any significant public comments received.

If EPA does not receive significant adverse or critical comments and/or any significant new data submitted during the comment period, the Site will be deleted from the NPL effective June 9, 2000.

IV. Basis for Intended Site Deletion

The Upper Deerfield Sanitary Landfill Superfund Site is an inactive, 14-acre landfill located on a 22.72-acre tract of land in the rural farming community of Upper Deerfield Township, Cumberland County, New Jersey. The Site is located approximately two and one-half miles east-southeast of Seabrook, New Jersey and lies between Woodruff Husted Station Road (County Route 687) to the east and Centerton Road (County Route 553) to the west.

The 14-acre site was operated as a municipal landfill licensed to accept household waste until it closed in 1983. In response to complaints about water quality from residents using private ground water wells, ground water investigations were conducted in 1980. Volatile organic compounds (VOCs) and mercury were found in area wells. In 1983, NJDEP and the County advised residents to discontinue using their wells, and the Township began supplying the affected residents with bottled water. The Site was included on the NPL on September 1, 1983.

In 1986, utilizing funds provided by the State of New Jersey, the Township installed a public water supply well and distribution system to provide potable water to residents in the area. EPA conducted a remedial investigation at the Site from September 1987 through September 1990.

The results showed that the ground water and soil contamination associated with the Site no longer posed a health threat under current or likely future land use conditions. On September 30, 1991, EPA issued a ROD which called for no further action with a program to monitor the air and ground water.

In September 1994, EPA and Upper Deerfield Township signed an Administrative Order on Consent (ACO) which requires the Township to monitor the ground water for 30 years pursuant to the 1991 ROD. The ground water monitoring program began in December 1995. To date, ground water samples taken at the landfill, have not shown elevated levels of contaminants of concern. Air samples at the landfill and surrounding areas have not detected any airborne contaminants. Since airborne contaminants were not detected, the air monitoring program has been discontinued.

A five-year review was completed in September 1999, and found the remedy continues to be protective of public health and the environment. In accordance with § 300.430(f)(4)(ii) of the NCP, this site is subject to a review of the remedies selected under CERCLA every five years. The next five-year review will be conducted on or before September 2004.

All the completion requirements for this Site have been met as described in the Final Close-Out Report dated September 23, 1993. EPA and NJDEP have found that the release poses no significant threat to public health and the environment and, therefore, taking remedial measures is not appropriate. Documents supporting this action are available in the deletion docket.

V. Action

EPA and the NJDEP have found that the release poses no significant threat to public health and the environment and, therefore, taking remedial measures is not appropriate. Therefore, EPA is deleting the Site from the NPL.

This action will be effective on June 9, 2000. However, if EPA receives significant adverse or critical comments by May 10, 2000, EPA will publish a document that withdraws this action.

List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Superfund, Water pollution control, Water supply.

Dated: March 15, 2000.

William J. Muszynki,

Acting Regional Administrator, Region 2.

Part 300, title 40 of chapter I of the Code of Federal Regulations is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the site for Upper Deerfield Township Sanit. Landfill, Upper Deerfield Township, New Jersey.

[FR Doc. 00–8524 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[CC Docket No. 98–137, ASD File No. 98–91; FCC 99–397]

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

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document we address proposals set forth in our Notice of Proposed Rulemaking to reform our depreciation prescription process. With this Order, we greatly streamline the depreciation requirements for price cap incumbent local exchange carriers (LECs). We adopt proposals to permit summary filings, eliminate the prescription of depreciation rates for certain incumbent LECs, expand the prescribed range for the digital switching plant account, and eliminate the theoretical reserve study requirement for mid-sized incumbent LECs. These measures will minimize the regulatory burden on incumbent LECs and will provide them with greater flexibility to adjust their depreciation rates while allowing the Commission to maintain adequate oversight in order to promote competition and protect consumer.

DATES: These rules contain information collections that have not been approved by the Office of Management and Budget. The Commission will publish a document announcing the effective date of this rule. Written comments by the public on the new and/or modified information collections are due June 9, 2000.

