopted a household-based definition. Based on the presumption that identifying primary residential lines without information from the customer would be more administratively burdensome, the Commission tentatively concluded to permit price cap LECs to use end-user self-certification to identify primary lines.

2. Discussion

10. Some commenters have supported each of the definitions of primary residential line that the Commission identified in the *Notice*: household-based, account-based, and location-based. None of these definitions is flawless. An account-based definition, for example, would permit a subscriber to have multiple primary lines by ordering each line under a different account name. A location-based definition does not permit subscribers who share the same address, such as housemates, each to have his or her own primary line. A household-based definition would present carriers, consumers, and the Commission with the ambiguous and administratively burdensome task of determining which subscribers are part of which households. We have balanced the advantages and disadvantages of each option. We conclude that a location-based definition is the least intrusive and most administratively feasible definition that fulfills the *Access Charge Reform Order's* objectives for setting higher SLC and PICC caps for non-primary residential lines and multi-line business lines.

11. Thus, we will consider one residential line provided by a price cap LEC per service location to be a primary residential line. For example, only one line per house, per apartment, or per college dorm room will receive primary-line rates. We begin by noting along with a number of commenters that LECs can implement this definition based on their service records. As the Commission stated in the *Notice*, a location-based definition is "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." Consequently, this definition obviates the need for the self-certification procedure that the Commission outlined in the *Notice*, a

procedure that the Office of Management and Budget (OMB) argues would be ineffective and burdensome. A customer's service location is also straightforward to determine and not something the customer can easily alter or misreport to obtain the primary-line rate. This definition will require carriers to cross-check records within a service location to ensure that only one subscriber line per residence receives the primary-line rates, but sorting records by service location should be relatively easy. Furthermore, many price cap LECs are already moving toward a location-based definition in their tariffs.

12. The Commission's rules that establish PICCs and set different SLC caps for primary residential lines than for non-primary residential lines apply only to price cap LECs, not to rate-of-return LECs. Consequently, the definition of primary residential line shall apply only to price cap LECs. The Commission has sought comment on whether to apply to rate-of-return LECs the rules regarding PICCs and the higher caps for non-primary residential lines, but has not issued an order resolving that issue. Should the Commission decide at a later date to apply such rules to rate-of-return LECs, the Commission will address at that time how to define, identify, and verify primary residential lines and single line business lines for rate-of-return LECs. Thus the Commission does not address issues that the *Notice* raised regarding rate-of-return LECs.

13. A number of commenters oppose the location-based definition because it allows only one primary line per multi-subscriber residence. If, for example, two roommates each subscribe to a line, only one line will be billed at the primary-line rate. Generally, however, only a single residential connection is necessary to permit all residents at a particular service location complete access to telecommunications and information services, including access to emergency services.

14. If a subscriber has both a primary and secondary home, this definition would also treat one line in each home as primary. We note that this definition departs from current practice in the business context, under which a business with one line in each of multiple locations in the same telephone company area receives multi-line business rates on each line. We find it unnecessary to extend this policy to the residential context. As many comments point out, the burden of investigating whether a particular residential subscriber has lines in multiple residences outweighs any benefit from collecting the higher non-

primary line rates, especially as the number of subscribers with multiple residences, and thus the number of lines that would be reclassified from primary to non-primary, is likely only a small percentage of all residential lines. Furthermore, in many instances different incumbent LECs will serve the primary and secondary residences. This further complicates the task of determining which subscribers have multiple residences, and raises the difficult question of which line would be deemed the primary line, assuming the subscriber could have only one primary line throughout all his or her residences. We also note that the number of residential subscribers is larger than the number of business subscribers.

15. We will look at all lines provided by a particular price cap LEC, whether sold by the price cap LEC or a reseller, when determining the status of the lines to a residence. We do so to address concerns that charging higher rates for non-primary residential lines sold by price cap LECs might encourage subscribers to obtain their additional lines from resellers for no reason other than to avoid the higher SLC. Consequently, we do not accept the invitation of some commenters to qualify our definition further by treating as primary one line per location per service provider. Doing so would create an artificial incentive for subscribers to spread their lines out among price cap LECs and multiple resellers merely to avoid the higher SLCs and PICCs associated with non-primary residential lines.

