

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

In the matter of
National Exchange Carrier Association
Petition to Amend Section 69.104 of the
Commission's Rules
WC Docket No. 04-259
RM-10603

ORDER GRANTING PETITION FOR RULEMAKING, NOTICE OF PROPOSED
RULEMAKING, AND ORDER GRANTING INTERIM PARTIAL WAIVER

Adopted: July 14, 2004

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Comment Date: 60 days after Federal Register publication of this Notice
Reply Comment Date: 90 days after Federal Register publication of this Notice

By the Commission:

TABLE OF CONTENTS

Table with 2 columns: Section Title and Paragraph Number. Includes sections I through VII with sub-sections A, B, C, D, E.

APPENDIX – LIST OF COMMENTERS

I. INTRODUCTION

1. By this action, we grant a petition for rulemaking and initiate a proceeding to examine the proper number of end user common line charges (commonly referred to as subscriber line charges or SLCs) that carriers (both rate-of-return and price cap) may assess upon customers that obtain derived channel T-1 service where the customer provides the terminating channelization equipment.¹ We also re-examine the proper number of SLCs that carriers may assess upon customers that obtain Primary Rate Interface (PRI) Integrated Service Digital Network (ISDN) service. Pending resolution of this rulemaking proceeding, we grant a partial waiver² of section 69.104(q) of the Commission's rules³ to permit rate-of-return carriers to reduce from twenty-four to five the number of SLCs that they may assess on customers of derived channel T-1 service where the customer provides the terminating channelization equipment without foregoing recovery of the associated SLC revenues from the interstate common line support universal service fund (ICLS).⁴

II. BACKGROUND

2. Rate-of-return local exchange carriers (LECs) recover common line costs as follows:⁵ First, per line costs are recovered from end users through the SLC.⁶ Then, because the SLC is capped at \$6.50 per line for residential and single line business (RES/SLB) customers⁷ and at \$9.20 per line for multi-line business (MLB) customers,⁸ common line costs that cannot be recovered through SLCs or other common

¹ The National Exchange Carrier Association, Inc. (NECA) filed a petition for rulemaking on this matter on September 26, 2002. *National Exchange Carrier Association, Inc. Petition to Amend Section 69.104 of the Commission's Rules*, RM-10603, Petition for Rulemaking (filed Sept. 26, 2002) (*SLC T-1 Rulemaking Petition*).

² See *National Exchange Carrier Association, Inc. Petition to Amend Section 69.104 of the Commission's Rules*, RM 10603, Joint Petition for Expedited Waiver (filed Aug. 19, 2003) (*SLC T-1 Partial Waiver Petition*). The joint waiver petitioners are Eastern Rural Telecom Association, Independent Telephone and Telecommunications Alliance, John Staurulakis Inc., Matanuska Telephone Associations, Inc. (Matanuska), NECA, National Telecommunications Cooperative Association (NTCA), Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), TDS Telecommunications Corporation (TDS Telecom), United States Telecom Association (USTA), and Western Alliance on behalf of their member carriers. *Id.* at 2. Because these organizations represent the overwhelming majority of rate-of-return carriers, the waiver applies to all rate-of-return carriers. See *infra* note 99 and accompanying text.

³ See 47 C.F.R. § 69.104(q).

⁴ See 47 C.F.R. § 54.901.

⁵ The Commission's separations rules allocate one-fourth of common line costs to the interstate jurisdiction. See 47 C.F.R. § 36.154(c). In this proceeding, we address interstate costs only.

⁶ See 47 C.F.R. § 69.104. Under certain circumstances, rate-of-return carriers recover a special access surcharge from customers of private line or Wide Area Telecommunications Service (WATS) services prior to assessing the SLC. See *id.* § 69.115.

⁷ See 47 C.F.R. § 69.104(n)(1).

⁸ See 47 C.F.R. § 69.104(o)(1). The SLC is capped to ensure that end-user rates are affordable in rural (and other high cost) areas. See, e.g., *Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps*, CC Docket Nos. 96-262, 94-1, Order, 17 FCC Rcd 10868, 10870, at para. 3 (2002) (*SLC Cost Study Order*), *aff'd*, *Nat'l Ass'n of State Util. Consumer Advocates v. FCC*, No. 02-1261, 2004 WL 1439686 (D.C. Cir. June 29, 2004).

line revenue sources are recovered from ICLS.⁹ ICLS comes from the universal service fund, to which all telecommunications carriers contribute based on their interstate revenues.