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

FOR FURTHER INFORMATION CONTACT: JoAnn Lucanik, Accounting Safeguards Division, Common Carrier Bureau at (202) 418–0800 or Andy Mulitz, Chief, Legal Branch, Accounting Safeguards Division, Common Carrier Bureau at (202) 418–0827. For additional information concerning the information collections contained in this document,

contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This *Report and Order* in CC Docket No. 98–137, ASD File No. 98–81, adopted on December 17, 1999 and released on December 30, 1999, is available for inspection and copying during normal business hours in the FCC Reference Information Center (RIC), 445 12th Street, SW, TW–A325, Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036 (202) 857–3800.

This Report and Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collections contained in this proceeding.

Paperwork Reduction Act

This R&O contains either a new or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this R&O as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due June 9, 2000. Comments should address: (a) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–0168.

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

Form No.: N/A.

Type of Review: Revised Collection.

Respondents: Business or other for-profit.

Title	Number of respondents	Est. time per respondent	Total annual burden
Section 43.43	11	5970	60030
Waiver of Depreciation Process	5	100	500

Total Annual Burden: 60,030 Hours.

Cost to Respondents: $0.

Needs and Uses: The Commission streamlined its depreciation prescription process by permitting summary filings and eliminating the prescription of depreciation rates for certain incumbent LECs, expanding the prescribed range for the digital switching plant account, and eliminating the theoretical reserve study requirement for mid-sized incumbent LECs. The Commission also established a waiver process whereby price cap incumbent LECs can free themselves of depreciation regulation. Synopsis of *Report and Order:*

I. Background

The Commission prescribes depreciation factors for price cap incumbent LECs whose revenues exceed an indexed revenue threshold, currently set at $112 million in annual revenue. These carriers currently have investments in telephone plant totaling $288 billion and an accumulated depreciation balance totaling $146 billion. Depreciation constitutes 28 percent of incumbent LECs' total operating expenses, and is their largest single expense.

Over the years, the Commission has taken steps to streamline the depreciation requirements to keep pace with changes in communications technology and legal requirements. When incumbent LECs were regulated under cost-of-service (or rate-of-return) regulation, regulation and oversight of the depreciation process was a critical function because prices for incumbent LEC services were set based on costs, including depreciation expenses. Under this regulatory scheme, each carrier seeking to change its depreciation rates was required to submit a depreciation rate study that was reviewed both by the Commission staff and the representatives of the state regulatory authorities. This depreciation prescription process required carriers to submit extensive data for each plant category to support the projection life, survivor curve, and future net salvage estimates underlying their proposed depreciation rates. These data requirements often necessitated voluminous submissions, with up to 25 pages of analysis for each of 34 plant categories for each jurisdiction.

In 1980, the Commission departed from its previous practice of relying largely on historical experience to project equipment lives and began to rely on analysis of company plans, technological developments, and other future-oriented studies. In 1993, the Commission issued the *Depreciation Simplification Order* (See 58 FR 00530 January 6, 1993) that adopted a simplified depreciation prescription process for AT&T and incumbent LECs. With regard to incumbent LECs, that Order provided for the establishment of ranges for the life and salvage factors that carriers could use to compute their depreciation rates. Consequently, incumbent LECs that proposed life and salvage factors within the Commission-approved ranges no longer needed to file detailed cost support for those rates. In contrast, a carrier that chose to propose depreciation factors outside of the ranges would have to provide cost support to justify it. Today, incumbent LECs remain subject to the Commission's rules under §§ 32.2000(g) and 43.43 for purposes of establishing depreciation rates; however, the typical carrier's filing requirements have been reduced by 75 percent when its depreciation proposals are within the prescribed ranges.

