

through either an increase in the access charges assessed on IXC's (specifically, the carrier common line or "CCL" charge) or the imposition of a separate end-user charge.⁷ On review, the court again reversed and remanded the Commission's determination, holding that even this permissive rule violated section 254(e).⁸

3. The Commission may, for good cause, waive its rules on its own motion.⁹ We find that good cause exists in the present case. NECA carriers and other non-price cap LECs currently recover their universal service contributions through CCL charges imposed on IXC's, which the Fifth Circuit has held is unlawful. However, the Commission's rules appear to prevent non-price cap LECs from collecting their universal service contributions through end-user charges. Specifically, section 69.4(d)(2) permits only price-cap LECs to assess such end-user charges. While this section originally applied to all LECs, it appears to have been inadvertently limited to price cap LECs when the CALLS Order changed price cap LECs' pricing rules.¹⁰ Nevertheless, there is insufficient time for the Commission to amend its rules to correct this apparent error and to comply with the Fifth Circuit's decision before the Fifth Circuit issues its mandate and LECs make their annual interstate access tariff filings.¹¹ Accordingly, to facilitate carriers' compliance with the Fifth Circuit's decision, we waive section 69.4(d)(2)'s limitation to price-cap LECs and thereby allow both price cap and non-price cap LECs to recover universal service contributions through end-user charges. As with price cap LECs, non-price cap LECs shall not assess a universal service end-user charge on Lifeline customers.¹² Furthermore, non-price cap LECs assessing end-user charges must make corresponding reductions in their access charges to avoid any double recovery.¹³ We also find good cause to waive section 69.3(a)'s requirement that the annual interstate access tariff filing must be limited to rate level changes. We do so only to the extent that non-price cap LECs may add a new end-user charge to recover universal service contributions in their annual interstate access tariff filings this year. This will simplify the overall efforts required to comply with the Court's decision.

⁷ *Federal-State Joint Board On Universal Service, Access Charge Reform*, CC Docket Nos. 96-45 and 96-262, Sixteenth Order on Reconsideration in CC Docket No. 96-45, Eighth Report and Order in CC Docket No. 96-45, and Sixth Report and Order in CC Docket No. 96-262, 15 FCC Rcd. 1679 (1999).

⁸ *Comsat v. FCC*, slip op. at 7-9.

⁹ 47 C.F.R. § 1.3.

¹⁰ *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, *Low-Volume Long-Distance Users*, CC Docket No. 99-249, Report and Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd 12962 (*CALLS Order*), *pets. for review pending, Texas Office of Public Util. Counsel et al. v. FCC*, 5th Cir. Nos. 00-60434 (and consolidated cases) (2000). After the Fifth Circuit's initial remand decision, the Commission amended its rules to allow both price cap and non-price cap LECs to recover their universal service contributions through end-user charges. See note 7. Nothing in the text of the CALLS Order suggests an intention to depart from that decision. The current limitation to price cap LECs in section 69.4(d)(2) thus appears to be the result of a drafting error.

¹¹ The term "annual interstate access tariff filings" refers to the filings described in 47 C.F.R. § 69.3. Although non-price cap LECs are only required to make such filings every two years, *id.* § 69.3(a), non-price cap LECs that are not required to make such filings until next year may nevertheless choose to make filings this year in order to come into compliance with *Comsat v. FCC*.

¹² See 47 C.F.R. § 69.158.

¹³ See *id.* § 69.4(d)(2)(ii).

4. We decline, at present, to rule on NECA's request for a waiver of section 69.4(d)(1) to permit NECA carriers to recover universal service contributions through a separately stated access charge on IXCs. The petition raises a question of first impression regarding the Fifth Circuit's decision that we are not prepared to resolve at this time on the basis of a single petition for waiver, without time to solicit comment from affected parties. Therefore, we take a cautious approach that will allow the affected carriers to recover their universal service contributions only through the same type of end-user charges that are already paid by the vast majority of telephone consumers.¹⁴

5. ACCORDINGLY, IT IS ORDERED, pursuant to authority contained in sections 1.3, 0.91, and 0.291 of the Commission's rules, 47 C.F.R. §§ 1.3, 0.91, and 0.291, that sections 69.3(a) and 69.4(d)(2) ARE WAIVED TO THE EXTENT INDICATED HEREIN.

6. IT IS FURTHER ORDERED that non-price cap local exchange carriers electing to take advantage of the waivers granted herein shall cite the "DA" number of this Order as the authority for the filing.

FEDERAL COMMUNICATIONS COMMISSION

Dorothy T. Attwood
Chief, Common Carrier Bureau

¹⁴ See *id.* § 69.158.