

percentage to total, industry-wide interstate telecommunications revenue for that year. During any given year, some carriers (mainly ILECs) might experience a decline in lines, which might lead to a decline in those particular carriers' interstate revenues subject to assessment. But at the same time, other carriers (mainly CLECs) will experience an offsetting increase in lines, with an associated increase in interstate revenues. Moreover, contributors to the fund such as long distance carriers (and, more recently, VoIP providers) may well experience increases in assessable interstate revenues without regard to any traditional "line counts" that may have entered into USAC's prospective estimate of what the assessment percentage should be. In these circumstances, there is no logical reason to conclude that the total funds available for distribution to all ETCs for a particular period will be directly linked to either ILEC or CLEC line counts in any prior periods.

Third, USAC's references regarding line count data relate only to the filing schedule and the method for making projections and disbursements based on those projections. They do not address the true-up mechanism at all.

Finally, USAC suggests that using actual line count data when making true-up calculations could allow a carrier that failed to file its projected line counts when required by the rules to argue that it is nonetheless entitled to full ICLS support payments if the actual line count data are submitted by the time of a true-up. *USAC Decision* at 16. Centennial certainly had no intention of endorsing such a result in arguing that a true-up based on "actual" data should, indeed, rely on "actual" data. To the extent that there is any reason to think that a competitive ETC might attempt to game the system in the way USAC suggested, all that is necessary is for the Commission to provide guidance to USAC indicating that (in the absence of a waiver or some valid excuse approved by the Commission) a carrier that fails to make timely line count

filings needed to receive support on a current basis cannot use the true-up mechanism to obtain ICLS funding anyway.

For all these reasons, using old line counts for ICLS true-ups be reconciled with either the rules governing the ICLS program, or even with economic common sense. The Commission, therefore, should direct USAC to calculate true-ups based on actual data for the period being trued up – including, specifically, actual line count data for such periods.<sup>40</sup>

**C. In The Alternative, Centennial Requests A Waiver Of The True-Up Rules.**

If the Commission concludes that USAC properly applied the true-up rules, Centennial requests, pursuant to 47 C.F.R. § 1.3 and other applicable law, that the Commission waive 47 C.F.R. §§ 54.307(a), 54.903(a) and/or 54.903(b), to the extent necessary to allow Centennial to retain the ICLS payments it received in 2004. The Commission may grant this waiver “if good cause therefore is shown.” 47 C.F.R. § 1.3. Centennial submits that such good cause exists in the circumstances presented here.

In general, waiver of a Commission rule is appropriate for “good cause.”<sup>41</sup> The Commission may waive a rule where “particular facts would make strict compliance inconsistent with the public interest.”<sup>42</sup> In other words, “a waiver is appropriate if special circumstances

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<sup>40</sup> To the extent that ILECs are losing lines and competitive ETCs are gaining lines, properly calculating true-ups based on actual line counts in the year for which the true-up occurs may well, on balance, increase payments to competitive ETCs. But the reason for such an increase would be the fact that the competitive ETCs are serving a greater fraction of the market. In this regard, the most recent available information shows that an increasing number of consumers – roughly 10% of all households as of the first half of 2006 – are relying entirely on wireless service for their telephone needs. See Center for Disease Control, National Center for Health Statistics (S.J. Blumberg & J.V. Luke), “Wireless Substitution: Preliminary Data from the January-June 2006 National Health Interview Survey,” (May 14, 2007), available at: <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200705.pdf>. Surely there is nothing inappropriate about increasing payments to wireless ETCs when those entities provide the sole form of telephone service for an increasing proportion of households.

<sup>41</sup> See *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990).

<sup>42</sup> *Id.*; *Wait Radio v. FCC*, 418 F. 2d 1153, 1157 (D.C. Cir. 1969).

warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.”<sup>43</sup>

This is the situation here. If indeed USAC properly applied the ICLS true-up rules, then in this specific case the operation of those rules is frustrating, rather than advancing, the purposes of the ICLS program and the public interest.

Specifically, a waiver is appropriate here because of the impact of PRTC’s significant over-estimation of its common line costs under the LTS program. As noted above, the “true-up” here involves a retroactive reduction of nearly 60% of the amounts initially paid. Centennial submits that on its face, a “true-up” of this magnitude violates the command of 47 U.S.C. §§ 254(b)(5) and (d) that universal service payments be “predictable.”

Moreover, Centennial has already used the money it received in 2004 to build out its wireless network in Puerto Rico, and in a manner that would not be economically reasonable based on purely commercial considerations.<sup>44</sup> Indeed, the Commission’s own rules (47 C.F.R. § 54.904) require Centennial to certify that it is using the money it receives for the purposes envisioned by the universal service program. Centennial cannot “un-invest” or “un-spend” the money that was received and used in 2004.

Centennial submits that while relatively small, “ordinary course of business” true-ups to reflect differences between projected and actual amounts can reasonably be absorbed into ongoing business operations – and would not offend the statute’s requirement of “predictability” – it is unfair and unreasonable to expect Centennial to absorb the massive “true-up” created by

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<sup>43</sup> *Request for Waiver of Section 54.611 of the Commission's Rules: Unicom, Inc.*, Order, WC Docket No. 02-60, 21 FCC Rcd 11240 (2006) at ¶ 7.

<sup>44</sup> This is inherent in any universal service spending on network infrastructure. If and to the extent that normal commercial considerations would justify an expenditure, that expenditure would have occurred without universal service funding. The funding, therefore, “uneconomically” either advances investment that would have occurred at some future time (with correspondingly delayed benefits to consumers) or not at all.

PRTC's over-estimation of its common line costs for 2004. A full or partial waiver of the true-up and/or equal support rules is therefore appropriate in this specific circumstance.

