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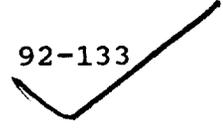
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL
FILE

In the Matter of)
)
Amendment of Parts 65 and 69 of)
the Commission's Rules to Reform)
The Interstate Rate of Return)
Represcription and Enforcement)
Process)

CC Docket No. 92-133



COMMENTS OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA") submits these Comments in response to the Notice of Proposed Rulemaking in the above proceeding ("Notice") (FCC 92-256), released July 14, 1992. The Federal Communications Commission ("Commission") seeks comments on proposals to reform Part 65 of its rules which set forth procedures and methodologies for prescribing and enforcing the rate of return certain Local Exchange Carriers ("LECs") are authorized to earn on interstate access service.

INTRODUCTION

NTCA is an association of approximately 480 small exchange carriers ("ECs") providing telecommunications services to subscribers and interexchange carriers ("IXCs") throughout rural America. NTCA's members support the continuation of a prescribed unitary overall rate of return and the Commission's overall goal in this proceeding, i.e., "to simplify the rate of return represcription and enforcement processes so they do not impose unnecessary burdens on the telecommunications industry as it

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continues to develop."¹ NTCA is particularly concerned that changes in rescription procedures may result in the imposition of new burdens on the small companies that have heretofore not been required to participate in rescription proceedings. The Commission's goal of simplification will be defeated if these small companies are saddled with new requirements to participate in the complex process of rescription or a new automatic refund rule.

DISCUSSION

I. NTCA AGREES THAT THE COMMISSION SHOULD RETAIN ITS POLICY OF PRESCRIBING A UNITARY, OVERALL RATE OF RETURN FOR RATE OF RETURN LECs.

The Commission proposes no change in its policy of prescribing a unitary, overall rate of return for rate of return ("ROR") LECs.² This position is consistent with the Commission's previous recognition that a unitary rate of return is necessary to calculate and maintain the support mechanisms. In its April 17, 1989, Report and Order, in the Price Cap proceeding, the Commission said, ". . . [P]rice cap regulation should not disturb our longstanding practice of employing a unitary rate of return for the local exchange industry, thereby ensuring that access rate determinations for those remaining under rate of return and the support mechanisms associated with

¹ Notice at para. 8.

² The unitary ROR is also utilized by price cap carriers in conjunction with NECA's calculation of the nationwide average loop cost and USF assistance to these carriers. In addition, some "new services" of price cap LEC's remain under rate of return regulation, Notice at n.100.

access charge revenue requirements are unaffected by the implementation of a price cap system."³

The Commission also states here that one of its objectives is to reform the prescription process while retaining a unitary ROR.⁴ NTCA agrees with the reform objective and believes the Commission can fulfill this objective while continuing to prescribe a unitary ROR. NTCA also agrees that continuation of a unitary ROR is necessary to accomplish the universal service goals of the Communications Act. Also, in its earlier rulemaking, the Commission found that prescription of a single ROR for the LECs interstate services "best balances administrative ease with fairness."⁵ This finding has continuing legitimacy in the context of this proceeding and the Commission's objective of reducing regulatory burdens on the companies that remain under rate of return regulation.

The maintenance of a unitary ROR is likewise implicit in the Unity 1-A Agreement principles and the access charge rules which incorporate Unity 1-A principles. The June 1986 Unity 1-A document represents industry agreement on a broad range of industry issues including subscriber line charges, pooling,

³ In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, Report and Order and Second Further Notice of Proposed Rulemaking, 4 FCC Rcd 3276, para. 836 (1989).

⁴ Notice at paras. 13-18.

⁵ Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers, Report and Order, CC Docket No. 84-800, Phase II, 51 Fed. Reg. 1795, para. 7, (Phase II Order), recon. 104 F.C.C.2d 1404 (1986) (Phase II Reconsideration).

Universal Service Fund, lifeline, uniform toll rates and a unitary rate of return. The Agreement was filed with the Commission in CC Docket Nos. 78-72 and 80-286 on July 25, 1986.

The Unity 1-A Agreement and the principles it supports are as viable today as they were in 1986. For that additional reason, the Commission should retain the unitary ROR.

II. THE COMMISSION SHOULD CONTINUE TO USE THE REGIONAL HOLDING COMPANIES AS SURROGATES FOR DETERMINING THE COST OF CAPITAL FOR LEC INTERSTATE ACCESS SERVICE.

In its 1990 represcription proceeding, the Commission found that the Regional Holding Companies ("RHCs") were appropriate surrogates for the BOC or other LEC interstate access industry. Surrogates were needed then as now because it is not actually possible to buy stock in the LECs' interstate access operations. In the 1990 proceeding, the Commission sought surrogate firms with risk characteristics similar to those of interstate access and chose the RHCs because it determined that the primary business of the RHCs in 1990 was still regulated telephone service.⁶ That has not changed. The Commission should continue to use the RHCs as surrogates to determine the cost of capital. There have been no dramatic changes in RHC diversification since the 1990 represcription proceeding. The RHCs are still the best surrogates for LEC provided interstate access.

