Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Biennial Review 2002 Comments	)	WC Docket No. 02-313
	)	

COMMENTS OF THE NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.

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SUMMARY

NECA proposes herein several rule modifications that would both serve the public interest and improve Commission operations.

NECA and the national telephone associations have sought reconsideration of rules relating to ICLS data reporting in the context of the Commission's MAG proceeding. Although the Commission has taken some steps towards resolving problems identified by the associations during the past year, many issues remain unresolved. Three key areas, highlighted herein, concern uncertainty over the scope of ICLS data submissions, ICLS reporting deadlines, and procedures for submitting ICLS data for NECA pool participants.

NECA also renews its requests concerning elimination of the requirement that NECA conduct annual NECA Board of Directors elections and streamlining of the average schedule process. Although the Commission has initiated separate proceedings to consider these issues, both remain pending from the 2000 Biennial Review Proceeding.

In the context of the Commission's proceeding on Local Number Portability, NECA and the national telephone associations have repeatedly requested that the Commission modify its rules to allow non-LNP capable ILECs to recover ongoing LNP-related costs through normal accounting and separations processes. The Commission's current rules leave the majority of non-LNP capable ILECs without any ability to recover these costs. Recovery as proposed by NECA would include all non-LNP capable ILECs in the cost recovery mechanism and be competitively neutral and consistent with the Commission's rules regarding recovery of ongoing costs by LNP capable ILECs after expiration of the five-year period for end-user charge recovery.

This Biennial Review proceeding also provides a good opportunity for the Commission to revise outdated rules regarding the application of subscriber line charges (SLCs) to channelized T-1 services. In a Petition for Rulemaking filed in September 2002, NECA requested that the Commission modify its rules so as to permit the application of no more than five SLCs to customer-ordered exchange access service that is provisioned using digital, high capacity T-1 interfaces for which the customer supplies the terminating channelization equipment. Such treatment would be consistent with the treatment of PRI ISDN and is warranted because these circuits are provisioned in an identical manner to PRI ISDN and impose the same outside plant costs as PRI ISDN.

NECA proposed in the 1998 Biennial Review that the Commission revise the standard allowance period for calculating cash working capital. The current standard allowance of 15 days is out of date and does not reflect the current business operations of small, rural carriers. To date, no action has been taken on NECA's proposal. The Commission should use this opportunity to revise this outdated rule.

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The National Exchange Carrier Association, Inc. (NECA) submits these comments in response to the Commission's *Public Notice* in the above-captioned proceeding.[1]

The Commission seeks comment as to what rules should be modified or repealed as part of its 2002 biennial regulatory review pursuant to Section 11 of the Communications Act of 1934, as amended. The Commission also seeks recommendation on changes to rules that "might enable the Commission to operate more efficiently and effectively."[2] According to the Commission's *Public Notice*, review of particular rules in this proceeding is not limited to circumstances where meaningful

[1] The Commission Seeks Public Comment in 2002 Biennial Review of Telecommunications Regulations Within the Purview of the Wireline Competition Bureau, WC Docket No. 02-313, *Public Notice*, FCC 02-267 (rel. Sept. 26, 2002) (*Public Notice*).

[2] *Id.*

economic competition justifies change, but also extends to situations where repeal or modification would serve the public interest. [3]

As discussed herein, the Commission has pending before it a number of proposed rule modifications that would both serve the public interest and improve Commission operations. Consistent with pending petitions for reconsideration submitted in other Commission proceedings, NECA recommends that the Commission modify rules relating to the collection of data used to calculate Interstate Common Line Support currently set forth in the Commission's Part 54 Universal Service rules, and suggests modification of rules that currently prevent many small telephone companies from recovering on-going costs association with local number portability. NECA also again proposes elimination of rules that unnecessarily require annual election of NECA directors and annual approval of NECA average schedule formulas. NECA also asks the Commission to take action quickly on a current proposal to modify rules that require telephone companies to assess unnecessary subscriber line charges on channelized high-capacity T-1 circuits. Finally, NECA requests that the Commission take action, as requested in the 1998 Biennial Review, to revise a rule that artificially limits recovery of cash working capital for small Class B telephone companies.

In many cases the Commission has initiated separate proceedings on these proposals and has received public comment on them. It has not, however, taken action. Section 11 of the Act states that the Commission must not only review all of its regulations issued under the Act, but shall also *make a determination* in every even-numbered year as to whether any such regulation is no longer necessary or in the public

[3] *Id.*

interest.[4] NECA requests that the Commission avail itself of the opportunity presented by this Biennial Review proceeding not only to consider regulatory reform, but to take action in accordance with the statute.