In this regard, the payment to Centennial of ICLS funding based on (supposedly) reasonably projected data, combined with the obligation on competitive ETCs to spend that money on supported services, creates a situation in which Centennial is forced to rely on the approximate accuracy of the ILEC's underlying projections, in making significant investment-backed business decisions. The program rules, in effect, give Centennial no choice but to act as though the amounts it receives on a current basis are approximately correct. In this case, for USAC to come back more than a year after the money is actually spent and demand recoupment of more than half the amount originally provided, amounts to a form of impermissible "taking" of Centennial's property.<sup>45</sup> A waiver here is appropriate, therefore, not only because the money from 2004 is already invested in Centennial's network, but also because the sheer size of the proposed recoupment, and the large proportion of the original amount provided that would be recouped, undermines the predictability of the universal service program itself.<sup>46</sup>

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<sup>45</sup> Centennial recognizes that the ICLS rules have always provided for a true-up, so that an ETC such as Centennial cannot reasonably have expected that the amounts actually disbursed in 2004 will remain unchanged for all time. Centennial's point, however, is that there are reasonable limits inherent in the nature of an after-the-fact "true-up" system. If a true-up based on PRTC's actual 2004 figures had resulted in a proposed recoupment of 3% or 5% of the amounts initially paid, Centennial submits that it would have no reason to complain. But no reasonable interpretation of an after-the-fact "true-up" mechanism would remotely suggest that originally disbursed amounts could be retroactively reduced by 60%. Centennial cannot simultaneously be expected to certify that it is using universal service funds for the purposes of the universal service program under § 54.904, yet at the same time hold enough funds in abeyance – that is, not use them – to guard against the possibility of a 50%, 60%, or perhaps even higher "true-up" of those funds two years in the future. The only logical way to interpret the true-up requirement, in light of the certification requirement, is that it creates a reasonable expectation that true-ups will be relatively minor as a proportion of the total amount initially received.

<sup>46</sup> In this regard, Centennial is a relatively small, publicly traded entity that receives a significant level of universal service funding. It is required to advise investors regarding material changes in its financial results. PRTC's extremely inaccurate common line cost projections – of which Centennial was completely unaware at the time – put Centennial at risk of having to make significant financial disclosures and adjustments with no meaningful advance warning, no explanation, and no basis for predicting

A waiver is also appropriate in light of the unique circumstances in Puerto Rico. As the Commission is aware, the level of landline penetration in Puerto Rico is dismal – less than 70%, the lowest in the nation.<sup>47</sup> As a result, providing universal service support to competitive wireless ETCs is uniquely important in Puerto Rico.<sup>48</sup> As far as Centennial is aware, no ILEC in any other state has created a situation akin to PRTC’s – in which the ICLS true-up for 2004 (or any other year) is proportionately as large as the true-up at issue here. But even if some ILEC in some other state *did* over-project its common line costs to the same extent that PRTC did – leading to a similarly large true-up in that state – the importance *to the goals of universal service* in permitting a wireless ETC to retain ICLS amounts invested in a wireless network would not be as great anywhere other than Puerto Rico. The combination of extremely low landline penetration and a corresponding extremely high reliance on wireless service is unique to Puerto Rico.

Finally, Centennial notes that granting a one-time waiver in these circumstances would not require either that PRTC be permitted to retain the excess LTS payments that USAC believed could lead to over-recovery, or that other competitive ETCs in other jurisdictions be granted a similar waiver. As a result, the overall impact on the universal service fund of granting Centennial a waiver would be *de minimis*.

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whether future adjustments will be called for. These factors simply increase the unfairness to Centennial of dealing with USAC’s proposed recoupment here.

<sup>47</sup> See Letter from Nancy Victory to Marlene Dortch dated December 12, 2006, *ex parte* presentation in CC Docket Nos. 96-45 and 05-337 (attachment at 1) (survey shows fixed line service available in only 68.7% of households).

<sup>48</sup> Indeed, the same *ex parte* presentation just cited indicates that *wireless* penetration in Puerto Rico is also roughly 68%. Clearly, wireless plays an extremely significant role in providing universal service in Puerto Rico.

**D. The Commission Should Direct USAC To Suspend Recovery Of The Amounts In Dispute While This Matter Is Pending.**

As noted above, Centennial requests that the Commission direct USAC to stay its recovery of the amounts USAC asserts to be due while this request for review is pending. USAC voluntarily suspended recovery while it considered Centennial's intra-USAC appeal, but as Centennial understands it, does not view itself to be free to continue that suspension at this juncture. On the merits, Centennial believes that the arguments asserted in this request are sufficiently substantial that it is fair and equitable to prevent further disruption in Centennial's cash flow – of which universal service support is a non-trivial portion – while this matter is pending.

**III. Conclusion.**

Centennial submits that USAC has clearly misapplied the rules governing both the LTS and ICLS programs in determining its asserted true-up for 2004. Specifically, USAC has misinterpreted the true-up rules to require that the only “relevant period” for which true-ups are calculated is the entire calendar year of 2004, even though the Commission's rules, and USAC's own practice, require calculating ICLS support on a quarterly basis (to reflect quarterly updates to line count data). In addition, USAC's approach ignores the Commission's clear directive that the LTS program terminate for all purposes effective July 1, 2004. Furthermore, USAC provides no sound justification for ignoring the rules' repeated command to calculate true-ups based on “actual” data; instead, it insists on making true-up calculations using line counts from periods prior to the one for which the true-up applies.

Even if the Commission does not conclude that USAC misapplied the relevant rules, in the unique circumstances of this case, the Commission should waive the true-up rules in light of Centennial's investment of the affected funds in its Puerto Rico network, in light of the

extraordinarily high *percentage* of amounts originally provided that USAC seeks to recoup, and in light of the unique importance, in Puerto Rico specifically, of providing universal service support to a robust wireless network.

Respectfully submitted,

Centennial Communications Corp.