3. For price cap carriers, the method of calculating the Average Price Cap CMT Revenue per Line was established in 2000 in the *CALLS Order*.¹⁰ CMT revenues are first recovered from end users through the SLC¹¹ and from the \$650 million Interstate Access Support mechanism.¹² Then, if revenues per line exceed the SLC caps,¹³ the difference is recovered through the MLB primary interexchange carrier charge (PICC),¹⁴ and if the PICC reaches its cap, through the carrier common line charge (CCLC).¹⁵ LECs assess the MLB PICC on interexchange carriers¹⁶ who, in turn, may pass the PICC on to their MLB customers.¹⁷

4. The Commission's rules have long specified that carriers, both rate-of-return and price cap, must assess one SLC "per line,"¹⁸ which is defined to mean per channel.¹⁹ For derived channel T-1 services, therefore, one SLC is assessed for each derived channel (*i.e.*, up to 24 channels per T-1) provided to the customer.

5. Beginning in the early 1990s, carriers began challenging the per channel approach to assessing the SLC for certain derived channel service offerings. The Commission first addressed this issue in 1992 in response to a tariff filing in which NYNEX sought to assess only one SLC on customers of derived channel T-1 services.²⁰ The Common Carrier Bureau rejected the NYNEX tariff, finding that, because the Commission's separations rules²¹ define the term "subscriber line" to mean a

⁹ See 47 C.F.R. § 54.901. Rate-of-return carriers receive ICLS equal to the difference between their common line revenue requirement and revenues from SLCs and other common line revenues.

¹⁰ *Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 99-249, 96-45, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) (*CALLS Order*) (subsequent history omitted); 47 C.F.R. § 61.3(d). The Average Price Cap CMT Revenue per Line varies among carriers and among study areas. Price Cap CMT Revenue was designed to recover not only common line costs, but marketing costs and the TIC (transport and interconnection charge), as well.

¹¹ See 47 C.F.R. § 69.152.

¹² See 47 C.F.R. §§ 54.801 *et seq.*

¹³ For price cap carriers different residential SLC caps apply to primary subscriber lines and secondary subscriber lines. The residential primary line SLC cap is \$6.50. See 47 C.F.R. § 69.152(d)(1)(ii)(D). The residential secondary line SLC cap is \$7.00. See *id.* § 69.152(e)(1)(i). The SLC cap for the business customers of price cap carriers is \$9.20 for all subscriber lines. See *id.* § 69.152(k)(1).

¹⁴ See 47 C.F.R. § 69.153(a). The PICC applies to MLB customers only and is capped at \$4.31 per line. See *id.*

¹⁵ See 47 C.F.R. § 69.154.

¹⁶ Compare 47 C.F.R. §§ 54.706, 709(a), with 47 C.F.R. 69.153(a).

¹⁷ See *SLC Cost Study Order*, 17 FCC Rcd at 10874, para. 12.

¹⁸ 47 C.F.R. §§ 69.104(a) (rate-of-return carriers), 69.152(a) (price cap carriers).

¹⁹ See 47 C.F.R. Part 36, App.-Glossary.

²⁰ *NYNEX Telephone Companies Revisions to Tariff F.C.C. No. 1*, Transmittal No. 116, Memorandum Opinion and Order, 7 FCC Rcd 7938, para. 2 (Common Carrier Bureau 1992) (*NYNEX Order*); see also *End User Common Line Charges*, CC Docket No. 95-72, Notice of Proposed Rulemaking, 10 FCC Rcd 8565, 8570, para. 10 (1995) (*1995 SLC NPRM*).

²¹ See 47 C.F.R. Part 36.

“communication channel,” SLCs must be assessed on a per channel basis for derived channel T-1 services.²² On review, the Commission upheld the Bureau’s finding.²³

