

FCC MAIL SECTION

Federal Communications Commission

FCC 98-257

Oct 14 10 42 AM '98

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

In the Matter of
Access Charge Reform

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CC Docket No. 96-262

THIRD ORDER ON RECONSIDERATION

Adopted: October 1, 1998

Released: October 5, 1998

By the Commission:

I. INTRODUCTION

1. The ceilings for the presubscribed interexchange carrier charge (PICC) are scheduled to increase for all classes of customers on January 1, 1999. For the reasons set forth in this Order, we delay this increase until July 1, 1999.

II. BACKGROUND

2. In the *Access Charge Reform Order*,¹ we adopted common line rate structure modifications that permit price cap local exchange carriers (LECs) to shift from a rate structure that recovers a significant portion of non-traffic sensitive common line costs through per-minute carrier common line charges to one that recovers these costs through flat-rated charges. The rate structure we adopted retained the existing \$3.50 ceiling on the subscriber line charge (SLC) for primary residential and single-line business lines and increased the SLC ceilings on other lines to permit LECs to recover a greater amount of the common line costs through flat-rated charges assessed on end users. To the extent that SLC ceilings prevent price cap LECs from recovering their allowed common line revenues from end users, price

¹ *Access Charge Reform*, CC Docket No. 96-262 *et al.*, First Report and Order, 12 FCC Rcd 15982 (1997) (*Access Charge Reform Order*), *aff'd sub nom.* Southwestern Bell Tel. Co. v. Fed. Communications Comm'n, ___ F.3d ___ (8th Cir., Aug. 19, 1998); Order on Reconsideration, 12 FCC Rcd 10119 (1997), Second Order on Reconsideration and Memorandum Opinion and Order, 12 FCC Rcd 16606 (1997). Petitions for reconsideration are currently pending before the Commission.

cap LECs may recover the shortfall, subject to a maximum charge, through PICCs. The PICC is a flat, per-line charge assessed on the end user's presubscribed interexchange carrier.²

3. In order to provide price cap LECs, interexchange carriers (IXCs), and end users with adequate time to adjust to the new rate structure, we adopted an approach that phases in the PICC. We also established several different categories of PICCs, setting an initial cap for primary residential and single-line business lines at \$0.53 per month for the first year, equal to the amount assessed IXCs in the past for those lines for purposes of the former High Cost Fund.³ We set initial ceilings on the PICCs for non-primary residential lines at \$1.50 per month and for multi-line business lines at \$2.75 per month.⁴ On January 1, 1999, the PICC ceilings are scheduled to increase by the following amounts: \$0.50 plus inflation for primary residential and single-line business lines, \$1.00 plus inflation for non-primary residential lines, and \$1.50 plus inflation for multi-line business lines.⁵

III. DISCUSSION

4. On our own motion,⁶ we postpone the scheduled increase of the PICC ceilings from January 1, 1999 to July 1, 1999. In the *Access Charge Reform Order*, we established a system that enables access charges better to reflect the costs underlying those charges. We remain convinced that recovery of non-traffic sensitive costs through flat charges, rather than minute-of-use charges, on IXCs is the appropriate recovery mechanism for these costs. We believe, however, that we should postpone implementation of the next round of shifts from per-minute charges to PICCs.

5. Other adjustments to access charges, most notably those involving universal service and the reductions associated with the annual application of our price cap formula, take effect on July 1, 1999. Earlier this year, we extended from January 1, 1999 until July 1, 1999 the

² PICCs also may recover some transport interconnection charges and marketing expenses. 47 C.F.R. § 69.153(a), (d).

³ *Access Charge Reform Order*, 12 FCC Rcd at 16020-21.

⁴ *Id.* at 16022. The rates must be even lower than these ceilings if the revenues a carrier is permitted to recover under our price cap rules are lower.

⁵ *Id.* at 16020-23.

⁶ 47 C.F.R. § 1.108. The filing of a petition for reconsideration tolls the thirty-day period our rules provide for *sua sponte* reconsideration. See *Central Fla. Enters., Inc. v. FCC*, 598 F.2d 37, 48 n.51 (D.C. Cir. 1978), *cert. dismissed*, 441 U.S. 957 (1979), and *cert. denied*, 460 U.S. 1084 (1983); *Radio Americana, Inc.*, 44 F.C.C. 2506, 2510 (1961).

implementation date for the revised mechanism for determining universal service high cost support for non-rural carriers.⁷ Under current rules, interstate access charges are to go down at that time to reflect the universal service support that incumbent LECs receive through the new high cost support mechanism.⁸ Also on July 1, 1999, price cap LECs' annual access tariffs will become effective. These new tariffs will reflect a downward adjustment of the price cap indices due in large part to the "X-Factor" and the low inflation experienced in the economy as a whole.⁹

6. If the scheduled increases in the PICC ceilings were not delayed, PICCs that would increase on January 1, 1999 may be reduced due to the new universal service support mechanism and the X-Factor adjustment both taking effect on July 1, 1999. The imposition of higher PICCs on January 1 followed by decreases just six months later will increase consumer confusion and frustration. We instead prefer to minimize rate churn, and so postpone the scheduled increase to the PICC ceilings.¹⁰

IV. FINAL REGULATORY FLEXIBILITY CERTIFICATION

7. In the *Access Charge Reform Order*,¹¹ we conducted a Final Regulatory Flexibility Analysis (FRFA), as required by the Regulatory Flexibility Act (RFA).¹² The RFA requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a

⁷ *Federal-State Board on Universal Service*, CC Docket No. 96-45, Order and Order on Reconsideration, 13 FCC Rcd 13749 (1998).