I. REVISE ICLS DATA REPORTING RULES (PART 54 AND PART 69)

A. Background

The Commission's November, 2001 *MAG Order*[5] established a number of complex rules governing submission of Interstate Common Line Support (ICLS) data. The NECA, the National Rural Telecom Association (NRTA), the Organization for the Protection and Advancement of Small Telecom Companies (OPASTCO) and the United States Telecom Association (USTA) (collectively, the "Associations") filed a Petition for Reconsideration of some of these rules on December 31, 2001.[6] The *Association PFR* pointed out that the rules contained certain technical errors and could impose unnecessary burdens on small companies.

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[4] 47 U.S.C. § 161(a).

[5] 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, *Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166*, 16 FCC Rcd 19613 (2001) (*MAG Order*).

[6] 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, *Petition for Reconsideration and/or Clarification* (filed Dec.31, 2001) (*Association PFR*)

Following a series of *ex parte* meetings with industry representatives, the Commission issued a *First Order on Reconsideration* in the MAG proceeding. That *First Reconsideration Order* extended the submission date for initial ICLS data projections from March 31, 2002 to April 18, 2002. The Order also limited the scope of initial ICLS data submissions to the six data items actually needed to calculate ICLS amounts, and directed NECA to submit these data on behalf of pooling companies.[7]

In a *Second Order on Reconsideration* issued on June 13, 2002, the Commission revised the ICLS data reporting rules to eliminate a redundant certification requirement. The *Second Reconsideration Order* also revised section 54.303 of its rules to permit adjustment of Long Term Support (LTS) payments to reflect ICLS amounts.[8]

While these steps were positive, a number of ICLS data collection issues remain unresolved. Exchange carriers are particularly concerned about possible burdens associated with future ICLS projections, interim true-ups and final ICLS data submissions. Several other issues still need to be resolved in order to assure that the new ICLS mechanism accomplishes its goals. These changes are explained in detail below.

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[7] 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*, 17 FCC Rcd 5635 (2002) (*First Reconsideration Order*).

[8] 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, *Order and Second Order on Reconsideration*, 17 FCC Rcd 11593 (2002) (*Second Reconsideration Order*).

B. The Commission should revise section 54.903(a)(3) to (1) permanently specify the data items needed to calculate ICLS amounts; and (2) permit carriers to update ICLS projections on June 30 of each year rather than April 10.

Section 54.903(a)(3) of the Commission's rules[9] provides only limited direction as to what data is to be provided by carriers for purposes of ICSL administration.[10] Uncertainty over the scope of ICLS data submission requirements led to significant concern when initial ICLS data projections were due in early 2002. The Commission resolved this problem in its *First Reconsideration Order* by clearly specifying the data to be submitted for initial ICLS projections.[11] That Order was limited, however, to the initial ICLS data projection, and left open the question as to future submissions.

This lack of clarity will likely cause additional confusion and controversy in 2003, as carriers prepare to submit their projections for second-year payments and true-ups to first-year data. Exchange carrier associations have already expressed concern about overbroad data submission requirements.[12] The Commission should act promptly to resolve these problems *before* they occur by revising section 54.903(a) to specify permanently the data items to be submitted for purposes of calculating ICLS projections and subsequent true-ups in future years. The rule should incorporate the same six data

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[9] 47 C.F.R. § 54.903(a)(3).

[10] *See Association PFR* at Exhibit A.

[11] *First Reconsideration Order* at ¶ 15.

[12] *See* 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, Public Information Collection, *Joint Comments of NRTA, NTCA, OPASTCO, USTA and Western Alliance* (May 17, 2002) (*Associations' May 17, 2002 OMB Comments*)

items specified in the *First Reconsideration Order*. These are data items required to develop 2003 ICLS projections, as well as all subsequent years' projections, "true-ups", and final data submissions.

The current 10-day "window" between March 31 (the time that initial ICLS data projections are due) and April 10 (the time that corrections or updates to these projections are due) is not adequate. Extension of the update window to June 30 of each year would provide time to incorporate data from the annual access tariff filing, and any revisions to the average schedule formulas. This would give carriers and NECA a far better view of projected common line revenues and costs, and would allow submission of meaningful updates to the initial March 31 ICLS projections.

C. The Commission should revise section 54.903(a)(4) to require carriers to submit actual ICLS data by December 31st of each year, rather than July 31st.

Rate of return carriers that operate on a "cost" basis must prepare detailed accounting and jurisdictional cost separations studies in order to submit actual ICLS data for the prior year. While some companies have completed the necessary studies in time for a July 31st submission date, many companies are unable to do so. Delays typically occur because companies rely on specialized consultants to perform their jurisdictional cost studies. Cost study consultants often serve a large number of clients, and in any case cannot commence work on a cost study until a company's books are closed for the year, which also often requires work by outside accounting firms.