16. We do not seek to discourage subscribers from ordering services from multiple providers, but also do not want to create an artificial incentive for them to do so. Thus, when a price cap LEC has already sold a line to a residence, the price cap LEC may assess the higher rates on any additional resold lines. If, however, a resold price cap LEC line is the primary line, as is the case when all the lines to the residence are purchased from one or more resellers, the resold line will remain the primary line should a price cap LEC subsequently sell an additional line to that residence. If the price cap LEC line and resold line are sold simultaneously, the price cap LEC line shall be the primary line. When lines are sold to a location by both a price cap LEC and at least one reseller of price cap LEC lines, one of the lines must be identified as primary, but which one will have little impact on the end user: whichever line is deemed primary, the sum of the SLC and PICC charges to the consumer will be the same. Because the price cap LEC is

physically providing both lines, we think it reasonable that it get the primary line designation in the rare circumstance that both lines are sold simultaneously.

17. Lines sold by wireless carriers and competitive LECs that do not resell price cap LEC lines shall not be considered in determining residential line status. Such carriers are not rate regulated by the Commission and are not subject to the Commission's rules regarding SLCs and PICCs. Nor do price cap LECs collect SLCs or PICCs on those carriers' lines. This approach is equitable as between price cap LECs, resellers, competitive LECs, and wireless carriers because it does not provide any artificial advantage in marketing second lines. Furthermore, a price cap LEC would have difficulty determining whether its customers are also receiving lines from non-reselling competitive LECs or wireless carriers.

18. We will not adopt a household-based definition of primary residential line. Although such a definition would allow multiple primary lines in multi-household residences (e.g., one for each family in a multi-family dwelling), it would also require gathering invasive information concerning living arrangements through a self-certification mechanism that would be administratively burdensome given the large universe of customers. The ambiguity of a household-based definition may also result in inconsistent application across subscribers, or encourage subscribers simply to declare themselves part of different households to receive the lower primary-line rates.

19. Nor will we treat one line per subscriber account as primary. Such a definition would allow multiple subscribers at a single location to receive the lower primary-line rates on each line (e.g., roommates with individual accounts). Some commenters view this as an advantage to the definition. Any such advantage, however, is offset by the ability of a subscriber to game such a definition by obtaining multiple lines under different account names. Some carriers even allow customers to obtain separate accounts under the same name. Furthermore, universal service objectives are met so long as residents at a single location have access to one line at that location at the subsidized primary-line rates; allowing more than one such line per location excessively shifts costs onto other subscribers. We agree with commenters that an account-based definition is unambiguous and compatible with most carriers' existing service records, but so too is a location-

based definition. An account-based definition would eliminate the need to check whether multiple subscribers are receiving lines at the same location, but the definition's other shortcomings outweigh this benefit. In any event, as noted above, sorting records by service location should not be difficult.

20. We also do not adopt the suggestion of some commenters that we eliminate the primary/non-primary line distinction, perhaps by applying an averaged rate to all lines or replacing the PICC with a cost-based SLC. The Commission has, in the past, specifically decided not to raise the SLC caps on primary residential lines, in accordance with the recommendations of the Federal-State Joint Board on Universal Service. A narrow proceeding such as this is not the appropriate forum for considering a SLC increase.

C. Definition of Single Line Business Line

1. Background

21. The Commission's rules for price cap LECs state that "[a] line shall be deemed to be a single line business subscriber 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." 47 CFR 69.152(i). The Commission defines "telephone company" for the purposes of the Part 69 Rules as "an incumbent local exchange carrier." See 47 CFR 69.2(hh). The Commission sought comment in the *Notice* on whether to retain the definition of "single line business line," and whether to consider as a single line business a business with a single line in each of multiple locations.

2. Discussion

22. We shall retain the existing definition of single line business line. This definition allows incumbent LECs to assess the correct SLCs and PICCs on business lines without determining whether a customer receives service from other carriers.

23. This definition treats as a single line business any business that obtains one line from a price cap LEC and other lines from a wireless carrier or a competitive LEC that does not resell the price cap LEC's lines. As in the context of residential lines, we do not include lines provided by wireless carriers and competitive LECs that do not resell price cap LEC lines because such carriers are not subject to the Commission's SLC and PICC requirements, and because price-cap

LECs do not collect SLCs or PICCs on those carriers' lines.

