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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 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
	)	

FIRST ORDER ON RECONSIDERATION IN CC DOCKET NO. 00-256, TWENTY-FOURTH ORDER ON RECONSIDERATION IN CC DOCKET NO. 96-45

Adopted: March 22, 2002 **Released: March 22, 2002**

By the Commission: Commissioner Copps concurring and issuing a statement.

I. INTRODUCTION

1. In this Order, we modify on our own motion the data collection and filing procedures for implementation of the Interstate Common Line Support (ICLS) mechanism, in order to ensure timely implementation of the ICLS mechanism on July 1, 2002 as adopted in the *MAG Order*.[1] First, we extend until April 18, 2002 the original March 31, 2002, deadline set forth in section 54.903(a) for the submission of projected data and line counts to the Universal Service Administrative Company (USAC).[2] Second, we modify the requirement under section 54.903(a) that each carrier file its data with USAC in order to permit NECA to file the data for each member of the common line pool for the purpose of this initial ICLS filing deadline.[3] Finally, we specify the data to be submitted for this initial ICLS filing under section 54.903(a).[4] We conclude that these actions are appropriate to ensure timely implementation of the ICLS mechanism, accuracy of support, and compliance with the new filing requirements, and shall apply only to the initial ICLS filing deadline.

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[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, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifteenth Report and Order , *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, Report and Order, *Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers,* CC Docket No. 98-166, Report and Order, 16 FCC Rcd 19613, FCC 01-304 (2001) (*MAG Order*), *recon. pending.*

[2] 47 C.F.R. § 54.903(a)(1), (3).

[3] 47 C.F.R. § 54.903(a).

[4] 47 C.F.R. § 54.903(a)(1), (3).

II. BACKGROUND

2. In the *MAG Order*, which was released by the Commission on November 8, 2001, the Commission reformed the interstate access charge and universal service support systems for rate-of-return carriers.[5] Consistent with the mandate of the Telecommunications Act of 1996 to eliminate implicit support in the access rate structure where possible, the Commission ordered that the carrier common line (CCL) charge gradually be replaced with an explicit support mechanism, ICLS.[6] These changes were designed to bring to all Americans, especially those living in rural and high-cost areas, the benefits of competition and choice while preserving universal service in those areas.[7] The *MAG Order* is tailored to the needs of small and mid-sized local telephone companies serving rural and high-cost areas, and will help provide certainty and stability for rate-of-return carriers, encourage investment in rural America, and provide important consumer benefits.[8]

3. The ICLS mechanism is critical to the achievement of the Commission's universal service goals. ICLS replaces the CCL charge, and thereby permits each rate-of-return carrier to recover its common line revenue requirement, while ensuring that its subscriber line charges (SLCs) remain affordable to its customers.[9] This makes possible the reduction of per-minute access rates toward cost-based levels, which in turn encourages the provision of affordable and competitive long-distance services in rural areas.[10] ICLS will be portable to competitive carriers and thus will encourage the growth of local service competition in regions served by rate-of-return carriers.[11] Under the *MAG Order*, the ICLS mechanism will be implemented beginning on July 1, 2002.[12] This date coincides with a number of important access reforms adopted in the *MAG Order*, making timely implementation of ICLS vital to the realization of the Commission's access reform and universal service goals.[13]

4. The Commission named USAC the administrator of the ICLS mechanism.[14] USAC bears responsibility for collecting data, calculating and distributing support to carriers, and preventing waste, fraud, and abuse in the mechanism.[15] As described in the *MAG Order*, USAC shall determine and collect the data necessary to perform these functions.[16] Consistent with its duty to prevent waste, fraud, and abuse, USAC may also require projected or actual data deemed reasonably necessary to verify and validate the carriers' filings, and perform audits of data when

[5] *Id.* at 19615-16, para. 1.

[6] 47 U.S.C. § 254(b), (e); *MAG Order*, 16 FCC Rcd at 19615-16, para. 1.

[7] *MAG Order*, 16 FCC Rcd at 19617, para. 3

[8] *Id.*

[9] *Id.* at 19664, para. 120.

[10] *Id.* at 19643-44, para. 63, 19664, para. 120.

[11] *Id.* at 19678-79, paras. 151-54.

[12] *Id.* at 19680-81, para. 158.

[13] *Id.*

[14] 47 C.F.R. § 54.702(a); *MAG Order*, 16 FCC Rcd at 19681, para. 159.

[15] 47 C.F.R. § 54.707; *MAG Order*, 16 FCC Rcd at 19682, para. 162.