The recent *Depreciation Notice* (63 FR 56900 September 23, 1998) sought comment on proposals that would further minimize the burden on incumbent LECs in the depreciation prescription process. We address the proposals set forth in the *Depreciation Notice* and take further steps to streamline the depreciation prescription process for incumbent LECs. In this action, we take the following actions to further simplify our depreciation prescription process. Filing Requirements in the *Depreciation Notice,* we sought comment on a proposal that would reduce price cap incumbent LECs' filing requirements to four summary exhibits, and the electronic data files used to generate them, provided carriers select depreciation factors from within the specified ranges for all accounts 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 underlying depreciation factors. We conclude that we must balance the carriers' needs for simplification with the needs of this Commission, ratepayers, state regulatory missions, and competitors for sufficient information to assess claims the incumbent LECs' may make for regulatory relief. As noted, depreciation expense constitutes a large portion of a carrier's expenses and is significant in determining cost recovery. While we believe we can reduce the amount of information a carrier must file, we find certain basic information is still needed to allow us to adequately monitor a carrier's depreciation practices and amounts associated with these practices. The information that carriers will be required to file in the four summary exhibits, along with the underlying data used to generate them, will provide the depreciation factors (*i.e.,* life, salvage, curve shape, depreciation reserve) required to verify the calculation of the carriers' depreciation rates, estimate the changes in annual depreciation expenses, and monitor the adequacy of the depreciation reserve. This information is critical because it provides the minimum amount of data needed to maintain oversight of carriers' depreciation expenses and rates. We conclude that the proposal in the *Depreciation Notice* strikes an appropriate balance. It will minimize the burden on the carriers, since carriers will not be required to prepare extensive supporting documents for public filing, while providing the minimum amount of data needed to maintain oversight of carriers' depreciation expenses and rates. Thus, we will permit carriers that select depreciation factors from within the specified ranges for all accounts, and certify that their selections are consistent with their operations, to file four summary exhibits along with electronic data files used to generate the summary exhibits as described.

Reduction of Need for Prescription Orders

In the *Depreciation Notice* we proposed that, if a carrier selects depreciation factors from within the ranges for all of its accounts, the carrier's new depreciation rates could go into effect without a prescription order. Based on our review of the record in this proceeding, we will permit carriers to submit streamlined exhibits if they request depreciation factors for all accounts that are within the prescribed ranges. Carriers that request depreciation factors outside the ranges prescribed by the Commission must continue to submit exhibits for each account. In either case, however, the information filed by the incumbent LEC would contain life, salvage, reserve, rate, and expense information, which will be maintained in public files. Also, much of this data will be maintained in the ARMIS database, and therefore, will be readily available to the public via the Internet. We conclude, therefore, that we can eliminate prescriptions in the case where carriers select depreciation factors from within the prescribed ranges for all of its accounts, thereby further reducing the burden on these carriers, and still maintaining an adequate public record that all interested parties will be able to review.

Equipment Life Ranges

We proposed to expand the range of lives for digital switching equipment from a range of 16 to 18 years to 13 to 18 years. Based on our review of the record, we are persuaded that the lower limit of the life range for digital switching should be shortened from the current 16-year minimum to 12 years. We find that this reduction is justified by incumbent LEC accounting data that shows an upward trend in retirements of digital switching equipment in recent years. The increasing retirements are due, in part, to the modular nature of modern digital switches, which allows the incumbent LECs to retire portions of a switch on an interim basis as technology improves. Incumbent LECs also advocate shorter minimum lives for accounts other than digital switching and recommend lives projected by Technology Futures, Inc. (TFI). Based on our review, and given the significant uncertainty that even TFI acknowledges exists in forecasting plant replacement over the next fifteen years, we do not find that the carriers that advocate adoption of TFI's much shorter projection lives have met their burden. Depreciation reserves are at 51 percent, an all-time high, and have increased for each of the past five years. There is no evidence that the large wave of plant replacements forecast by TFI, which should result in increased retirements, has begun or is about to begin. If the carriers do begin to retire plant more rapidly, our depreciation prescription process is flexible enough to allow them shorter lives and faster depreciation. We conclude, therefore, that the TFI study fails to establish convincingly that current projection lives are inadequate.

Salvage and Cost of Removal

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 *Depreciation Notice* tentatively concluded that the prescription of net salvage no longer serves a regulatory purpose and that eliminating that factor from the formula would significantly reduce the regulatory burden of the depreciation prescription process. Accordingly, we proposed to eliminate the future net salvage factor from the depreciation formula and to record net salvage as a current expense in the period incurred. Alternatively, we proposed making the elimination of net salvage from the depreciation formula optional, and allowing each incumbent LEC the option to treat net salvage as either a current expense or a component of depreciation. The Financial Accounting and Standards Board (FASB) is currently conducting a proceeding that could change how firms must account for net salvage on their financial books. In light of the pending action by the FASB, we conclude that it is appropriate to defer action on this issue.