24. We clarify that if a business receives lines from a price cap LEC and a competitive LEC that is reselling the price cap LEC's lines, all those lines shall be considered multi-line business lines. Clarifying that all the lines provided by a price cap LEC become multi-line business lines once a customer purchases a second line provided by that price cap LEC (whether sold by the price cap LEC or a reseller of the price cap LEC's lines) prevents businesses from avoiding the higher multi-line business charges by spreading out their lines among one price cap LEC and multiple resellers of the price cap LEC's lines.

25. Under existing practice, a business with one line in each of multiple locations within a "telephone company area" is treated as a multi-line business. We will continue that practice. Thus when a business subscriber's account reflects a single line in each of two locations within a particular telephone company area, the subscriber will be treated as a multi-line business. Consequently, we shall maintain the existing definition of single line business line, thereby preserving the status quo both for price cap LECs and rate-of-return LECs.

D. Identification of Primary Residential and Single Line Business Lines

1. Background

26. As discussed, the Commission tentatively concluded in the *Notice* to permit price cap LECs to use end-user self-certification to identify primary lines. The Commission also sought comment on whether to require resellers to relay primary- and non-primary-line data to price cap LECs, or whether price cap LECs should identify the primary and non-primary lines of resellers' customers directly. Thus, if resellers collected self-certifications, the Commission asked whether resellers should be required to provide those certifications to price cap LECs so that the price cap LECs could assess on the resellers the appropriate SLCs. The Commission tentatively concluded that it would not use databases, county and municipal records, or social security numbers to identify primary lines because such proposals are administratively burdensome and raise privacy concerns.

2. Discussion

27. The definitions of primary residential line and single line business line will enable price cap LECs to use their service records to identify the

status of their lines. This approach alleviates the concerns that carrier records would be insufficient to identify line-status, as those concerns were directed primarily at a household-based definition of primary residential line. Carriers will have the necessary information in their existing service records; thus, allowing carriers to use their records is the least burdensome option for carriers, consumers, and the Commission, and minimizes privacy concerns. Carrier records are also relatively easy to verify and reasonably immune from gaming or misreporting by customers, willful or otherwise.

28. Consequently, we need not address various administrative and privacy issues related to the self-certification method discussed in the *Notice*. Price cap carriers are, of course, still subject to tariffing requirements, and the Commission can always examine carriers' line counts in a tariff investigation. We note, also, that carriers are governed by statutory and regulatory restraints regarding the treatment of customer information to the extent that they apply to data regarding line status.

29. We will require each price cap LEC to identify the status of the lines it provides to resellers. We are not persuaded by commenters' arguments that requiring price cap LECs to determine the status of other carriers' lines will raise administrative and confidentiality concerns. Most of these comments focused on the difficulties of identifying lines provided by facilities-based competitive LECs, not resellers of price cap LECs' lines, or presumed a self-certification procedure. We believe that the price cap LECs are in a better position going forward than the resellers to know all their lines going to a particular residence, as their service records indicate both the lines the price cap LECs bill and the lines they provide on behalf of resellers. Thus, we will not require resellers to identify their primary and non-primary lines to price cap LECs. The issues the Commission raised in the *Notice* regarding the exchange of information between price cap LECs and resellers are largely mooted by our decision to adopt a location-based definition of primary line and to allow carriers to use service records rather than self-certification to identify line status. Because of that decision, as well as our clarification of the single line business line definition, price cap LECs will have the information necessary to administer the definitions, eliminating the need to share data with, or collect data from, other carriers.

E. Customer Notification

30. Because the distinction between primary and non-primary residential lines may cause customer confusion, the Commission sought comment in the Notice on whether to require carriers to provide consumers with a uniform disclosure statement describing the distinction. The Commission tentatively concluded that such a disclosure requirement would be consistent with applicable First Amendment standards, and sought comment on that conclusion. The Commission also sought comment on how, if it adopts a consumer disclosure statement that refers to the SLC cap on non-primary lines, such disclosure statement should indicate any future increases in the SLC cap. The Commission sought comment on whether such a statement would be compatible with marketing and consumer information campaigns that carriers have instituted or may be formulating. The Commission has issued a Notice of Proposed Rulemaking in CC Docket No. 98-170 focused on truth-in-billing. 63 FR 55077, October 14, 1998; *Truth-in-Billing*, CC Docket No. 98-170, Notice of Proposed Rulemaking, FCC 98-232 (rel. Sept. 17, 1998). We think it more appropriate to consider these issues in connection with that docket. Consequently, we refer these issues to that proceeding.