⁸ *Access Charge Reform Order*, 12 FCC Rcd at 16148-49.

⁹ 47 C.F.R. §§ 61.43, 61.45.

¹⁰ We are not similarly concerned about SLC increases scheduled to take effect on January 1, 1999. While the cap for the multi-line business SLC is scheduled to increase, it should affect very few price cap LEC customers, because almost all multi-line business line SLCs assessed by price cap LECs are, and will remain, below the current cap. As for the increase in the SLC for non-primary residential lines, it is unlikely that charge will decrease as the result of universal service and X-Factor adjustments on July 1, 1999. Therefore, we believe that rate churn for these customers is unlikely.

¹¹ 12 FCC Rcd at 16160-68.

¹² See 5 U.S.C. § 604. The RFA, see 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

significant economic impact on a substantial number of small entities."¹³ In this present *Third Order on Reconsideration* we have, as described *supra*, revised the rules to postpone the scheduled increases to PICC ceilings from January 1, 1999, to July 1, 1999. We hereby certify that this postponement will not have a significant economic impact on a substantial number of small entities, because the action merely maintains the status quo concerning the maximum PICCs that price cap LECs may charge customers. The present action also, therefore, does not affect the previous FRFA. The Commission will send a copy of this *Third Order on Reconsideration*, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.¹⁴ In addition, the *Third Order on Reconsideration* (or a summary thereof) and certification will be published in the Federal Register.¹⁵

V. PAPERWORK REDUCTION ACT ANALYSIS

8. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. 104-13, and does not contain new and/or modified information collections subject to Office of Management and Budget review.

VI. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), and 201-205 of the Communications Act, 47 U.S.C. §§ 154(i), and 201-205, and Section 1.108 of the Commission's rules, 47 C.F.R. § 1.108, we hereby amend § 69.153 as set forth in the Appendix.

¹³ 5 U.S.C. § 605(b).

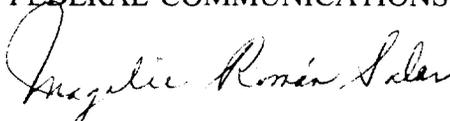
¹⁴ *Id.*

¹⁵ *Id.*

10. IT IS FURTHER ORDERED that the provisions of this Order will be effective thirty days after publication.

11. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this *Third Order on Reconsideration*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

APPENDIX -- Final Rules**AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS****Part 69 -- ACCESS CHARGES**

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

Authority: 47 U.S.C. §§ 154(i) and (j), 201, 202, 203, 205, 218, 254, and 403.

2. Section 69.153 is amended by revising paragraphs (c), (d), and (e) to read as follows:

§ 69.153 Presubscribed interexchange carrier charge (PICC).

* * * * *

(c) The maximum monthly PICC for primary residential subscriber lines and single-line business subscriber lines shall be the lower of:

(1) * * *

(2) \$0.53. On July 1, 1999, this amount shall be adjusted by the inflation factor computed under paragraph (e), and increased by \$0.50. On July 1, 2000, and in each subsequent year, this amount shall be adjusted by the inflation factor computed under paragraph (e), and increased by \$0.50.

(d) * * *

(1) The maximum monthly PICC for non-primary residential subscriber lines shall be the lower of:

(i) * * *

(ii) \$1.50. On July 1, 1999, this amount shall be adjusted by the inflation factor computed under subparagraph (e), and increased by \$1.00. On July 1, 2000, and in each subsequent year, this amount shall be adjusted by the inflation factor computed under subparagraph (e), and increased by \$1.00.

(2) If the maximum monthly PICC for non-primary residential subscriber lines is determined using paragraph (d)(1)(i), the maximum monthly PICC for multi-line business subscriber lines shall equal the maximum monthly PICC of non-primary

residential subscriber lines. Otherwise, the maximum monthly PICC for multi-line business lines shall be the lower of:

(i) * * *

(ii) \$2.75. On July 1, 1999, this amount shall be adjusted by the inflation factor computed under subparagraph (e), and increased by \$1.50. On July 1, 2000, and in each subsequent year, this amount shall be adjusted by the inflation factor computed under subparagraph (e), and increased by \$1.50.

(e) For the PICC ceiling for primary residential subscriber lines and single-line business subscriber lines under subparagraph (c)(2), non-primary residential subscriber lines under subparagraph (d)(1)(ii), and multi-line business subscriber lines under subparagraph (d)(2)(ii):

(1) On July 1, 1999, the ceiling will be adjusted to reflect inflation as measured by the change in GDP-PI for the 18 months ending March 31, 1999.

(2) On July 1 of each subsequent year, the ceiling will be adjusted to reflect inflation as measured by the change in GDP-PI for the 12 months ending on March 31 of the year the adjustment is made.

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