By:

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\_\_\_\_\_  
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Its Attorneys

May 28, 2007

# EXHIBIT 1



# **Beneficiary Appeal & Attachments**

**Centennial Communications Corporation  
Puerto Rico**

**Study Area Codes 633200 & 633201**

**March 28, 2007**

**1**

**Administrator's Decision on High Cost Support Mechanism – Beneficiary Appeal**

**Attachment A**

**3**

**Attachment A – PRTC Disbursements**

**4**

**Attachment B**

**5**

**Attachment C**

**6**

**Attachment D**

**7**

**Attachment E**

**8**

**Attachment F**

**9**

**Attachment G**

**10**

**Attachment H**

**11**

**Attachment I**

**12**

**Attachment J**

**13**

**Attachment K**

**14**

**15**



Universal Service Administrative Company

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*Administrator's Decision on High Cost Support Mechanism  
Beneficiary Appeal*

March 28, 2007

Mr. Christopher Savage  
Davis Wright Tremaine LLP  
Suite 200  
1919 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Re: Appeal Pursuant to 47 C.F.R. § 54.719 of the 2004 ICLS Reconciliation for  
Centennial Communications Corp. in Puerto Rico

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Dear Mr. Savage:

The Universal Service Administrative Company ("USAC") has reviewed the appeal filed by you on behalf of Centennial Communications Corp. ("Centennial"), dated September 8, 2006, concerning USAC's decision to recover Interstate Common Line Support ("ICLS") for 2004, which was paid to Centennial Puerto Rico ("Centennial PR"). As discussed in more detail below, USAC hereby denies Centennial's appeal, except for an adjustment to the amount of ICLS to be recovered.<sup>1</sup>

Consistent with this Administrator's decision, USAC will resume recovery of the outstanding ICLS owed, which had been suspended pending USAC's decision on this appeal. Recovery will occur over the next five disbursement months immediately following the issuance of this appeal decision by subtracting the monthly amount owed from High Cost Support Mechanism benefits payable to Centennial PR. After adjustment to the remaining amount to be recovered as set forth above, USAC will recover \$4,294,017 of ICLS paid to Centennial PR.

If after netting support to be paid against ICLS over the next five disbursement months there is a remaining balance of ICLS to be recovered, USAC will continue monthly netting until all remaining ICLS associated with this matter is recovered. If necessary, USAC reserves the right to invoice and collect from Centennial PR any remaining amounts owed.

Following is a summary and detailed discussion of USAC's findings in this matter.

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<sup>1</sup> See *infra*, Discussion, item 4—Alleged Overstatement of Centennial PR 2004 ICLS Revenue.

## SUMMARY

USAC performed the annual ICLS 2004 reconciliation as required by 47 C.F.R. § 54.903 in determining Puerto Rico Telephone Company (“PRTC”), the Incumbent Local Exchange Carrier (“ILEC”), had over-recovered ICLS, and, therefore, Centennial PR, the Competitive Eligible Telecommunications Carrier (“CETC”) had correspondingly also over-recovered ICLS. Conversely, use of the reconciliation methodology proposed by Centennial would be contrary to Section 54.903 of the Federal Communications Commission’s (“FCC” or “Commission”) rules and result in an improper ICLS windfall for PRTC and Centennial PR.<sup>2</sup>

As enumerated in the first three allegations of the Centennial appeal, USAC hereby:

- (1) denies that Long Term Support (“LTS”) was treated erroneously in calculating the calendar year 2004 ICLS<sup>3</sup> reconciliation;
- (2) denies it incorrectly recalculated the 2004 per line ICLS reconciliation by using PRTC 2003 line count data instead of 2004 data;
- (3) denies it incorrectly recalculated the 2004 per line ICLS reconciliation for Centennial PR by using 2003 line count data instead of 2004 data; and
- (4) USAC confirms that USAC overstated Centennial PR’s projected ICLS dollars paid for 2004 and grants relief consistent with the difference between the overstatement and the actual projected ICLS dollars paid for 2004.

## FACTUAL BACKGROUND

On September 8, 2006 Centennial filed an appeal with USAC<sup>4</sup> regarding USAC’s 2004 ICLS recovery decision for the Centennial PR study area code: 639001. USAC agreed to suspend recovery of the remaining \$5,438,121 of the \$6,525,745 total 2004 ICLS owed for the Centennial PR study area during the pendency of the appeal.<sup>5</sup>

On September 25, 2006, Centennial sent a supplement to its *September 8 Letter* discussing in more detail the ICLS 2004 reconciliation issues it raised.<sup>6</sup> In effect, Centennial appeals the

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<sup>2</sup> See 47 C.F.R. § 54.903.

<sup>3</sup> ICLS is provided pursuant to 47 C.F.R. §§ 54.901-904.

<sup>4</sup> Letter from Christopher W. Savage, Counsel for Centennial Communications Corp., to Karen Majcher (USAC), dated September 8, 2006 (the “September 8 Letter”).

<sup>5</sup> The initial \$1,087,624 of 2004 ICLS reconciliation was recovered in July disbursements.

<sup>6</sup> Letter from Christopher W. Savage, Counsel for Centennial Communications Corp., to Karen Majcher (USAC), dated September 25, 2006 (the “September 25 Letter”). On September 8, 2006, USAC and representatives of Centennial met at USAC’s offices in Washington, D.C. to discuss Centennial’s claims. Upon receipt of the *Initial Appeal Letter*, USAC agreed to suspend recovery of ICLS pending its decision on appeal.

manner in which USAC reconciled ICLS 2004 payments and contests the line count data USAC used in the ICLS 2004 payment reconciliation.<sup>7</sup> Specifically, Centennial alleges:

- (1) erroneous treatment of LTS revenues in the calculation of calendar year 2004 ICLS reconciliation by USAC;
- (2) improper use of incumbent carrier line counts in the 2004 ICLS reconciliation by USAC;
- (3) improper use of competitive carrier line counts in the 2004 ICLS reconciliation by USAC; and
- (4) improper calculation of Centennial PR's 2004 ICLS payments due to the errors and improprieties enumerated in the three preceding allegations.<sup>8</sup>

On March 13, 2007, USAC received a letter from Mr. Savage supplementing Centennial's appeal.<sup>9</sup> In this letter, Centennial cites an order issued by the Commission's Wireline Competition Bureau on March 12, 2007 relating to PRTC as further support for Centennial's appeal.<sup>10</sup>

