DOCKET FILE COPY ORIGINAL

RECEIVED & INSPECTED
JUN 19 2002
FCC - MAILROOM

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

ORDER AND SECOND ORDER ON RECONSIDERATION

Adopted: June 13, 2002 **Released: June 13, 2002**

By the Commission: Commissioner Copps issuing a statement.

I. INTRODUCTION

1. In this Order we waive, on our own motion, the requirement that carriers file annual certifications on June 30, 2002, in order to receive Interstate Common Line Support (ICLS).[1] We find that this requirement is unnecessary because carriers have already filed such certifications on April 18, 2002, for the ICLS funding year beginning July 1, 2002. We also amend our rules to permit adjustments to Long Term Support (LTS) to reflect projected revenues of carriers that participate in the National Exchange Carrier Association (NECA) common line pool.[2] This amendment conforms the rules governing calculation of LTS to the Commission's intent in the *MAG Order*, ensures appropriate LTS funding levels, and will enable NECA to file common line tariffs that comply with Part 69 of the Commission's rules.

II. WAIVER OF THE JUNE 30, 2002, FILING REQUIREMENT

A. Background

2. In the *MAG Order*, we created a new, explicit universal service support mechanism, ICLS, to replace implicit support in the access rate structure of rate-of-return carriers.[3] The

[1] 47 C.F.R. § 54.904(d).

[2] 47 C.F.R. § 54.303(b). Pooling carriers charge rates set by NECA, pool their interstate access revenues, and recover their costs plus a return on investment from the pool. Carriers that participate in the common line pool are eligible for LTS.

[3] 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

(continued....)

ICLS mechanism will be implemented on July 1, 2002.[4] Section 54.904(d) provides that each carrier must file an annual certification "on the date it first files its line count information pursuant to section 54.903[.]"[5] Pursuant to this requirement, carriers filed annual certifications for the initial ICLS funding year on April 18, 2002.[6] Each carrier that wishes to receive ICLS also must file with the Universal Service Administrative Company (USAC) and the Commission an annual certification on June 30 of each year, stating that it will use ICLS "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[7]

B. Discussion

3. We waive, on our own motion, the requirement that carriers file an annual certification on June 30, 2002. The Commission may exercise its discretion to waive a rule where special circumstances make strict compliance with the rule inconsistent with the public interest.[8] We find that special circumstances exist here to warrant a waiver. Generally, the requirement that carriers file a certification on June 30 of each year serves the public interest by ensuring that carriers use ICLS only for the "provision, maintenance, and upgrading of facilities and services for which the support is intended," in accordance with section 254(e).[9] In the initial ICLS funding year, however, the June 30 filing requirement merely duplicates the earlier filing required on April 18, 2002, which covers the same certification period. The duplicative filing requirement is therefore unnecessary.[10] We therefore conclude that special circumstances warrant a waiver of the June 30, 2002 filing requirement.

III. LONG TERM SUPPORT RULES

A. Background

4. Rate-of-return carriers, including members of the common line pool, are limited to recovery of their common line revenue requirements: their costs plus a prescribed rate of return

---

(...continued from previous page)
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, 19667-69 paras. 128-30, FCC 01-304 (2001) (*MAG Order* or *MAG Further Notice*), recon. pending.

[4] *MAG Order*, 16 FCC Rcd at 19680-81 para. 158.

[5] 47 C.F.R. § 54.904(d).

[6] *See Multi-Association Group (MAG) Plan for Regulation of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, First Order on Reconsideration, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Twenty-Fourth Order on Reconsideration, para. 10, FCC 02-89 (rel. March 22, 2002) (*MAG First Order on Reconsideration*) (extending deadline for filing initial line count data to April 18, 2002).

[7] 47 C.F.R. § 54.904(a).

[8] *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[9] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. §§ et seq.