Reporting Requirements for Mid-Sized LECs

In the *Depreciation Notice*, we proposed that mid-sized incumbent LECs no longer be required to file annual theoretical reserve studies. Because the Commission would continue to receive theoretical reserve studies from the largest incumbent LECs, which serve approximately 90 percent of all access lines, this proposal would relieve these mid-sized companies of this regulatory burden without seriously encumbering the Commission's ability to monitor and evaluate the adequacy of the industry's reserves. Although a carrier's theoretical reserve studies allow us to monitor and evaluate the adequacy of a carrier's depreciation reserve, we recognize the burden these studies impose on mid-sized incumbent LECs. On balance, we believe that the benefits of streamlining depreciation reporting for mid-sized LECs outweighs the risks. We note that, if necessary, we can request a mid-sized carrier to provide a theoretical reserve study. Further, we note that incumbent LECs with individual annual operating revenues below the indexed revenue threshold continue to be exempt from the Commission's depreciation prescription process.

Confidentiality

The Commission's existing confidentiality procedures are contained in 47 CFR 0.457 and 0.459 of the Commission's rules. We sought comment on whether these rules are

adequate or whether additional safeguards need to be adopted to protect information that carriers regard as confidential. We find no reason to alter the policies we have in place to protect the confidentiality of carrier information.

Waivers

In the *Depreciation Notice*, we noted that even under price caps, depreciation had a potentially significant impact on a carrier's price cap indexes and its rates for some non-price cap services. We invited comment on ways that we might eliminate our need for depreciation prescription. In addition, the USTA forbearance petition raised issues concerning conditions under which the depreciation process might not be necessary. Based on our review, we believe that it would be appropriate to grant a waiver of our depreciation prescription process for certain price cap incumbent LECs in certain instances. Specifically, we find that such a waiver may be approved when an incumbent LEC, voluntarily, in conjunction with its request for waiver: (1) Adjusts the net book costs on its regulatory books to the level currently reflected in its financial books by a below-the-line write-off; (2) uses the same depreciation factors and rates for both regulatory and financial accounting purposes; (3) foregoes the opportunity to seek recovery of the write-off through a low-end adjustment, an exogenous adjustment, or an above-cap filing; and (4) agrees to submit information concerning its depreciation accounts, including forecast additions and retirements for major network accounts and replacement plans for digital central offices. Finally, the waiver request must comply with § 1.3 of the Commission's rules. We will consider alternative proposals by carriers seeking a waiver of our depreciation requirements. Such alternative proposals, however, must provide the same protections to guard against adverse impacts on consumers and competition as the conditions adopted in this Order provide.

The first and second conditions of the waiver process we establish in this Order require that carriers seeking a waiver of our depreciation prescription process adjust their regulatory net book costs to their financial net book costs and use the same depreciation factors and rates for both regulatory and financial accounting purposes. The first condition addresses the disparity that exists between the largest incumbent LECs' financial and regulatory books. In the early 1990's many of the largest incumbent LECs wrote off billions of dollars from their financial books through adjustments to their depreciation reserves. Because they did not make comparable write-offs on their regulatory books, there are significant differences in depreciation reserves between their financial and regulatory books. The first condition requires that the incumbent LEC eliminate this disparity by increasing the depreciation reserves on its regulatory books by a below-the-line write-off. The second condition then requires that carriers use the same depreciation factors and rates for both regulatory and financial purposes. Using the same factors and rates will ensure that established accounting procedures are being followed. These conditions are important because they provide assurance that carriers do not engage in a practice that would disadvantage consumers and competition by using high financial depreciation rates with high regulatory net book costs or by applying inappropriate depreciation rates to regulatory plant accounts.

The third condition requires that carriers obtaining a waiver forego the opportunity to recover any portion of the adjustment that results from conforming their regulatory net book costs to their financial net book costs (*i.e.*, through a below-the-line write-off). As a precondition to obtaining a waiver of the depreciation prescription process, a carrier would have to voluntarily forego its opportunity to recover any portion of the one-time adjustment to its regulatory books through a low-end adjustment, an exogenous adjustment or an above-cap filing. These are all mechanisms through which a price cap incumbent LEC can increase its prices by passing costs through to ratepayers. This third condition assures that a waiver from the depreciation prescription rules would not lead to unjust and unreasonable rates that would result from the inappropriate use of recovery mechanisms. Foregoing recovery of any portion of the write-off is necessary because the depreciation prescription process is the primary way in which we evaluate such claims for recovery. If, as a condition of obtaining a waiver, an incumbent LEC voluntarily foregoes any opportunity to assert such claims in connection with this adjustment to its regulatory net book costs, then our concerns would be mitigated and we could conclude that a waiver of our rules is consistent with the public interest.