USAC performs periodic reconciliation of the ICLS provided to each carrier based on projected data filed pursuant to 47 C.F.R. § 54.903(a)(3) and the ICLS for which each carrier is eligible based on actual data filed pursuant to 47 C.F.R. § 54.903(a)(4).<sup>11</sup> USAC recovers ICLS previously paid when adjustments to prior period ICLS are calculated based on actual ICLS filings to the extent that projected ICLS exceeds actual ICLS during the relevant period.<sup>12</sup> As a result of this reconciliation process, USAC initiated recovery of \$6,525,745 of ICLS support from Centennial PR. As of September 8, 2006, USAC had recovered \$1,087,624 of ICLS with \$5,438,121 remaining to be recovered. USAC agreed to suspend further recovery pending its decision on appeal.

## LEGAL BACKGROUND

The Commission established the ICLS mechanism to replace implicit support in the interstate access rate structure of rate-of-return carriers.<sup>13</sup> The Commission determined that it would retain LTS for stability as the transition to ICLS occurred.<sup>14</sup> Although LTS and ICLS performed duplicative functions, the two mechanisms were complementary with respect to the amount of

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<sup>7</sup> See *September 25 Letter* at 1-8.

<sup>8</sup> See *Id.*

<sup>9</sup> *Letter from Christopher Savage, Counsel for Centennial Communications Corp., to Karen Majcher, USAC*, dated March 13, 2007 (the "*March 13, 2007 Letter*").

<sup>10</sup> *Federal-State Board on Universal Service*, DA 07-1235 (rel. March 12, 2007) (the "*March 12, 2007 Order*")

<sup>11</sup> 47 C.F.R. §54.903(b)(3).

<sup>12</sup> 47 C.F.R. § 54.903(a)(4).

<sup>13</sup> *Multi-Association Group (MAG) Plan For Regulation Of Interstate Services Of Non-Price Cap Incumbent Local Exchange Carriers And Interexchange Carriers*, FCC 01-304, 16 FCC Rcd. 19163, ¶ 120 (2001) ("*MAG Order*").

<sup>14</sup> *MAG Order* at ¶ 139.

support provided because a carrier's ICLS is reduced by any LTS received with the objective that a carrier would not recover more combined support than it would receive if ICLS or LTS were the sole sources of support for the interstate common line.<sup>15</sup> In 2004, the Commission merged LTS into ICLS to provide administrative simplicity by eliminating a duplicative and obsolete mechanism.<sup>16</sup> Thus, no carrier could receive LTS beginning July 1, 2004.<sup>17</sup> The Commission noted that overall support would not be reduced by this decision because ICLS would automatically increase by an amount to match any LTS reduction.<sup>18</sup>

In establishing the new ICLS mechanism, the Commission mandated filing requirements and a reconciliation or "true up" process to enable USAC to calculate per line amounts of ICLS.<sup>19</sup> Under the filing requirements, rate-of-return carriers are required to report their projected common line revenue requirements for each study area in which they operate.<sup>20</sup> The Commission required "rate-of-return carriers to file projected common line revenue requirements on an annual basis" because, in part, "the annual filing of projected common line revenue requirements will ensure that total amounts of the [ICLS] remain more predictable."<sup>21</sup> CETCs are not required to file a projected revenue requirement because they will receive per line ICLS based on the incumbent rate-of-return carrier's support.<sup>22</sup>

The Commission also established a reconciliation process to ensure that carriers receive ICLS that accurately reflects actual costs.<sup>23</sup> The Commission determined that reconciled support amounts would be "based on complete funding year cost data."<sup>24</sup> CETCs' per line support amounts also are subject to reconciliation to the extent the incumbent rate-of-return carrier's support amounts are subject to reconciliation.<sup>25</sup>

To enable USAC to properly calculate ICLS, the Commission also required line count data be filed by rate-of-return carriers and CETCs in most instances on a quarterly basis.<sup>26</sup> The Commission determined that line count data that is filed on a quarterly basis would be used to calculate support for the second calendar quarter after the data is filed.<sup>27</sup>

<sup>15</sup> See *MAG Order* at ¶¶ 140-41.

<sup>16</sup> *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd. 4122, ¶ 67 (2004) ("*LTS Order*").

<sup>17</sup> *LTS Order* at ¶ 67.

<sup>18</sup> *Id.*

<sup>19</sup> 47 C.F.R. § 54.903.

<sup>20</sup> 47 C.F.R. § 54.903(a); 47 C.F.R. §§ 36.611-12.

<sup>21</sup> *MAG Order* at ¶ 165.

<sup>22</sup> *Id.* at ¶ 171.

<sup>23</sup> *Id.*

<sup>24</sup> *MAG Order* at ¶ 167.

<sup>25</sup> 47 C.F.R. § 54.307; *MAG Order* at ¶ 167.

<sup>26</sup> *MAG Order* at ¶ 171.

<sup>27</sup> *Id.*

## DISCUSSION

Following is USAC's response to each of Centennial's allegations set forth in the *September 25 Letter*.

### 1. Alleged Erroneous Treatment of First-Half 2004 LTS Revenues.

Centennial alleges that in calculating the 2004 calendar year ICLS reconciliation, USAC treated LTS revenues paid in the first half of 2004 as an annual amount violating the Commission rule stating that “[b]eginning July 1, 2004, no carrier shall receive Long Term Support.”<sup>28</sup>

*USAC Reconciles ICLS Paid to an ILEC in Accordance with 47 C.F.R. § 54.903(b)(3) and applies the Results of the Reconciliation to CETCs as Required by 47 C.F.R. § 54.307(a)*

ICLS rules require each rate-of-return carrier to file data necessary to calculate ICLS for the prior calendar year to facilitate reconciliation of ICLS for the relevant period.<sup>29</sup> In December 2005, the two PRTC carriers serving areas, where Centennial PR served lines, filed the requisite data, and one of the components reported and necessary to calculate actual ICLS was LTS. LTS is part of a carrier's calendar year common line cost and revenue data that rate-of-return carriers file under Commission rules,<sup>30</sup> and the amount of ICLS reflects any LTS received.<sup>31</sup>

The fact that LTS was reported as part of the common line cost and revenue data for calendar year 2004 and was labeled as “Annual LTS” may imply that LTS was paid for a period subsequent to June 2004 disbursements. However, a review of disbursements clearly shows that the PRTC carriers received LTS only through June 2004. *See Attachment A, PRTC Disbursements - 2004*. USAC used LTS disbursed only for January through June 2004 in calculating the 2004 calendar year ICLS reconciliation.