[10] *See* NECA et al., Petition for Reconsideration and/or Clarification, filed December 31, 2001, at 2-3; *see also MAG Order*, 16 FCC Rcd at 19681 para. 160 (expressing intent to minimize administrative burdens on carriers).

on their investment.[11] Historically, rate-of-return carriers recovered their common line revenue requirements through subscriber line charges (SLCs), carrier common line (CCL) charges, and LTS.[12] The purpose of LTS was to prevent the CCL rates of high-cost, pooling carriers from rising significantly above the national average CCL rate.[13] In 1997, the Commission concluded that LTS should be continued, but that modifications were necessary to make it explicit, portable, and competitively neutral.[14] Rate-of-return carriers currently receive LTS amounts based on the support received in the previous year, increased by inflation.[15]

5. Under the *MAG Order*, the CCL charge will be phased out and replaced with ICLS beginning July 1, 2002.[16] ICLS is calculated as the difference between a carrier's common line revenue requirement and the sum of its revenues from SLCs, transitional CCL charges, special access surcharges, line port costs in excess of basic analog services, and LTS.[17] We recognized that "once the CCL charge is phased out, the historical purpose of LTS will be eliminated," and that carriers now receiving LTS would be eligible for ICLS to meet their common line revenue requirements.[18] Nevertheless, we did not modify LTS, finding that retention of the current LTS mechanism is warranted to ensure the stability of membership in the NECA common line pool during the transition to a more efficient rate structure.[19] We anticipated that the practical effect of retaining LTS, other than stabilizing pool membership, "would be merely to reduce the Interstate Common Line Support received by each pooling carrier."[20]

6. On April 18, 2002, NECA filed with USAC projected ICLS data for each member of the common line pool.[21] In the filing, NECA made downward adjustments to the LTS amounts received by approximately 90 carriers because, otherwise, these carriers' total revenues from SLCs, CCL charges, other common line end-user charges, and LTS would exceed their common

[11] *See MAG Order*, 16 FCC Rcd at 19700 para. 206.

[12] *See* 47 C.F.R. §§ 69.104, 69.105; *see generally MAG Order*, 16 FCC Rcd at 19622-24 paras. 16-20. The SLC is a flat, monthly charge assessed directly on end users to recover interstate loop costs. The SLC is capped due to affordability concerns. The CCL charge, a per-minute charge assessed on interexchange carriers, historically recovered rate-of-return carriers' residual interstate loop costs not recovered through SLCs.

[13] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9163-64 para. 754 (1997) (subsequent history omitted) (*Universal Service First Report and Order*).

[14] *Universal Service First Report and Order*, 12 FCC Rcd at 9164-66 paras. 756-59.

[15] *See* 47 C.F.R. 54.303(b)(4). Although the rule addresses the calculation of LTS available to members of the common line pool in the aggregate, LTS is divided among the carriers pursuant to the *Universal Service First Report and Order*. *Universal Service First Report and Order*, 12 FCC Rcd at 8942 paras. 305-06, 9165 n. 1946 (1997).

[16] *MAG Order*, 16 FCC Rcd at 19680-81 para. 158. Pursuant to the phase-out provisions adopted in the *MAG Order*, rate-of-return carriers' CCL rates recover residual interstate loop costs only to the extent of the difference between the existing residential SLC cap and the maximum residential SLC cap of $6.50. The CCL charge largely has been phased out for price-cap carriers.

[17] 47 C.F.R. § 54.901(a).

[18] *MAG Further Notice*, 16 FCC Rcd at 19725-26 paras. 274-76.

[19] *MAG Order*, 16 FCC Rcd at 19672-73 paras. 139-41. We sought comment on whether LTS should be merged with ICLS as of July 1, 2003. *MAG Further Notice*, 16 FCC Rcd. at 19725-26 paras. 274-76.

[20] *MAG Further Notice*, 16 FCC Rcd at 19725-26 para. 274.

[21] Letter from Jeffrey E. Dupree, NECA, to USAC, dated April 17, 2002 (NECA ICLS filing); *see also MAG First Order on Reconsideration*, para. 10.

line revenue requirements.[22] Rather than reducing ICLS for these carriers, LTS leads to earnings greater than their common line revenue requirements. Our rules, however, do not currently permit the downward adjustment to LTS that NECA made in its filing, and USAC's most recent quarterly filing with the Commission, filed on May 2, 2002, does not reflect an LTS adjustment for these carriers.[23] We note that, if LTS is not adjusted for these carriers, NECA's tariff filing for the tariff year that begins July 1, 2002, would violate the Commission's rules by establishing rates targeted to overearn a total of approximately $27 million.

