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Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of	)	
	)	
Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers	)	CC Docket No. 00-256
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation	)	CC Docket No. 98-77
	)	
Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers	)	CC Docket No. 98-166
	)	
December 17, 2001, MAG Access Charge Tariff Filings	)	CCB/CPD 01-23

DECLARATORY RULING

Adopted: December 11, 2001 **Released: December 11, 2001**

By the Chief, Common Carrier Bureau:

1. In the recent *Rate-of-Return Access Charge Reform Order*,[1] the Commission reformed the access charge and universal service rules as they apply to local exchange carriers (LECs) subject to rate-of-return regulation. Some of these LECs have questioned whether one of these revisions – the reallocation of costs recovered through the transport interconnection charge (TIC) – could theoretically result in negative transport rates in certain circumstances. With this declaratory ruling, we clarify the proper reallocation of the TIC provided for in section 69.415 of the Commission's rules.[2]

2. Rate-of-return LECs develop tariffed rates based on estimates of revenue requirements and demand. For the larger rate-of-return LECs, the demand and revenue requirements are projected amounts for the period to be covered by the tariff. Smaller LECs –

[1] Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256, *Second Report and Order and Further Notice of Proposed Rulemaking*, FCC 01-304 (rel. Nov. 8, 2001) ("*Rate-of-Return Access Charge Reform Order*").

[2] 47 C.F.R. § 69.415.

those with fewer than 50,000 lines and that do not participate in the National Exchange Carrier Association pool – are permitted to develop costs and demand based on historical data from the preceding two years, rather than projecting their costs and demand for the tariff period. For LECs that file their own tariffs and have fewer than 50,000 lines, the tariffs are in effect for two years. Thus, the rates in effect during the 2000-2001 tariff period were based on 1997-1998 historical cost data. Once a carrier sets its rates, a carrier's revenues from the service in question are a function of the actual demand for the service, and thus may be higher or lower than the revenue requirement reflected in the underlying cost data.

3. In the *Rate-of-Return Access Charge Reform Order*, the Commission eliminated the TIC as an access charge rate element.[3] The Commission concluded that the costs previously recovered through the TIC should be reallocated among all access categories, including transport, and adopted a new rule, section 69.415, to implement this reallocation.[4] The Commission, however, limited the amount of transport costs that could be reallocated as a result of the elimination of the TIC to a rate-of-return LEC's TIC revenues during the twelve months ending June 30, 2001.[5] This limitation was designed to preclude rate-of-return LECs from increasing the costs recovered through the TIC, which would permit them to lower their transport rates and to reallocate more costs to the common line category, thereby potentially increasing the costs recovered through the interstate common line support mechanism.

4. Based on inquiries from rate-of-return carriers concerning the implementation of the *Rate-of-Return Access Charge Reform Order*, we have learned that some rate-of-return LECs are interpreting section 69.415 as requiring them to reallocate transport costs based on all of their TIC revenues between July 1, 2000, and June 30, 2001, in all circumstances. For some of these carriers, these TIC revenues are greater than their transport revenue requirement because, in some cases, the demand during the twelve-month period ending June 30, 2001, was significantly higher than the demand that had formed the basis of the rate setting process that resulted in their existing transport revenue requirements. In such cases, TIC revenues would exceed the transport revenue requirement, potentially resulting in negative transport rates. Thus, some parties have questioned whether the Commission intended for them to file tariffs with negative transport rates when it adopted section 69.415.

5. With this declaratory ruling, we clarify how the TIC should be reallocated under section 69.415. Paragraph (a) of Section 69.415 provides that "[b]eginning January 1, 2002, non-price cap local exchange carriers shall reallocate a portion of the costs otherwise assigned to the transport category to the common line, local switching, information, and special access elements." This language makes clear that the costs to be reallocated are "a portion" of the costs otherwise assigned to the transport category. The rule does not, however, specify the derivation of the amount of costs that are to be allocated from the transport category, only that a portion are to be reallocated. The Commission made clear in the *Rate-of-Return Access Charge Reform Order* that the amount to be reallocated was the costs that otherwise would have been recovered by the TIC. For example, in paragraph 76, the Commission stated that it was reallocating the

[3] *Rate-of-Return Access Charge Reform Order* at paras. 98-104.

[4] 47 C.F.R. § 69.415.

[5] 47 C.F.R. § 69.415(b).

costs contained in the TIC to other access rate elements,[6] and in paragraph 100, the Commission referred to "spreading the costs currently recovered through the TIC."[7] As discussed above in paragraph 3 of this order, the Commission also adopted a limitation on the maximum amount of the TIC to be reallocated and codified that limitation in paragraph (b) of section 69.415.[8] Rather than reading paragraph (b) as a limitation, several carriers appear to be interpreting paragraph (b) as the amount to be reallocated in all circumstances, even where the limit has not been reached. Consistent with the text of the *Rate-of-Return Access Charge Reform Order*, the "amount to be reallocated" language in paragraph (b) refers to the amount that would otherwise be recovered through the TIC. Paragraph (b) then proceeds to establish a limit on the amount to be reallocated from the transport category. The limit is clearly intended to preclude LECs from gaming the reallocation process, as noted above, not to establish the amount to be reallocated where the limit has not been reached. The December 17, 2001, tariff filing, therefore, should reallocate the costs recovered by any interconnection charge included in a carrier's tariff, subject to the limitation contained in section 69.415(b), and should not contain a negative transport rate.

6. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and (j) and 201 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j) and 201, and Sections 0.91, 0.291, and 1.2 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.2, that this declaratory ruling IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Dorothy T. Attwood
Chief, Common Carrier Bureau

[6] *Rate-of-Return Access Charge Reform Order* at para. 76.

[7] *Rate-of-Return Access Charge Reform Order* at para. 100.

[8] Paragraph (b) provides: "The amount to be reallocated is limited to the total revenues recovered through the interconnection charge assessed pursuant to section 69.124 for the 12-month period ending June 30, 2001." 47 C.F.R. § 69.415(b).