Consistent with the Commission's requirements, the calendar year data provided by the PRTC carriers was used to reconcile ICLS for the relevant period—calendar year 2004.<sup>32</sup> To calculate ICLS reconciliation for relevant period(s) other than calendar year 2004 would have resulted in the PRTC carriers substantially exceeding their common line revenue requirements because ICLS would have been paid in excess of the carrier's actual costs, resulting in a recovery of funds in excess of the allowable rate of return.<sup>33</sup>

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<sup>28</sup> 47 C.F.R. § 54.303(a).

<sup>29</sup> *See* 47 C.F.R. § 54.903(a)(4).

<sup>30</sup> *See Id.* *See also* 47 C.F.R. § 54.901(a).

<sup>31</sup> *See MAG Order* at ¶ 141; *LTS Order* at ¶ 67.

<sup>32</sup> *See* 47 C.F.R. § 54.903(a)(4).

<sup>33</sup> *See* 47 C.F.R. § 65.700. *See also, 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, Order and*

Applying LTS disbursement information to determine the appropriate ICLS reconciliation for a given calendar year is required by Commission rules because the amount of LTS received during a calendar year will affect the amount of ICLS received.<sup>34</sup> It is not correct to assume that the reconciliation process is effectively providing LTS to any carrier beyond June 30, 2004.<sup>35</sup> The months in which LTS was disbursed are not relevant to the calendar year reconciliation of ICLS because that reconciliation is based on actual costs and takes into account any LTS a carrier may have received during the calendar year. Only by using LTS disbursement data when reconciling the relevant period (i.e., calendar year) can eligible rate-of-return carriers and CETCs receive the ICLS for which they are eligible consistent with Commission rules.<sup>36</sup>

During calendar year 2004, Centennial PR served lines in the two incumbent rate-of-return study areas of PRTC (i.e., study area codes 633200 and 633201). Each of the PRTC carriers received ICLS in 2004, and, consistent with Commission rules, Centennial PR also received ICLS in 2004.<sup>37</sup> The ICLS disbursed to Centennial PR was based on the ICLS projections of each PRTC carrier.<sup>38</sup> For the calendar year, Centennial PR received \$10,330,311 in ICLS. *See Attachment B, Centennial PR (639001) 2004 Support.* The Centennial PR ICLS disbursements were made consistent with the ICLS projections of the two PRTC rate-of-return incumbent carriers, and the ICLS disbursement was subject to a prospective reconciliation as required by the Commission's rules.<sup>39</sup>

The PRTC carriers made the common line cost and revenue data filing for calendar year 2004 necessary to adjust the 2004 calendar year support.<sup>40</sup> Pursuant to Section 54.307(a)

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Second Order on Reconsideration, FCC 02-181, 17 FCC Rcd 11593, 11594-96, ¶¶ 4 and 6 (2002) ("Negative ICLS Order"). *See also, Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 89-624, *Order*, 5 FCC Rcd 7507 (1990) (the Commission established an 11.25% overall rate of return for the interstate access services of local exchange carriers), *petitions for review docketed sub nom., Illinois Bell Telephone Co., et. Al. v. FCC*, No. 91-1020 (D.C. Cir. Filed Jan. 11, 1991) *recon.* 6 FCC Rcd 7193 (1991).

<sup>34</sup> See 47 C.F.R. § 54.903(b)(3).

<sup>35</sup> See *September 25 Letter* at 1-2.

<sup>36</sup> See 47 C.F.R. § 54.901(a).

<sup>37</sup> "A competitive eligible telecommunications carrier [CETC] serving loops in the service area of a rate-of-return carrier shall be eligible to receive Interstate Common Line Support of each line it serves in the service area...." 47 C.F.R. § 54.307(a)(1)

<sup>38</sup> See 47 C.F.R. § 54.903(a).

<sup>39</sup> See 47 C.F.R. § 54.903(b).

<sup>40</sup> "Each rate-of-return carrier shall submit to the Administrator on December 31st of each year the data necessary to calculate a carrier's Interstate Common Line Support, including common line cost and revenue data, for the prior calendar year. Such data shall be used by the Administrator to make adjustments to monthly per-line Interstate Common Line Support amounts in the final two quarters of the following calendar year to the extent of any differences between the carrier's ICLS received based on projected common line cost and revenue data and the ICLS for which the carrier is ultimately eligible based on its actual common line cost and revenue data during the relevant period." 47 C.F.R. § 54.903(a)(4).

of the Commission's rules, CETCs operating in the PRTC carriers' study areas receive universal service support at the same per line rate as the PRTC carriers.<sup>41</sup> As a result of the data provided, and after USAC applied the reconciliation process, the PRTC carriers were determined to have over-recovered 2004 ICLS in the amounts of \$2,806,512 and \$15,139,773 for the two respective study areas. *See Attachment C, PRTC ILEC 2004 ICLS Reconciliation Calculation.*