⁶ In the Matter of Represcribing the Authorized Rate of Return for Interstate Service of Local Exchange Carriers, Order, 5 FCC Rcd 7507, paras. 76-82 (1990).

NTCA also believes that a trigger mechanism is appropriate and that the Commission should abandon the two-year represcription cycle embodied in the current rules.

III. THE COMMISSION SHOULD CONTINUE TO USE A COMPOSITE OF THE BOCs' EMBEDDED COSTS OF DEBT TO DETERMINE THE DEBT COMPONENT OF THE WEIGHTED COST OF CAPITAL.

Under present rules, the Commission uses a composite of the RHCs' embedded cost of debt to determine the cost of debt component of the weighted average cost of capital. It requests comments on whether it should continue to use this methodology. It also requests comments on whether it should calculate the cost of debt component using a composite of the Bell Operating Companies' ("BOCs") embedded cost of debt.

NTCA supports use of the BOCs' embedded cost of debt because this method is reasonable and administratively efficient. Data for BOC debt costs is readily available in the FCC Annual Form M. Form M is a reliable and detailed source of information. It is submitted to the Commission under Section 219 of the Act, a provision which contains enforcement mechanisms for non-compliance. Moreover, the data in Form M is already relied upon by many state public utility commissions. Under these circumstances, use of the BOCs' embedded cost of debt would promote the Commission's interest in reducing regulatory burdens and promoting administrative efficiencies.

IV. THE COMMISSION SHOULD CAREFULLY DEFINE NECA'S ROLE AS DATA ADMINISTRATOR.

The Commission requests comments on a proposal to make the National Exchange Carrier Association ("NECA") the only mandatory

participant in represcription proceedings. The proposal also suggests that the Commission require that NECA collect information to support the triggering mechanism and cost of capital methodologies and "process this information in accordance with [Commission] rules."⁷

NTCA is not opposed to a process which includes the collection of data by NECA and the submission of this data to the Commission. NECA participation in this effort may further the Commission's objective by contributing to administrative efficiencies and reducing regulatory burdens for small companies. However, since the Commission has not yet decided on the methodologies it will use to calculate cost of capital or to identify the triggering event that begins a new prescription, NTCA believes it is premature to devise a rule that limits mandatory participation to NECA or that requires NECA to process as well as submit data in accordance with Commission rules [emphasis added]. It is not clear from the Notice what range of activities is contemplated by the processing function. Processing of the type of expert analysis that will be involved in cost of capital determinations could include any number of functions such as assembling and manipulating data, performing set calculations, drawing conclusions from data and/or calculations, choosing from a number of possible conclusions suggested by the data, or applying and/or interpreting possible conclusions to rules, policies or other guidelines suggested by

⁷ Notice at para. 41.

law or the Constitution. In any event, NTCA believes the Commission should proceed cautiously before requiring NECA to perform non-ministerial duties that might involve it in the exercise of discretion more appropriately left to the Commission or that might otherwise place NECA in a position of not being able to act as an agent of its members or of having to represent conflicting interests.

V. THE COMMISSION SHOULD REPEAL THE AUTOMATIC REFUND RULE.

NTCA supports the Commission's tentative conclusion that it should rely on the tariff review and complaint process as its primary enforcement mechanism and that it should repeal the automatic refund rule.

An automatic refund rule is not required to assure compliance with ROR prescription orders. Any automatic refund order would only apply to the small percentage of carriers, (7% of the industry remaining under rate of return).⁸ The Commission is proposing an Optional Incentive Plan, that if adopted as proposed, will establish an earning zone extending 100 basis points below to 100 basis points above the authorized ROR for carriers opting for the plan.⁹ Any automatic refund rule would have to identify buffer zones below and above this zone to comply with the Automatic Refund Decision, 836 F.2d 1386, 1393 (D.C. Cir. 1987). NTCA agrees that the Commission has the

⁸ In the Matter of Regulatory Reform of Local Exchange Carriers Subject to Rate of Return Regulation, Notice of Proposed Rulemaking, CC Docket No. 92-135, released July 17, 1992.

⁹ Id.

authority to enact a rule that would allow carriers to recover amounts by which their earnings fall short of a target or to return amounts above the target.¹⁰ However, the Commission has other alternatives available and these alternatives are effective. Both the tariff review and complaint process serve as sufficient safeguards against violation of the Commission's ROR prescription. NTCA urges the Commission to continue to utilize these enforcement alternatives to assure compliance with its ROR prescription.

VI. CONCLUSION

For the above stated reasons, NTCA urges the Commission to adopt procedures in accordance with the recommendations made above.

Respectfully submitted,

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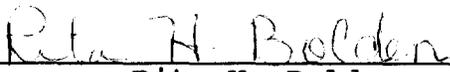
¹⁰ Automatic Refund Decision, 836 F.2d 1393.

CERTIFICATE OF SERVICE

I, Rita H. Bolden certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in CC Docket No. 92-133 was served on this 11th day of September 1992, by first-class, U.S. Mail, postage prepaid, to the following persons listed below:

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