[16] *MAG Order*, 16 FCC Rcd at 19682, para. 162.

appropriate.[17]

5. Under the rules adopted in the *MAG Order*, rate-of-return carriers are responsible for filing their own data to be eligible for ICLS.[18] The Commission recognized that many rate-of-return carriers are small, rural carriers that would be particularly burdened by imposition of additional reporting requirements. The Commission stated its intention to limit as much as possible the administrative burdens associated with the new ICLS mechanism, while promoting accurate and efficient distribution of support.[19] The Commission also noted that "the burdens associated with these new filing requirements are in many cases mitigated because rate-of-return carriers already prepare similar filings pursuant to other Commission rules or as a result of their membership in the NECA common line pool."[20] The Commission anticipated that many members of the common line pool—which includes nearly all rate-of-return carriers—would opt to have NECA provide data to USAC on their behalf.[21]

6. The Commission's ICLS rules require carriers or their agents to file projected cost and revenue data for the first ICLS funding year on March 31, 2002.[22] Pursuant to section 54.901(a), each carrier is eligible, on a study area basis, for ICLS equal to its common line revenue requirement less its SLC revenues, CCL charge revenues, special access surcharges, line port costs in excess of basic analog service, and Long Term Support (LTS).[23] On March 31 of each year, each rate-of-return carrier must file the data necessary to determine its projected ICLS for the next funding year (July 1 to June 30).[24] The support calculated using the projected data will subsequently be "trued up" against actual data to ensure that each carrier has received an appropriate and accurate support amount.[25]

7. Under section 54.903(a), rate-of-return carriers are also required to provide historical line count data on March 31, 2002.[26] Line count data are required to calculate the per-line support amount available to a competitive eligible telecommunications carrier (CETC) serving a study area served by a rate-of-return carrier.[27] For the ICLS mechanism, carriers are therefore

[17] 47 C.F.R. § 54.707; *MAG Order*, 16 FCC Rcd at 19682, para. 162.

[18] 54 C.F.R. § 54.903(a).

[19] *MAG Order*, 16 FCC Rcd at 19681, para. 160.

[20] *Id.*

[21] *Id.* at 19682 n. 428. NECA already collects similar data as administrator of the pool and performs many of the necessary projections for tariff purposes.

[22] 47 C.F.R. § 54.903(a)(3).

[23] 47 C.F.R. § 54.901(a); *MAG Order*, 16 FCC Rcd at 19673-74, para. 142.

[24] 47 C.F.R. § 54.903(a)(3); *MAG Order*, 16 FCC Rcd at 19682-84, paras. 162-65.

[25] 47 C.F.R. § 54.903(a)(4), (b)(3); *MAG Order*, 16 FCC Rcd at 19684-85, paras. 166-69. The actual data for true-up purposes is filed on a calendar year basis. The first filing of actual data for true-up purposes is scheduled for July 31, 2003.

[26] 47 C.F.R. § 54.903(a)(1).

[27] *MAG Order*, 16 FCC Rcd at 19678-79, paras. 151-54; 19685-87, paras. 170-73. A CETC receives the same per-line support amount that an incumbent carrier receives. 47 C.F.R. §§ 54.307, 54.901(b). Disaggregation of support permits a carrier to target its universal service support as well as its competitor's to high-cost regions within a study area. *MAG Order*, 16 FCC Rcd at 19675-78, paras. 143-50.

required to file their line count data by customer class and by study area or disaggregation zone, if disaggregation zones have been established in the study area.[28] Under the disaggregation rules adopted by the Commission, rate-of-return carriers will not elect a disaggregation path until May 15, 2002.[29] As a result, most carriers will not establish disaggregation zones by March 31. Carriers will file their annual line count data on July 31, 2002, after the deadline for electing a disaggregation path.[30]

III. DISCUSSION

8. In this Order we modify, on our own motion, the initial ICLS data collection and filing procedures to ensure timely implementation of the ICLS mechanism on July 1, 2002. We recognize that implementation of the ICLS mechanism is a critical element of the Commission's achievement of its access reform and universal service goals. Since adoption of the *MAG Order*, rural carriers and other interested parties have indicated that additional time would significantly improve their ability to file complete and accurate data with USAC.[31] We have been working with USAC, rural carriers, and other interested parties to ensure that carriers have sufficient time to prepare and submit the data necessary to implement the ICLS mechanism.[32] We conclude that the actions we take in this Order are appropriate to ensure timely ICLS implementation, to permit the submission of accurate data, and to minimize the associated administrative burdens on rate-of-return carriers.