When recovering over-projected and paid ICLS for an incumbent study area, USAC recovers from both the incumbent carrier and any CETC that received ICLS in the incumbent study area to ensure the CETC (in this case of Centennial PR) operating in an ILEC's (in this case PRTC) study area receives the same support on a per line basis as the ILEC, as required by the Commission's rules.<sup>42</sup> In recovering ICLS from the PRTC carriers arising from the over-projection of 2004 ICLS, USAC also must recover ICLS from Centennial PR. The amount scheduled for 2004 ICLS recovery from Centennial PR was \$6,525,745. *See Attachment D, Centennial PR 2004 ICLS Reconciliation Calculation.* This information was published in USAC's third quarter 2006 fund size projection summary filed with the Commission on May 2, 2006.<sup>43</sup>

*Centennial's Proposed 2004 ICLS Reconciliation Process Would Generate an Improper Support Benefit Payment Windfall for the PRTC Carriers and Centennial PR in Contravention of Commission Rules*

Centennial suggests that the 2004 ICLS reconciliation should be performed as a separate calculation for each half of the year in light of the Commission's decision to merge LTS into ICLS as of July 1, 2004. However, reconciling ICLS in this manner is contrary to Section 54.903 of the Commission's rules, which requires ICLS calculations to be performed on an annual basis.<sup>44</sup> To illustrate the difference between Centennial's proposed methodology and USAC's methodology, a brief overview of the ICLS reconciliation performed by USAC and the reconciliation process proposed by Centennial is provided below.

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<sup>41</sup> See 47 C.F.R. § 54.307(a).

<sup>42</sup> 47 C.F.R. § 54.307(a). *See also, MAG Order at ¶ 167* ("We note that competitive eligible telecommunications carriers' per-line support amounts will also be subject to reconciliations to the extent that the incumbent rate-of-return carrier's support amounts are subject to reconciliation, consistent with section 54.307 of the Commission's rules.").

<sup>43</sup> *See Quarterly Administrative Filings 2006, Third Quarter Appendices, HC 23, Interstate Common Line Support 2004 Reconciliation Per Line 2004*, released May 2, 2006. While on notice of the prospective funds recovery for ICLS from May 2, 2006, Centennial PR did not discuss the funds recovery with USAC until September 2006.

<sup>44</sup> See 47 C.F.R. §§ 54.903(a)(3) and (4) for annual information filing requirements, and 47 C.F.R. § 54.903(b) for performing ICLS reconciliations based on the annual data filed pursuant to 47 C.F.R. § 54.903(a)(3).

ILEC SAC	2004 Projected ICLS	2004 Actual ICLS	Amount for Payment Recovery	ICLS Monthly Recovery Amount
633200	\$4,991,114	\$4,609,972.00	\$(381,142)	\$(63,524)
633201	\$26,937,742	\$24,673,920.50	\$(2,263,822)	\$(377,304)

Centennial’s proposed methodology requires two separate reconciliations—one for the first half of the year and one for the second half of the year. All actual 2004 LTS dollars are allocated in the first half-year reconciliation calculation. No LTS dollars are used in the second half-year reconciliation calculation. The effect of the two separate calculations, which has no basis in FCC rules, is to improperly increase the amount of actual calendar year 2004 ICLS to the PRTC carriers. *See Attachment F, PRTC ILEC 2004 ICLS Reconciliation Calculation – Centennial PR Methodology*, for more details.

Using Centennial’s proposed methodology would permit the two PRTC carriers to recover more than \$15 million<sup>48</sup> in excess of their common line revenue requirements for the calendar year in effect negating the Commission’s cost recovery rules by permitting the two PRTC carriers to recover more than their common line revenue requirements for the relevant period. Centennial’s approach requires the ICLS recovery to occur solely in the first half of the year in which there is insufficient ICLS paid to recover. Then, Centennial’s proposed methodology precludes recovery of the balance of the ICLS amount during the second half of the year, which results in the carrier over-recovering ICLS in excess of its common line revenue requirements. Centennial’s proposed methodology results in over-recovery of ICLS by carriers in excess of the allowable rate of return, which is contrary to the Commission’s rules as specified in the *Negative ICLS Order*.<sup>49</sup>

*Commission Guidance on the Proper Reconciliation of ICLS for 2002 Does Not Support Centennial’s Claims Regarding ICLS Reconciliation for 2004*

In support of its argument regarding first half 2004 LTS, Centennial cites March 2004 guidance from the Wireline Competition Bureau.<sup>50</sup> Centennial contends the guidance in the *Mattey Letter* was for “an analogous situation involving half-year revenue amounts in 2002.”<sup>51</sup> To the contrary, the *Mattey Letter* explicitly requires USAC to use calendar year data to perform ICLS reconciliations.<sup>52</sup>

<sup>48</sup> See Attachment F at cell (G:17).

<sup>49</sup> *Negative ICLS Order* at ¶ 8 (“[w]e 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....”).

<sup>50</sup> See Letter from C. Mattey (Wireline Competition Bureau) to I. Flannery (USAC), dated March 2, 2004 (the “*Mattey Letter*”).

<sup>51</sup> *September 25 Letter* at ¶ 1.

<sup>52</sup> *Mattey Letter* at page 1.

The situation addressed in the *Mattey Letter* is not analogous to the 2004 ICLS reconciliation. The *Mattey Letter* was written to provide USAC guidance because the ICLS program began July 1, 2002, and 50% of the calendar year actual costs did not provide “an accurate calculation of the final ICLS amount carriers required to meet their common line revenue requirements for the relevant period.”<sup>53</sup> The guidance enabled USAC to accurately reconcile ICLS for the “relevant period” required by Section 54.903(a)(4) of the Commission’s rules.<sup>54</sup> The relevant period for ICLS reconciliation based on the calendar year data provided was the final six months of calendar year 2002, which was also the initial six months of the ICLS program.

The 2002 reconciliation adjustments under the *Mattey Letter* resulting from the application of factors to annual common line and revenue data were calculated to ensure that only the period in which ICLS was payable in 2002 was subject to reconciliation. The 2004 ICLS reconciliation required no such adjustments because the ICLS program was in existence for the entire 2004 calendar year. Both forecasted and actual ICLS data for the entire calendar year were available. The fact that LTS was only available through June 2004 does not mean that ICLS was not available throughout the entire 2004 calendar year. LTS was simply a component of the common line cost and revenue data necessary to reconcile ICLS payments for the relevant period—calendar year 2004.

USAC used calendar year data with factors applied to the revenue components to perform the ICLS reconciliations for the first six months of the ICLS program in the third and fourth calendar quarters of 2002 as required by Section 54.903(b) of the Commission’s rules.<sup>55</sup> Similar to the 2002 ICLS reconciliation, but without the need for development and application of factors to ICLS revenue components, USAC used calendar year data consistent with Commission rules when performing the ICLS 2004 reconciliation calculations. This revenue data included 2004 LTS disbursements.

Fundamentally, the *Mattey Letter*, referenced by Centennial, was concerned with accurately calculating “final ICLS amounts that carriers require to meet their common line revenue requirements” for the first six months of the ICLS program, which was new at the time.<sup>56</sup> For USAC to calculate 2004 ICLS reconciliations in a different manner would result in an inaccurate calculation of the final ICLS amounts that carriers require to

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<sup>53</sup> The *September 25 Letter* erroneously states at pages 4-5 that “the Bureau directed NECA to determine reasonable industry-wide factors for allocating revenues to the first versus second half of 2002, and to use the appropriate 2<sup>nd</sup> half figures...in calculating the reconciliation.” In fact, the Bureau did not direct NECA to determine industry wide factors for allocating revenues. In the *Mattey Letter* at page 2, the Bureau “concluded that USAC should utilize the revenue data provided by NECA for July 1 to December 31, 2002, to calculate factors that reflect the actual industry-wide distribution of revenues for each component of the ICLS formula between the first and second half of the [sic] 2002.” USAC determined the factors for use in the 2002 reconciliation.

<sup>54</sup> See 47 C.F.R. § 54.903(a)(4).

<sup>55</sup> See 47 C.F.R. § 54.903(b).

<sup>56</sup> *Id.*

meet their common line revenue requirements for 2004. Further, for USAC to calculate ICLS as requested by Centennial would result in a violation of Commission rules and PRTC's recovering funds in excess of its common line revenue requirement.<sup>57</sup> Centennial PR would also over-recover ICLS inconsistent with the rules.<sup>58</sup>

Further, the *Mattey Letter* directly refutes Centennial's allegation by specifically stating that "[s]ection 54.903(b) requires USAC to use calendar year data to perform ICLS reconciliations."<sup>59</sup>

*The Wireline Competition Bureau's March 12, 2007 Order is Not Dispositive to this Matter*

Centennial cites the *March 12, 2007 Order* as "confirming Centennial's understanding of the FCC's rules is correct."<sup>60</sup> USAC agrees with Centennial's reading of the *March 12, 2007 Order*. However, USAC does not conclude the order is dispositive to this issue of recovery of 2004 ICLS from PRTC and Centennial. As discussed above, USAC has not spread LTS across calendar year 2004 in the manner alleged by Centennial in determining the amount of ICLS to recover from Centennial PR.<sup>61</sup>

*Conclusion*

Centennial's argument concerning erroneous LTS treatment is an attempt to mitigate the impact of the 2004 ICLS reconciliation for lines Centennial PR served in the PRTC carrier service areas. Consistent with Commission rules, however, the ICLS reconciliation for 2004 was for only one relevant period—the calendar year. The termination of LTS in July 2004 does not create special circumstances under which the 2004 ICLS reconciliation should proceed under Centennial's proposed methodology because to do so permits cost recovery in excess of the prescribed rate of return for incumbent carriers receiving ICLS. Similarly, CETCs would over-recover ICLS where serving lines in rate-of-return incumbent carrier service areas. Permitting either rate-of-return carriers or CETCs to over-recover ICLS is in contravention of Commission rules.<sup>62</sup>

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<sup>57</sup> See 47 C.F.R. § 54.903(a)(4).

<sup>58</sup> See 47 C.F.R. § 54.307(a)(1).

<sup>59</sup> *Mattey Letter* at page 1.

<sup>60</sup> *March 13, 2007 Letter*.

<sup>61</sup> See *supra* at 5-7.

<sup>62</sup> See 47 C.F.R. § 54.903(a)(4). See also, the *Negative ICLS Order* at ¶ 8.

## 2. Alleged Overstated PRTC Line Counts

Centennial alleges USAC incorrectly determined the 2004 per line ICLS reconciliation by using PRTC 2003 line count data instead of 2004 data.

USAC correctly used the PRTC carriers' 2003 line count data to calculate the 2004 per line ICLS reconciliation consistent with Commission guidance in place since the beginning of the ICLS program.<sup>63</sup> USAC uses the latest available ICLS line counts when projecting demand for high cost areas, and those same ICLS line counts are used when adjusting payments for projected ICLS in the subsequent reconciliation period ensuring that monthly per line ICLS amounts in the payment adjustment result from the use of consistent line counts. The disconnect between the period for which support is provided and the reporting period for the line counts used in determining the amount of support to be provided is relatively consistent across High Cost support components that follow the line count schedule found in Sections 36.612<sup>64</sup> and 54.307<sup>65</sup> of the Commission's rules.<sup>66</sup> In addition, the *MAG Order* provides specific guidance on the use of ICLS line counts for purposes of distributing ICLS.<sup>67</sup> Further, using 2004 line count data would circumvent the Commission's CETC line count filing rules,<sup>68</sup> thereby enabling potential over-recovery of ICLS when reconciled.

### Filing Requirements Established in the Commission's Rules For Determining High Cost Support Funding Require Quarterly Filing of Line Counts

Section 54.709(a)(3) of the Commission's rules requires USAC to submit its projected quarterly budget at least sixty (60) days prior to the start of each calendar quarter.<sup>69</sup> Included in USAC's projected quarterly filing are dollars to fund projected ICLS for the calendar quarter. In determining ICLS available to CETCs for the quarter projected, USAC uses the line counts submitted by both incumbent carriers and CETCs that are the

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<sup>63</sup> See *MAG Order* at ¶ 171.