B. Discussion

7. On our own motion, we amend our rules to permit LTS to be adjusted so that it does not exceed the difference between each carrier's projected common line revenue requirement and its projected revenues from SLCs, other common line end-user charges, and transitional CCL charges.[24] This amendment conforms the rules governing the calculation of LTS to our intent in the *MAG Order*, ensures appropriate LTS funding levels, and will enable NECA to file common line tariffs that comply with our rules.[25]

8. Amendment of our LTS rule is necessary to fulfill our goals in reforming the interstate universal service support mechanisms and access rate structure in the *MAG Order*. The current LTS rule does not take into account the increased SLC revenues resulting from the reforms adopted in the *MAG Order*.[26] This makes no difference for the vast majority of carriers, whose common line revenue requirements will exceed their revenues from SLCs, other end-user common line charges, transitional CCL charges, and LTS. For some carriers, however, the reforms adopted in the *MAG Order* reduced the need for high-cost support for interstate loop costs below the amount of LTS they currently receive. Failure to adjust LTS for these carriers would lead to earnings in excess of their common line revenue requirements. As stated above, we retained LTS in the *MAG Order* solely for the purpose of stabilizing membership in the

[22] NECA ICLS filing. This data reflects that, if their LTS were not adjusted downward, these carriers' projected revenues from SLCs, other common line end user charges, transitional CCL charges, and LTS would exceed their common line revenue requirements for the tariff year beginning July 1, 2002. Rather than reduce ICLS for these carriers, LTS would lead to earnings greater than their common line revenue requirements. NECA's alternative would have been to file data establishing "negative ICLS" for these carriers, which the Commission did not contemplate in the *MAG Order*. The implication of a negative ICLS value is that the carrier would pay into the universal service fund the amount that its ICLS account runs negative. We never envisioned that such payments would occur. A carrier should, under no circumstance, have an ICLS amount less than zero.

[23] *See* Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter 2002, available at <http://www.universalservice.org/overview/ filings/> (filed May 2, 2002) (*USAC Filing for Third Quarter 2002 Projections*).

[24] The Commission may reconsider on its own motion a prior decision as long as petitions for reconsideration of the prior decision are pending. *Central Florida Enterprises, Inc. v. FCC*, 598 F.2d 37, 48 n.51 (D.C. Cir. 1978), cert. dismissed, 441 U.S. 957 (1979).

[25] We note that this Order does not prejudge our consideration of whether LTS should be merged with ICLS as of July 1, 2003, about which we sought comment in the *MAG Further Notice*. The vast majority of pooling carriers—including nearly all of the carriers immediately affected by this Order—continue to receive some amount of LTS that, under our current rules, would be foregone if they chose to leave the pool. We intend to address the issue of whether to merge LTS with ICLS in the future in conjunction with the other issues raised in the *MAG Further Notice*.

[26] 47 C.F.R. § 54.303(b)(4).

common line pool during the transition to a more efficient rate structure.[27] We did not intend to negate our cost recovery rules for rate-of-return carriers and permit the carriers to recover more than their common line revenue requirements, nor did we intend that any carrier would have a "negative" ICLS amount.[28] Accordingly, we conclude that amendment of the LTS rule is necessary.

9. We also find that this amendment is necessary to ensure the appropriate LTS funding levels. This amendment will prevent waste of universal service support by ensuring that LTS is not distributed to any rate-of-return carrier except to the extent that it is required to maintain the affordability of the carrier's interstate common line services. We conclude that the potential alternatives to adjusting LTS would not serve the public interest. For example, we decline to require NECA to reduce its tariffed SLC or transitional CCL rates to offset the excess LTS payments. Reducing SLCs would use universal service funds to subsidize rates below the caps the Commission has set.[29] Reducing the transitional CCL rate would undermine the decision to use a transitional CCL charge to gradually implement the reforms adopted in the *MAG Order*.[30]