9. We emphasize that our actions in this Order apply only to the initial implementation of ICLS and the first filing currently scheduled for March 31, 2002, and are not intended to restrict USAC's ability in the future to determine the data necessary to fulfill its obligations as Administrator of the ICLS mechanism, including its duty to prevent waste, fraud, and abuse. We expect that Commission staff and USAC will work with affected rate-of-return carriers and other interested parties to develop the appropriate filing requirements for future data submissions consistent with the Commission's rules. Although the Commission directed USAC to determine the data required for the ICLS mechanism, the Commission retains oversight authority over the ICLS program.[33] To that end, we direct the Common Carrier Bureau to take steps reasonably necessary to implement the ICLS mechanism, consistent with the Commission's rules, while minimizing the administrative burdens on affected carriers.[34] We are confident that USAC,

[28] *MAG Order*, 16 FCC Rcd at 19685-87, paras. 170-73.

[29] 47 C.F.R. § 54.315; *MAG Order*, 16 FCC Rcd at 19677-78, para. 150.

[30] 47 C.F.R. § 54.903(a). We note that some carriers electing path 2, which requires a state-approved disaggregation plan, will not have established disaggregation zones even by July 31. It is likely, however, that significantly more carriers will have established disaggregation zones by that time than will have established them by March 31.

[31] *See Memorandum of Oral Ex Parte Presentation*, CC Docket Nos. 00-256, 96-45, 98-77, and 98-166 (filed by Susan Bahr, March 8, 2002) (regarding March 7, 2002, ex parte presentation) (*March 7 ex parte*); *Memorandum of Oral Ex Parte Presentation*, CC Docket Nos. 00-256, 96-45, 98-77, and 98-166 (filed by Susan Bahr, March 11, 2002) (regarding March 8, 2002, ex parte presentation) (*March 8 ex parte*).

[32] *See March 7 ex parte*; *March 8 ex parte*.

[33] *MAG Order*, 16 FCC Rcd at 19682, para. 162.

[34] *See also* 47 C.F.R. § 54.705(c) (providing authority to USAC's High Cost and Low Income Committee "[to develop] applications and associated instructions as needed for . . . [the] interstate common line support

(continued....)

under the Bureau's oversight, will develop procedures and filing requirements that fulfill the Commission's intent to limit as much as possible the administrative burdens associated with the ICLS mechanism, while promoting accurate and efficient distribution of support.

10. *Waiver of March 31 Filing Deadline.* We conclude that it is appropriate to extend until April 18, 2002, the initial March 31, 2002, filing deadline in section 54.903(a) of the Commission's rules. We established the March 31 ICLS filing deadline to provide rate-of-return carriers with sufficient time to prepare and submit the necessary data, and to provide USAC a reasonable opportunity to implement the mechanism on July 1, 2002 and perform its obligations as Administrator. Since the adoption of the *MAG Order*, affected carriers have indicated that it will be difficult to provide complete and accurate data by the initial March 31, 2002, deadline.[35] Implementation of the ICLS mechanism and calculation of ICLS support depend on the submission of complete and accurate data. We find that it is appropriate to extend the deadline for the first-time filing of this data until April 18, 2002. This extension will provide sufficient time for the submission of complete and accurate data, while allowing USAC to implement the ICLS mechanism and calculate support beginning July 1, 2002.[36]

11. *NECA to Submit Data on Behalf Pooling Carriers.* In order to further ensure the timely submission of complete and accurate data for the initial implementation of the ICLS support mechanism beginning July 1, 2002, we modify the requirement under section 54.903(a) that each carrier file its data with USAC.[37] Specifically, we permit NECA to file the data set forth below in this Order for each member of its common line pool for the purposes of this initial ICLS filing deadline.[38] Interested parties have indicated that initial implementation of the ICLS mechanism, including the first-time filing of the necessary data, may be difficult for the approximately 1300 rate-of-return carriers eligible for ICLS.[39] We believe that, by directing NECA to complete the filing on behalf of each member of its common line pool, we will mitigate the first-time filing obligations on the vast majority of the 1300 carriers eligible for ICLS. As members of the NECA common line pool, these carriers already provide cost, revenue, and line count data to NECA to permit NECA to prepare projected common line cost and revenue data for tariff filings on behalf of its members. NECA should possess all of the projected data and line counts set forth in detail below and thus should be able to file the data on its members' behalf by April 18, 2002, in accordance with the instructions set forth below.[40]

12. Based on input from interested parties, we do not expect pooling carriers to object to

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mechanism"). We note that the Common Carrier Bureau does not have authority to act on any applications or requests which present novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines. *See* 47 C.F.R. § 0.291(a)(2).