NECA's experience shows that only about one-third of the companies complete cost studies by July 31st of each year. About two-thirds complete their studies by October. Extending the final ICLS submission date to December 31st allows a reasonable

opportunity for the remaining one-third to complete the necessary studies and submit final ICLS data. A December 31st reporting date would also be consistent with the timeline for reporting final Local Switching Support data.[13]

D. The Commission should add a new section 54.903(c) to the rules giving NECA the responsibility to report ICLS data for pooling companies.

As noted above, ICLS is calculated on a residual basis (*i.e.*, ICLS = common line costs less common line revenues less LTS). Currently, common line revenues are derived from tariffed end user SLCs, line port charges, and carrier common line charges.

The *MAG Order* makes clear that data used for tariff projections must be consistent with data submitted for ICLS purposes – otherwise, carriers might significantly over-recover (or under-recover) their common line revenue requirements.[14]

As noted above, ICLS amounts are calculated simply by subtracting common line revenues and LTS from common line costs. These are the same data that NECA currently collects for purposes of filing access tariffs and administering the common line pool. In other words, *the FCC rules already requir*e *NECA to collect and/or calculate all of the data needed to determine ICLS amounts for each pooling company*.

NECA has nearly 20 years experience in collecting and analyzing common line cost and revenue data. It has sophisticated processes "in place" for compiling and validating common line cost and revenue data. Indeed, some of the data items needed for ICLS – cost and demand forecasts – are prepared by NECA itself on behalf of member companies, as part of the tariff filing responsibilities. Few, if any, rate-of-return

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[13] 47 C.F.R. § 54.301(e)(1).

[14] *MAG Order* at ¶ 164.

companies would have the necessary expertise to prepare such forecasts. This means that NECA is the *only* entity capable of reporting and certifying such forecast data.

NECA's existing tariff forecast and settlement systems can easily produce ICLS data forecasts, interim true-ups and final results for pooling companies. Transmitting this information in electronic format to the Universal Service Administrative Company (USAC) can be accomplished at virtually no incremental cost to NECA or its member companies. In fact, this is precisely the way that Local Switching Support (LSS) is administered. It obviously makes sense to rely on NECA to perform the same functions for ICLS data reporting.

In the *MAG Order*, the Commission did consider relying on NECA to submit ICLS data to USAC, but did not do so because of differences between the ICLS submission dates and NECA's tariff forecast schedule.[15] NECA has since revised its tariff schedule to conform to the schedule for ICLS data submissions, so discrepancies in data reporting cycles no longer exist and thus present no bar to relying on NECA for ICLS data.[16]

The feasibility of this approach was demonstrated in April 2002, when NECA submitted initial ICLS forecast data to USAC on behalf of all 1241 of its common line pool members. The ICLS forecast process worked seamlessly, and there is good reason to expect that subsequent true-up and actual data submissions will work as well if a similar process is used.

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[15] *Id.*

[16] Letters from Gina Harrison, NECA to William Caton, Secretary, 2000 Biennial Review, CC Docket No. 01-174 (filed March 1, 2002 and March 4, 2002).

The Commission has expressed some reluctance to rely solely on NECA to submit ICLS data on behalf of pooling companies, pointing out that companies are free to use NECA if they wish to, and that some companies might want to submit data on their own or through some other agent. While such arguments favoring "choice" have superficial appeal, in this instance choice only promotes wasteful duplication of effort and unnecessary confusion.

As noted above, NECA is required to collect, analyze and file common line cost and revenue data in any event. That is, even if an individual company chooses to submit data to USAC on its own or through an agent, NECA would still be required to perform the necessary data collection and computation steps to file its tariffs and to administer the common line pool. Using different administrators to collect the same data is obviously wasteful, in that ratepayers are asked to pay two administrators to do the same job. This approach also is likely to lead to confusion and additional cost, as both administrators attempt to sort out the inevitable data discrepancies that occur from duplicate data requests.

The Commission accordingly should revise its ICLS submission rules so that NECA is required to submit ICLS data on behalf of its common line pool participants to USAC.

E. The Commission should clarify that data certifications submitted under section 69.601(c) of its rules apply to universal service as well as access data submissions.

Section 69.601(c) of the Commission's rules[17] requires that data submissions to NECA "required by this title" must be accompanied by a certification statement signed

[17] 47 C.F.R. § 69.601(c).

by the officer or employee responsible for the overall preparation for the data submission. This requirement was imposed prior to adoption of the Commission Part 54 universal service rules.