F. Detailed PICC Billing of IXC's

31. AT&T, MCI, and Sprint have asked the Commission to require price cap LECs to issue detailed bills that enable interexchange carriers to audit the PICC charges that price cap LECs assess on them. Creating additional requirements is not necessary at this time. We already require price cap LECs to provide interexchange carriers with customer-specific information about the PICCs they assess on them, and to include a "class of customer" indicator on Customer Account Record Exchange (CARE) transactions for new customer notifications. Furthermore, our decisions in the order concerning the definition and identification of primary residential lines and single line business lines should facilitate clearer and more uniform billing of SLCs and PICCs.

G. Procedural Matters

1. Final Regulatory Flexibility Analysis

32. The Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the Notice in this docket, as required by the Regulatory Flexibility Act (RFA). See 5 U.S.C. 603. The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. The

RFA also requires the Commission to prepare a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact the order might have on small entities, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b).

33. The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. 5 U.S.C. 601(3). A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Small Business Act, 15 U.S.C. 632. The SBA has further defined a small business for SIC categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) as a business with no more than 1,500 employees. 13 CFR 121.201. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4). "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." 5 U.S.C. 601(5).

34. Only price cap LECs currently assess SLCs and PICCs, and the order places the responsibility for differentiating and identifying primary residential lines and single line business lines only on price cap LECs, as discussed above. Consequently, the order will not significantly affect "small organizations" or "small governmental jurisdictions," and we only address the impact on small price cap LECs. Neither the Commission nor SBA has developed a definition of "small entity" specifically applicable to price-cap LECs. The closest definition under SBA rules is that for establishments providing "Telephone Communications, Except Radiotelephone."

35. According to our most recent data, 1,371 carriers reported that they were engaged in the provision of local exchange services. Fewer than 20 of these carriers are price-cap incumbent LECs. Consistent with our prior

practice, we shall continue to exclude small incumbent LECs from the definition of "small entity." We consider these carriers dominant in their field of operations. Some also are not independently owned and operated, and most if not all likely have more than 1,500 employees. We therefore certify that our decisions in this proceeding will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the order, including the certification, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. See 5 U.S.C. 801(a)(1)(A). A summary of the order and the certification will also be sent to the Chief Counsel for Advocacy of the SBA.

2. Final Paperwork Reduction Act Analysis

36. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law No. 104-13, and does not contain new and/or modified information collections subject to OMB review.

H. Ordering Clauses

37. Accordingly, *it is ordered*, pursuant to sections 1, 4(i) and (j), 201-209, 218-222, 251, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201-209, 218-222, 251, 254, and 403, that the order is adopted.

38. *It is further ordered* that section 69.152 of the Commission's rules, 47 CFR 69.152, is amended as set forth in the rule changes.

39. *It is further ordered* that the policies, rules, and requirements adopted herein *shall be effective* July 1, 1999.

40. *It is further ordered* that the Commission's Office of Public Affairs, References Operations Division, *shall send* a copy of the Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 69

Access charges, Communications common carriers, End-user common line charge, Multi-line business line, Non-primary residential line, Price cap local exchange carriers, Primary interexchange carrier charge, Primary residential line, Reporting and recordkeeping requirements, Single line business line, Subscriber line charge, Telephone.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 69 as follows:

PART 69—ACCESS CHARGES

1. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

2. Section 69.152 is amended by adding paragraph (h) to read as follows:

§ 69.152 End user common line for price cap local exchange carriers.

* * * * *

(h) Only one of the residential subscriber lines a price cap LEC provides to a location shall be deemed to be a primary residential line.

(1) For purposes of § 69.152(h), "residential subscriber line" includes residential lines that a price cap LEC provides to a competitive LEC that resells the line and on which the price cap LEC may assess access charges.

