



85 7th Place East, Suite 500
St. Paul, Minnesota 55101-2198
mn.gov/commerce/
651.539.1500 FAX 651.539.1547
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April 2, 2014

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: **Recommended Procedures for 2014 Access Rate Changes**
Docket No. P999/PR-14-15

Dear Dr. Haar:

Attached are the Reply Comments of the Minnesota Department of Commerce (Department) in the Matter of Intercarrier Compensation Reform Required by FCC Order and Rules.

Sincerely,

/s/ BRUCE L. LINSCHIED
Financial Analyst

/s/ KATHERINE DOHERTY
Rates Analyst

BLL/KD/lt
Attachment



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

REPLY COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE

DOCKET NO. P999/PR-14-15

I. BACKGROUND

On February 4, 2014 the Department filed comments recommending procedures for the 2014 intrastate access rate reduction filings required by the FCC's November 18, 2011 USF-ICC Order.¹ The Department recommended that switched access providers be required to file revised intrastate access rates for 2014 using the methodology set forth in FCC Rules 47 CFR §§51.907(d), 909(d), 911(c), and the applicable provisions of 47 CFR §61.26.

On March 12, 2014, the Minnesota Public Utilities Commission (Commission) issued a Notice of Comment Period, seeking initial comments with respect to the Department's recommended procedures by March 26, 2014, and replies by April 2, 2014.

On March 20, 2014 comments were filed by the Minnesota Independent Coalition (MIC)²

On March 26, 2014, comments were filed by CenturyLink.

¹ In the Matter of Connect America Fund, *et al.*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, and WT Docket No. 10-208, *Report and Order and Further Notice of Proposed Rulemaking*, November 18, 2011 (USF-ICC Order).

² The Minnesota Independent Coalition is a group of approximately 75 local exchange carriers providing service in Rural Minnesota. MIC noted in its comments that "MIC members include small incumbent Rate of Return local exchange carriers ("Incumbent LECs") who provide local exchange service, including origination and termination of toll traffic for interexchange carriers ("IXCs")."

II. THE COMMENTING PARTIES' RECOMMENDATIONS

A. COMMENTS OF MIC

MIC noted in its March 20, 2014 comments that in the Matter of Intercarrier Compensation Reform Docket No. P999/PR-13-137, the Department's April 18, 2013 comments recommend the following clarifications, which the Commission adopted, to its recommended procedure for the 2013 access rate reduction filings:

- If intrastate access rates are identical to the interstate rates, filings may identify in their intrastate tariffs the electronic links to interstate access rates. The electronic link should clearly show the trail an access customer can follow to get from the individual carrier's intrastate access tariff to the interstate tariff for each access element that is applicable to a customer's situation.
- Companies whose intrastate access rates already equal interstate access rates need only file a letter so stating.³

MIC recommended that similar clarifications be adopted for the 2014 procedure. Specifically, MIC recommended the following:

- If a company's intrastate access rates are identical to its interstate rates, the company may identify in their intrastate tariffs the electronic links to interstate access rates.
- Companies whose intrastate access rates already equal interstate access rates and who, pursuant to FCC Rules, effective July 1, 2014 will still have intrastate access rates that equal interstate access rates need only file an informational letter so stating. Such letters to be filed by individual companies or at a company's option, in cases where multiple companies participate in group tariffs, participants in the group tariff may file a joint letter.

B. COMMENTS OF CENTURYLINK

CenturyLink noted in its March 26 comments its belief that "the Department's calculation methodology conflicts with the methodology the FCC will require," and that "[t]he FCC has indicated that it plans to issue a clarification order detailing its required methodology by the end of March."⁴

³ In the Matter of Intercarrier Compensation Reform, Docket No. P999/PR-13-137, Reply Comments of the Department of Commerce, April 18, 2013.

⁴ CenturyLink Comments, March 26, 2014.

CenturyLink recommended that the Commission “issue an order now, requiring companies to follow the FCC’s methodology,”⁵ or that the Commission “delay a decision until the FCC clarifies its methodology.”⁶

II. REPLY COMMENTS OF THE DEPARTMENT OF COMMERCE

A. RESPONSE TO CENTURYLINK COMMENTS

The Department supports CenturyLink’s recommendation that the Commission require companies to follow the FCC’s methodology.

The Department recommended, in its March 12, 2014 comments, that switched access providers be required to file revised intrastate access rates for 2014 using the methodology set forth in FCC Rules 47 CFR §§51.907(d), 909(d), 911(c), and the applicable provisions of 47 CFR §61.26.

The FCC, however, as CenturyLink anticipated in its March 26, 2014 comments, issued an order on March 31, 2014, clarifying the required methodology and revising Rules 47 CFR §§51.907(d) and 909(d) for the 2014 access rate reductions⁷ as follows:

47 CFR §51.907 Transition of price cap carrier access rate reductions

(d) *Step 3.* Beginning July 1, 2014, notwithstanding any other provision of the Commission’s rules:

- (1) A Price Cap Carrier shall establish separate originating and terminating rate elements for all per-minute components within interstate and intrastate End Office Access Service. For fixed charges, the Price Cap Carrier shall divide the rate between originating and terminating rate elements based on relative originating and terminating end office switching minutes. If sufficient originating and terminating end office switching minute data is not available, the carrier shall divide such charges equally between originating and terminating elements.

⁵ Id.

⁶ Id.

⁷ The FCC’s Order also modified its rules for 2015 and 2016 access rate reductions (§§51.907 and 909 subparts (e) and (f)) as well as for revenue recovery (§§51.917 and 915) none of which are directly relevant to the 2014 access rate reduction procedure or methodology discussed herein.

- (2) Each Price Cap Carrier shall establish rates for interstate or intrastate terminating End Office Access Service using the following methodology:
- (i) Each Price Cap Carrier shall calculate the 2011 Baseline Composite Terminating End Office Access Rate. The 2011 Baseline Composite Terminating End Office Access Rate means the Composite Terminating End Office Access Rate calculated using Fiscal Year 2011 interstate demand and the End Office Access Service rates at the levels in effect on December 29, 2011, and then dividing the result by 2011 Fiscal Year interstate local switching demand.
 - (ii) Each Price Cap Carrier shall calculate its 2014 Target Composite Terminating End Office Access Rate. The 2014 Target Composite Terminating End Office Access Rate means \$0.0007 per minute plus two-thirds of any difference between the 2011 Baseline Composite Terminating End Office Access Rate and \$0.0007 per minute.
 - (iii) Beginning July 1, 2014, no Price Cap Carrier's interstate ~~or intrastate~~ Composite Terminating End Office Access Rate shall exceed its 2014 Target Composite Terminating End Office Access Rate. A price cap carrier shall determine compliance by calculating interstate Composite Terminating End Office Access Rates using the relevant Fiscal Year 2011 interstate demand multiplied by the respective interstate rates as of July 1, 2014, and then dividing the result by the relevant 2011 Fiscal Year interstate terminating local switching demand. A price cap carrier's intrastate terminating end office access rates may not exceed the comparable interstate terminating end office access rates. In the alternative, any Price Cap Carrier may elect to implement a single per minute rate element for both interstate and intrastate terminating End Office Access Service no greater than the 2014 Target Composite Terminating End Office Access Rate if its intrastate terminating end office access rates would be at rate parity with its interstate terminating end office access rates.

- (iv) 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 increasing such rates.