Questions have arisen as to whether certifications submitted to NECA pursuant to part 69.601(c) would cover ICLS data submissions made to USAC by NECA on behalf of pooling companies. The Commission can resolve any uncertainty in this regard by clarifying that the phrase "required by this title" in section 69.601(c) applies to all data submissions to NECA, regardless of whether they are required under Part 36 or 69 or any other part of Title 47 of the Code of Federal Regulations, including Part 54. This action will avoid the need for multiple certifications of the same data.

Proposed rule changes to address these ICLS data collection issues are contained in the Appendix to this filing.[18]

[18] The rule amendments proposed in the attached Appendix would also resolve a problem in the Part 69 rules relating to recovery of NECA administrative expenses. As explained in the *Association PFR*, the *MAG Order* correctly revised section 69.603(g) of the Commission's rules to specify that ICLS amounts of pool participants be included in the common line allocation base, but did not specify a method for assigning NECA expenses included in the common line element to individual study areas participating in the pool. To remove any uncertainty going forward, the Commission should revise section 69.603(h)(2) to specify that, effective July 1, 2002, NECA Category I.B expenses are to be apportioned to study area common line revenue requirements on a pro rata basis. Absent this change, the rules would require NECA to allocate expenses to a non-existent rate element, in effect preventing NECA from recovering a significant portion of its costs.

II. ELIMINATE THE ANNUAL NECA BOARD ELECTION REQUIREMENT (PART 69)

In connection with the 2000 Biennial Review Proceeding, NECA recommended that the Commission change Section 69.602 of the Commission's rules to eliminate the annual election requirement for NECA's Board of Directors due to the burdens placed on NECA, its directors, and its member companies.[19]

The Commission sought comment on NECA's proposal.[20] No party raised an objection to the proposal to eliminate the annual election requirements for NECA's Board of Directors. Pending a final decision on the rule, the Commission has twice granted NECA's request for an interim waiver of the rules that require NECA's directors to stand for election annually.[21]

With a decision in the 2000 biennial review proceeding still pending, NECA renews its request that the Commission eliminate the annual election requirement for NECA's Board of Directors. For the Commission's convenience, rule changes to address the NECA Board election issue are also contained in the Appendix to this filing.

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[19] *See* Letter to Magalie R. Salas, Secretary, Federal Communications Commission from Richard A. Askoff, Deputy General Counsel, NECA (filed July 26, 2000).

[20] 2000 Biennial Regulatory Review, Requirements Governing the NECA Board of Directors under Section 69.602 of the Commission's Rules and Requirements for the Computation of Average Schedule Company Payments under Section 69.606 of the Commission's Rules, CC Docket No. 01-174, *Notice of Proposed Rulemaking,* 16 FCC Rcd 16027 (2001) (*August 2001 Notice*).

[21] *See* National Exchange Carrier Association, Inc., Petition for Waiver of Section 69.602 of the Commission's Rules, File No. ASD 01-34, *Order*, 16 FCC Rcd 11973 (2001) (*June 2001 Order)*, granting NECA's *Petition for Interim Waiver*, CC Docket No. 00-175 (filed April 10, 2001); National Exchange Carrier Association, Inc., Petition for Waiver of Section 69.602 of the Commission's Rules, CC Docket No. 01-174, *Order*, 17 FCC Rcd 12888 (2002) (*July 2002 Order)*, granting NECA's *Petition for Interim Waiver*, CC Docket No. 01-174 (filed May 28, 2002).

III. STREAMLINE AVERAGE SCHEDULE FORMULA PROCESSES (PART 54 AND PART 69)

NECA proposed streamlining the current average schedule development and approval processes in connection with the 2000 Biennial Regulatory Review proceeding. The Commission staff endorsed NECA's recommendation[22] and the Commission subsequently sought comment on NECA's simplification proposal, noting that the "resources devoted by both NECA and the Commission to average schedule formulas may be disproportionate" and that "NECA's current process for developing average schedule formulas may be unnecessarily complex in light of our extensive reform and simplification efforts for the largest ILECs and for ILECs that file outside the NECA process."[23]

NECA filed comments in the proceeding,[24] explaining that the average schedule process is complex, burdensome, and time-consuming. NECA further explained that, while not specified in the rules, the Commission requires NECA to provide extensive documentation of each step of the average schedule process and often requests additional data and supplementary explanations of NECA's methodology. NECA outlined a simplified approach that would reduce administrative burdens on carriers and the Commission while maintaining reasonable accuracy in formula settlement. Under NECA's proposal, overall formula levels would be adjusted based on representative cost

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[22] Biennial Review 2000 Staff Report Released, *Public Notice*, 15 FCC Rcd 21084 (2000) *Staff Report* at ¶ 54.

[23] *August 2001 Notice* at ¶ 12.

[24] 2000 Biennial Regulatory Review, CC Docket No. 01-174 NECA *Comments* (filed Oct. 22, 2001).

company changes. The overall adjustments could be reviewed in the context of NECA access tariff filings and Universal Service Fund (USF) submissions, thus avoiding separate, lengthy, redundant proceedings to review NECA's calculations.

OPASTCO and NTCA supported the need to reduce the complexity of the average schedule development and review processes. OPASTCO noted that "the current present complexity of the process leads to unnecessary administrative costs that are ultimately passed on to consumers in their rates."[25]

The Commission has not taken any action on simplification, yet the need for simplification clearly exists as demonstrated by a review of the 2002 process. The 2002 reorganization of the Commission divided the responsibility for average schedule formula review between the Telecommunications Access Policy Division (TAPD) for universal service (USF) formulas and the Pricing Policy Division (PPD) for access formulas. For 2002, NECA submitted USF formulas on October 1, 2001 for effect January 1, 2002, allowing a three-month review period.[26] Although the Accounting Policy Division (APD) (now the TAPD) approved the local switching support (LSS) formula on December 26, 2001, it determined that further review of the expense adjustment formula was necessary.[27] The TAPD did not approve an expense adjustment formula until seven

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[25] 2000 Biennial Regulatory Review, CC Docket 01-174, OPASTCO *Comments* at 3. (filed Oct. 22, 2001); 2000 Biennial Regulatory review, CC Docket No. 01-174, NTCA *Initial Comments* (filed Oct. 22, 2001).

[26] 2002 NECA Modification of Average Schedule Universal Service Formulas, National Exchange Carrier Association, Inc., (filed Oct.1, 2001).

[27] National Exchange Carrier Association, Inc. Proposed 2002 Modification of Average Schedule Formulas, APD 01-7, *Order*, 17 FCC Rcd 15 (2002).

months (and numerous data requests) later, necessitating retroactive payments to average schedule companies.[28] 2002 access formulas were submitted December 28, 2001 for effect July 1, 2002, allowing a six-month review period.[29] The PPD approved these formulas on June 12, 2002.[30]

The lengthy review process in both cases is unnecessary and burdensome and should be streamlined. Since the Commission took no action on this matter in the 2000 Biennial Review Proceeding, NECA renews its request to streamline the average schedule development and approval processes in the context of the current 2002 Biennial Review Proceeding.

IV. MODIFY LNP COST RECOVERY RULES FOR NON-LNP CAPABLE ILECs (PART 52)

The Commission's initial cost recovery rules adopted in 1998 allowed LNP capable Incumbent Local Exchange Carriers (ILECs) the option to recover one time and ongoing carrier-specific costs directly related to providing LNP through a monthly end-user LNP charge for a five-year period. However, the Commission provided no mechanism for non-LNP capable ILECs to recover their LNP-related costs, which include, at a minimum, costs of supporting regional Number Portability Administration

[28] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, National Exchange Carrier Association, Inc. Proposed 2002 Modification of Average Schedule Formulas, *Order*, DA 02-1769 (rel. Jul. 30, 2002), NECA *Petition for Reconsideration* (filed Aug. 29, 2002), *recon. pending*.

[29] 2002 NECA Modification of Average Schedules, National Exchange Carrier Association, Inc. (filed Dec.28, 2001).

[30] National Exchange Carrier Association, Inc. 2002 Modification of Average Schedules, CCB/CPD No. 02-04, *Order*, 17 FCC Rcd 10991 (2002).

Centers (NPACs) as well as N-1 carrier query costs.[31] The Commission also did not specify any mechanism for the recovery of ongoing LNP costs beyond the expiration of the five-year period.

Following four years of discussions with Commission staff and numerous filings, the Commission finally acknowledged that non-LNP capable ILECs also have LNP costs and adopted the same type of cost recovery mechanism, a five-year end-user charge, as was selected for LNP-capable ILECs.[32] However, the Commission limited non-LNP capable ILEC cost recovery to those ILECs outside the 100 largest metropolitan statistical areas (MSAs) that participate in an extended area service (EAS) calling plan with one of the 100 largest MSAs or other adjacent areas served by a number portability capable switch. ILECs not fitting the narrow criteria specified continue to be deprived of recovery of ongoing LNP-related costs.[33]

The Commission's current cost recovery mechanism for non-LNP capable ILECs leaves the majority of non-LNP capable ILECs without any ability to recover their ongoing LNP-related costs. As it now stands, the Commission's rules require a small subset of non-LNP capable carriers to recover ongoing LNP costs via end-user charges,

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[31] *See* Telephone Number Portability, CC Docket No. 95-116, *Third Report and Order*, 13 FCC Rcd 11701 (1998) (*Third Report and Order*). NECA sought reconsideration on this point. *See NECA Expedited Petition for Reconsideration*, CC Docket No. 95-116, RM 8535 (filed July 29, 1998).

[32] *See* Telephone Number Portability, CC Docket No. 95-116, *Memorandum Opinion and Order on Reconsideration and Order on Application for Review*, 17 FCC Rcd 2578 (2002) (*Order on Reconsideration*).

[33] NECA has again sought reconsideration of this decision. *See NECA Petition for Reconsideration*, CC Docket No. 95-116 (filed July 15, 2002). The Commission should act promptly on NECA's petition.

while permitting LNP-capable carriers to recover the same costs via access charges upon expiration of the five-year period for end-user charge recovery. The Commission should revise section 52.33 of its rules to correct this unfair situation.

V. MODIFY RULES REGARDING SUBSCRIBER LINE CHARGES APPLICABLE TO T-1 BASED EXCHANGE ACCESS SERVICES (PART 69)

On September 26, 2002, NECA filed a petition for rulemaking requesting that the Commission amend section 69.104 of its rules to permit the application of no more than five subscriber line charges (SLCs) to customer-ordered exchange access service that is provisioned using digital, high capacity T-1 interfaces (i.e., 1.544 Mbps digital circuit interfaces) for which the customer supplies the terminating channelization equipment.[34]

With the exception of Integrated Services Digital Network (ISDN) services, current Commission rules require the assessment of one SLC for each derived channel provided by an ILEC for local exchange service.

The Commission recently amended its Part 69 SLC rules to provide that ILECs assess no more than 5 SLCs for Primary Rate Interface (PRI) ISDN.[35] The Commission

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[34] National Exchange Carrier Association Inc., Petition to Amend Section 69.104 of the Commission's Rules, *Petition for Rulemaking*, (filed September 26, 2002) (*NECA Petition*).

[35] *See* Access Charge Reform, CC Docket No. 96-262, Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, Transport Rate Structure and Pricing, CC Docket No. 91-213, End User Common Line Charges, CC Docket No. 95-72, *First Report and Order*, 12 FCC Rcd 15982 at ¶ 115 (1997) (*First Report and Order*). This rule change applied initially only to price cap carriers. The Commission also concurrently changed its rules for BRI ISDN to provide that ILECs assess no more than 1 SLC for BRI ISDN service. *See* 47 C.F.R. §§ 69.152(l)(1) and (2). The *MAG Order* modified section 69.104 (47.C.F.R. §69.104) to extend comparable methods for calculating BRI and PRI ISDN SLCs to non-price cap carriers. *See MAG Order* at ¶ 56.

based its determination on a comparison of the non-traffic sensitive (NTS) loop costs of ISDN, excluding switching costs, and the NTS costs of single channel analog service. The Commission also established a separate port charge to be assessed directly on ISDN users to recover the difference between the cost of an ISDN line card and the cost of a line card used for basic, analog service. However, the Commission limited its decision to ISDN, explaining that the record did not contain sufficient information to allow it to address other derived channel services.

The *NECA Petition* proposes that similar SLC treatment be accorded to customer-ordered exchange access services that are provisioned using T-1 interfaces for which the customer supplies the terminating channelization equipment. Such treatment more closely reflects the actual common line costs incurred by NECA pool participants in providing such circuits and would be consistent with the treatment of functionally similar PRI ISDN services. Without equivalent treatment, similar derived channel services (and the purchasing customers) are saddled with a SLC burden that is almost three times as much as compared to PRI ISDN and far exceeds the NTS loop costs of the service provided. Unequal SLC treatment creates an artificial price incentive for subscribers to choose ISDN over similar services that may be a more efficient or effective choice from a technology deployment perspective.

The Commission should act promptly to amend section 69.104 of its rules to permit the application of no more than five SLCs to customer-ordered exchange access services that are provisioned using T-1 interfaces for which the customer supplies the terminating channelization equipment, as suggested in the *NECA Petition.* Proposed rule

changes reflecting this SLC treatment modification are contained in the Appendix to this filing.

VI. REVISE SECTION 65.820(d) STANDARD ALLOWANCE FOR CALCULATING CASH WORKING CAPITAL (PART 65)

Class B carriers have the option of using a standard allowance method for calculating the cash working capital element (CWC) of the interstate rate base.[36] However, the full lead-lag method for calculating CWC creates a heavy administrative burden. The alternative method provided in Commission rules for Class B carriers to calculate CWC is also complex and difficult for most of these carriers. The rules further provide that Class B carriers may calculate CWC using a "standard allowance which will be established annually by the Chief, Common Carrier Bureau."[37] The current standard allowance of 15 days, which was established over 10 years ago, is out of date and should be revised.

NECA raised this issue in comments[38] submitted in response to the 1998 Biennial Regulatory Review,[39] pointing out that the 15-day standard allowance does not reflect the current business operations of small, rural carriers. These companies are typically required to pay bills more promptly than large carriers. Small companies' books

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[36] 47 C.F.R. § 65.820(d).

[37] *Id.*

[38] 1998 Biennial Regulatory Review, CC Docket No. 98-177, NECA *Comments* (filed Jan. 11, 1999).

[39] 1998 Biennial Regulatory review- Petition for Section 11 Biennial Review filed by SBC Communications, Inc., Southwestern Bell Telephone Company, Pacific Bell, and

typically reflect less cash on hand for shorter periods of time. As a result, revenue receipt lags have a more pronounced effect on small carriers. To date, the Commission has taken no action on this proposal. The Commission should resolve this long-overdue issue by revising the standard allowance period from 15 days to an interval in the range of 30 to 45 days, to be more reflective of the operating experience of small rate-of-return carriers.

VII. CONCLUSION

The suggestions outline above, if adopted, would reduce unnecessary regulatory burdens on ILECs and improve the Commission's operations. Resolution of ICLS data reporting issues in particular would be instrumental in facilitating effective operation of the ICLS support mechanism, thereby, eliminating unnecessary burdensome reporting requirements for ILECs and achieving operating efficiencies for the Commission and the universal service administrator.

In directing the Commission to conduct biennial reviews of its regulations, Congress clearly contemplated that the Commission would not simply announce a "biennial review" proceeding every two years but would instead *take action* to eliminate or modify unnecessary regulations. Section 11 of the Act unequivocally states that in every even-numbered year beginning in 1998, the Commission (1) *shall review* all regulations issued under the Act applicable to telecommunications service providers and (2) *shall determine* whether any such regulation is no longer necessary in the public

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Nevada Bell, CC Docket No. 98-177, *Notice of Proposed Rulemaking*, 13 FCC Rcd 22928 (1998).

interest. Congress' use of the word "shall" leaves no room for doubt – action is required in each biennial cycle.

As discussed above, numerous issues remain pending from earlier biennial review proceedings that should be acted on by the Commission. NECA urges the Commission to act favorably on these recommendations in the near future, certainly prior to the next biennial review proceeding.

Respectfully submitted,

NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC.

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Appendix

Proposed Rule Changes

§ 54.301 Local Switching Support

***

(f) Calculation of the local switching revenue requirement for average schedule companies.

(1) The local switching revenue requirement for average schedule companies, as defined in § 69.605(c) of this chapter, shall be calculated in accordance with a formula developed pursuant to § 69.606(a) ~~approved or modified by the Commission. The Administrator shall submit to the Commission and the Common Carrier Bureau for review and approval a formula that simulates the disbursements that would be received pursuant to this section by a company that is representative of average schedule companies. For each annual period, the Administrator shall submit the formula, any proposed revisions of such formula, or a certification that no revisions to the formula are warranted on or before December 31 of each year~~.

(2) ~~The Commission delegates its authority to review, modify, and approve the formula submitted by the Administrator pursuant to this paragraph to the Chief, Wireline Competition Bureau.~~

§ 54.903 Obligations of rate-of-return carriers and the Administrator

(a) To be eligible for Interstate Common Line Support, each rate-of-return carrier shall make the following filings with the Administrator.

* * *

(3) Each rate-of-return carrier shall submit to the Administrator, on March 31, 2002, and annually thereafter on March 31st preliminary information needed to calculate the ~~Projected Annual Common Line Revenue Requirement~~ Interstate Common Line Support amount as defined in section 54.901 for each of its study areas in the upcoming funding year. A rate-of-return carrier's ~~Projected Annual Common Line Revenue Requirement~~ projection shall be calculated in accordance with part 69 of this chapter. The funding year shall be July 1st of the current year through June 30th of the next year. Rate-of-return carriers will be permitted to submit corrections to their projected ~~Annual Common Line Revenue Requirement~~ data until April 10, 2002, and annually thereafter until April 10th, and shall have an additional

opportunity to submit corrections to projected data on June 30 of each year. For purposes of this section, information needed to calculate Interstate Common Line Support amounts shall include (1) projected common line revenue requirement; (2) projected SLC revenues; (3) projected revenue from transitional CCL charges; (4) projected special access surcharges; (5) projected line port costs in excess of basic analog service; and (6) projected LTS amounts.

(4) Each rate-of-return carrier shall submit to the Administrator, ~~on July 31,~~ no later than December 31, 2003, and annually thereafter on ~~July~~ December 31st, final updates to the data submitted pursuant to paragraph (3) above ~~the carrier's common line costs as defined in part 69 of this chapter~~ for each study area in which it operates for the previous calendar year. Such data shall be used by the Administrator to make adjustments to monthly per-line Interstate Common Line Support amounts in the following calendar year to the extent of any difference between the carrier's ~~Projected Annual Common Line Revenue Requirement~~ projected interstate common line costs and revenues and the carrier's actual interstate common line costs and revenues during the relevant period. A rate-of-return carrier may update the information submitted on ~~July~~ December 31st one or more times quarterly on a rolling year basis according to the schedule in § 36.612 of this chapter.

* * *

(c) NECA shall submit the data required under this section to the administrator on behalf of companies participating in the association common line pool.

* * *

§ 61.39 Optional supporting information to be submitted with letters of transmittal for Access Tariff filings effective on or after April 1, 1989, by local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602.

***

(b) *Explanation and data supporting tariff changes*.

* * *

(2)(ii) For subsequent filings, an amount calculated to reflect the Traffic Sensitive average schedule pool settlement the carrier would have received if the carrier had continued to participate, based upon the most recent average schedule formulas developed pursuant to § 69.606(a) ~~approved by the Commission~~.

§ 69.104 End user common line for non-price cap incumbent local exchange carriers

* * *

(p) ~~Beginning January 1, 2002, n~~Non-price cap local exchange carriers shall assess:

(1) No more than one End User Common Line charge as calculated under the applicable method under paragraph (n) of this section for Basic Rate Interface integrated services digital network (ISDN) service.

(2) No more than five End User Common Line charges as calculated under paragraph (o) of this section for Primary Rate Interface ISDN service.

(3) No more than five End User Common Line charges as calculated under paragraph (o) of this section for customer-ordered exchange access service that is provisioned using T-1 interfaces for which the customer supplies the terminating channelization equipment.

§ 69.602 Board of directors.

* * *

(e) Each subset shall select the directors who will represent it individually through ~~an annual~~ periodic elections in which each member of the subset shall be entitled to vote for the number of directors that will represent such members' subset.

(f) The association membership shall select the directors ~~for the following calendar year~~ who will represent all three subsets through ~~an annual~~ periodic elections in which each member of the association shall be entitled to one vote for each director position. ~~There shall be at least two candidates meeting the qualifications in paragraph (d) of this section for each such director position:~~

~~(1) In any election in which the~~ most ~~recently elected director for such position is not a qualified candidate;~~

~~(2) If there has been no election for~~ such ~~position having more than one qualified candidate during the present and the two preceding calendar years; and~~

~~(3) In any election for which the~~ ballot ~~lists two or more qualified candidates.~~

*** * ***

(i) ~~Directors shall serve for a~~ term ~~of one year commencing January 1 and concluding on December 31 of each year.~~

* * *

§ 69.603 Association Functions

(h) * * *

(2) The revenue requirement for association tariffs filed pursuant to § 69.4(a) and (b)(2) shall not include an Association expenses other than Category I.B Expenses. Beginning July 1, 2002, Category I.B. Expenses shall be apportioned to study areas on a *pro rata* basis.

§ 69.606 Computation of average schedule company payments.

(a) Overall average schedule revenue requirements shall be determined by updating revenue requirements for each formula category, coincident with association tariff filings made pursuant to §69.3, based on the projected line growth of the average schedule population, and percentage change of revenue requirement experienced by cost companies that are representative of average schedule companies. ~~Payments shall be made in accordance with a formula approved or modified by the Commission.~~ ~~Such~~ Individual formulas shall be designed by the association to produce disbursements to ~~an~~ average schedule compan~~y~~ies that simulate ~~the~~ changes in disbursements ~~that would be~~ received ~~pursuant to § 69.607~~ by ~~a~~ cost compan~~y~~ies that ~~is~~ are representative of average schedule companies.

(b) ~~The association shall submit a proposed revision of the formula for each annual period subsequent to December 31, 1986, or certify that a majority of the directors of the association believe that no revisions are warranted for such period on or before December 31 of the preceding year.~~

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Comments was served on this 18th day of October 2002 by electronic delivery and by first-class mail to the persons listed below.

By : /s/ Shawn O'Brien
Shawn O'Brien

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