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(e) A telephone company or group of telephone companies may file a tariff that is not an association tariff, except that a group rate for non-affiliated telephone companies may not be filed under Section 61.50; e.g., the Association.

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(i) The following rules apply to the withdrawal from Association tariffs under the provision of paragraphs (e)(6) or (e)(9) of this section or both by telephone companies electing to file price cap tariffs pursuant to § 69.3(h) or optional incentive plan tariffs pursuant to § 61.50 of this chapter.

(1) In addition to the withdrawal provisions of § 69.3(e)(6) and (9), a telephone company or group of affiliated telephone companies that participates in one or more Association tariffs during the current tariff year and that elects to file price cap tariffs or optional incentive regulation tariffs effective July 1 of the following tariff year, shall give the Association at least 6 months' notice that it is withdrawing from all Association tariffs, subject to the terms of this Rule, to participate in price cap regulation or optional incentive regulation.

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(3) Notwithstanding the provisions of § 69.3(e)(3), (6), and (9), in the event a telephone company withdraws from all Association tariffs for the purpose of filing price cap tariffs or optional incentive plan tariffs, such company shall exclude from such withdrawal all "average schedule" affiliates and all affiliates so excluded shall be specified in the withdrawal. However, such company may include one or more "average schedule" affiliates in price cap regulation or optional incentive plan regulation provided that each price cap or optional incentive plan affiliate relinquishes "average schedule" status and withdraws from all Association tariffs and any tariff filed pursuant to 61.39(b)(2) of this chapter. See generally §§ 69.605(c), 61.39(b) of this chapter; MTS and WATS Market Structure: Average Schedule Companies, Report and Order, 103 FCC 2d 1026-1027 (1986).

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(j) A telephone company or group of affiliated telephone companies that participates in an association tariff and elects to file its own tariff pursuant to § 61.50 effective January 1, 1994 shall notify the association not later than September 1, 1993 that it will no longer participate in the association tariff. This January 1, 1994 filing shall be for an 18-month tariff period. A telephone company or group of affiliated telephone companies that participates in an association tariff and elects to file its own tariff pursuant to § 61.50 effective July 1, 1994 or thereafter pursuant to § 69.3(a) shall notify the association not later than December 31 of the preceding year that it will no longer participate in that association tariff.

**Concurring Statement
of
Commissioner Ervin S. Duggan**

**In Re: Regulatory Reform for Local Exchange Carriers Subject to
Rate of Return Regulation (CC Docket 92-135)**

I concur in the Commission's decision today to allow an adjustment for growth in demand when calculating the carrier common line formula for small telephone companies choosing the optional incentive regulation plan.

I dissented on this point in the local telephone company price caps proceeding for the following reason: In its 1990 price caps decision, the FCC adopted a formula for calculating the effect of demand growth on the carrier common line rate element.¹ That formula handed local telephone companies half the benefit of the increase in minutes of use over non-traffic sensitive subscriber lines, and gave the other half to customers. The majority's rationale, which I could not accept, was that local telephone companies are somehow partially responsible for stimulating interstate demand growth over subscriber lines, and that the telephone companies should benefit from that demand growth through an adjustment to the carrier common line formula.² I disagreed with the proposition that local telephone companies in fact are able to stimulate interstate demand growth, and so I dissented from the price cap carrier common line formula.³

I concur today, despite my problems with the common line formula, because consistency dictates that the Commission give to smaller telephone companies choosing incentive regulation the same treatment it gave the larger companies.

¹ Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order (Docket No. 87-313), 5 FCC Rcd 6786 (1990), aff'd sub. nom. National Rural Telecommunications Association v. FCC (D.C. Cir., March 26, 1993).

² Id., 5 FCC Rcd at 6793-95.

³ Id., 5 FCC Rcd at 6859-61.