intentional radiator is operating, the radio frequency power that is produced by the intentional radiator shall be at least 20 dB below that in the 100 kHz bandwidth within the band that contains the highest level of the desired power, based on either an RF conducted or a radiated measurement. Attenuation below the general limits specified in § 15.209(a) is not required. In addition, radiated emissions which fall in the restricted bands, as defined in § 15.205(a), must also comply with the radiated emission limits specified in § 15.209(a) (see § 15.205(c)).

(d) For digitally modulated systems, the peak power spectral density conducted from the intentional radiator to the antenna shall not be greater than 8 dBm in any 3 kHz band during any time interval of continuous transmission.

* * * * *

(f) For the purposes of this section, hybrid systems are those that employ a combination of both frequency hopping and digital modulation techniques. The frequency hopping operation of the hybrid system, with the direct sequence or digital modulation operation turned off, shall have an average time of occupancy on any frequency not to exceed 0.4 seconds within a time period in seconds equal to the number of hopping frequencies employed multiplied by 0.4. The digital modulation operation of the hybrid system, with the frequency hopping operation turned off, shall comply with the power density requirements of paragraph (d) of this section.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket Nos. 96–262, 94–1; FCC 02–161]

Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps

AGENCY: Federal Communications Commission.

ACTION: Interpretation.

SUMMARY: This document concludes the cost review proceeding to verify that increases to the subscriber line charge (SLC) cap above $5.00 are appropriate. The SLC is a flat-rated charge imposed by local telephone service providers on end users to recover the interstate-allocated portion of local loop costs. In 2000, the Commission adopted a schedule to reduce the implicit subsidies in access rates while gradually increasing the cap on the SLC. The Commission stated that it would conduct a cost review proceeding prior to the scheduled cap increases above $5.00. Based on the record before us, we conclude that the increases are appropriate—and indeed necessary—to fulfill the Commission's access charge reform objectives. Therefore, the SLC cap will increase as scheduled in the Commission's rules, to $6.00 on July 1, 2002, and to $6.50 on July 1, 2003.

FOR FURTHER INFORMATION CONTACT: Jennifer McKee, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530, or via the Internet at *jmckee@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket Nos. 96–262 and 94–1 released on June 5, 2002. The full text of this document is available on the Commission's website in the Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

Background

In the May 2000 *CALLS Order,* the Commission adopted comprehensive interstate access charge and universal service reforms for incumbent local exchange carriers (LECs) subject to price cap regulation. Consistent with the goals and principles of the Communications Act, the purpose of these reforms is to promote competition by removing implicit subsidies from access charges, while ensuring affordable and reasonably comparable rates through explicit universal service support. Among other things, the Commission adopted a schedule to reduce the implicit subsidies in access rates while gradually increasing the cap on the subscriber line charge (SLC), a flat-rated charge imposed by LECs on end users to recover the interstate-allocated portion of local loop costs. Under the rules adopted in the *CALLS Order,* the SLC cap for residential and single-line business lines will increase to $6.00 on July 1, 2002, and to $6.50 on July 1, 2003. To verify that the increases above the current $5.00 cap are appropriate, the Commission stated that it would conduct a cost review proceeding prior to any scheduled increases above this cap to examine forward-looking cost information associated with the provision of retail voice-grade access to the public switched telephone network. The Commission subsequently concluded that, if the cost review proceeding verified that increases were appropriate for price cap carriers, then the same increases were appropriate for carriers subject to rate-of-return regulation because these carriers generally have higher costs than price cap carriers.

Under the Communications Act, the Commission has a statutory duty to regulate the interstate rates of common carriers, including the interstate access rates charged by incumbent LECs. In performing that duty, the Commission is required to balance the Communications Act's goals of promoting competition and preserving and advancing universal service. More specifically, the Communications Act directs us to convert implicit subsidies, such as those found in access charges, into explicit support, while simultaneously promoting the goals of affordability and reasonable comparability of rates throughout the nation. To promote economically efficient competition and to avoid cross-subsidization, the Commission has recognized that, to the extent possible, LECs should recover costs of interstate access in the same way that they are incurred. Thus, traffic-sensitive costs should be recovered through corresponding per-minute access rates. Similarly, non-traffic-sensitive costs, such as loop costs, should be recovered through fixed, flat-rated fees.