These first three conditions are imposed in order to guard against adverse impacts on consumers and competition. Without these conditions, the largest incumbent LECs could use their high financial depreciation rates with their high regulatory net book costs, thereby drastically increasing their annual depreciation expenses. Large increases in depreciation expenses on the carrier's regulatory books would significantly reduce carrier's earnings, which in the case of most all the largest incumbent LECs, would be of such magnitude as to lower rates of return below 10.25%. This in turn could trigger a low-end adjustment, or could lead to carriers seeking recovery through exogenous cost treatment or above-cap filings. These recovery mechanisms, if granted, could enable incumbent LECs to increase prices they charge for access services and in rates they charge for unbundled network elements (UNEs) and interconnection. Increases in access service prices, which could be substantial, would be imposed on purchasers of access and passed on to their customers. The harmful impact that increased charges could have on competition is also substantial. State regulatory commissions have set rates for interconnection and UNEs, and in many instances, have based the rates on Commission-prescribed depreciation factors. Incumbent LECs, acting as wholesale providers of critical facilities to their competitors, could independently establish depreciation rates that could result in unreasonably high interconnection and UNE rates, which competitors would be compelled to pay in order to provide competing local exchange service.

In addition, allowing the largest incumbent LECs to select their own financial depreciation rates for regulatory purposes could have serious consequences for the universal service process. All the largest price cap incumbent LECs are classified as non-rural for universal service purposes. Under the rules we adopted in the recent federal high-cost support mechanism proceedings, each of the non-rural carriers' high cost support is the larger of: (1) An amount determined under our previous USF calculation method, i.e., by basing the amount of support on the relationship of the carrier's average cost per loop and the nationwide average cost per loop or (2) an amount determined under the new synthesis model. Our current depreciation prescription process is critical in the calculation of high cost support amounts determined under method (1) because it ensures that the depreciation expense component of the carriers' average costs per loop are reasonable. If we were to allow incumbent LECs to choose their own depreciation factors without review, we

could no longer ensure that the depreciation expense or the average cost per loop were reasonable. If these carriers were to use their financial depreciation factors for regulatory purposes, they would report major increases in their average costs per loop. This would increase substantially their high cost support under method (1). Under this method, however, because high cost support is subject to a cap, increases in the largest incumbent LECs' high cost support would not increase the fund. Instead, it would lead to substantial reductions in the high cost support for other, primarily rural, carriers, many of which rely to a great extent on high cost support to keep their local rates affordable.

In light of the significantly harmful impact that unrestricted changes in depreciation expenses could have on consumers and competition, we find the public interest is protected only if safeguards are in place that will negate such potential harm. We believe the first three conditions provide the appropriate safeguards and will ensure that carriers do not unreasonably increase depreciation expenses as a result of granting flexibility to establish their own depreciation rates.

The fourth condition requires that carriers who obtain a waiver of our depreciation process submit certain information about network retirement patterns and modernization plans related to their plant accounts so that we can maintain realistic ranges of depreciable life and salvage factors for each of the major plant accounts. This condition seeks to ensure that the Commission has the necessary data to periodically update depreciation factors (*i.e.*, life, salvage, curve shape, depreciation reserve) and to address issues in areas where reliance on the carriers' financial depreciation rates may be inconsistent with other regulatory policy goals. Maintaining appropriate depreciation ranges for the major plant accounts will continue to be critical even though some carriers may be granted relief from the Commission's prescribed depreciation process. This is especially true given the Commission's reliance on the prescribed depreciation ranges in the use of its cost models for universal service high cost support and UNE/interconnection prices.

As discussed, calculation of high cost support under method (2) uses the synthesis model. In this model, the Commission determined that it would rely on the weighted average of the prescribed lives and salvage percentages. If we were to discontinue depreciation prescription for most carriers, these weighted average factors would become less representative of the industry as a whole. In such a circumstance, in order to have representative depreciation factors, we would likely have to rely on the Commission's prescribed depreciation ranges. In order to do this successfully, however, we would have to require that all the major carriers continue to provide the data necessary to keep the ranges up-to-date.