(2) If a customer subscribes to residential lines from a price cap LEC and at least one reseller of the price cap LEC's lines, the line sold by the price cap LEC shall be the primary line, except that if a resold price cap LEC line is already the primary line, the resold line will remain the primary line should a price cap LEC subsequently sell an additional line to that residence.

* * * * *

[FR Doc. 99-7787 Filed 4-2-99; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

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

SUMMARY: This document sets forth our interpretation of the location requirements for identification and clearance lamps mounted on the rear of trucks and trailers whose overall width is more than 2032 mm (80 in.). Federal Motor Vehicle Safety Standard No. 108

requires that identification lamps be mounted as close to the top of a vehicle as practicable. The identical requirement applies to clearance lamps, except when the rear identification lamps are mounted at the extreme height of the vehicle. In the past, we have stated that the manufacturer may make the initial determination as to whether it is practicable to mount these lamps near the top of a vehicle, and that it has been our enforcement policy to accept the manufacturer's determination of practicability unless that decision appears clearly erroneous. Under this approach, identification lamps on many vehicles, especially van-type trailers, have been mounted on the lower sill below the rear doors under various conditions, even on vehicles where the header was up to 3 inches wide. Our enforcement policy was based in part on the unavailability of narrow lamps. However, narrow lamps are now readily available. Effective on the publication of this interpretive rule, we interpret Standard No. 108 to require manufacturers to satisfy an objective standard of practicability; i.e., if, under all the circumstances, it would be practicable to locate lamps above the rear doors, the manufacturer must do so. We will no longer defer to a manufacturer's subjective determination of practicability.

DATES: Effective April 5, 1999.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (Phone: 202-366-5263; FAX: 202-366-3820).

SUPPLEMENTARY INFORMATION:

Requirements of Federal Motor Vehicle Safety Standard No. 108 for the Location of Identification and Clearance Lamps on Large Trucks and Trailers

Table I of Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices and Associated Equipment*, requires trucks and trailers whose overall width is 2032 mm (80 inches) or more to be equipped with a rear lighting system that includes three red identification lamps and two red clearance lamps. Table II specifies that the identification lamps are to be mounted on the rear "as close as practicable to the top of the vehicle at the same height, as close as practicable to the vertical centerline." Table II also requires that the clearance lamps shall be mounted on the rear "to indicate the overall width of the vehicle, one on each side of the vertical centerline, at the same height, and as near the top thereof as practicable." However, clearance lamps need not be located

near the top "when the rear identification lamps are mounted at the extreme height of a vehicle," * * * S5.3.1.4).

In general, location requirements specified by Standard No. 108 for motor vehicle lamps and reflectors are expressed in terms of practicability. Under this approach, the required lighting equipment can be installed without unduly restricting the design of vehicles.

Past Policy Regarding the Meaning of "Practicability" With Respect to the Upper Mounting Location for Identification and Clearance Lamps

In 1968, when Standard No. 108 became effective for wide vehicles, lighting technology had not advanced to the level where it is today, and, in order to provide the required photometric performance, generally lamps were somewhat larger than lamps that are now commercially available. Manufacturers advised us that, in their opinion, it would not be practicable to mount the lamps on the rear header of some vehicles. Rather than make individual practicability assessments in an enforcement context, we advised the industry that we would not contest manufacturers' decisions to mount identification and clearance lamps below the cargo doors, on an approximate horizontal plane with other rear lamps, except where the manufacturer's decision was clearly erroneous.

This deferential approach originated as a matter of enforcement policy. Indeed, it was first articulated in a June 18, 1981 letter to the Division of State Patrol of the Wisconsin DOT from Francis Armstrong, who was the Director of NHTSA's Office of Vehicle Safety Compliance. Over the years this enforcement policy was restated in several letters signed by NHTSA's Chief Counsels.

However, over the years, narrow lamps have become available for use on trucks and trailers with relatively narrow headers. Since it appears that it is now "practicable" to locate clearance and identification lamps on or above such headers, we decided to review the issue and reconsider our earlier enforcement policy.

As part of our review, we conducted a field survey in which we took photographs and measured rear lighting configurations of several typical trailers. The photographs showed that some trailer manufacturers are locating identification and clearance lamps on the lower sill of many trailer models, even though there is sufficient space to