

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: May 21, 2003.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 00-256 and 96-45; FCC 03-106]

Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Commission addresses a Petition for Reconsideration of the *MAG Order* filed by the National Exchange Carrier Association (NECA), the National Rural Telecom Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, and the United States Telecom Association (collectively, the Joint Petitioners). In response to the concerns raised by the Joint Petitioners, the Commission grants their request to amend of our rules to move the deadline for filing actual common line cost and revenue data from July 31st to December 31st of each year. The Commission also amends its rules to permit rate-of-return carriers to file updates of projected common line cost and revenue data on June 30th of each year. Additionally, the Commission adopts several minor amendments to its rules in response to issues raised by the Joint Petitioners and on our own motion.

DATES: Effective June 27, 2003.

FOR FURTHER INFORMATION CONTACT: Theodore Burmeister, Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418-7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Order on Reconsideration in CC Docket Nos. 00-256 and 96-45 released on May 8, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445

12th Street, SW., Washington, DC 20554.

I. Introduction

1. The Commission addresses a Petition for Reconsideration of the *MAG Order*, 66 FR 59719, November 30, 2001, filed by the National Exchange Carrier Association (NECA), the National Rural Telecom Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, and the United States Telecom Association (collectively, the Joint Petitioners). The Joint Petitioners raise issues concerning the filing requirements for Interstate Common Line Support (ICLS), the new universal service support mechanism established in the *MAG Order*. In response to the concerns raised by the Joint Petitioners, the Commission grants their request to amend § 54.903(a)(4) of our rules to move the deadline for filing actual common line cost and revenue data from July 31st to December 31st of each year. The Commission also amends § 54.903(a)(3) of our rules to permit rate-of-return carriers to file updates of projected common line cost and revenue data on June 30th of each year. As discussed, these changes will promote more accurate and efficient distribution of ICLS while minimizing administrative burdens on rate-of-return carriers. Additionally, the Commission adopts several minor amendments to §§ 54.307, 54.902, and 54.903 of our rules in response to issues raised by the Joint Petitioners and on our own motion.

II. Discussion

2. *Filing of Actual Cost and Revenue Data.* On reconsideration, the Commission grants the Joint Petitioners' request to change the filing date for actual cost and revenue data for the prior calendar year from July 31st to December 31st. The Commission finds that changing the filing date for actual cost and revenue data to December 31st will better serve the Commission's goals of minimizing administrative burdens on carriers and promoting accurate and efficient distribution of ICLS. A December 31st filing date will reduce administrative costs. The Joint Petitioners contend that, based on NECA's experience with the common line pooling process, many small carriers would have difficulty completing accurate cost studies by July 31st, whereas carriers have historically complied with a December 31st deadline. Moving the filing deadline to December 31st will reduce burdens on carriers and minimize the potential need for late filings and corrections. The

resulting delay in the initiation of adjustments to ICLS as part of the ICLS true-up process will be mitigated by the measures the Commission adopts below to improve the accuracy of ICLS payments. In particular, permitting carriers to revise their projected data for the current and upcoming ICLS funding years on June 30th will mitigate the lag between projected and actual data filings and give carriers more meaningful opportunities to revise projections to adjust ICLS where necessary. Moving the deadline for filing actual cost and revenue data to December 31st also will not result in any delay in the completion of the ICLS true-up process. Under the current rules, ICLS true-up payments are spread over the calendar year following the filing of actual data. The Commission concludes that ICLS true-up payments instead can be distributed over the final two quarters of the calendar year without affecting fund stability.

3. *Voluntary Updates of Projected Cost and Revenue Data.* The Commission also concludes that certain modifications to § 54.903(a)(3), governing the filing of projected cost and revenue data, are warranted. Under the rules adopted in the *MAG Order*, carriers that wish to receive ICLS must, on March 31st, file projected data for the upcoming July 1st to June 30th funding year and may correct that data until April 10th. The Commission concludes that permitting carriers at their discretion to correct their projected data for the upcoming funding year until June 30th would better promote the accurate and efficient distribution of ICLS without increasing administrative burdens. Additionally, the Commission provides a voluntary opportunity for rate-of-return carriers to update on June 30th their projected data for the ICLS funding year ending on that date will promote the accurate and efficient distribution of ICLS.

4. The Commission will amend § 54.903(a)(3) of our rules for voluntarily updating the March 31st filing to replace the existing April 10th deadline with a June 30th deadline. The Commission agrees with NECA that this deadline extension will provide a more meaningful opportunity for carriers to revise their projections and, therefore, will increase the accuracy of ICLS for the coming funding year. Two major factors potentially affecting projections will be resolved by the June 30th prior to the start of each funding year. First, the Commission normally approves or modifies the common line average schedule settlements formula proposed by NECA by June 15th of each funding year. Because this formula functions in

the same manner as the common line revenue requirement for average schedule carriers, the specific resolution of this formula could have a significant effect on the amount of prospective ICLS received by average schedule carriers. Second, NECA, as tariff agent on behalf of pooling carriers, continues to update projected cost and revenue data until its June 15th deadline for filing a common line tariff with the Commission. The new deadline the Commission adopts here will enable carriers to incorporate these updates into their ICLS filings, will permit calculation of more accurate ICLS amounts for the coming funding year, and will reduce the size of the true-ups required when actual cost and revenue data is available.

5. The Commission also concludes that permitting carriers, at their option, to update on June 30th their projected data for the past funding year will promote the Commission's goals of minimizing administrative burdens while promoting accuracy of ICLS payments. This update will provide carriers an additional opportunity, in advance of the true-up process, to recognize changed circumstances that may have affected their projections. This will have the effect of minimizing the size of the final true-up adjustments that will occur after actual cost and revenue data is filed. The Administrator shall reflect both the corrections to projections for the upcoming funding year and updates to projections for the past funding year through adjustments to ICLS payments made during the first two quarters of the following calendar year.

6. In light of the modifications the Commission adopts here, we eliminate the optional quarterly update of actual data adopted in the *MAG Order*. The quarterly update of actual data was intended to permit carriers to accelerate the true-up process by recognizing actual costs and revenues earlier than would otherwise be possible. However, based on further consideration, the Commission finds that the ability to update actual data on a quarterly basis will not be useful for most carriers. In addition, the quarterly update of actual data creates potential administrative costs that the measures the Commission adopts herein make unnecessary.

7. The Commission denies the Petition for Reconsideration's request to move the deadline for carriers to file projected data with USAC from March 31st to July 15th. At the time the Petition was filed, the Joint Petitioners contended that these changes were necessary because data used to develop projections were not available on March

31st. The Petition for Reconsideration further suggested that carriers instead be allowed to rely on NECA to submit aggregate projections for the common line pool on March 31st. NECA later indicated, however, that it had made changes to its own procedures that would ensure that carriers could make projections by March 31st, rendering unnecessary the request for the Commission to change the March 31st filing date. In addition, consistent with USAC's administrative obligations and the necessity of calculating per-line support amounts, ICLS payments for the coming funding year must be based on individual carrier data, not aggregate data. For these reasons, the Commission denies the Joint Petitioners' request. The Commission notes that, under the rules adopted in the *MAG Order*, a rate-of-return carrier may elect to rely on NECA, as its agent, to submit ICLS data to USAC on its behalf.

8. *Collection of Projected and Actual Revenue Data*. As requested by the Joint Petitioners, the Commission also amends our rules to clarify that carriers must file common line revenue data to permit calculation of ICLS. The Joint Petitioners correctly note that § 54.903(a)(3) and (a)(4) of the Commission's rules do not explicitly state that carriers must file revenue data in addition to cost data, even though revenue data is clearly necessary to calculate ICLS. The *MAG Order* unambiguously granted USAC authority to collect any data necessary to administer the ICLS mechanism, including revenue data, and the Commission does nothing here to change that. The Commission revises the rules only to more clearly state certain types of data that will be required. Accordingly, the Commission amends § 54.903(a)(3) and (a)(4) to clarify that the types of data that carriers must file thereunder include common line revenue data.

9. *Apportionment of NECA Costs*. The Commission denies the Joint Petitioners' request to amend § 69.603 to specify how NECA, as common line pool administrator, should apportion its administrative expenses among pooling carriers for the purposes of calculating individual study area common line revenue requirements. In the *MAG Order*, the Commission amended its rules to ensure that NECA's administrative costs are appropriately allocated after the implementation of the *MAG Order's* reforms. The Joint Petitioners request that the Commission further amend § 69.603(h)(2) of its rules to specify how NECA should apportion its Category I.B. costs—those costs assigned to the common line pool—

among members of the common line pool. No comments were received on this issue, and, subsequently, NECA filed projected cost and revenue data with USAC which apportioned NECA Category I.B. expenses among its members. The Commission finds that NECA has appropriate discretion under the Commission's existing rules to determine how to apportion expenses among members of the common line pool in an equitable manner, and we see no need to amend our rules to prescribe a specific apportionment method at this time.

10. *Miscellaneous issues*. On our own motion, the Commission further amends our rules to correct three errors. First, the Commission amends § 54.902 to correct erroneous cross-references. Second, in order to conform our rules to the Commission's intent in the *MAG Order*, we amend § 54.307(a)(2) to include a reference to ICLS. Third, the Commission amends § 54.903(b)(3) to clarify that the reconciliation performed by USAC as part of its true-up process applies to the support amounts received by carriers, not their common line revenue requirements.