Further, in the *Local Competition Proceeding*, (61 FR 45476 August 29, 1996) the Commission required the use of ''economic depreciation'' in calculating rates for interconnection and UNEs, but did not elaborate on how economic depreciation should be calculated. Based on our review to date, twenty-four states commissions have required incumbent LECs to use FCC-prescribed projection lives and salvage factors, or similar state-prescribed factors, to calculate their rates for UNEs. We are concerned that forbearance from depreciation regulation by the Commission might deprive state regulatory commissions of valuable information that they may want or need in setting rates for interconnection and UNEs, and might enable incumbent LECs to raise arbitrarily the rates for essential inputs that competitors must purchase from the incumbent LECs. This could have an adverse impact on the development of local competition.

Thus, in order to prevent any inappropriate and undesirable fluctuations in high cost support or the rates for interconnection and UNEs due to changes in depreciation rates caused by carriers receiving a waiver, we will continue to maintain realistic ranges of depreciable life and salvage factors for each of the major plant accounts. These ranges can be relied upon by federal and state regulatory commissions for determining the appropriate depreciation factors to use in establishing high cost support and interconnection and UNE prices. The information that carriers will be required to submit include: forecast additions and retirements for major network accounts; replacement plans for digital central offices; and information concerning relative investments in fiber and copper cable. This condition will assure that any increase in depreciation expense will not have a harmful effect on consumers or competition in rates calculated using reported costs or forward-looking cost models.

The four conditions outlined are intended to mitigate our concerns about the adverse impacts that could occur when carriers are given the freedom to select their own depreciation lives and procedures. The depreciation prescription process is our primary method of assessing the validity of the incumbent LECs' claims for reserve deficiencies and it would not be in the public interest to waive our depreciation rules with the issue of billions of dollars in potential claims unresolved. By establishing conditions pursuant to which a waiver from the depreciation prescription process would be granted, we are giving carriers the freedom from depreciation regulation that they seek. In exchange for that freedom, however, they would need to relinquish portions of the regulatory safety net that has protected them in the past.

USTA Petition for Forbearance

On September 21, 1998, USTA filed a petition for forbearance on behalf of the price cap incumbent LECs and requested that the Commission forbear from imposing §§ 32.2000(g) and 43.43 of the Commission's rules, and refrain from conducting depreciation prescription proceedings under section 220(b) of the Act. The USTA petition is filed under section 10 of the Act. We deny the USTA's petition. We find that USTA did not meet the requirements of Section 10 and that: Our depreciation prescription process is necessary to ensure just and reasonable charges; continuation of our depreciation prescription process is necessary for the protection of consumers; and that forbearance is not consistent with the public interest and the promotion of competition as it is likely to have an adverse effect on competition by raising the input prices that competitors must pay to provide local exchange service. We therefore find that none of the three prongs of the section 10 forbearance test is met. We thus deny USTA's petition for forbearance from the prescription of depreciation prescription.

IV. Procedural Issues

A. Regulatory Flexibility Act

Final Regulatory Flexibility Certification—Report and Order in CC Docket No. 98–81, RM–9341.

The Regulatory Flexibility Act (RFA), 5 USC 601 *et seq.*, amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA), requires that an agency prepare a regulatory flexibility analysis 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.'' 5 U.S.C. 605(b). In the *NPRM*, 1998 Biennial Regulatory Review—Review of

Depreciation Requirements for Incumbent Local Exchange Carriers, CC Docket No. 98–137, *Notice of Proposed Rulemaking (NPRM)*, the Commission certified that the Regulatory Flexibility Act did not apply to this rulemaking because none of the proposed changes to our depreciation prescription process would have a significant economic impact on a substantial number of small entities. Pursuant to longstanding rules, the proposed changes would apply only to incumbent LECs with annual operating revenues exceeding the indexed revenue threshold. No comments were received concerning the proposed certification.

B. Paperwork Reduction Act

26. *Final Paperwork Reduction Act Analysis.*

C. Authority

This decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law 104–13, and has been approved in accordance with the provisions of that Act. The Office of Management and Budget (OMB) approved the proposed requirements under OMB control number 3060–0168, which expires December 31, 2001. The Report and Order contains new or modified information collections which are subject to the Paperwork Reduction Act of 1995.