47 CFR §51.909 Transition of rate of return carrier access rate reductions

- (d) *Step 3.* Beginning July 1, 2014, notwithstanding any other provision of the Commission's rules:

- (1) Notwithstanding the rate structure rules set forth in §69.106 of this chapter or anything else in the Commission's rules, a Rate-of-Return Carrier shall establish separate originating and terminating interstate and intrastate rate elements for all components within interstate End Office Access Service. For fixed charges, the Rate-of-Return Carrier shall divide the amount based on relative originating and terminating end office switching minutes. If sufficient originating and terminating end office switching minute data is not available, the carrier shall divide such charges equally between originating and terminating elements.
- (2) Nothing in this Step shall affect Tandem-Switched Transport Access Service or Dedicated Transport Access Service.
- (3) Each Rate-of-Return Carrier shall establish rates for interstate and intrastate terminating End Office Access Service using the following methodology:
 - (i) Each Rate-of-Return Carrier shall calculate the 2011 Baseline Composite Terminating End Office Access Rate. The 2011 Baseline Composite Terminating End Office Access Rate means the Composite Terminating End Office Access Rate calculated using Fiscal Year 2011 interstate demand and the interstate End Office Access Service rates at the levels in effect on December 29, 2011.
 - (ii) Each Rate-of-Return Carrier shall calculate its 2014 interstate Target Composite Terminating End Office Access Rate. The 2014 ~~interstate~~ Target Composite Terminating End Office Access Rate means \$0.005 per minute plus two-thirds of any difference between the 2011 Baseline Composite Terminating End Office Access Rate and \$0.005 per minute.

- (iii) Beginning July 1, 2014, no Rate-of-Return Carrier's interstate or intrastate Composite Terminating End Office Access Rate shall exceed its 2014 interstate Target Composite Terminating End Office Access Rate. *A rate-of-return carrier shall determine compliance by calculating interstate Composite Terminating End Office Access Rates using the relevant projected interstate demand for the tariff period multiplied by the respective interstate rates as of July 1, 2014, and then dividing by the projected interstate demand terminating end-office switching demand for the tariff period. A rate-of-return carrier's intrastate terminating end office access rates may not exceed the comparable interstate terminating end office access rates.* In the alternative, any Rate-of-Return Carrier may elect to implement a single per minute rate element for both interstate and intrastate terminating End Office Access Service no greater than the 2014 interstate Target Composite Terminating End Office Access Rate if its intrastate terminating end office access rates would be at rate parity with its interstate terminating end office access rates.
- (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.

The revised rules will become effective 30 days after publication in the Federal Register. The Department revises its recommendation to reflect that price cap and rate of return carriers should follow the revised methodology as reflected in the above rules, and as discussed in the FCC's March 31, 2014 Order. The rules applicable to competitive local exchange carriers (47 CFR 51.911) remain unchanged. The FCC's March 31, 2014 Order is attached as Exhibit 1.

B. RESPONSE TO MIC COMMENTS

The Department does not object to the clarifications proposed by MIC. Since the USF-ICC Order requires intrastate switched access tariffed rates be no higher than interstate rates, the Department recommends that carriers be allowed to comply with the requirement to file revised intrastate access rates by filing the link to their interstate tariff. As the Department noted in its April 18, 2013 comments, rates are being adjusted every year through 2020 and since the intrastate rates may be the same, allowing this referencing will reduce the regulatory burden.

The ability to easily locate rates, however, is needed for transparency. Therefore, the Department recommends, as it did in 2013, that 2014 access rate change filings not simply identify a link to a carrier's interstate tariff, but clearly show the trail an access customer can follow to get from the individual carrier's intrastate access tariff to the interstate tariff for each access element that is applicable to a customer's situation.

III. DEPARTMENT RECOMMENDATION

The Department revises its March 12 2014 recommendation for carriers filing their access rates as of July 1, 2014 and for CLECs who benchmark their rates to the competing ILEC, and who must file revised tariffs within 15 days of the effective date of the lowered ILEC rate, as follows:

1. Carriers should e-file revised intrastate access rates for 2014 in the new docket number established for 2014, Docket No. P999/PR-14-15, using the methodology set forth by the FCC, as clarified in its March 31, 2014 Order, and set forth in revised rules 47 CFR §§51.907(d) and 909(d), 47 CFR 51.911(c) and the applicable provisions of 47 CFR §61.26.
2. Each carrier's rate should be subject to a true-up if a complaint filed by October 31, 2014 results in a Commission finding that a different rate was warranted.
3. If a company's intrastate access rates are identical to its interstate rates, the company may identify in their intrastate tariffs the electronic links to interstate access rates. The intrastate tariff should clearly show the trail an access customer can follow to get from the individual carrier's intrastate access tariff to the interstate tariff for each access element that is applicable to a customer's situation.
4. If a company's intrastate access rates are identical to its interstate rates, and who, pursuant to FCC Rules, effective July 1, 2014 will still have intrastate access rates that equal interstate access rates need only file an informational letter so stating. Such letters to be filed by individual companies or at a company's option, in cases where multiple companies participate in group tariffs, participants in the group tariff may file a joint letter.

/lt

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	

ORDER

Adopted: March 31, 2014

Released: March 31, 2014

By the Associate Chief, Wireline Competition Bureau:

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION.....	1
II. BACKGROUND.....	2
III. DISCUSSION	4
A. Rate Parity for Interstate and Intrastate Terminating End Office Access Service.....	4
B. Calculation of Terminating End Office Access Rates	7
C. Other Corrections or Clarifications.....	11
IV. PROCEDURAL MATTERS.....	20
V. ORDERING CLAUSES.....	24
APPENDIX – Final Rules	

I. INTRODUCTION

1. In the *USF/ICC Transformation Order*, the Commission delegated to the Wireline Competition Bureau (Bureau) the authority to make any rule revisions necessary to ensure that the reforms adopted by the Commission are properly reflected in the rules, including correction of any conflicts between the new or revised rules and addressing of any omissions or oversights.¹ In this Order, the Bureau acts pursuant to its delegated authority to clarify and correct certain rules relating to implementation of the intercarrier compensation (ICC) transition adopted in the *USF/ICC Transformation Order*. Specifically, the Bureau clarifies language in sections 51.907 and 51.909 to reflect ongoing rate parity in the transition process for price cap and rate-of-return local exchange carriers (LECs), consistent with the intent of the *USF/ICC Transformation Order*. The Bureau also clarifies certain aspects of the Commission’s rules relating to the transition of terminating end office access rates and the calculation of Eligible Recovery for price cap and rate-of-return carriers beginning in 2014. Finally, the Bureau clarifies issues related to duplicative recovery and the true-up of regulatory fees and revenue calculations.²

¹ *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 sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

² See 47 C.F.R. §§ 51.907; 51.909; 51.915; 51.917.