[35] *March 7 ex parte*; *March 8 ex parte.*

[36] Just as there is a ten-day correction period ending April 10 for data filed March 31, there will be a ten-day correction period ending April 29 for data filed April 18.

[37] 47 C.F.R. § 54.903(a).

[38] *See, infra,* paras. 15-17.

[39] *March 7 ex parte*; *March 8 ex parte.*

[40] *See March 7 ex parte*; *March 8 ex parte. See also, infra,* paras. 15-17.

NECA filing on their behalf.[41] If, however, a carrier prefers to file its own data or designate an agent other than NECA to file its data, it may do so at its option. If a pooling carrier files data separately from NECA, USAC will disregard the data filed by NECA on the carrier's behalf. A carrier that does not participate in NECA's common line pool must file its own data or designate an agent to do so, as discussed below.

13. We also conclude that NECA should make certain certifications with respect to the data submission. First, it must certify that the projected cost and revenue data are accurate to the best of its knowledge and ability. Second, it must certify that the line count data are accurate to the best of its knowledge and represents actual data supplied to NECA by the carrier. Third, it must certify that it has notified each carrier of the filing and will provide each carrier with a copy of the part of the filing relevant to the individual carrier within 15 days. We believe that such certifications are necessary for the purposes of this initial filing deadline to ensure the accuracy and reliability of the data used to calculate ICLS and that carriers are aware of the data that has been filed on their behalf. NECA may file a single statement making these certifications for all of the data it files and need not separately certify for each carrier, as long as the certifications are truthful for each carrier's data.

14. *Filings By Parties Other Than NECA.* To ensure the accuracy of the data for purposes of this initial filing deadline, we require certifications from non-pooling carriers or pooling carriers that choose to file their data separately from NECA. Specifically, the carrier or its designated agent will certify that (1) its projections are accurate to the best of its knowledge and ability, and (2) its line count data is accurate. If the filing is made by a carrier's designated agent, it must be accompanied by an authorization by the carrier. These certifications are necessary to ensure the accuracy and reliability of the data used to calculate support.

15. *Projected Data Required.* In order to ensure that NECA and affected carriers have sufficient guidance as to the data required to ensure timely implementation of the ICLS mechanism, we specify below the data that must be included in the initial filing under section 54.903(a) of the Commission's rules. We find that, for the initial April 18, 2002, data submission, the only projected data required are the data specifically identified in section 54.901(a) of the Commission's rules.[42] The initial filing shall therefore include the following data for each eligible rate-of-return carrier: (1) projected common line revenue requirement; (2) projected SLC revenues; (3) projected revenue from its transitional CCL charge; (4) projected special access surcharges; (5) projected line port costs in excess of basic analog service; and (6) projected LTS.[43] The Commission's rules implementing the *MAG Order* recognize that these data points are necessary for the calculation of ICLS. We are also confident, based on consultation with interested parties, that this data can be filed by the April 18, 2002 filing deadline.[44] We therefore do not anticipate NECA or any individual carrier will be unable to file

[41] *March 7 ex parte*; *March 8 ex parte*.

[42] 47 C.F.R. §§ 54.901(a); 54.903(a).

[43] 47 C.F.R. § 54.901(a). We note that in this initial filing we require that same information will be required for average schedule members of the NECA common line pool as for carriers that report their costs. In future filings, average schedule and cost companies may be required to provide different information, as appropriate to their average schedule or cost status.

[44] *March 7 ex parte*; *March 8 ex parte*.

members of its common line pool based on data already in its possession. This relieves individual carriers that participate in the NECA common line pool—the vast majority of rate-of-return carriers—from the burden of completing the filings on their own. Members of the NECA common line pool need not rely on NECA's filing if they would prefer to make their own filing as our rules currently require. A carriers that does not participate in the NECA common line pool must file its own data or have another designated agent file its data, as currently required in our rules. These modifications are expected to reduce the administrative burdens associated with making the initial ICLS filings. The modifications apply only to the initial filings under the ICLS mechanism, and are not permanent changes to the Commission's rules. Finally, we note that NECA, which itself is a small entity due to its non-profit status, appears to be the only entity with any additional compliance burden as a result of our actions. Because the modifications reduce, rather than increase, administrative costs and are of a one-time nature, and because any additional compliance burden falls only on NECA, we certify that the requirements of this Order on Reconsideration will not have a significant economic impact on a substantial number of small entities.

