

On July 3, 2004, George L. Lyon, Jr. send the following email to Christopher Libertelli, senior legal advisor to Chairman Powell:

I had hoped to speak with you prior to the Sunshine Agenda being released. Given that time is short before it will be I will summarize my concerns with the VRS rate setting mechanism.

In comments I filed last week, I suggested that the Commission can have no confidence in NECA's proposed rate submission for 2004-05 due to its failure to explain adjustments made to cost data and the fact that its purported method of calculating rate of return is contrary to Part 65's methodology and failed to obtain required data on investment pursuant to Section 64.604. I also explained that to the extent NECA is lawfully delegated the authority to review provider data, the CGB cannot rubber stamp that action, but must independently review what NECA has done. However, since NECA has not provided details of what it has done, CGB has no basis to exercise review of NECA's actions. Accordingly, the Commission and the Bureau have no basis to approve or disapprove NECA's proposed VRS rate. Given that, the Commission still needs to set a VRS rate for 2004-05. I suggest you set that rate on an interim basis by continuing the 2003-04 rate as you may adjust it via the pending reconsideration proceeding, which I assume will be before the Commission in its June 10, 2004 meeting, and that you hold a rule making to establish more definite procedures on setting TRS rates. At least the 2003-04 rate would have been fully vetted via the Bureau and the full Commission.