II. BACKGROUND

2. The *USF/ICC Transformation Order* adopted, among other things, an ICC reform timeline including rules that require carriers to adjust, over a period of years, many of their legacy ICC rates effective on July 1 of each of those years, with the ultimate goal of transitioning to a bill-and-keep regime.³ The Commission also adopted a recovery mechanism to mitigate the impact of reduced ICC revenues on carriers and to facilitate continued investment in broadband infrastructure while providing greater certainty and predictability going forward.⁴ The recovery mechanism allows incumbent LECs to recover ICC revenues reduced due to the ICC reforms, up to an amount defined for each year of the transition, which is referred to as “Eligible Recovery.”⁵ A carrier may recover a limited portion of its Eligible Recovery each year from its end users through a fixed monthly charge called the Access Recovery Charge (ARC), and the remainder of its Eligible Recovery for the year, if it so elects, from Connect America Fund ICC support.⁶

3. The Bureau previously clarified and corrected several rules adopted in the *USF/ICC Transformation Order* in response to requests for clarification or correction in prior years.⁷ In this Order, we clarify and correct several rules pertaining to future filings that price cap and rate-of-return carriers will make in the 2014 annual access charge tariff filings and beyond.

III. DISCUSSION

A. Rate Parity for Interstate and Intrastate Terminating End Office Access Service

4. In 2013, both price cap and rate-of-return regulated incumbent LECs were required to reduce certain intrastate switched access rates that exceeded comparable interstate switched access rates to interstate rate levels using the interstate rate structure.⁸ Carriers whose intrastate switched access rates were below comparable interstate rates generally were not allowed to increase such rates.⁹ Beginning in 2014, price cap carriers must reduce terminating switched end office and reciprocal compensation rates “by one-third of the differential between end office rates and \$0.0007.”¹⁰ Rate-of-return carriers must also begin making similar reductions using a target rate of \$0.005 rather than \$0.0007 to calculate the reductions.¹¹ Because some end office rate elements are assessed on a per-minute basis and others on a flat-rated basis, the transition rules employed composite terminating end office access rates to determine

³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17934-35, para. 801 and Fig. 9. The *USF/ICC Transformation Order* altered the regulatory treatment of interstate and intrastate switched access traffic, which is now subject to the reciprocal compensation framework under section 251(b)(5) of the Communications Act, rather than the legacy access charge regime. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17914-16, paras. 760-64; see also 47 U.S.C. § 251(b)(5). In this Order, the term “legacy switched access” refers to switched access charges or rates under the pre-*USF/ICC Transformation Order* access charge regulatory regime as opposed to the reciprocal compensation framework adopted in the *USF/ICC Transformation Order*.

⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17677, para. 36.

⁵ *Id.* at 17956-57, paras. 847, 850.

⁶ *Id.* at 17994-95, para. 918; 47 C.F.R. §§ 51.915(d)-f); 51.917(d-f).

⁷ See *Connect America Fund et. al*, WC Docket Nos. 10-90, 12-63, CC Docket No. 01-92 *et. al*, Order, 28 FCC Rcd 3319 (Wireline Comp. Bur. 2013) (*2013 ICC Clarification Order*).

⁸ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17934-35, para. 801 and Fig. 9.

⁹ Carriers that had some intrastate switched access rates above the comparable interstate rate and some below were allowed to increase the intrastate rate(s) that were below the comparable interstate(s) rate in a manner that was revenue neutral. See, e.g., *2013 ICC Clarification Order*, 28 FCC Rcd 3319.

¹⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 17934-35, para. 801 and Fig. 9.

¹¹ *Id.*

the amount by which terminating end office access rates were required to be reduced in each year of the transition. The rules also employed separate interstate and intrastate composite terminating end office access rates to establish the actual rates. To the extent any flat-rated elements are included in end office rates, the use of separate interstate and intrastate composites in determining rate reductions would take interstate and intrastate rates out of parity as terminating end office access rates are reduced.

5. Price cap carriers work cooperatively with Bureau staff each year to develop tariff review plan spreadsheets that support their annual access filings. In the course of such discussions, some carriers have questioned whether the use of separate interstate and intrastate rate composites to measure whether intrastate terminating end office access rates do not exceed interstate terminating end office access rates is consistent with the *USF/ICC Transformation Order*. These carriers assert that the Commission intended for interstate and intrastate rates to remain at parity as the rate transition proceeds, which one interpretation of the existing rules would not always achieve.¹² We agree that the Commission intended in the *USF/ICC Transformation Order* for rate parity to be maintained during the transition of terminating end office access rates to bill-and-keep beginning in 2014.¹³ The Commission noted that varying access rates “have created incentives for arbitrage and pervasive competitive distortions within the industry.”¹⁴ The Commission further noted that “[b]y transitioning all traffic in a coordinated manner, we will minimize opportunities for arbitrage that could be presented by disparate intrastate rates.”¹⁵ Having reached rate parity whenever possible in 2013, and reduced rate disparity in other cases, we find that a methodology that could be interpreted to increase rate disparity for two years, only to return to rate parity in the succeeding year, is inconsistent with the objectives described above.¹⁶ Thus, we clarify that the Commission intended to achieve parity between interstate and intrastate rates, not interstate and intrastate composite rates. While the composite rate is necessary to calculate the required rate reductions, we clarify that sole reliance on composite rates, rather than the rates themselves, is unnecessary to ensure that intrastate terminating end office access rates do not exceed comparable interstate terminating end office access rates. Therefore, as set forth in the Appendix, we revise sections 51.907 and 51.909 to clarify that achieving rate parity for the access rates themselves, not the composite rate for price cap and rate-of-return LECs, was the intent of the *USF/ICC Transformation Order*.¹⁷ Under this approach, carriers may continue to establish interstate terminating end office access rate caps that do not exceed the target composite terminating end office access rate for each year in the transition in the manner the adopted

¹² *See id.* at 17934, para. 801.

¹³ *See id.* at 17676-77, para. 35 (“To reduce the disparity between interstate and intrastate terminating end office rates, we next require carriers to bring these rates to parity within two steps, by July 2013. Thereafter, we require carriers to reduce their termination (and for some carriers also transport) rates to bill-and-keep, within six years for price cap carriers and nine for rate-of-return carriers”). *See also id.* at 17930-31, para. 794, n. 1479 (citing with approval Missouri Public Service Commission comments stating “Assuming the FCC’s initial goal of intercarrier compensation reform is for parity between intrastate and interstate rates then the FCC should set a schedule for achieving that objective”).

¹⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17929-30, para. 791.

¹⁵ *Id.* at 17930, para. 792.

¹⁶ For instance, in the *2013 ICC Clarification Order*, the Bureau clarified that rate changes to NECA’s switched access rates resulting from carrier entry or exit from the NECA switched access tariff were to be reflected in intrastate rates. The Bureau stated that “[b]ecause the Commission’s rules require intrastate switched access rate levels to be set based on interstate rate levels, we clarify that if NECA’s interstate switched access rates decrease, pooling carriers must also reduce their intrastate rates, consistent with the framework established in the *USF/ICC Transformation Order*. Similarly, we clarify that if NECA’s switched access rates increase, pooling carriers whose intrastate rates would have been at parity with interstate rates in 2013 or that already were at parity with interstate rates are required to increase their intrastate rates.” *2013 ICC Clarification Order*, 28 FCC Rcd at 3326, para. 15.

¹⁷ Appendix at 47 C.F.R. §§ 51.907(d), (e), and (f); 51.909(d), (e), (f), (g), and (h).

rules require. To achieve rate parity, the interstate rate caps so determined will be used in setting intrastate rate caps for the comparable intrastate terminating end office access elements rather than developing new intrastate rate caps that would satisfy a separately determined intrastate composite terminating end office access rate. To ensure the maximum rate parity, intrastate terminating end office rates will be set at the interstate rate level for the comparable rate element unless the intrastate rate for that rate element is lower, in which case the lower rate will be used.¹⁸ As terminating end office rates decrease, intrastate terminating end office rates that are below comparable interstate rates will begin to be reduced when rate parity is reached.¹⁹ This approach to developing reduced rates best achieves the Commission's goals of maintaining rate parity during the transition process.