To address the affordability concerns of universal service, however, the Commission has limited the amount of interstate costs that LECs can recover directly from residential and business customers through the flat-rated SLC. Specifically, the SLC is subject to a cap that, particularly for residential customers, is often too low to enable the LECs to recover the entire interstate-allocated cost of the local loop. The remaining loop costs that LECs cannot recover from the SLC are recovered through charges imposed on interexchange carriers (IXCs), which pass these charges on to their customers. Thus, long-distance customers subsidize the rates that LECs charge to residential and single-line business end users. In addition to the inefficient implicit subsidies in the rate structure, LECs historically have averaged their SLCs over relatively large geographic areas. Geographic rate averaging means that customers in low-cost areas are subsidizing the rates of customers in high-cost areas. To the extent the SLC cap is set below cost, it inhibits a LEC's ability to deaverage its SLC rates, thus maintaining implicit subsidies running from low-cost areas to high-cost areas.

To reduce the inefficient implicit subsidies caused by the residential and single-line business SLC cap, the Commission in the *CALLS Order* implemented a schedule of increases to this cap, with corresponding decreases to the charges imposed on IXCs. The cap was $3.50 prior to the *CALLS Order,* and was raised to $4.35 on July 1, 2000, and to $5.00 on July 1, 2001. The cap is scheduled to increase to $6.00 on July 1, 2002 and to $6.50 on July 1, 2003. In setting these SLC caps, the Commission balanced the goals of removing implicit subsidies and ensuring the affordability of basic telephone service for residential and single-line business customers, and concluded that gradual increases in the SLC could bring substantial benefits that outweigh any affordability concerns. Specifically, the Commission found that increasing the SLC cap would:

• Remove inefficient implicit subsidies in the access charge rate structure by more closely aligning cost recovery with cost causation;

• Remove inefficient implicit subsidies inherent in geographic rate averaging by allowing LECs greater flexibility to deaverage SLCs;

• Promote competition by sending appropriate pricing signals through deaveraged SLCs that more closely reflect the actual costs of providing service; and

• Not jeopardize affordable local telephone rates for qualifying low-income consumers, due to additional Lifeline support available to cover any SLC rate increases resulting from the increased cap.

As stated in the *CALLS Order,* the Commission initiated the current proceeding to verify that it is appropriate to increase the residential and single-line business SLC caps above $5.00. By Public Notice issued on September 17, 2001, the Commission initiated a proceeding to verify that increases to the residential and single-line business SLC cap above $5.00 are appropriate. Price cap carriers submitted their cost studies on November 16, 2001. Specifically, Aliant, Cincinnati Bell, Iowa Telecom, and Sprint based their cost studies on the Synthesis Model used by the Commission to determine costs for universal service support purposes. The remaining price cap LECs, BellSouth, Citizens, Qwest, SBC, Valor, and Verizon, used other cost models, some of which are proprietary. Parties submitted comments on these studies on January 24, 2002. In addition to filing comments opposing the SLC cap increases, the National Association of State Utility Consumer Advocates (NASUCA) filed a cost study of its own. Parties submitted reply comments on February 14, 2002.

Discussion

The purpose of the instant proceeding is to verify that increases to the SLC cap above $5.00 are warranted. Specifically, pursuant to the Commission's plan for allowing SLCs to increase gradually, the SLC cap for residential and single-line business lines is scheduled to increase to $6.00 on July 1, 2002, and to $6.50 on July 1, 2003, provided that ''such increases are appropriate and reflect higher costs where they are to be applied.'' *CALLS Order,* 65 FR 38684 (June 21, 2000).

To verify that the scheduled SLC cap increases are appropriate, the Commission stated that it would examine the price cap carriers' forward-looking costs of providing retail voice grade access to the public switched telephone network. Forward-looking costs are the costs that an efficient carrier would incur to provide service in a competitive market. Most markets today are not yet competitive and the incumbent LEC is the dominant provider of service for residential and single-line business customers. Even in a fully competitive environment, however, there may be a continued need for a SLC cap because the cost of providing service in certain rural and insular regions is high and will likely continue to be high for the foreseeable future. By examining forward-looking costs in this proceeding, the Commission can verify that increases to the SLC cap would be appropriate if the market were, in fact, competitive. Thus, by evaluating the SLC cap in light of forward-looking costs, we can ensure that the upper limit placed on consumer rates reflects competitive market conditions even though full competition has not yet arrived.