10. Finally, this amendment will enable NECA to file common line tariffs that comply with our Part 69 rules. Rate-of-return carriers, including members of the common line pool, are limited to recovery of their costs plus a prescribed rate of return.[31] The common line pool would overearn if NECA filed tariffs for SLCs and CCL charges that reflect the aggregate cost and revenue data included in the April 18 projected ICLS filing, without adjustment of LTS. If NECA files a tariff that on its face permits excessive recovery, any ratepayer—end users or interexchange carriers subject to CCL charges—could request that the Commission suspend the tariff to prevent over-recovery.[32]

IV. PROCEDURAL MATTERS

A. Supplemental Final Regulatory Flexibility Analysis

11. In compliance with the Regulatory Flexibility Act (RFA),[33] this Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the Final Regulatory Flexibility Analysis (FRFA) included in the *MAG Order*,[34] to the extent that changes to that Order adopted here on reconsideration require changes in the conclusions reached in the FRFA. We note that we do not find that this Order on Reconsideration creates a significant economic impact on small entities. We could therefore meet our obligations under the RFA by certifying that there is no significant economic impact on small entities, rather than including this

[27] *MAG Order*, 16 FCC Rcd at 19672-73 paras. 139-41.

[28] *See MAG Order*, 16 FCC Rcd at 19620 para. 12, 19701-02 paras. 208-10.

[29] *MAG Order*, 16 FCC Rcd at 19634-36 paras. 42-45; 19638-39 paras. 51-53.

[30] *MAG Order*, 16 FCC Rcd at 19644-45 para. 65.

[31] *See MAG Order*, 16 FCC Rcd at 19700 para. 206.

[32] *See* 47 U.S.C. § 204(a)(1).

[33] *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) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[34] *MAG Order*, 16 FCC Rcd at 19727-41, paras. 278-327.

SFRFA.[35] We nonetheless include this Supplemental FRFA to demonstrate that we have considered the impact of our action on small entities in adopting this Order on Reconsideration.

1. Need For, and Objective of, the Second Order on Reconsideration

12. This Second Order on Reconsideration is necessary to conform the rules governing the calculation of LTS to our intent in the *MAG Order*, ensure appropriate LTS funding levels, and enable NECA to file common line tariffs that comply with our rules. Section 254 of the Communications Act of 1934, as amended by the 1996 Act, requires the Commission to promulgate rules to preserve and advance universal service support.[36] Pursuant to that mandate, the Commission, in the *MAG Order*, adopted reforms to the interstate access rate structure and universal service support mechanisms for rate-of-return carriers.[37] In making these reforms, the Commission created ICLS to provide explicit universal service support for the interstate common line, but left the existing interstate support mechanism, LTS, unchanged for the July 1, 2002-June 30, 2003, funding year.[38] We now conclude that it is necessary to amend LTS to permit reductions of LTS to certain carriers in certain circumstances. As described above, this is necessary in order to permit NECA to file a tariff on behalf pooling carriers that does not result in revenues in excess of their authorized rate-of-return.[39] This is consistent with our intent in adopting the reforms in the *MAG Order*.[40]

2. Summary of Significant Issues Raised by Public Comments

13. No petitions were submitted in response to the previous FRFA.

3. Description and Estimate of the Number of Small Entities to Which this Order on Reconsideration will Apply

14. In the previous FRFA at paragraphs 289-300 of the *MAG Order*, we described and estimated the number of small entities that would be affected by the new universal service rules. These included local exchange carriers, interexchange carriers, competitive service providers, and providers of wireless telephony, rural radiotelephone service, fixed microwave services, and 39 GHz service. The rule amendment adopted herein may apply to the same entities affected by the rules adopted in that order. We therefore incorporate by reference paragraphs 289-300 of the *MAG Order*.[41]

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

15. The rule amendment adopted in this Second Order on Reconsideration contains no

[35] *See generally* 5 U.S.C. § 605.

[36] 47 U.S.C. § 254.

[37] *MAG Order*, 16 FCC Rcd at 19615-16 para. 1.

[38] *MAG Order*, 16 FCC Rcd at 19667-73 paras. 128-41.