6. An overview of the calculations necessary for reducing terminating end office access rates beginning July 1, 2014, as described above, is as follows. In broad terms, the reductions are based on rates developed to comply with targets developed from interstate rates and demand, with the interstate rates generally being used to establish intrastate rate levels. Using 2014 as a model, carriers first establish the 2011 Baseline Composite Terminating End Office Access Rate, which reflects interstate rates and demand.²⁰ Next, carriers must calculate the 2014 Target Composite Terminating End Office Access Rate, by reducing the 2011 Baseline Composite Terminating End Office Access Rate by one-third of the difference between the 2011 Baseline Composite Terminating End Office Access Rate and \$0.0007 for price cap carriers and \$0.005 for rate-of-return carriers.²¹ Carriers will then develop terminating interstate end office access rates for their interstate tariffs that are consistent with the target composite rate. These terminating interstate end office access rates will be used to establish terminating intrastate end office access rates for comparable rate elements unless the intrastate rate for a rate element is lower than the interstate rate for that element.²² Carriers have the option to elect to charge a single per minute rate element for terminating end office access in both their interstate and intrastate tariffs that is no greater than the target terminating end office access rate for the year in question. This option is contingent on such an electing carrier's intrastate terminating end office access rates being at parity with the interstate rates if separate rates for different rate elements were used.²³ Below, we clarify certain aspects of these calculations to ensure consistent implementation among carriers.

B. Calculation of Terminating End Office Access Rates

7. *2011 Baseline Composite Terminating End Office Access Rate.* Section 51.907(d) and 51.909(d) of the Commission's rules specify the access charge rate reductions that price cap and rate-of-return carriers, respectively, must make to terminating end office access rates in 2014. The first step in this process is for carriers to calculate the "2011 Baseline Composite Terminating End Office Access Rate," which is calculated using Fiscal Year 2011 demand and the End Office Access Service rates at the levels in effect on December 29, 2011.²⁴ This composite rate is calculated this one time, and is used in making calculations in subsequent years. Section 51.907(d)(2)(i), which is applicable to price cap carriers, does not specify whether price cap carriers should use interstate or intrastate demand and rates in making this calculation, although the comparable rule applicable to rate-of-return carriers specifies that it should be interstate rates and demand.²⁵ The absence of a jurisdictional designation for the demand and

¹⁸ See *id.*; see also para. 6 *infra*.

¹⁹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17936, para. 804.

²⁰ See 47 C.F.R. §§ 51.907(d)(2)(i); 51.909(d)(3)(i).

²¹ See 47 C.F.R. §§ 51.907(d)(2)(ii); 51.909(d)(3)(ii).

²² See 47 C.F.R. §§ 51.907(d)(2)(iii); 51.909(d)(3)(iii).

²³ See para. 5 *supra*.

²⁴ 47 C.F.R. §§ 51.907(d); 51.909(d).

²⁵ See 47 C.F.R. §§ 51.909(d)(3)(i).

rates to be used by price cap carriers creates potential ambiguity in the calculation of the required rate reductions.

8. We clarify that the 2011 Fiscal Year *interstate* demand and rates are to be utilized for the reasons explained below. The ICC rate transition started by capping interstate and intrastate switched access rates for price cap carriers at December 29, 2011, levels. The 2012 and 2013 transition steps reduced “Transitional Intrastate Access Service” rates (which included reduction of end office rates that were above interstate switched access rates to interstate switched access rate levels),²⁶ but did not require any changes to interstate switched access rates during that period. The 2014 annual access tariff filing begins the transition process of focusing annual rate reductions to interstate and intrastate Terminating End Office Access rates from their 2013-14 rate levels. Because intrastate switched access rates above comparable interstate rates are now reduced to interstate levels, 2011 intrastate rate and demand data are no longer relevant to the calculation of a baseline from which to reduce Terminating End Office Access Service rates in 2014. The calculation of the 2011 Baseline Composite Terminating End Office Access Rate, which is made for the first time this year, thus should only include 2011 Fiscal Year interstate demand and rates.²⁷ We revise section 51.907(d)(2)(i) accordingly, as set forth in the Appendix, to eliminate any ambiguity and to facilitate the annual tariff filing process. We note further that using interstate rates and demand in calculating the required terminating end office access rate reductions for price cap carriers is consistent with how we require rate-of-return carriers to calculate their 2011 Baseline Composite Terminating End Office Access Rates.

9. *Target Composite Terminating End Office Access Rate.* Beginning this year, the ICC transition steps require carriers to calculate a Target Composite Terminating End Office Access Rate in certain years in which a target rate is not specified to determine the amount of reductions that must be made that year.²⁸ Carriers have raised the question of whether separate interstate and intrastate target composite rates are required. The above clarification that the Commission intended rate parity between interstate and intrastate rates to apply during the reductions in terminating end office access rates renders this question moot. We therefore clarify that there is only one Target Composite Terminating End Office Access Rate each year, which is to be determined consistent with sections 51.907(d)(2)(iii) and 51.909(d)(3)(ii).

10. To begin the implementation of rate parity, a carrier may develop terminating end office access rates for the interstate jurisdiction whose composite rate does not exceed the composite target terminating end office access rate for the year in question.²⁹ The carrier’s intrastate terminating end office access rates may not exceed the carrier’s interstate terminating end office access rates so developed for the comparable rate elements. A carrier’s terminating intrastate end office access rates are further constrained in that the carrier may not increase any existing intrastate rate during this transition. Alternatively, the carrier may assess the target terminating end office access rate in both the interstate and

²⁶ See 47 C.F.R. §§ 51.907(b) and (c). Transitional Intrastate Access Service is defined at 47 C.F.R. 51.903(j).

²⁷ We also clarify that, for both price cap and rate-of-return carriers that file interstate tariffs assessing a single rate applicable in different states, the interstate demand used shall be the sum of the demand for all of the states included in the tariff, rather than making separate state-by-state calculations.

²⁸ See 47 C.F.R. §§ 51.907(d)(2)(ii), (e)(1)(i); 51.909(d)(3)(ii), (e)(1)(i), (g)(1)(i), and (h)(1)(i).

²⁹ To facilitate consistent calculation of the Composite Terminating End Office Access Rate to determine compliance, we clarify that price cap carriers shall use the relevant Fiscal Year 2011 demand multiplied by the respective interstate rates as of July 1 of the year in question and then divide by 2011 terminating end office local switching minutes. In calculating their Composite Terminating End Office Access Rate to determine compliance, rate-of-return carriers shall use the relevant projected demand for the tariff period multiplied by the respective interstate and intrastate rates as of July 1 of the year in question and then divide by the relevant projected terminating end office local switching demand for the tariff period.

intrastate jurisdictions as long as the carrier's intrastate terminating end office access rates would all be at parity with the interstate rates under the preceding approach. We amend the rules accordingly, as set forth in the Appendix.