III. Procedural Matters

A. Supplemental Final Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was included in the *MAG Notice*. Additionally, a Final Regulatory Flexibility Analysis (FRFA) was included in the *MAG Order*. In compliance with the RFA, this Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the FRFA included in the *MAG Order* to the extent that changes to that Order adopted here on reconsideration require changes in the conclusions reached in the FRFA.

1. Need for, and Objective of, the Third Order on Reconsideration

12. This *Third Order on Reconsideration* addresses a Petition for Reconsideration filed jointly by the National Exchange Carrier Association, the National Rural Telecom Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, and the United State Telecom Association (collectively, the Joint Petitioners). Section 254 of the Communications Act of 1934, as amended by the 1996 Act, requires the Commission to promulgate rules to preserve and advance universal service support. Pursuant to that mandate, the Commission, in the *MAG*

Order, adopted reforms to the interstate access rate structure and universal service support mechanisms for rate-of-return carriers. In making these reforms, the Commission created the ICLS mechanism to provide explicit universal service support and adopted rules governing its administration. The Commission now concludes that certain changes to the rules governing ICLS's administration will promote more accurate and efficient distribution of ICLS while minimizing administrative burdens on rate-of-return carriers. In response to the concerns raised by the Joint Petitioners, the Commission grants their request to amend § 54.903(a)(4) of our rules to move the deadline for filing actual common line cost and revenue data from July 31st to December 31st of each year. The Commission also amends § 54.903(a)(3) of our rules to permit rate-of-return carriers to file updates of projected common line cost and revenue data on June 30th of each year. As discussed, these changes will promote more accurate and efficient distribution of ICLS while minimizing administrative burdens on rate-of-return carriers. Additionally, the Commission adopts several minor amendments to §§ 54.307, 54.902, and 54.903 of our rules in response to issues raised by the Joint Petitioners and on our own motion.

2. Summary of Significant Issues Raised by Public Comments

13. In response to the Joint Petitioners' Petition for Reconsideration, the Commission received one comment. However, after careful consideration, the Commission concludes that this comment does not raise significant small business-related issues.

3. Description and Estimate of the Number of Small Entities to Which This Order on Reconsideration Will Apply

14. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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).

15. In the previous FRFA at paragraphs 289–300 of the *MAG Order*, the Commission described and estimated the number of small entities that would be affected by the new universal service rules. These included local exchange carriers, interexchange carriers, competitive service providers, and providers of wireless telephony, rural radiotelephone service, fixed microwave services, and 39 GHz service. The rule amendment adopted herein may apply to the same entities affected by the rules adopted in that order. The Commission therefore incorporates by reference paragraphs 289–300 of the *MAG Order*.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

16. This *Third Order on Reconsideration* makes several changes to the reporting requirements for rate-of-return carriers receiving ICLS, but creates few additional burdens. First, this *Third Order on Reconsideration* changes the existing annual filing date for actual common line cost and revenue data from July 31st to December 31st, but adds no new requirements with respect to that filing. Second, this *Third Order on Reconsideration* changes the existing deadline for filing voluntary corrections to projected common line cost and revenue data from April 10th to June 30th, but adds no new requirements with respect to that filing. The Commission also creates an opportunity for each carrier to voluntarily file an annual update to its projected data, but do not require a carrier to perform the update. In connection with these changes, the Commission also eliminates an existing opportunity for voluntary update of actual common line cost and revenue data on a quarterly basis. Third, the Commission amends our rules to clarify the data required for certain existing filing requirements, but do not require the reporting of any additional data beyond that already filed by carriers. These amendments apply equally to all entities affected, and therefore impose no different burdens on smaller entities.

5. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

17. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into

account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."

18. The Commission notes that we do not find that this *Third Order on Reconsideration* creates a significant economic impact on small entities. The Commission could therefore meet our obligations under the RFA by certifying that there is no significant economic impact on small entities, rather than including this SFRFA. The Commission nonetheless includes this Supplemental FRFA to demonstrate that we have considered the impact of our action on small entities in adopting this *Third Order on Reconsideration*.

19. As noted, the amendment to our rules adopted in this *Third Order on Reconsideration* does not have a significant impact on small entities. Our actions are intended primarily to reduce administrative burdens on small carriers associated with the ICLS mechanism, while also promoting the accurate and efficient distribution of ICLS. Our actions respond to concerns raised by representatives of small carriers. The Commission does consider alternatives to the actions adopted herein but concluded that these alternatives would not reduce administrative burdens or increase the accuracy of ICLS as effectively as the measures we adopt. These alternatives include retaining the filing requirements currently codified in the Commission's rules, extending the current March 31st date for filing projected cost and revenue data to July 15th, and permitting carriers to update their projected data on a quarterly basis.