[39] *See supra* para. 10.

[40] *See infra* para. 8.

[41] *MAG Order*, 16 FCC Rcd at 19730-35 paras. 289-300.

new reporting, recordkeeping, or other compliance requirement.

5. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

16. As noted above, the amendment to our rules adopted in this Order on Reconsideration does not have a significant impact on small entities. We take action to reaffirm the ability of rate-of-return carriers to recover their costs plus the Commission-approved rate of return on investment. Although the amendment does limit the carriers' ability to recover its revenue from a particular source, LTS, it has no net impact on their overall ability to recover their costs and rate return.

17. We did consider other alternatives that would have limited carriers revenue recovery from other sources, but concluded that reducing the tariffed SLC rates or transitional CCL charge rates imposed by these carriers would not be in the public interest. Reducing SLCs would use universal service funds to subsidize rates below the caps the Commission has set.[42] Reducing the transitional CCL rate would undermine the decision to use a transitional CCL charge to gradually implement the reforms adopted in the *MAG Order*.[43]

6. Report to Congress

18. The Commission will send a copy of this Second Order on Reconsideration, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of this Second Order on Reconsideration, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Second Order on Reconsideration and Supplemental FRFA (or summaries thereof) will also be published in the Federal Register. *See* 5 U.S.C. § 604(b).

B. Paperwork Reduction Act

19. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose no new or modified reporting or recordkeeping requirements or burdens to the public.

V. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 10, 201-02, and 254 of the Communications Act of 1934 as amended, 47 U.S.C. §§ 1-4, 10, 201-02, 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 AND SECOND ORDER ON RECONSIDERATION is ADOPTED.

21. IT IS FURTHER ORDERED that section 54.904(d) IS WAIVED with respect to the filing required pursuant to that rule on June 30, 2002.

22. IT IS FURTHER ORDERED that section 54.303(b) of the Commission's rules, 47

[42] *MAG Order*, 16 FCC Rcd at 19634-36 paras. 42-45; 19638-39 paras. 51-53.

[43] *MAG Order*, 16 FCC Rcd at 19644-45 para. 65.

C.F.R. § 54.303(b), is amended as set forth in Appendix A hereto, 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 are intended to facilitate compliance other Commission rules. It is necessary that the amendment set forth in Appendix A take effect as soon as possible in order to best fulfill this purpose.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

APPENDIX A – FINAL RULES

Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 54 –UNIVERSAL SERVICE

Subpart D – Universal Service Support for High-Cost Areas

1. Section 54.303 is amended by adding subparagraph (5) to paragraph (b) to read as follows:

§ 54.303 Long Term Support

. . .
(b)(1) . . .
(5) Beginning July 1, 2002, each carrier will eligible to receive LTS equal to the lesser of
(A) the LTS for which the carrier would be eligible pursuant to subparagraph (4), or
(B) its common line revenue requirement as calculated in accordance with Part 69 of this chapter, minus
(1) the study area revenues obtained from end-user common line charges at their allowable maximum as determined by §§ 69.104(n) and 69.104(o) of this chapter;
(2) the carrier common line charge revenues to be phased out pursuant to § 69.105 of this chapter;
(3) the special access surcharges pursuant to § 69.114 of this chapter; and
(4) the line port costs in excess of basic analog service pursuant to § 69.130 of this chapter.
(C) Under no circumstance shall a carrier have LTS that is less than zero.
(D) In calculating an LTS amount pursuant to subparagraph (b)(5)(D), the Administrator shall use data filed pursuant to section 54.903 of this part.

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

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

Although I approve of the steps we take in this order, I write separately to reiterate my concerns about the access reform plan adopted last fall. I had hoped that the Commission would consider the issues raised in the petitions for reconsideration prior to implementation of the plan. With only a few weeks left, I am doubtful that this Commission will consider the important issues raised by petitioners. I urge the Commission to monitor the impact of this plan to ensure that it provides the stability necessary for investment in rural America. In addition, I urge the Commission to initiate a proceeding to examine broader issues related to the application of the universal service mechanism in markets with competition.