22. The Commission will send a copy of this Order on Reconsideration, including a copy of this supplemental certification, in a report to Congress pursuant to the Congressional Review Act.[55] In addition, this Order on Reconsideration and certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the Federal Register.[56]

B. Paperwork Reduction Act Analysis

23. The decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. 104-13, and found to impose new or modified reporting and/or recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and/or recordkeeping requirements will be subject to approval by the Office of Management and Budget.

V. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED, pursuant to sections 1-4, 10, 201-202, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 1-4, 10, 201-202, and 254, and sections 1.3 and 1.103 of the Commission's rules, 47 C.F.R. § 1.3 and 1.103, this ORDER ON RECONSIDERATION is ADOPTED.

25. IT IS FURTHER ORDERED, pursuant to section 4(i) of the Communications Act of 1934, as Amended, 47 U.S.C. § 154(i), and sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that THIS ORDER IS EFFECTIVE UPON PUBLICATION IN THE FEDERAL REGISTER. Good cause exists to make this effective immediately upon publication in the Federal Register. The actions we take in this Order on Reconsideration, including the extension of time to file data, are intended to reduce administrative burdens on rate-of-return carriers. It is necessary that it take effect as soon as possible in order to best fulfill this purpose.

[55] *See* 5 U.S.C. § 801(a)(1)(A).

[56] *See* 5 U.S.C. § 605(b).

mail address, as well as the address of the carrier. The data may be presented in a letter or in an appropriate electronic format (*i.e.*, an Access or Excel spreadsheet on CD). The filing must clearly indicate that the projected data is for the 2002-03 ICLS year, and the line count data represents line counts as of September 30, 2001. The cover letter may be used to make the necessary certifications for both the projected data and the line count data. Confidential treatment of the filed data may be requested in the cover letter, pursuant to section 0.459 of the Commission's rules.[48]

19. USAC shall post to its website, www.universalservice.org, a sample letter and spreadsheets that the filing parties are encouraged follow. We anticipate that USAC will conduct additional outreach to ensure that non-pooling carriers are able to meet these requirements. We expect also that NECA will consult with USAC regarding the best manner to provide its filing to USAC. Questions regarding these filing procedures may be directed to USAC by telephone at (512) 835-1585, by fax at (512) 835-1586, or by e-mail at iclsquestions@universalservice.org.

IV. PROCEDURAL ISSUES

A. Supplemental Final Regulatory Flexibility Certification

20. The Regulatory Flexibility Act of 1980, as amended (RFA)[49] requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."[50] The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[51] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[52] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[53]

21. On October 11, 2001, the Commission adopted *MAG Order*, which has as its the principle goal the gradual elimination of implicit support in the access rate structure of non-price cap carriers and replacement with an explicit support mechanism, ICLS.[54] In this Order on Reconsideration, we adopt modifications to our rules concerning the initial filing of data for the ICLS mechanism. First, we extend the deadline for completing the initial filing from March 31, 2002, to April 18, 2002. Second, we order NECA to complete the initial filing on behalf of

[48] 47 C.F.R. § 0.459.

[49] 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).

[50] 5 U.S.C. § 605(b).

[51] 5 U.S.C. § 601(6).

[52] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. § 632).

[53] Small Business Act, 15 U.S.C. § 632.

[54] *MAG Order*, 16 FCC Rcd 19613; *see id.* at 19727-41, paras. 278-327 (Final Regulatory Flexibility Analysis).

STATEMENT OF

COMMISSIONER MICHAEL J. COPPS,

CONCURRING

Re: Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, First Order on Reconsideration

I concur in the decision to extend the deadline for rural carriers to file data and to permit the National Exchange Carrier Association to file on behalf of rural carriers in the NECA common line pool. These steps respond to some of the concerns raised by rural carriers. I write separately to reiterate my concerns about the access reform plan adopted last fall and the truncated process by which it was adopted, and to urge the Commission, in the strongest possible terms, to address the issues raised in the petitions for reconsideration before the access reform plan is fully implemented.

26. IT IS FURTHER ORDERED that the Accounting Policy Division of the Common Carrier Bureau SHALL SEND a copy of the Order, upon release, to the National Exchange Carrier Association, Inc., CenturyTel-Ohio, Ogden Telephone—New York, Warwick Valley Telephone Company, Alltel Georgia Comm, Corp., Georgia Alltel Telecom, Inc., Great Plains Communications, and Interstate Telecommunications Cooperative, Inc.

27. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary