

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)		
)		
Connect America Fund)	WC Docket No. 10-90	<p>MAILED JUN 12 2012 FCC Mail Room</p>
)		
A National Broadband Plan for Our Future)	GN Docket No. 09-51	
)		
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135	
)		
High-Cost Universal Service Support)	WC Docket No. 05-337	
)		
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92	
)		
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45	
)		
Lifeline and Link-Up)	WC Docket No. 03-109	
)		
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208	

ORDER

Adopted: June 5, 2012

Released: June 5, 2012

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In the *USF/ICC Transformation Order*, the Commission delegated to the Wireline Competition Bureau (Bureau) the authority to revise and clarify rules as necessary to ensure that the reforms adopted in the *USF/ICC Transformation Order* are properly reflected in the rules.¹ In this Order, the Bureau acts pursuant to this delegated authority to revise and clarify certain rules, and acts pursuant to authority delegated to the Bureau in sections 0.91, 0.201(d), and 0.291 of the Commission’s rules to clarify certain rules.² Below, the Bureau clarifies several intercarrier compensation issues relating to the transition of intrastate switched access rates and operation of the transitional recovery mechanism adopted in the *USF/ICC Transformation Order*. The Bureau also grants limited waivers of the Commission’s rules to address administrative concerns and rule inconsistencies.

¹ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 18149, para. 1404 (2011) (*USF/ICC Transformation Order*), *pets. for review pending*, *Direct Commc'ns Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 18, 2011) (and consolidated cases).

² See 47 C.F.R. §§ 0.91, 0.201(d), 0.291. The Bureau may release additional clarification orders in the future, consistent with its authority under the *USF/ICC Transformation Order*. See, e.g., *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 27 FCC Rcd 605 (2012) (*USF/ICC Clarification Order*).

II. DISCUSSION

2. In the *USF/ICC Transformation Order*, the Commission adopted a uniform national bill-and-keep framework as the ultimate intercarrier compensation end state for all telecommunications traffic exchanged with a local exchange carrier (LEC), and established a gradual, measured transition that focused initially on reducing certain terminating switched access rates.³ The initial steps of the transition cap the vast majority of switched access rates⁴ and require carriers to, among other things, reduce certain intrastate switched access rates to interstate levels pursuant to the methodology contained in the rules.⁵ The Commission also adopted a transitional recovery mechanism to mitigate the effect of reduced intercarrier revenues on carriers and to facilitate continued investment in broadband infrastructure, while providing greater certainty and predictability going forward than the *status quo ante*.⁶ As part of the transitional recovery mechanism, the Commission defined, as “Eligible Recovery,” the amount of intercarrier compensation revenue reductions that incumbent LECs would be eligible to recover.⁷

3. In this Order, the Bureau clarifies that the required reductions to intrastate switched access rates may be made to the rate level for any intrastate switched access rate so long as the lowered rates produce a reduction in revenues equal to the total reduction required in 2012.⁸ In addition, the Bureau clarifies that non-commercial mobile radio service (CMRS) reciprocal compensation traffic exchanged pursuant to a bill-and-keep arrangement should not be included in demand for the purpose of intercarrier compensation rate transition calculations.⁹ Finally, we grant a number of limited rule waivers, including a limited waiver of section 54.712 of our rules, to allow incumbent LECs to charge the second quarter 2012 universal service contribution factor until July 3, 2012.

A. Transition Implementation

1. Rate Structure Issues

4. In the *USF/ICC Transformation Order*, the Commission noted that in many states, intrastate switched access rates are significantly higher than interstate switched access rates; in others, intrastate switched access and interstate switched access rates are at parity; and in still other states,

³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17676-77, para. 35.

⁴ Specifically, all interstate switched access and reciprocal compensation rates are capped as of December 29, 2011. In addition, for price cap carriers, all intrastate access rates and, for rate-of-return carriers, all terminating intrastate access rates are capped as of December 29, 2011. *See id.* at 17934-36, para. 801 and Figure 9.

⁵ *See* 47 C.F.R. § 51.907(a); 47 C.F.R. § 51.909(a).

⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17677, para. 36. In adopting the recovery mechanism, the Commission explained that it did so in large part “to provide predictability to incumbent carriers that had been receiving implicit ICC subsidies [and] to mitigate marketplace disruption during the reform transition” *Id.* at 17962, para. 858.

⁷ *Id.* at 17957-58, paras. 850-51. Several petitioners requested reconsideration of issues related to the calculation of Eligible Recovery. *See, e.g.,* NECA et al. Petition for Reconsideration and Clarification, WC Docket No. 10-90 et al. at 30-33 (filed Dec. 29, 2011) (Rural Associations Petition); United States Telecom Association, Petition for Reconsideration, WC Docket Nos. 10-90, et al., at 30-34 (filed Dec. 29, 2011) (US Telecom Petition). In this Order, we address two specific proposals relating to the calculation of Eligible Recovery. To the extent that issues relating to reconsideration of this calculation methodology more broadly, including alternative proposals, are not specifically addressed herein, those issues remain pending before the Commission.

⁸ *See* 47 C.F.R. § 51.907(b)(2); 47 C.F.R. § 51.909(b)(2).

⁹ *See* 47 C.F.R. § 51.915(d)(1)(i)(C)(2)(i) (2012 Recovery calculations for Price Cap regulated carriers); 47 C.F.R. § 51.917(d)(1)(i)(C)(2)(i) (2012 Recovery calculations for Rate-of-Return regulated carriers); 47 C.F.R. § 51.915(d)(1)(ii)(C)(2)(i) (2013 Recovery calculations for Price Cap regulated carriers); 47 C.F.R. § 51.917(d)(1)(ii)(C)(2)(i) (2013 Recovery calculations for Rate-of-Return regulated carriers).

intrastate access rates are below interstate levels.¹⁰ The Commission noted that this rate disparity “created incentives for arbitrage and pervasive competitive distortions within the industry.”¹¹ The Commission, therefore, adopted transition mechanisms for incumbent LECs and competitive LECs that require carriers to reduce intrastate switched access rates in 2012 if intrastate rates are higher than interstate rates. Specifically, in making the comparison, the Commission did not focus on specific rates, but compared certain intrastate revenues resulting from switched demand for Fiscal Year 2011 to the same demand priced at corresponding interstate rates for the same period. If the intrastate revenues are higher, then the carrier is required to make a reduction in its intrastate switched access rates in 2012.

5. Under the methodology adopted in the transition rules, the reduction in a carrier’s intrastate rates on July 1, 2012,¹² is equal to one-half of the difference between the compared revenue levels.¹³ On July 1, 2013, the specified intrastate switched access rates move to parity with interstate switched access rate levels employing the carrier’s interstate rate structure.¹⁴ This movement to interstate rates and rate structure was designed to reduce the potential for arbitrage between interstate and intrastate rates and deliver the benefits of a uniform intercarrier compensation system.¹⁵ The Commission also prohibited carriers from raising any intrastate rates that are lower than their functionally equivalent interstate rates in making this transition.¹⁶

6. Carriers and state commissions have posed a number of questions concerning the implementation of this transition.¹⁷ For instance, some of a carrier’s intrastate switched access rate element rates in a state may be below the carrier’s functionally equivalent interstate switched access rate element rates. Other of the carrier’s intrastate switched access rate element rates in the state could, simultaneously, be above the functionally equivalent interstate switched access rate element rates.¹⁸ In other cases, a carrier’s overall intrastate switched access rate structure may be dissimilar to its interstate switched access rate structure. This situation may require a carrier desiring to move to the interstate rate structure in 2012 to establish new rate elements, which on its face, could be viewed to violate the prohibition on intrastate switched access rate increases in 2012.¹⁹

7. We conclude that some clarification of the rules governing the transition from intrastate switched access rates and rate structures to interstate switched access rates and rate structures is warranted to assist carriers in making their 2012 intrastate switched access tariff filings and to provide guidance to state commissions who are responsible for reviewing these filings. As noted above, the determination of

¹⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 17929-30, para. 791.

¹¹ *Id.*

¹² *Material to be Filed in Support of 2012 Annual Access Tariff Filings*, WCB/Pricing File No. 12-08, Order, DA 12-575 at para. 2 (Wireline Comp. Bur., rel. Apr. 19, 2012).

¹³ See 47 C.F.R. § 51.907(b)(2); 47 C.F.R. § 51.909(b)(2).

¹⁴ See 47 C.F.R. § 51.907(c); 47 C.F.R. § 51.909(c).

¹⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17930, para. 792.

¹⁶ 47 C.F.R. § 51.907(b)(2)(vi). See *USF/ICC Transformation Order*, 26 FCC Rcd at 17932-33, para. 798.

¹⁷ See, e.g., Letter from Brian Benison, Director-Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45 at Attachment, at 1 (filed Apr. 2, 2012) (Benison April 2 Letter); Letter from Brian J. Rybarik, Administrator, Telecommunications Division, Public Service Commission of Wisconsin, to Sharon Gillett, Chief, Wireline Competition Bureau, FCC, CC Docket No. 01-92, at 2-3 (filed May 15, 2012) (Rybarik May 15 Letter). The Commission received no opposition to these requests for clarification.

¹⁸ See, e.g., Benison April 2 Letter at 1.

¹⁹ *Id.*

whether intrastate switched access rates must be reduced in 2012 was based on an aggregate measurement, not on the basis of comparing one tariffed rate to another tariffed rate. Accordingly, prohibiting increases to specific intrastate switched access rate element rates is inconsistent with a transition plan based on moving aggregate revenue levels to interstate levels using interstate switched access rates and rate structure. If a carrier has an intrastate rate for a particular rate element that is below the rate for its functionally equivalent interstate rate element, it cannot comply with both the prohibition on increasing rates and the requirement to transition to interstate rates using the interstate switched access rate structure. Therefore, we clarify that, for carriers required to make reductions to intrastate switched access rates in 2012 under the intercarrier compensation transition, achievement of unified rate levels and rate structure overrides the prohibition on rate element increases included in the adopted transition rules.²⁰

8. The rules set forth two approaches for implementing the initial reductions to specified intrastate switched access rates.²¹ First, a LEC may elect to establish rates for Transitional Intrastate Access Service²² using its intrastate access rate structure.²³ Alternatively, it may elect to apply its interstate access rates and rate structures, and for one year assess a transitional per-minute charge on Transitional Intrastate Access Service end office switching minutes.²⁴ These approaches remain valid, but should not be read as the only approaches that can be used to transition intrastate switched access rates to interstate switched access rates. In considering alternative rate and rate structure approaches to reducing intrastate switched access rates, the overarching principle is compliance with the requirement that a carrier reduce its overall intrastate switched access rates by the amount calculated in section 51.907(b)(2) (for price cap carriers) or 51.909(b)(2) (for rate-of-return carriers) of the Commission's rules. Thus, we now clarify that a carrier required to make intrastate rate reductions in 2012 may increase individual intrastate switched access rate element levels to levels above comparable interstate rate element levels in 2012 without violating the prohibition on raising intrastate switched access rates as long as the overall reduction principle is satisfied. For example, a carrier could adopt the interstate rate structure for its intrastate switched access and price out each rate element so that the intrastate revenues will reflect the reductions required in 2012. A carrier could also partially adopt the interstate rate structure in the first year and move to the interstate rate structure completely in 2013. Furthermore, we clarify that, for carriers required to make intrastate switched access rate reductions in 2012, any intrastate switched access rate element that is below the functionally equivalent interstate switched access rate must be increased to the interstate level no later than July 1, 2013 to be consistent with the use of aggregate revenue relations reflected in our transition rules.²⁵ Such increase will not be considered to violate the prohibition on raising intrastate switched access rates. Accordingly, we revise sections 51.907, 51.909, and 51.911 of the Commission's rules to reflect these clarifications. An incumbent LEC shall reflect any increased revenues from increased intrastate rates made in light of this clarification in calculating its Eligible Recovery under section 51.915(d) or 51.917(d) of the Commission's rules, as appropriate.²⁶

9. Moreover, several carriers and state commissions have inquired as to whether the transition rules require a proportionate reduction to each intrastate access rate element or whether the reduction may be targeted to a subset of rate element rates.²⁷ Consistent with the above clarification, the

²⁰ 47 C.F.R. § 51.907(b)(2)(vi). See *USF/ICC Transformation Order*, 26 FCC Rcd at 17932-33, para. 798.

²¹ See 47 C.F.R. § 51.907(b)(2)(iv) and (v); 47 C.F.R. §§ 51.909(b)(2)(iv) and (v).

²² See 47 C.F.R. § 51.903(j).

²³ See 47 C.F.R. § 51.907(b)(2)(iv); 47 C.F.R. § 51.909(b)(2)(iv).

²⁴ See 47 C.F.R. § 51.907(b)(2)(v); 47 C.F.R. § 51.909(b)(2)(v).

²⁵ See 47 C.F.R. § 51.907(b)(2); 47 C.F.R. § 51.909(b)(2).

²⁶ 47 C.F.R. § 51.915(d); 47 C.F.R. § 51.917(d).

²⁷ See, e.g., Rybarik May 15 Letter at 2; Benison April 2 Letter at Attach., 1-2.

required reductions to intrastate switched access rates may be made to any intrastate switched access rate as long as the lowered rates produce a reduction in revenues equal to the reduction required in 2012.

B. Recovery Implementation Issues

10. In the *USF/ICC Transformation Order*, the Commission adopted rules establishing procedures for calculating Eligible Recovery for non-CMRS traffic subject to reciprocal compensation.²⁸ Within these rules, the Commission established, as an option, a process for using a composite rate procedure to calculate required reductions in non-CMRS reciprocal compensation during the intercarrier compensation rate transition.²⁹ Under this process, a price cap carrier may establish a “composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand”³⁰ AT&T sought clarification that Fiscal Year 2011 non-CMRS reciprocal compensation demand used to calculate the reduction in net reciprocal compensation revenues should exclude demand that is already exchanged pursuant to a bill-and-keep arrangement.³¹

11. We clarify that demand associated with non-CMRS reciprocal compensation traffic exchanged pursuant to a bill-and-keep arrangement should not be used in the recovery calculation. Non-CMRS reciprocal compensation arrangements and the associated demand for traffic exchanged pursuant to a bill-and-keep arrangement are not part of this transition process. Under the composite rate approach, non-CMRS reciprocal compensation rate reductions are required when the target rate is below the composite rate. If the composite reflected bill-and-keep demand, the resulting lower composite rate would take longer to fall below the target transition rate to trigger a reduction in rates.³² Because this traffic is not part of the transition and would skew the average lower, including such demand is inappropriate and contrary to the intent of the *USF/ICC Transformation Order*. This would delay the benefits of reduced, uniform intercarrier compensation rates. We accordingly amend section 51.915 of the Commission’s rules to reflect this clarification, as set forth in the Appendix.

C. Implementation Issues

1. Waiver of USF Contribution Date Rule

12. In the *2012 Annual Access Tariff Filing Procedures Order*,³³ the Bureau established an effective date of July 3, 2012, for the 2012 annual access charge tariff filing for incumbent LECs. The Commission moved the annual access charge tariff effective date from July 1, 2012 to July 3, 2012 because, pursuant to Section 204(a)(3) of the Act, carriers filing their tariff revisions on 15 days’ notice

²⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17967-68, 17971-72, paras. 868, 892. See, e.g., 47 C.F.R. § 51.915(d)(1)(i)(C)(2)(i).

²⁹ 47 C.F.R. § 51.915(d)(1).

³⁰ 47 C.F.R. § 51.915(d)(1)(i)(C)(2)(i).

³¹ See Benison April 2 Letter, Attach. at 3.

³² This clarification will not result in any additional intercarrier compensation recovery disbursements to carriers, as we are simply clarifying the intent of the *USF/ICC Transformation Order*, that non-CMRS reciprocal compensation traffic already exchanged pursuant to a bill-and-keep arrangement would be excluded from eligible recovery calculations. In any event, changing whether the composite rate included bill-and-keep demand would primarily affect the timing, rather than the amount, of access recovery permitted to incumbent LECs. Additionally, any carrier not wishing to calculate its eligible recovery baseline in this manner may instead calculate reductions to Fiscal Year 2011 net reciprocal compensation without the use of a reciprocal compensation composite, as specified in section 915(d)(1)(i)(C)(1) of the Commission’s rules. See 47 C.F.R. 915(d)(1)(i)(C)(1).

³³ *July 3, 2012 Annual Access Charge Tariff Filings*, WCB/Pricing File No. 12-07, Order, DA 12-482, at 1 (Wireline Comp. Bur., rel. Mar. 28, 2012) (*2012 Annual Access Tariff Procedures Order*).

would have been filing their tariffs over a weekend.³⁴ Accordingly, the Bureau waived section 69.3 of the Commission's rules and established July 3, 2012 as the effective date for the 2012 annual access charge tariff filing.³⁵

13. Carriers may recover the costs of universal service fund (USF) contributions by passing through an explicit charge to customers.³⁶ As part of the annual access charge tariff filing, carriers include the universal service charge contribution factor for the third quarter, which begins on July 1, 2012.³⁷ Section 54.712 of the Commission's rules states that "[i]f a contributor chooses to recover its federal universal service contribution costs through a line item on a customer's bill the amount of the federal universal service line-item charge may not exceed the interstate telecommunications portion of that customer's bill times the relevant contribution factor."³⁸

14. We recognize that moving the annual access charge tariff filing to July 3, 2012 creates administrative difficulties with respect to inclusion of the universal service charge contribution factor. Requiring carriers to have a different rate for the two first days of July would be administratively burdensome for carriers and complicated for the Commission to manage. Accordingly, for incumbent LECs and competitive LECs filing an annual access charge tariff filing in 2012, we grant a limited waiver of section 54.712 of the Commission's rules, to allow such carriers to charge the universal service contribution factor for the second quarter 2012, until July 3, 2012, at which time carriers must begin charging the third quarter 2012 factor, with respect to end user charges that are part of the annual access filing.

15. In addition, if a carrier chooses to apply and pass through charges associated with the third quarter 2012 universal service contribution factor on July 1, 2012, we grant a limited waiver of section 61.59 of the Commission's rules, to allow carriers to modify material in their tariff that has not been effective for 30 days, in order to file their annual access charge tariff filing on July 3, 2012.³⁹

2. Changing the Effective Date to July 3, 2012

16. As explained above, in the *2012 Annual Access Tariff Filing Procedures Order*, the Bureau moved the annual access charge tariff effective date from July 1, 2012 to July 3, 2012.⁴⁰ Because of that modification to the effective date, the Commission granted a limited waiver of sections 69.3(a), 51.705, 51.907, and 51.909 of its rules to the extent that those rules would otherwise require rates to be effective as of July 1, 2012.⁴¹ Pursuant to that waiver language, state commissions have informally inquired whether the Bureau intended to change the effective date to July 3, 2012, for the intrastate filings that must be made in accordance with sections 51.705(c), 51.907(b), and 51.909(b) of the Commission's rules.⁴² State commissions have also inquired whether the Bureau intended to move to July 3, 2012, the date that competitive LECs must reduce intrastate reciprocal compensation rates in accordance with

³⁴ *Id.* at para. 3.

³⁵ *Id.*

³⁶ 47 C.F.R. § 54.712(a).

³⁷ 47 C.F.R. § 54.709(a).

³⁸ 47 C.F.R. § 54.712.

³⁹ 47 C.F.R. § 61.59(a).

⁴⁰ *See 2012 Annual Access Tariff Filing Procedures Order* at para. 3.

⁴¹ *Id.* at para. 2 n.3.

⁴² 47 C.F.R. § 51.705(c); 47 C.F.R. § 51.907(b); 47 C.F.R. § 51.909(b).

section 51.911(b) of the Commission's rules.⁴³

17. With regard to incumbent LECs, we clarify that the *2012 Annual Access Tariff Filing Procedures Order* granted a limited waiver of the July 1, 2012 date for intrastate filings made pursuant to sections 51.705(c), 51.907(b), and 51.909(b) of the Commission's rules.⁴⁴ In 2012, the only step incumbent LECs are required to take pursuant to those rules is to reduce intrastate access and non-access reciprocal compensation rates.⁴⁵ To further clarify, the waiver the Bureau granted permits, but does not require states to move their effective dates for intrastate filings from July 1, 2012 to July 3, 2012.⁴⁶ However, for administrative efficiency, we encourage states to move to July 3, 2012 as many effective dates for rate changes as possible.

18. With regard to competitive LECs, the Bureau's *2012 Annual Access Tariff Filing Procedures Order* did not grant a waiver of section 51.911(b) of its rules, which requires competitive LECs to reduce intrastate reciprocal compensation rates. However, for purposes of fairness in the treatment of competitive LECs and incumbent LECs, we conclude that good cause exists to grant a limited waiver of section 51.911(b) of the Commission's rules to allow such rates to become effective on July 3, 2012 instead of July 1, 2012.⁴⁷ As we noted above, although the waiver does not require states to move their intrastate effective dates, the Bureau encourages states to move effective dates for rate changes to July 3, 2012.

3. Waiver of Inconsistent Rules

19. In this Order we make revisions to Part 51 of the Commission's rules as described above to facilitate implementation of Step 1 of the intercarrier compensation rate transition. We intend for the revisions contained in this Order to apply to 2012 annual access charge tariff filings, which must be effective by July 3, 2012.⁴⁸ Because the rule revisions adopted herein cannot be published in the Federal Register and made effective before the required effective date, we find that good cause exists to waive applicable sections of Part 51 to the extent necessary to allow LECs to make annual access tariff filings in accordance with the rule revisions adopted herein.⁴⁹

III. PROCEDURAL MATTERS

A. Paperwork Reduction Act

20. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

⁴³ 47 C.F.R. § 51.911(b).

⁴⁴ *2012 Annual Access Tariff Filing Procedures Order* at para. 2 n.3.

⁴⁵ 47 C.F.R. § 51.705(c); 47 C.F.R. § 51.907(b); 47 C.F.R. § 51.909(b).

⁴⁶ *See, e.g.*, 47 C.F.R. §§ 51.915(d)(3); 47 C.F.R. § 51.917(d)(vii).

⁴⁷ 47 C.F.R. § 51.911(b).

⁴⁸ *2012 Annual Access Tariff Filing Procedures Order* at 1.

⁴⁹ This waiver is effective only during the time period between the date on which this order is adopted and the date on which the rules revisions adopted herein and contained in the Appendix become effective.

B. Final Regulatory Flexibility Act Certification

21. The Regulatory Flexibility Act of 1980, as amended (RFA),⁵⁰ requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that “the rule will not have a significant economic impact on a substantial number of small entities.”⁵¹ The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁵² In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁵³ A small business concern is one which (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁵⁴

22. This Order clarifies, but does not otherwise modify, the *USF/ICC Transformation Order*. These clarifications do not create any burdens, benefits, or requirements that were not addressed by the Final Regulatory Flexibility Analysis attached to *USF/ICC Transformation Order*. Therefore, we certify that the requirements of this Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order including a copy of this final certification in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996; *see* 5 U.S.C. § 801(a)(1)(A). In addition, the Order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the Federal Register. *See* 5 U.S.C. § 605(b).

C. Congressional Review Act

23. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.⁵⁵

IV. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 201-203, 220, 251, 252, 303(r), 332, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201-203, 220, 251, 252, 303(r), 332, 403, and pursuant to sections 0.91, 0.201(d), 0.291, 1.3, and 1.427 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.201(d), 0.291, 1.3, 1.427 and pursuant to the delegation of authority in paragraph 1404 of 26 FCC Rcd 17663 (2011) that this Order IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the Federal Register.

25. IT IS FURTHER ORDERED that Part 51 of the Commission's rules, 47 C.F.R. Parts 51.907, 51.909, 51.911, 51.915, and 51.917, are AMENDED as set forth in the Appendix, and such rule amendments shall be effective 30 days after the date of publication of the rule amendments in the Federal

⁵⁰ The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

⁵¹ 5 U.S.C. § 605(b).

⁵² 5 U.S.C. § 601(6).

⁵³ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁵⁴ Small Business Act, 15 U.S.C. § 632.

⁵⁵ *See* 5 U.S.C. § 801(a)(1)(A).

Register.

26. IT IS FURTHER ORDERED that pursuant to section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and pursuant to authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, sections 54.712, and 61.59 of the Commission's rules, 47 C.F.R. §§ 54.712, and 61.59(a) ARE WAIVED effective upon release of this Order for the limited purposes specified in this Order.

27. IT IS FURTHER ORDERED that, pursuant to section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and pursuant to authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, Parts 51.907, 51.909, 51.911, 51.915, and 51.917 of the Commission's rules, 47 C.F.R. §§ 51.907, 51.909, 51.911, 51.915, and 51.917, ARE WAIVED effective upon release of this Order for the limited purpose specified in paragraph 19, *supra*.

28. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION



Sharon E. Gillett
Chief
Wireline Competition Bureau

APPENDIX**Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission revises Part 51 of its rules to read as follows:

PART 51-INTERCONNECTION

The authority citation for part 51 continues to read as follows:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 220, 225–27, 251–54, 256, 271, 303(r), and 332, of the Communications Act of 1934, as amended, and section 706 of the Telecommunication Act of 1996, as amended; 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 220, 225–227, 251–254, 256, 271, 303(r), 332, 1302, 47 U.S.C. 157 note, unless otherwise noted.

Revise §51.907(b)(2)(iii), (v), and (iv), add (b)(3), revise (c)(1), remove and reserve (c)(3), and add (c)(4), as follows:

§ 51.907 Transition of price cap carrier access charges.

* * * * *

(b) * * *

(2) * * *

(iii) Calculate the Step 1 Access Revenue Reduction. The Step 1 Access Revenue Reduction is equal to one-half of the difference between the amount calculated in paragraph (b)(2)(i) of this section and the amount calculated in paragraph (b)(2)(ii) of this section plus one half (1/2) of any intrastate rate increases made pursuant to paragraph (b)(3)(i) of this section by July 3, 2012.

* * * * *

(v) A Price Cap Carrier may elect to apply its interstate access rate structure and interstate rates to Transitional Intrastate Access Service. In addition to applicable interstate access rates, the carrier may, between July 1, 2012 and July 1, 2013, assess a transitional per-minute charge on Transitional Intrastate Access Service end office switching minutes (previously billed as intrastate access). The transitional per-minute charge shall be no greater than the Step 1 Access Revenue Reduction divided by Fiscal Year 2011 Transitional Intrastate Access Service end office switching minutes. Carriers electing to establish rates for Transitional Intrastate Access Service in this manner shall notify the appropriate state regulatory authority of their election in the filing required by § 51.907(b)(1).

(vi) Except as provided in paragraph (b)(3) of this section, nothing in this section obligates or allows a Price Cap Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions to increase such rates.

(3) If a Price Cap Carrier must make an intrastate switched access rate reduction pursuant to paragraph (b)(2) of this section, and that Price Cap Carrier has an intrastate rate for a rate element that is below the comparable interstate rate for that element, the Price Cap Carrier shall:

- (i) Increase the rate for any intrastate rate element that is below the comparable interstate rate for that element to the interstate rate no later than July 1, 2013;
- (ii) Include any increases made pursuant to paragraph (b)(3)(i) of this section in the calculation of its eligible recovery for 2012.

(c) * * *

(1) Transitional Intrastate Access Service rates shall be no higher than the Price Cap Carrier's interstate access rates. Once the Price Cap Carrier's Transitional Intrastate Access Service rates are equal to its functionally equivalent interstate access rates, they shall be subject to the same rate structure and all subsequent rate and rate structure modifications. Except as provided in paragraph (c)(4) of this section, nothing in this section obligates or allows a Price Cap Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions to increase such rates.

* * * * *

(4) If a Price Cap Carrier made an intrastate switched access rate reduction in 2012 pursuant to paragraph (b)(2) of this section, and that Price Cap Carrier has an intrastate rate for a rate element that is below the comparable interstate rate for that element, the Price Cap Carrier shall:

- (i) Increase the rate for any intrastate rate element that is below the comparable interstate rate for that element to the interstate rate on July 1, 2013; and
- (ii) Include any increases made pursuant to paragraph (4)(i) of this section in the calculation of its eligible recovery for 2013.

* * * * *

Revise §51.909 (a)(3), (b)(2)(iii), (b)(2)(v), (b)(3), add (b)(4), revise (c), as follows:

§ 51.909 Transition of rate-of-return carrier access charges.

(a) * * *

(3) Except as provided in paragraph (b)(4) of this section, nothing in this section obligates or allows a Rate-of-Return Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(b) * * *

(2) * * *

(iii) Calculate the Step 1 Access Revenue Reduction. The Step 1 Access Revenue Reduction is equal to one-half of the difference between the amount calculated in (b)(2)(i) of this section and the amount calculated in (b)(2)(ii) of this section plus one half (1/2) of any intrastate rate increases made pursuant to paragraph (b)(4)(i) of this section by July 3, 2012.

* * * * *

(v) A Rate-of-Return Carrier may elect to apply its interstate access rate structure and interstate rates to Transitional Intrastate Access Service. In addition to applicable interstate access rates, the carrier may, between July 1, 2012 and July 1, 2013, assess a transitional per-minute charge on Transitional Intrastate Access Service end office switching minutes (previously billed as intrastate access). The transitional per-minute charge shall be no greater than the Step 1 Access Revenue Reduction divided by Fiscal Year 2011 Transitional Intrastate Access Service end office switching minutes. Carriers electing to establish rates for Transitional Intrastate Access Service in this manner shall notify the appropriate state regulatory authority of their election in the filing required by § 51.907(b)(1).

(3) Except as provided in paragraph (b)(4), nothing in this section obligates or allows a Rate-of-Return carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(4) If a Rate-of-Return Carrier must make an intrastate switched access rate reduction pursuant to paragraph (b)(2) of this section, and that Rate-of-Return Carrier has an intrastate rate for a rate element that is below the comparable interstate rate for that element, the Rate-of-Return Carrier shall:

- (i) Increase the rate for any intrastate rate element that is below the comparable interstate rate for that element to the interstate rate no later than July 1, 2013;
- (ii) Include any increases made pursuant to paragraph (b)(4)(i) in the calculation of its eligible recovery for 2012.

(c) Step 2. Beginning July 1, 2013, notwithstanding any other provision of the Commission's rules:

(1) Transitional Intrastate Access Service rates shall be no higher than the Rate-of-Return Carrier's interstate Terminating End Office Access Service and Terminating Tandem-Switched Transport Access Service rates and subject to the same rate structure and all subsequent rate and rate structure modifications. Except as provided in paragraph (c)(2), nothing in this section obligates or allows a Rate-of-Return Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions to increase such rates.

(2) If a Rate-of-Return Carrier made an intrastate switched access rate reduction in 2012 pursuant to paragraph (b)(2) of this section, and that Rate-of-Return Carrier has an intrastate rate for a rate element that is below the comparable interstate rate for that element, the Rate-of-Return Carrier shall:

- (i) Increase any intrastate rate element that is below the comparable interstate rate to the interstate rate by July 1, 2013; and

(ii) Include any increases made pursuant to paragraph (c)(2)(i) of this section in the calculation of its eligible recovery for 2013.

* * * * *

Revise §51.911 (b), (b)(3), (b)(6), add (b)(7) as follows:

§51.911 Access reciprocal compensation rates for competitive LECs.

* * * * *

(b) Except as provided in paragraph (b)(7) of this section, beginning July 3, 2012, notwithstanding any other provision of the Commission's rules, each Competitive LEC that has tariffs on file with state regulatory authorities shall file intrastate access tariff provisions, in accordance with §51.505(b)(2), that set forth the rates applicable to Transitional Intrastate Access Service in each state in which it provides Transitional Intrastate Access Service. Each Competitive Local Exchange Carrier shall establish the rates for Transitional Intrastate Access Service using the following methodology.

* * * * *

(3) Calculate the Step 1 Access Revenue Reduction. The Step 1 Access Revenue Reduction is equal to one-half of the difference between the amount calculated in (b)(1) of this section and the amount calculated in (b)(2) of this section plus one half (1/2) of any intrastate rate increases made pursuant to paragraph (b)(7) of this section by July 3, 2012.

* * * * *

(6) Except as provided in paragraph (b)(7) of this section, nothing in this section obligates or allows a Competitive LEC that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(7) If a Competitive LEC must make an intrastate switched access rate reduction pursuant to paragraph (b) of this section, and that Competitive LEC has an intrastate rate for a rate element that is below the comparable interstate rate for that element, the Competitive LEC may increase the rate for any intrastate rate element that is below the comparable interstate rate for that element to the interstate rate no later than July 1, 2013;

* * * * *

Revise §51.915(d)(1)(i)(C)(2)(i), (d)(1)(ii)(C)(2)(i), (d)(1)(iii)(3)(E)(2)(i), (d)(1)(iv)(E)(2)(i), (d)(1)(v)(E)(2)(i), (d)(1)(vi)(F)(2)(i), (d)(1)(vii)(G)(2)(i), as follows:

§ 51.915 Recovery mechanism for price cap carriers.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(C) * * *

(2) * * *

(i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by its respective Fiscal Year 2011 demand excluding demand for traffic exchanged pursuant to a bill-and-keep arrangement;

* * * * *

(ii) * * *

(C) * * *

(2) * * *

(i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by its respective Fiscal Year 2011 demand excluding demand for traffic exchanged pursuant to a bill-and-keep arrangement;

* * * * *

(iii) * * *

(E) * * *

(2) * * *

(i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by its respective Fiscal Year 2011 demand excluding demand for traffic exchanged pursuant to a bill-and-keep arrangement;

* * * * *

(iv) * * *

(E) * * *

(2) * * *

(i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments

by its respective Fiscal Year 2011 demand excluding demand for traffic exchanged pursuant to a bill-and-keep arrangement;

* * * * *

(v) * * *

(E) * * *

(2) * * *

(i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by its respective Fiscal Year 2011 demand excluding demand for traffic exchanged pursuant to a bill-and-keep arrangement;

* * * * *

(vi) * * *

(F) * * *

(2) * * *

(i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by its respective Fiscal Year 2011 demand excluding demand for traffic exchanged pursuant to a bill-and-keep arrangement;

* * * * *

(vii) * * *

(G) * * *

(2) * * *

(i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by its respective Fiscal Year 2011 demand excluding demand for traffic exchanged pursuant to a bill-and-keep arrangement;

* * * * *