<sup>64</sup> See 47 C.F.R. § 36.612.

<sup>65</sup> See 47 C.F.R. § 54.307.

<sup>66</sup> The one inconsistency in the use of line counts under the rules described is for lines submitted on July 31 for lines served as of December 31 of the preceding year. The rural loops used in High Cost Loop ("HCL") and Local Switching Support ("LSS") lines submitted on July 31 are used for the first quarter of the following year projections and payments. Both High Cost Model ("HCM") and ICLS use the lines submitted on July 31 as of December 31 for the fourth quarter of the current year projections and payments. The *MAG Order* specifically addresses this use of lines in paragraph 171 stating "We clarify that annual line count data filed on July 31 will serve as the basis for support distributed beginning in the fourth calendar quarter." *MAG Order* at ¶ 171. HCL, LSS, HCM, and ICLS all use the lines submitted on September 30 as of March 30 for the first quarter of the following year projections and payments. However, for HCL and LSS the September 30 filing, if made, replaces the July 31 filing for first quarter purposes.

<sup>67</sup> See *MAG Order* at ¶ 171. ← See *plaint memo*

<sup>68</sup> See 47 C.F.R. § 54.307(c).

<sup>69</sup> 47 C.F.R. § 54.709(a)(3).

most recently available counts immediately preceding the projected quarterly filing deadline.

Incumbent carriers with CETCs serving in their service areas are obligated to file line counts quarterly for ICLS purposes.<sup>70</sup> CETCs are also obligated to file quarterly ICLS line counts in order to be disbursed ICLS payments.<sup>71</sup> Following is a table with the reporting time frames for ICLS and the required filing date for USAC projected budgets and ICLS payment periods:

<b>Filing Date for ICLS Lines</b>	<b>Time Frame of Reported Data</b>	<b>Type of Line Count Report</b>	<b>Commission Demand Projection Filing Date</b>	<b>Affects Payments for</b>
No Later than July 31 pursuant to § 54.903(a)(1) and/or § 54.307(c)(1)	Lines served as of 12/31 of the preceding year	Mandatory	August 2 (4th Quarter Projections)	Fourth quarter of the current year
No later than September 30 Pursuant to § 54.903(a)(2) and/or § 54.307(c)(2)	Lines served as of 3/31 of the current year	Voluntary/ Mandatory for CETCs and ILECs with Competition	November 2 (1st Quarter Projections)	First quarter of the following year
No later than December 30 pursuant to § 54.903(a)(2) and/or § 54.307(c)(3)	Lines served as of 6/30 of the current year	Voluntary/ Mandatory for CETCs and ILECs with Competition	January 31 (2nd Quarter Projections)	Second quarter of the following year
No later than March 30 pursuant to § 54.903(a)(2) and/or § 54.307(c)(4)	Lines served as of 9/30 of the preceding year	Voluntary/ Mandatory for CETCs and ILECs with Competition	May 2 (3rd Quarter Projections)	Third quarter of the current year

As seen from the schedule in the table above, lines served as of March 31, 2003, June 30, 2003, September 30, 2003 and December 31, 2003 were used by USAC for the Commission's quarterly demand projection filings and ICLS payments in the first,

<sup>70</sup> 47 C.F.R. §§ 54.903(a) and 36.612(a).

<sup>71</sup> 47 C.F.R. § 54.307(b).

Centennial PR's 2004 projected ICLS was based on the lines served by Centennial PR and the PRTC carriers as of March 31, 2003, June 30, 2003, September 30, 2003 and December 31, 2003. To pay Centennial PR the ICLS it was ultimately eligible to receive requires the use of the same line counts as those used for the projected calendar year payments for ICLS, which Centennial was eligible to receive in 2004 based on the lines served in 2003. Had the PRTC carriers projected their actual common line cost and revenue data perfectly for 2004 ICLS, the difference in projected and actual ICLS for Centennial PR would have been \$0 for 2004.

Using Centennial's proposed approach of altering the line counts from those used for initial projected payments (i.e., the 2003 line counts) to the 2004 line counts would change the per line rates resulting in an ICLS payment or recovery where no payment should be due for the relevant period. Using consistent line counts provides carriers with the predictability of receiving the ICLS reconciliation consistent with the differences between a carrier's projected ICLS and ICLS for which the carrier was ultimately eligible based on actual cost and revenue data for the calendar year.<sup>79</sup> Where there is no difference in the projected ICLS and actual ICLS, neither the incumbent carrier nor the CETC serving within the incumbent carrier's service area should receive payments or be required to pay a recovery.

For ILECs, the disconnect between payment period and line count reporting period is consistent across High Cost components using the schedule found in Part 36 of the Commission's rules.<sup>80</sup> For CETCs, the disconnect between payment period and the line count reporting period is consistent across High Cost components using the schedule found in Section 54.307 of the Commission's rules.<sup>81</sup> Historical lines reported are always used to project and pay High Cost support to eligible carriers. For example, first calendar quarter payments to an incumbent carrier with competition in its service area is always based on lines as of March 31 of the previous year reported on September 30 of the previous year. The line counts are simply a mechanism in determining per line rates used in calculating CETC payments in a given payment period.

In addition, USAC cannot use line counts for the same payment period in which the payment is made as the need for demand projections in advance of the payment period necessitates the use of prior period lines in CETC per line rate development.<sup>82</sup> Use of line counts for the same payment period in which the payment is made would not provide USAC with sufficient time to collect line count information for ILECs; enter the data into its High Cost systems to determine per line rates used for CETC payments; use the CETC

<sup>79</sup> See 47 C.F.R. § 54.903(a)(4).

<sup>80</sup> See 47 C.F.R. §§ 36.611 and 612.

<sup>81</sup> See 47 C.F.R. § 54.307(c).

<sup>82</sup> See *MAG Order* at ¶ 171. "Line count data that is filed on a quarterly basis will be used to calculate support for the second calendar quarter after the data is filed."