6. Report to Congress

20. The Commission will send a copy of this *Third Order on Reconsideration*, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of this *Third Order on Reconsideration*, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Third Order on Reconsideration* and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

B. Paperwork Reduction Act

21. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA)

and found to impose new or modified reporting or recordkeeping requirements or burdens to the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act, and will go into effect upon announcement in the **Federal Register** of OMB approval.

IV. Ordering Clauses

22. *It is ordered* that, pursuant to the authority contained in sections 1–4, 10, 201–202, and 254 of the Communications Act of 1934 as amended, and §§ 1.3 and 1.103 of the Commission's rules, this *Third Order on Reconsideration* is adopted.

23. *It is further ordered* that part 54 of the Commission's rules, is amended as set forth, effective June 27, 2003. The collections of information are contingent upon approval by the Office of Management and Budget as necessary.

24. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Third Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Final Rules

■ For the reason discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

■ 2. Amend § 54.307(a)(2) by revising the second sentence to read as follows:

§ 54.307 Support to a competitive eligible telecommunications carrier.

(a) * * *

(2) * * * A competitive eligible telecommunications carrier that uses loops purchased as unbundled network elements pursuant to § 51.307 of this chapter to provide the supported

services shall receive the lesser of the unbundled network element price for the loop or the incumbent LEC's per-line payment from the high-cost loop support, LTS, and Interstate Common Line Support mechanisms, if any. * * *

■ 3. Amend § 54.902 by revising the first sentence of paragraph (a)(1), by revising paragraphs (a)(2), and (a)(3), by revising the first sentence of paragraph (b)(1), by revising paragraphs (b)(2), and (b)(3), (c)(2), and paragraph (c)(3) to read as follows:

§ 54.902 Calculation of Interstate Common Line Support for transferred exchanges.

(a) * * *

(1) Each carrier may report its updated line counts to reflect the transfer in the next quarterly line count filing pursuant to § 54.903(a)(1) that applies to the period in which the transfer occurred. * * *

(2) Each carriers' projected data for the following funding year filed pursuant to § 54.903(a)(3) shall reflect the transfer of exchanges.

(3) Each carriers' actual data filed pursuant to § 54.903(a)(4) shall reflect the transfer of exchanges. All post-transaction Interstate Common Line Support shall be subject to true up by the Administrator pursuant to § 54.903(b)(3).

(b) * * *

(1) The acquiring carrier may report its updated line counts for the study area into which the acquired lines are incorporated in the next quarterly line count filing pursuant to § 54.903(a)(1) that applies to the period in which the transfer occurred. * * *

(2) The acquiring carrier's projected data for the following funding year filed pursuant to § 54.903(a)(3) shall reflect the transfer of exchanges.

(3) The acquiring carrier's actual data filed pursuant to § 54.903(a)(4) shall reflect the transfer of exchanges. All post-transaction Interstate Common Line Support shall be subject to true up by the Administrator pursuant to § 54.903(b)(3).

(c) * * *

(2) The acquiring carrier's projected data for the following funding year filed pursuant to § 54.903(a)(3) shall reflect the transfer of exchanges.

(3) The acquiring carrier's actual data filed pursuant to § 54.903(a)(4) shall reflect the transfer of exchanges. All post-transaction Interstate Common Line Support shall be subject to true up by the Administrator pursuant to § 54.903(b)(3)

* * * * *

■ 4. Amend § 54.903 by revising paragraphs (a)(3), (a)(4), and (b)(3) to read as follows:

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

(a) * * *

(3) Each rate-of-return carrier shall submit to the Administrator annually on March 31st projected data necessary to calculate the carrier's prospective Interstate Common Line Support, including common line cost and revenue data, for each of its study areas in the upcoming funding year. The funding year shall be July 1st of the current year through June 30th of the next year. Each rate-of-return carrier will be permitted to submit a correction to the projected data filed on March 31st until June 30th of the upcoming funding year. On June 30th each rate-of-return carrier will be permitted to submit to the Administrator an update to the projected data for the funding year ending on that date.

(4) 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.

(b) * * *

(3) Perform periodic reconciliation of the Interstate Common Line Support provided to each carrier based on projected data filed pursuant to paragraph (a)(3) of this section and the Interstate Common Line Support for which each carrier is eligible based on actual data filed pursuant to paragraph (a)(4) of this section.

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