C. Other Corrections or Clarifications

11. *Recovery Mechanism Calculations.* Sections 51.915(d)(1)(iii)(C), (iv)(C), and (v)(C) refer to the “[i]ntrastate 2014 Composite Terminating End Office Access Rate” in the process for establishing the rate level from which reductions in terminating end office rates are to be measured for purposes of determining a price cap carrier’s Eligible Recovery for 2014. However, no methodology for calculating a 2014 Composite Terminating End Office Access Rate is specified in the rules. We clarify the procedure to be used by adding a definition of “Intrastate 2014 Composite Terminating End Office Access Rate” that specifies the required calculation method for price cap carriers.³⁰ This definition is consistent with the calculation required under section 51.907(d) and uses 2011 Fiscal Year demand to weight the different rates used in calculating the composite rate in the same manner that the corresponding price cap carrier ICC rate transition rules weight different rates used to calculate composites.³¹ Consistent with the clarification that rate parity was to be maintained during the transition, we revise the introductory language in sections 51.915(d)(1)(iii)(C), (iv)(C) and (v)(C) that relied on composite rate comparisons to determine if rates had been reduced. The clarifying language makes clear that the recovery permitted by subparagraphs (d), (e), and (f) is allowed only if intrastate Terminating End Office Access Service rates are reduced in the year in question.

12. We also correct an inadvertent omission in section 51.907(f) by adding language clarifying that a price cap carrier has the option, in 2016, to implement a single per minute rate element for terminating End Office Access Service at a rate no greater than the 2016 Target Composite Terminating End Office Access Rate. This clarification is consistent with price cap carrier options in 2014 and 2015 and thus tracks the description in Sections 51.907(d)(2)(iii) and (e)(1)(ii) of the Commission’s rules specifying a price cap carrier’s pricing options for terminating end office access service in those years.³²

13. We also make the following clarifications and corrections to the rate-of-return ICC transition and recovery rules. First, we delete the word “interstate” in each instance when it referred to a particular year’s target composite rate. This change reflects our clarification that there is only one target composite rate each year starting in 2014, not separate interstate and intrastate target composite rates.³³ Second, we clarify that in calculating the target composite terminating end office access rates in 2017 and 2018, rate-of-return carriers should use the 2016 Target Composite Terminating End Office Access Rate rather than the Terminating End Office Access Service Rate as of July 1, 2016 as the initial rate to reflect the uniform transition the Commission intended rather than requiring a carrier with a very low terminating rate to have to further reduce its rates before the uniform target rate falls below its rates.³⁴ Finally, we add or delete “interstate” or “intrastate” in several places to more clearly reflect the intended rates.³⁵

14. *Access Recovery Charge True-Up.* Section 51.917(d) outlines the process for determining Eligible Recovery for rate-of-return carriers. The Eligible Recovery calculation set forth in

³⁰ See Appendix at 47 C.F.R. § 51.915(b)(14).

³¹ See 47 C.F.R. § 51.907(d)(2).

³² See 47 C.F.R. §§ 51.907(d)(2)(iii); 51.907(e)(1)(ii).

³³ See Appendix at 47 C.F.R. §§ 51.909(d)(3)(ii); 51.909(e)(1)(i); 51.909(g)(1)(i); 51.909(h)(1)(i).

³⁴ See Appendix at 47 C.F.R. §§ 51.909(g)(1)(i); 51.909(h)(1)(i).

³⁵ See Appendix at 47 C.F.R. §§ ; 51.909(f); 51.909(g)(1); 51.909(h)(1).

section 51.917(d)(1)(iii)(D) requires rate-of-return carriers to, among other things, subtract from their Base Period Revenues (as reduced by multiplying these revenues by the Rate-of-Return Carrier Baseline Adjustment Factor) “an amount equal to True-up Revenues for Access Recovery Charges for the year beginning July 1, 2012.”³⁶ In the *2013 ICC Clarification Order*, we substituted a defined term for the previous calculation of the ARC true-up.³⁷ This substitution resulted in inadvertently reversing the order of the calculation, which would have the effect of reducing Eligible Recovery when it should have been increased, or vice versa. To correct this error in the rule language, we add the clause “multiplied by negative one” to the rule language in order to have the calculation described in the rule produce the intended result.³⁸

15. *True-Up of Regulatory Fees.* For rate-of-return carriers, telecommunications relay services (TRS) fees, regulatory fees, and North American Numbering Plan administration (NANPA) fees were historically recovered, in part, through interstate switched access rates. When the Commission adopted a cap on interstate switched access rate elements in the *USF/ICC Transformation Order*, it did not address how carriers should recover any increases in these regulatory fees, or reflect any reductions in such fees in future years. In 2012, we clarified that increases in these regulatory fees that would have been assigned to capped interstate switched access services could be recovered through subscriber line charges (SLC) and/or Eligible Recovery under certain conditions.³⁹ We have been asked informally whether any regulatory fees recovered pursuant to this methodology in the 2012-13 tariff period are to be trued-up in the calculation of 2014-15 Eligible Recovery. Regulatory fees are based on projected amounts just as is going-forward, tariff-year demand for rate elements in the calculation of a carrier’s Eligible Recovery. Given the projected nature of these items, similar treatment in the true-up process is warranted. We clarify that if a rate-of-return carrier included an amount for these fees in its Eligible Recovery calculation in any year, it should reflect the amounts of any true-ups for the referenced regulatory fees as increases in, or reductions to, Eligible Recovery calculations on the same schedule that ARCs are trued-up -- *i.e.*, two years following their initial inclusion.

16. *Duplicative Recovery.* Sections 51.915(d)(1)(viii)(2) and 51.917(d)(1)(vii) prohibit price cap and rate-of-return carriers, respectively, from duplicative recovery. Specifically, the rules provide that if a carrier “recovers any costs or revenues that are already being recovered as Eligible Recovery through Access Recovery Charges or the Connect America Fund from another source, that carrier’s ability to recover reduced switched access revenue from Access Recovery Charges or the Connect America Fund shall be reduced to the extent it receives duplicative recovery.”⁴⁰ The rules do not, however, specify how Eligible Recovery should be adjusted to reflect any duplicative recovery, and carriers have informally inquired about how such adjustments should be made. We address this omission by revising the rules as set forth in the Appendix to provide that any duplicative recovery shall be reflected through reductions to the carrier’s Eligible Recovery in its annual tariff supporting materials. This approach to addressing duplicative recovery is appropriate because it is carrier-specific and narrowly tailored to result in necessary Eligible Recovery reductions in specific years.

17. *Single Per-Minute Rate Element for Terminating End Office Access Service.* Beginning in 2014, the ICC transition rules permit both price cap and rate-of-return carriers, under certain conditions, to elect to implement a single per-minute rate element for Terminating End Office Access

³⁶ 47 C.F.R. § 51.917(d)(1)(iii)(D).

³⁷ *2013 ICC Clarification Order*, 28 FCC Rcd at 3333, para. 32.

³⁸ See Appendix at 47 C.F.R. § 51.917(d)(1)(iii)(D).

³⁹ See *Material to be Filed in Support of 2012 Annual Access Tariff Filings*, WCB/Pricing File No. 12-08, Order, 27 FCC Rcd 3960, 3962-63, para. 7 (Wireline Comp. Bur. 2012).

⁴⁰ 47 C.F.R. §§ 51.915(d)(1)(viii)(2); 51.917(d)(1)(vii).

Service that is no greater than the Target Composite Terminating End Office Access rate for the respective year.⁴¹ Beginning on July 1, 2014, many carriers will begin to assess rates for several terminating end office rate elements, one of which will be a local switching charge assessed on all terminating minutes of use. Several carriers have informally asked whether, if they assess the single composite rate, which would be assessed on all terminating end office traffic, they can tariff it as a terminating switched access rate to avoid the expenses associated with revising their billing systems to create a new rate element. We believe that this approach implements the reforms adopted in the *USF/ICC Transformation Order* in a manner that would reduce implementation costs and burdens without any offsetting negative concerns.⁴² We thus clarify that both price cap and rate-of-return carriers may tariff the single composite rate as a terminating local switching access rate, consistent with the ICC transition, as long as all other rate elements associated with terminating end office access service are reduced to zero.⁴³ If its Target Composite Terminating End Office Access Rate is higher than the terminating local switching rate such carrier tariffed the previous year that will not constitute an impermissible rate increase.

18. *Revenue True-Ups.* Carriers are required this year to begin making true-ups to certain revenue amounts projected in 2012 to reflect differences between projected and actual demand.⁴⁴ To measure actual demand for purposes of making the true-up calculation, carriers will need to establish a cutoff date for finalizing the measured demand. Sections 51.917(d)(1)(v) and (vi) direct rate-of-return carriers who receive ARC or other revenues after the period used to measure the adjustments to reflect the differences between estimated and actual revenues, to treat such payments as actual revenue in the year the payment is received, and to reflect this as an additional adjustment for that year.⁴⁵ This requirement addresses the potential that carriers could affect the true-up calculation by shifting the timing of the collection of revenues absent a requirement that later collections will need to be recognized in subsequent filings. The codified price cap rules are silent as to how to apply ARC revenues received after the cutoff date to adjust price cap carriers' eligible recovery in future years. This was clearly an omission because the *USF/ICC Transformation Order* did not specify that it was treating carriers differently in this regard -- thus, the silence in the price cap rules is best interpreted consistently with the approach expressly adopted for rate-of-return carriers. To correct this omission, we amend the codified rules, as set forth in the Appendix, to make clear that price cap carriers will comply with the same requirements as rate-of-return carriers with respect to ARC revenues. We also take this opportunity to clarify that carriers should use revenues for services provided in tariff year 2012-13, collected through December 31, 2013, as a cut-off for making their true-ups this year. This will ensure that filings are consistent among carriers and will ease review, and the December 31 date gives carriers sufficient time to prepare their filings. Carriers shall also use December 31 as the cutoff date in future true-up calculations.

19. NECA has asked whether, in making the true-up calculations, it could use the difference between projected revenues and realized revenues. The rules generally provide for this calculation to be made by multiplying the rate for the service in question by projected demand less actual realized demand.⁴⁶ Because projected and realized revenues are summations of the results of the calculations (including rates and demand), the proposed methodology should produce the same results as the process

⁴¹ See, e.g., 47 C.F.R. §§ 51.907(d)(2)(iii); 51.907(e)(1)(ii).

⁴² See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd at 17932-33, para 798.

⁴³ The terminating local switching rate element is used for this purpose because it is assessed on all terminating minutes of use, just as a composite terminating end office access rate would be assessed on all terminating minutes of use.

⁴⁴ See 47 C.F.R. §§ 51.915(d)(iii); 51.917(d)(iii).

⁴⁵ See 47 C.F.R. §§ 51.917(d)(1)(v); 51.917(d)(1)(vi).

⁴⁶ See 47 C.F.R. §§ 51.915(b)(13); 51.917(b)(5)-(6).

provided for in the rules, as long as the carrier is charging the maximum allowed rate.⁴⁷ We find that the proposed methodology will significantly simplify the process and therefore clarify that all carriers may use revenue differences in making their true-up adjustments, as long as the carrier is charging the maximum allowed rate

IV. PROCEDURAL MATTERS

A. Paperwork Reduction Act

20. This document does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).⁴⁸ Therefore, the Order does not contain any new or modified information collection burdens for small businesses with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.⁴⁹

B. Final Regulatory Flexibility Act Certification

21. The Regulatory Flexibility Act of 1980, as amended (RFA),⁵⁰ requires agencies to prepare a regulatory flexibility analysis 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. We hereby certify that the rule revisions adopted in this Order will not have a significant economic impact on a substantial number of small entities. This Order amends rules adopted in the *USF/ICC Transformation Order* by correcting conflicts between the new or revised rules and existing rules, as well as addressing omissions or oversights. These revisions do not create any burdens, benefits, or requirements that were not addressed by the Final Regulatory Flexibility Analysis attached to the *USF/ICC Transformation Order*.⁵⁵ The Commission will send a copy of this Order, including a copy of

⁴⁷ *Id.*

⁴⁸ Pub. Law No. 104-13; 44 U.S.C. Part 35.

⁴⁹ Pub. Law No. 107-198; *see* 44 U.S.C. § 3606(c)(4).

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(b).

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.” 5 U.S.C. § 601(3).

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

⁵⁵ *See USF/ICC Transformation Order*, 26 FCC Rcd at 18324-63, App O.

this final certification, to the Chief Counsel for Advocacy of the SBA.⁵⁶ In addition, the Order (or a summary thereof) and certification will be published in the Federal Register.⁵⁷

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.⁵⁸

V. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED, that pursuant to the authority contained in sections 1, 2, 4(i), 201-203, 220, 251, 252, 254, 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201-203, 220, 251, 252, 254, 303(r) and 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 and 1.427, and pursuant to the delegation of authority in paragraph 1404 of 26 FCC Rcd 17663 (2011), 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. sections 51.907, 51.909, 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 Register.

26. 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.⁵⁹

27. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Deena M. Shetler
Associate Chief, Wireline Competition Bureau

⁵⁶ 15 U.S.C. § 632.

⁵⁷ *Id.*

⁵⁸ *See* 5 U.S.C. § 801(a)(1)(A).

⁵⁹ *Id.*

APPENDIX

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 C.F.R. part 51.

PART 51—INTERCONNECTION

1. 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), 332, 706 of the Telecommunication Act of 1996, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 220, 225–27, 251–54, 256, 271, 303(r), 332, 1302, 47 U.S.C. 157 note, unless otherwise noted.

Subpart J—Transitional Access Service Pricing

2. Amend 47 C.F.R. § 51.907 by revising (d)(2)(i), (d)(2)(iii), (e)(1)(ii), and (f) to read as follows:

§ 51.907 Transition of price cap carrier access charges.

* * * * *

(d) * * *

(1)

(2) * * *

(i) Each Price Cap Carrier shall calculate the 2011 Baseline Composite Terminating End Office Access Rate. The 2011 Baseline Composite Terminating End Office Access Rate means the Composite Terminating End Office Access Rate calculated using Fiscal Year 2011 interstate demand multiplied by the interstate End Office Access Service rates at the levels in effect on December 29, 2011, and then dividing the result by 2011 Fiscal Year interstate local switching demand.

(ii) * * *

(iii) Beginning July 1, 2014, no Price Cap Carrier's interstate Composite Terminating End Office Access Rate shall exceed its 2014 Target Composite Terminating End Office Access Rate. A price cap carrier shall determine compliance by calculating interstate Composite Terminating End Office Access Rates using the relevant Fiscal Year 2011 interstate demand multiplied by the respective interstate rates as of July 1, 2014, and then dividing the result by the relevant 2011 Fiscal Year interstate terminating local switching demand. A price cap carrier's intrastate terminating end office access rates may not exceed the comparable interstate terminating end office access rates. In the alternative, any Price Cap Carrier may elect to implement a single per minute rate element for both interstate and intrastate terminating End Office Access Service no greater than the 2014 Target Composite Terminating End Office Access Rate if its intrastate terminating end office access rates would be at rate parity with its interstate terminating end office access rates.

* * * * *

(e) * * *

(1) * * *

(ii) Beginning July 1, 2015, no Price Cap Carrier's interstate Composite Terminating End Office Access Rate shall exceed its 2015 Target Composite Terminating End Office Access Rate. A price cap carrier shall determine compliance by calculating interstate Composite Terminating End Office Access Rates using the relevant Fiscal Year 2011 interstate demand multiplied by the respective interstate rates as of July 1, 2015, and then dividing the result by the relevant 2011 Fiscal Year interstate terminating local switching demand. A price cap carrier's intrastate terminating end office access rates may not exceed the comparable interstate terminating end office access rates. In the alternative, any Price Cap Carrier may elect to implement a single per minute rate element for both interstate and intrastate terminating End Office Access Service no greater than the 2015 Target Composite Terminating End Office Access Rate if its intrastate terminating end office access rates would be at rate parity with its interstate terminating end office access rates.

* * * * *

(f) Step 5. Beginning July 1, 2016, notwithstanding any other provision of the Commission's rules, each Price Cap Carrier shall establish interstate terminating End Office Access Service rates such that its Composite Terminating End Office Access Service rate does not exceed \$0.0007 per minute. A price cap carrier shall determine compliance by calculating interstate Composite Terminating End Office Access Rates using the relevant Fiscal Year 2011 interstate demand multiplied by the respective interstate rates as of July 1, 2016, and then dividing the result by the relevant 2011 Fiscal Year interstate terminating local switching demand. A price cap carrier's intrastate terminating end office access rates may not exceed the comparable interstate terminating end office access rates. In the alternative, any Price Cap Carrier may elect to implement a single per-minute rate element for both interstate and intrastate Terminating End Office Access Service no greater than the 2016 Target Composite Terminating End Office Access Rate if its intrastate terminating end office access rates would be at rate parity with its interstate terminating end office access rates. 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 raising such rates.

* * * * *

3. Amend 47 C.F.R. § 51.909 by revising (d)(3)(ii)-(iii), (e)(1)(i)-(ii), (f), (g)(1), (g)(1)(i)-(ii), (h)(1), and (h)(1)(i)-(ii) to read as follows:

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

* * * * *

(d) * * *

(3) * * *

(ii) Each Rate-of-Return Carrier shall calculate its 2014 Target Composite Terminating End Office Access Rate. The 2014 Target Composite Terminating End Office Access Rate means \$0.005 per minute plus two-thirds of any difference between the 2011 Baseline Composite Terminating End Office Access Rate and \$0.005 per minute.

(iii) Beginning July 1, 2014, no Rate-of-Return Carrier's interstate Composite Terminating End Office Access Rate shall exceed its 2014 Target Composite Terminating End Office Access Rate. A rate-of-return carrier shall determine compliance by calculating interstate Composite Terminating End Office Access Rates using the relevant projected interstate demand for the tariff period multiplied by the respective interstate rates as of July 1, 2014, and then dividing by the projected interstate terminating end office local switching demand for the tariff period. A rate-of-return carrier's intrastate terminating end office access rates may not exceed the comparable interstate terminating end office access rates. In the alternative, any Rate-of-Return Carrier may elect to implement a single per minute rate element for both interstate and intrastate terminating End Office Access Service no greater than the 2014 Target Composite Terminating End Office Access Rate if its intrastate terminating end office access rates would be at rate parity with its interstate terminating end office access rates.

* * * * *

(e) * * *

(1) * * *

(i) Each Rate-of-Return Carrier shall calculate its 2015 Target Composite Terminating End Office Access Rate. The 2015 Target Composite Terminating End Office Access Rate means \$0.005 per minute plus one-third of any difference between the 2011 Baseline Composite Terminating End Office Access Rate and \$0.005 per minute.

(ii) Beginning July 1, 2015, no Rate-of-Return Carrier's interstate Composite Terminating End Office Access Rate shall exceed its 2015 Target Composite Terminating End Office Access Rate. A rate-of-return carrier shall determine compliance by calculating interstate Composite Terminating End Office Access Rates using the relevant projected interstate demand for the tariff period multiplied by the respective interstate rates as of July 1, 2015, and then dividing by the projected interstate terminating end office local switching demand for the tariff period. A rate-of-return carrier's intrastate terminating end office access rates may not exceed the comparable interstate terminating end office access rates. In the alternative, any Rate-of-Return Carrier may elect to implement a single per minute rate element for both interstate and intrastate terminating End Office Access Service no

greater than the 2015 Target Composite Terminating End Office Access Rate if its intrastate terminating end office access rates would be at rate parity with its interstate terminating end office access rates. 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.

* * * * *

(f) Step 5. Beginning July 1, 2016, notwithstanding any other provision of the Commission's rules, each Rate-of-Return Carrier shall establish interstate terminating End Office Access Service rates such that its interstate Composite Terminating End Office Access Service rate does not exceed \$0.005 per minute. A rate-of-return carrier shall determine compliance by calculating interstate Composite Terminating End Office Access Rates using the relevant projected interstate demand for the tariff period multiplied by the respective interstate rates as of July 1, 2016, and then dividing by the projected interstate terminating end office local switching demand for the tariff period. A rate-of-return carrier's intrastate terminating end office access rates may not exceed the comparable interstate terminating end office access rates. In the alternative, any Rate-of-Return Carrier may elect to implement a single per minute rate element for both interstate and intrastate terminating End Office Access Service no greater than the 2016 Target Composite Terminating End Office Access Rate if its intrastate terminating end office access rates would be at rate parity with its interstate terminating end office access rates. 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.

(g) * * *

(1) Each Rate-of-Return Carrier shall establish interstate and intrastate rates for terminating End Office Access Service using the following methodology:

(i) Each Rate-of-Return Carrier shall calculate its 2017 Target Composite Terminating End Office Access Rate. The 2017 Target Composite Terminating End Office Access Rate means \$0.0007 per minute plus two-thirds of any difference between that carrier's 2016 Target Composite Terminating End Office Access Rate and \$0.0007 per minute.

(ii) Beginning July 1, 2017, no Rate-of-Return Carrier's interstate Composite Terminating End Office Access Rate shall exceed its 2017 Target Composite Terminating End Office Access Rate. A rate-of-return carrier shall determine compliance by calculating interstate Composite Terminating End Office Access Rates using the relevant projected interstate demand for the tariff period multiplied by the respective interstate rates as of July 1, 2017, and then dividing by the projected interstate terminating end office local switching demand for the tariff period. A rate-of-return carrier's intrastate terminating end office access rates may not exceed the comparable interstate terminating end office access rates. In the alternative, any Rate-of-Return Carrier may elect to implement a single per minute rate element for both interstate and intrastate terminating End Office Access Service no greater than the 2017 Target Composite Terminating End Office Access Rate if its intrastate terminating end office access rates would be at rate parity with its interstate terminating end office access rates. 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.

* * * * *

(h) * * *

(1) Each Rate-of-Return Carrier shall establish interstate and intrastate rates for terminating End Office Access Service using the following methodology:

(i) Each Rate-of-Return Carrier shall calculate its 2018 Target Composite Terminating End Office Access Rate. The 2018 Target Composite Terminating End Office Access Rate means \$0.0007 per minute plus one-third of any difference between that carrier's 2016 Target Composite Terminating End Office Access Rate and \$0.0007 per minute.

(ii) Beginning July 1, 2018, no Rate-of-Return Carrier's interstate Composite Terminating End Office Access Rate shall exceed its 2018 Target Composite Terminating End Office Access Rate. A rate-of-return carrier shall determine compliance by calculating interstate Composite Terminating End Office Access Rates using the relevant projected interstate demand for the tariff period multiplied by the respective interstate rates as of July 1, 2018 and then dividing by the projected interstate terminating end office local switching demand for the tariff period. A rate-of-return carrier's intrastate terminating end office access rates may not exceed the comparable interstate terminating end office access rates. In the alternative, any Rate-of-Return Carrier may elect to implement a single per minute rate element for both interstate and intrastate terminating End Office Access Service no greater than the 2018 interstate Target Composite Terminating End Office Access Rate if its intrastate terminating end office access rates would be at rate parity with its interstate terminating end office access rates. 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. Amend 47 C.F.R. § 51.915 by adding (b)(14) and (d)(4) and by revising (d)(1)(iii)(B)-(C), (d)(1)(iv)(B)-(C), (d)(1)(v)(B)-(C), (d)(1)(vi)(B), (d)(1)(vii)(B), and (d)(1)(viii)(2) to read as follows:

§ 51.915 Recovery mechanism for price cap carriers.

* * * * *

(b) * * *

(14) Intrastate 2014 Composite Terminating End Office Access Rate. The Intrastate 2014 Composite Terminating End Office Access Rate as used in this section is determined by (1) if a separate terminating rate is not already generally available, developing separate intrastate originating and terminating end office rates in accordance with section 51.907(d)(1) of this part using end office access rates at their June 30, 2014, rate caps; (2) multiplying the existing terminating June 30, 2014, intrastate end office access rates, or the terminating rates developed in (1), by the relevant Fiscal Year 2011 intrastate demand; and (3) dividing the sum of the revenues determined in (2) by 2011 Fiscal Year intrastate terminating local switching minutes.

(c) * * *

(d) * * *

(1) * * *

(iii) * * *

(B) The reduction in interstate switched access revenues equal to the difference between the 2011 Baseline Composite Terminating End Office Access Rate and the 2014 Target Composite Terminating End Office Access Rate determined pursuant to § 51.907(d) using Fiscal Year 2011 terminating interstate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(C) If the carrier reduced its 2014 Intrastate Terminating End Office Access Rate(s) pursuant to section 51.907(d)(2), the reduction in revenues equal to the difference between either the Intrastate 2014 Composite Terminating End Office Access Rate and the Composite Terminating End Office Access Rate based on the maximum terminating end office rates that could have been charged on July 1, 2014, or the 2014 Target Composite Terminating End Office Access Rate, as applicable, using Fiscal Year 2011 terminating intrastate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

* * * * *

(iv) * * *

(B) The reduction in interstate switched access revenues equal to the difference between the 2011 Baseline Composite Terminating End Office Access Rate and the 2015 Target Composite Terminating End Office Access Rate determined pursuant to § 51.907(e) using Fiscal Year 2011 terminating interstate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(C) If the carrier reduced its Intrastate Terminating End Office Access Rate(s) pursuant to section 51.907(e)(1), the reduction in intrastate switched access revenues equal to the difference between either the intrastate 2014 Composite Terminating End Office Access Rate and the Composite Terminating End Office Access Rate based on the maximum terminating end office rates that could have been charged on July 1, 2015, or the 2015 Target Composite Terminating End Office Access Rate, as applicable, using Fiscal Year 2011 terminating intrastate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor; and

* * * * *

(v) * * *

(B) The reduction in interstate switched access revenues equal to the difference between the 2011 Baseline Composite Terminating End Office Access Rate and \$0.0007 determined pursuant to § 51.907(f) using Fiscal Year 2011 terminating interstate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(C) If the carrier reduced its Intrastate Terminating End Office Access Rate(s) pursuant to section 51.907(f), the reduction in revenues equal to the difference between either the Intrastate 2014 Composite Terminating End Office Access Rate and \$0.0007 based on the maximum terminating end office rates that could have been charged on July 1, 2016, or the 2016 Target Composite Terminating End Office Access Rate, as applicable, using Fiscal Year 2011 terminating intrastate end office minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

* * * * *

(vi) * * *

(B) The reduction in interstate switched access revenues equal to the 2011 Baseline Composite Terminating End Office Access Rate using Fiscal Year 2011 terminating interstate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

* * * * *

(vii) * * *

(B) The reduction in interstate switched access revenues equal to the 2011 Baseline Composite Terminating End Office Access Rate using Fiscal Year 2011 terminating interstate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

* * * * *

(viii) * * *

(2) If a Price Cap Carrier recovers any costs or revenues that are already being recovered through Access Recovery Charges or the Connect America Fund from another source, that carrier's ability to recover reduced switched access revenue from Access Recovery Charges or the Connect America Fund shall be reduced to the extent it receives duplicative recovery. Any duplicative recovery shall be reflected as a reduction to a carrier's Eligible Recovery calculated pursuant to section 51.915(d) of this Part.

* * * * *

(4) If a Price Cap Carrier receives payment for Access Recovery Charges after the period used to measure the adjustment to reflect the differences between estimated and actual revenues, it shall treat such payments as actual revenues in the year the payment is received and shall reflect this as an additional adjustment for that year.

5. Amend 47 C.F.R. § 51.917 by revising (d)(1)(iii)(D) and (d)(1)(vii) as follows:

§ 51.917 Revenue recovery for rate-of-return carriers.

* * * * *

(d) * * *

(1) * * *

(iii) * * *

(D) An amount equal to True-up Revenues for Access Recovery Charges for the year beginning July 1, 2012 multiplied by negative one.

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(vii) If a Rate-of-Return Carrier recovers any costs or revenues that are already being recovered as Eligible Recovery through Access Recovery Charges or the Connect America Fund from another source, that carrier's ability to recover reduced switched access revenue from Access Recovery Charges or the Connect America Fund shall be reduced to the extent it receives duplicative recovery. Any duplicative recovery shall be reflected as a reduction to a carrier's Eligible Recovery calculated pursuant to section 51.917(d) of this Part. A Rate-of-Return Carrier seeking revenue recovery must annually certify as part of its tariff filings to the Commission and to the relevant state commission that the carrier is not seeking duplicative recovery in the state jurisdiction for any Eligible Recovery subject to the recovery mechanism.

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce
Reply Comments**

Docket No. P999/PR-14-15

Dated this 2nd day of **April 2014**

/s/Sharon Ferguson

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	No	OFF_SL_14-15_14-15
Linda	Chavez	linda.chavez@state.mn.us	Department of Commerce	85 7th Place E Ste 500 Saint Paul, MN 55101-2198	Electronic Service	No	OFF_SL_14-15_14-15
Burl W.	Haar	burl.haar@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 551012147	Electronic Service	No	OFF_SL_14-15_14-15
John	Lindell	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	No	OFF_SL_14-15_14-15