Applying this analysis, we conclude that the scheduled SLC cap increases are appropriate if the record demonstrates that efficient carriers in a competitive market would have a substantial number of lines with forward-looking costs that exceed the current $5.00 SLC cap and the ultimate $6.50 SLC cap. A substantial number of lines with costs that exceed the current $5.00 cap shows that, at a level where affordability is not yet a paramount concern, the current cap is impeding the efficient recovery of costs in a meaningful way. A substantial number of lines with costs that exceed the ultimate $6.50 cap shows that, at a level where affordability becomes a paramount concern, the ultimate cap serves a legitimate purpose by protecting consumers from potentially unaffordable rates. Determining what constitutes a ''substantial'' number of lines, however, is not an exact science. In making this determination we rely on our expertise in regulating interstate access charges, as well as our discretion in balancing the removal of implicit subsidies with ensuring affordability. We conclude on the record before us—where the most conservative estimate shows at least 27 million non-rural/33 million total residential and single-line business price cap lines with costs above $5.00, and at least 14 million non-rural/20 million total residential and single-line business price cap lines with costs above $6.50—that raising the cap is necessary to enable SLC deaveraging as discussed below. Therefore, we need not determine precisely what figure might require us to override the planned increase of the SLC cap.

As a result of the Commission's prior decisions, there is currently one primary residential and single-line business SLC cap that applies to all carriers. We determine that it is appropriate to retain a single national cap to apply to all incumbent LECs. One cap, as opposed to multiple caps for carriers or regions, promotes reasonable comparability of rates in different geographic areas, and is simpler to administer. In addition, although the SLC cap will increase, SLCs will be constrained by price cap carriers' CMT (common line, marketing and transport interconnection charge) revenues, and by rate-of-return carriers' costs. We therefore decline to adopt the Florida Commission's suggestion that ''the SLC be made state-specific for each company'' so carriers cannot average rates across their regions. Maintaining one national SLC cap preserves carriers' existing flexibility to average rates across their regions. Eliminating this flexibility would force carriers to recover more of their common line costs through the inefficient subsidy of PICC and CCL charges. Moreover, as discussed above, the Commission in the *CALLS Order* has provided LECs the flexibility to deaverage their SLCs within study areas once certain conditions are met. Raising the SLC cap will provide LECs with a greater ability to take advantage of study area deaveraging. To the extent carriers do not avail themselves of the opportunity to deaverage their SLCs after the cap reaches $6.50, however, the Commission will have the opportunity to revisit this issue if necessary.

Our decision in this proceeding affects both the price cap carriers regulated under our rules adopted in the *CALLS Order,* and rate-of-return carriers. Although the access charge reforms, including the SLC cap increases, adopted in the *CALLS Order* applied only to price cap carriers, in 2001 the Commission implemented a separate access charge reform plan for rate-of-return carriers, which serve roughly 10.9 million lines. Pursuant to the Commission's decision in the *Rate-of-Return Access Charge Reform Order,* the residential and single-line business SLC cap for rate-of-return carriers is synchronized with the *CALLS Order* schedule for increases above $5.00, pending the findings of the Commission in the price cap carrier SLC review proceeding. In the *Rate-of-Return Access Charge Reform Order,* the Commission stated that, if SLC cap increases are justified for price cap carriers, then SLC cap increases also are justified for rate-of-return carriers because rate-of-return carriers generally have higher common line costs than price cap carriers. The Rural Task Force has documented these higher costs, finding that rate-of-return carriers in rural areas have high loop costs because of a lack of economies of scale and density, and total investment in plant per loop is substantially higher for rural carriers than for non-rural carriers. Furthermore, parity in SLC cap levels among price cap and rate-of-return carriers is appropriate to ensure reasonable comparability of rates in urban and rural areas.

After considering the various submissions on the record, we find that the record demonstrates that a substantial number of lines have forward-looking costs above the current $5.00 cap and the ultimate $6.50 cap. The cost studies of the price cap LECs provide results showing the greatest number of lines with costs above $5.00 and $6.50 respectively, but we are disinclined to use those results because of the criticisms of these studies raised by commenters in this proceeding. Proceeding cautiously, and assuming for the sake of argument that these criticisms are valid, we find that NASUCA's more conservative cost study still shows that there are a substantial number of lines above the SLC caps. Commission staff were able to verify NASUCA's results using the cost model and NASUCA's assumptions. In addition, we observe that certain parties that support raising the SLC cap also relied on the Synthesis Model. Although some of these parties modified various parameters of the model, they generally agreed that the model provided a reasonable estimate of forward-looking costs for the limited purpose of this proceeding. The Commission has cautioned parties against using the results of the Synthesis Model to set rates, however, and we emphasize that we are not doing so in this proceeding. Instead, we are relying on NASUCA's cost study because it is the most conservative one in our record addressing the question of whether the proposed SLC cap increases, applicable to all carriers on a national basis, are appropriate.