D. Ordering Clauses

Pursuant to Sections 1, 2, 4, 11, 201–205, and 218–220 of the Communications Act of 1934, as amended, 47 USC 151, 152, 154, 161, 201–205, and 218–220, part 43 of the Commission's rules, 47 CFR part 43, is *Amended* as shown. Pursuant to Sections 1–4, 201–205, 220 and 303(r) of the Communications Act of 1934, as amended, 47 USC 151–154, 201–205, 220 and 303(r) that the *Report and Order is Adopted.* These rules contain information collections that have not been approved by OMB. The Commission will publish a document announcing the effective date of this rule.

Pursuant to Sections 1, 4, 10, and 220 of the Communications Act of 1934, as amended, 47 USC 151, 154, 160, and 220 that the Petition for Forbearance from Depreciation Regulation of Price Cap Local Exchange Carriers filed by the United States Telephone Association is hereby denied. The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this 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 43

Reports of Communication Common Carriers and Certain Affiliates.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 43 of Title 47 of the CFR is amended as follows:

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for part 43 continues to read as follows:

Authority: 47 U.S.C. 154: Telecommunications Act 0f 1996, Public Law 104–104, sections 402 (b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

2. In § 43.43 paragraph (c) and (e) are revised to read as follows:

§ 43.43 Reports of proposed changes in depreciation rates.

* * * * *

(c) Except as specified in paragraphs (c)(1) and (c)(3) of this section, when the change in the depreciation rate proposed for any class or subclass of plant (other than one occasioned solely by a shift in the relative investment in the several subclasses of the class of plant) amounts to twenty percent (20%) or more of the rate currently applied thereto, or when the proposed change will produce an increase or decrease of one percent (1%) or more of the aggregate depreciation charges for all depreciable plant (based on the amounts determined in compliance with paragraph (b)(2) of this section) the carrier shall supplement the data required by paragraph (b) of this section) with copies of the underlying studies, including calculations and charts, developed by the carrier to support service-life and net-salvage estimates. If a carrier must submit data of a repetitive nature to comply with this requirement, the carrier need only submit a fully illustrative portion thereof.

(1) A Local Exchange Carrier regulated under price caps, pursuant to §§ 61.41 through 61.49 of this chapter, is not required to submit the supplemental information described in paragraph (c) introductory text of this section for a specific account if: The carrier's currently prescribed depreciation rate for the specific accounts derived from basic factors that fall within the basic factor ranges established for that same account; and the carrier's proposed depreciation rate for the specific account would also be derived from basic factors that fall within the basic factor ranges for the same account.

(2) Local Exchange Carriers that are regulated under price caps, pursuant to §§ 61.41 through 61.49 of this chapter, and have selected basic factors that fall within the basic factor ranges for all accounts are exempt from paragraphs (b)(3), (b)(4), and (c) introductory text of this section. They shall instead comply with paragraphs (b)(1), (b)(2) and (b)(5) of this section and provide a book and theoretical reserve summary and a summary of basic factors underlying proposed rates by account.

(3) Interexchange carriers regulated under price caps, pursuant to §§ 61.41 through 61.49 of this chapter, are exempted from submitting the supplemental information as described in paragraph (c) introductory text of this section. They shall instead submit: Generation data, a summary of basic factors underlying proposed depreciation rates by account and a short narrative supporting those basic factors, including company plans of forecasted retirements and additions, recent annual retirements, salvage and cost of removal.

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(e) Unless otherwise directed or approved by the Commission, the following shall be observed: Proposed changes in depreciation rates shall be filed at least ninety (90) days prior to the last day of the month with respect to which the revised rates are first to be applied in the accounts (*e.g.*, if the new rates are to be first applied in the depreciation accounts for September, they must be filed on or before July 1). Such rates may be made retroactive to a date not prior to the beginning of the year in which the filing is made: *Provided however,* that in no event shall a carrier for which the Commission has prescribed depreciation rates make any changes in such rates unless the changes are prescribed by the Commission. Carriers who select basic factors that fall within the basic factor ranges for all accounts are exempt from depreciation rate prescription by the Commission.

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