NASUCA's cost study, although conservative, still amply demonstrates that a substantial number of residential and single-line business lines have forward-looking costs above the current $5.00 SLC cap, and above the fully phased-in $6.50 SLC cap. Specifically, NASUCA's analysis shows that at least 27 million non-rural price cap lines have forward-looking costs above $5.00, and at least 14 million non-rural price cap lines have forward-looking costs above $6.50. The actual number of lines with forward-looking costs above the $5.00 and $6.50 caps presumably is even higher because NASUCA examined the results of only 80 study areas in the Synthesis Model, including only non-rural study areas served by price cap carriers. NASUCA did not include approximately 6 million lines from price cap carriers' rural study areas, which are likely to have relatively high costs. Thus, NASUCA's study is conservative not only as a result of its reliance on the Synthesis Model, which was not intended to be used for ratemaking purposes, but also as a result of its exclusion of high-cost study areas, which introduces a downward bias to its cost estimates. NASUCA's analysis shows that lines with forward-looking costs above the caps are geographically dispersed and exist in every state. Given the substantial number of geographically-dispersed lines above the caps, we find that the scheduled increases in the SLC cap are appropriate.

In the *CALLS Order,* the Commission rejected commenters' request to combine the multi-line business SLC and the multi-line business PICC, but agreed to revisit the issue during the residential and single-line business SLC cap cost review proceeding. After weighing the competing goals of removing implicit subsidies and maintaining affordable rates for consumers, we determine that it is not appropriate to combine the multi-line business SLC and PICC charged by price cap LECs at this time.

In declining commenters' suggestions to combine the multi-line business SLC and PICC, we observe that the multi-line business PICC will be reduced or eliminated for most carriers when the residential and single-line business SLC cap reaches $6.50. If necessary, we will examine ways to eliminate the multi-line business PICC, as well as another charge containing implicit subsidies, the CCL charge, after the residential and single-line business SLC reaches the cap of $6.50 in July 2003.

In addition, we are concerned with the affordability issues raised by increasing the multi-line business SLC above the current $9.20 cap. Some carriers that operate in high-cost areas still recover their loop costs by charging IXCs up to the full amount of the multi-line business PICC cap of $4.31. The IXCs, in turn, recover the PICC from all of their multi-line business customers, effectively spreading the PICC across a much larger group and thereby lowering the amount recovered from each customer. If we were to combine the charges at this time, some multi-line business customers in high-cost areas would be subject to SLCs at or near $13.51 per line per month. Increasing to this level the SLCs of these customers, who are not eligible for Lifeline support, would raise affordability concerns. Additionally, we are disinclined to recover the subsidy represented by the multi-line business PICC entirely from the narrow class of high-cost multi-line business customers, rather than spreading its effect more broadly by continuing to recover it from IXCs, which have considerable flexibility in how they recover this cost.

At paragraph 154 of the *CALLS Order,* the Commission adopted an option that allows rural price cap LECs some relief from achieving the required switched access usage charge reductions solely through rate decreases. Specifically, non-Bell Operating Company price cap carriers that have at least 20 percent of total holding company lines operated by rural telephone companies may elect to shift to the common line basket the switched access usage charges necessary to yield those filing entities' proportionate share of the total reduction in switched access usage charge rates. These carriers would include these amounts in the CMT revenue requirement, and, to the extent they cannot recover all of the revenue requirement within a filing entity, they may increase their multi-line business PICCs and multi-line business SLCs in other filing entities within the same holding company, up to the amount of the applicable SLC and PICC cap. The Commission stated that this mechanism was to be reviewed in the instant cost proceeding to determine whether retaining this exception or transferring the additional switched access reduction amounts to the CMT basket is warranted.

We note that no party has raised any objection to retaining the rural price cap exception and we are not aware of any problems created by the exception. We believe that the rationale for adopting it in the *CALLS Order* remains, i.e., it is in the public interest to allow rural price cap LECs some ability to recover the switched access usage charge reductions through shifting them to the CMT basket. We therefore retain the exception.

Accordingly, *it is ordered* that, pursuant to sections 1, 4(i) and (j), 201–205, 218–222, 254, 303(r), and 403 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 218–222, 254, 303(r), and 403, this Order is *hereby adopted.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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