6. Subsequently, in May 1995, the Commission released a notice of proposed rulemaking seeking comment on the assessment of SLCs for loops used to provide ISDN service or to provide other derived channel services.²⁴ These issues were resolved for price cap carriers in 1997 in the *Access Charge Reform First Report and Order* where the Commission modified the SLC rules for loops used to provide Basic Rate Interface (BRI) ISDN and PRI ISDN services.²⁵ Specifically, the Commission created exceptions to the general rule that one SLC be assessed for each channel of service provided, finding that a single SLC may be assessed for a loop used to provide BRI ISDN service, and that up to five SLCs may be assessed for a loop used to provide PRI ISDN service.²⁶ The Commission relied on analyses of several Bell Operating Company (BOC) cost studies, which showed that PRI ISDN common line costs were approximately five times basic, analog common line costs, and that BRI ISDN common line costs were approximately the same as basic, analog common line costs.²⁷ The net effects of these rule changes were (1) to increase the SLC if it was below the SLC cap, or (2) to raise the PICC (and the CCLC if the PICC was at its cap) if the SLC was at cap. These increases offset the loss of SLC revenues from ISDN services. The Commission also permitted price cap LECs to develop a separate line port charge for ISDN services to recover the difference between ISDN line port costs and basic, analog line port costs.²⁸ Because of the limited record before it, the Commission expressly declined to make any finding with respect to derived channel services other than ISDN.²⁹

7. In 2001, in the *MAG Order*, the Commission adopted identical rule changes for rate-of-return carriers.³⁰ The supporting analysis was contained in a single paragraph, which stated that the changes were made to harmonize the rules for ISDN for rate-of-return carriers with the rules for price cap carriers.³¹ Cost data for rate-of-return carriers were neither provided by carriers nor relied on by the Commission. The net effects of these rule changes for rate-of-return carriers were (1) to increase the SLC

²² *NYNEX Order*, 7 FCC Rcd at 7938, paras. 4-5 (quoting 47 C.F.R. Part 36, Appendix-Glossary).

²³ *NYNEX Telephone Companies Revisions to Tariff F.C.C. No. 1*, Transmittal No. 116, Order on Reconsideration, 10 FCC Rcd 2247, para. 2 (1995) (*NYNEX Recon Order*).

²⁴ *1995 SLC NPRM*, 10 FCC Rcd 8565, 8570, 8673, paras. 1, 10, 15 (“we seek comment on the proper application of SLCs to BRI and PRI ISDN service . . . as well as to other services that permit the provision of multiple derived channels over a single facility”).

²⁵ *Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, 12 FCC Rcd 15982, 16028-33, paras. 111-120 (1997) (*Access Charge Reform First Report and Order*), *aff’d*, *Southwestern Bell FCC*, 153 F.3d 523 (8th Cir. 1998).

²⁶ *Id.* These changes were codified in section 69.152(l) of the Commission’s rules. See 47 C.F.R. § 69.152(l).

²⁷ *Access Charge Reform First Report and Order*, 12 FCC Rcd at 16030-33, paras. 113-18.

²⁸ See 47 C.F.R. § 69.157 (port charge). In recovering loop costs, price cap carriers assess the port charge on end users before assessing the MLB PICC and CCLC on interexchange carriers.

²⁹ *Access Charge Reform First Report and Order*, 12 FCC Rcd at 16033, para. 120.

³⁰ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket Nos. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613, 19640-41, para. 56 (2001) (*MAG Order*) (subsequent history omitted). These rule changes were codified in section 69.104(p) of the Commission’s rules. See 47 C.F.R. § 69.104(p).

³¹ *MAG Order*, 16 FCC Rcd at 19640-41, para. 56.

if it was below the SLC cap, or (2) to increase ICLS if the SLC was at cap.³² The Commission also permitted rate-of-return carriers to develop a separate line port charge for ISDN services.³³

8. Finally, we note that, in the *2002 Biennial Review Order*, we adopted the 2002 Biennial Review Staff Report in which the Wireline Competition Bureau concluded that the rules governing the assessment of the SLC on T-1 exchange access services “may not be necessary in the public interest,” and recommended “that the Commission consider modifying these rules in a rulemaking proceeding in response to NECA’s Petition for Rulemaking.”³⁴

III. NOTICE OF PROPOSED RULEMAKING

A. Background

9. On September 26, 2002, NECA filed a petition for rulemaking requesting that the Commission initiate a rulemaking proceeding to modify its rules governing the assessment of the SLC for derived channel T-1 services where the customer provides the terminating channelization equipment.³⁵ NECA requested that the Commission harmonize its treatment of the assessment of SLCs for derived channel T-1 services with the rules for PRI ISDN services by amending the general SLC assessment rules to require that (as is the case for PRI ISDN) no more than five SLCs may be assessed for loops used to provide derived channel T-1 services.³⁶ Specifically, NECA proposes modifying section 69.104(p) of the Commission’s rules as follows (modifications are indicated by underscoring or striking through the text):

(p) ~~Beginning January 1, 2002, n~~Non-price cap local exchange carriers shall assess:

- (1) No more than one End User Common Line charge as calculated under the applicable method under paragraph (n) of this section for Basic Rate Interface integrated services digital network (ISDN) service.
- (2) No more than five End User Common Line charges as calculated under paragraph (o) of this section for Primary Rate Interface ISDN service.
- (3) No more than five End User Common Line charges as calculated under paragraph (o) of this section for customer-ordered exchange access service that is provisioned using T-1 interfaces for which the customer supplies the terminating channelization equipment.³⁷

³² Because the CCLC for rate-of-return carriers had not yet been eliminated at the time of the rule change, rate-of-return carriers could have recovered amounts over the SLC cap from the CCLC rather than from ICLS. The CCLC was eliminated for rate-of-return carriers as of July 1, 2003. *See id.* at 19642-45, paras. 61-65.

³³ *See* 47 C.F.R. § 69.130 (port charge). In recovering loop costs in their revenue requirement, rate-of-return carriers assess the port charge on end users before recovering any costs from ICLS.

³⁴ *Wireline Competition Bureau, Federal Communications Commission Biennial Regulatory Review 2002*, WC Docket No. 02-213, GC Docket No. 02-390, Staff Report, 18 FCC Rcd 4622, 4724 (WCB 2002), issued concurrently with *The 2002 Biennial Review*, GC Docket No. 02-390, Report, 18 FCC Rcd 4726 (2002).

³⁵ *SLC T-1 Rulemaking Petition* at 1, 5, 9, App. A.

³⁶ *Id.* at 1-2, 5-9.

³⁷ *Id.* at App. A.

NECA proposes this rule change for rate-of-return carriers only.³⁸ In its reply comments, Verizon requests that any rule change be applied to price cap carriers for new T-1 service offerings.³⁹

10. NECA claims that its proposed rule change is necessary to bring SLC assessments more in line with costs, particularly because loops used for derived channel T-1 services (where the end user provides the terminating channelization equipment) are provisioned in the same manner, and therefore have the same common line costs, as loops used to provide PRI ISDN services.⁴⁰ NECA bases this claim on its survey of the Rate Development Task Force (RDTF), which provided NECA with network diagrams purporting to show the loop configurations are the same for derived channel T-1 and PRI ISDN services.⁴¹ NECA claims that treating these services differently creates artificial price incentives that favor PRI ISDN services over derived channel T-1 services.⁴²

11. NECA estimates that, under its proposal, it would lose \$13 million in annual revenue due to the reduction in the number of SLCs it would assess on derived channel T-1 services.⁴³ It proposes to recover this revenue through the development of a port charge, analogous to the ISDN port charge, and through an increase in ICLS support.⁴⁴ It estimates that it would recover \$1.5 million through the port charge and \$11.5 million from ICLS.⁴⁵

12. All commenting incumbent LECs and incumbent LEC associations⁴⁶ support the petition essentially for the same reasons presented by NECA.⁴⁷ Specifically, ALLTEL, GVNW Consulting, NCTA, OPASTCO, TDS Telecom, and USTA all support NECA's assertions that loops used to provide the derived channel T-1 services at issue are provisioned in a similar manner to, and therefore have common line costs similar to, loops used to provide PRI ISDN services, and thus the SLC assessment

³⁸ *Id.* at 1, 9, App. A.

³⁹ Verizon Telephone Companies (Verizon) Rulemaking Reply at 1-4.

⁴⁰ *SLC T-1 Rulemaking Petition* at 5-9.

⁴¹ *Id.* at 6-9. The RDTF, according to NECA, is a group of participants in the NECA Traffic Sensitive Pool that represent approximately 37 percent of cost company revenue and of total pool revenue. *Id.* at 7 n.22. *See also* Letter from Colin Sandy, NECA, to Marlene H. Dortch, Sec'y, FCC, RM-10603 at 3-4 (filed Oct. 29, 2003) (NECA Oct. 29, 2003 *Ex Parte* Letter).

⁴² *SLC T-1 Rulemaking Petition* at 5-9. NECA also claims that a comparison of its federally-tariffed *rates* for derived channel T-1 service and basic, analog service (after accounting for the 75:25 intrastate:interstate separations factor) reveals a relationship of 3.76:1. *See* Letter from Colin Sandy, NECA, to Marlene H. Dortch, Sec'y, FCC, RM-10603 at 2, 5 (filed Oct. 24, 2003) (NECA Oct. 24, 2003 *Ex Parte* Letter); NECA Oct. 29, 2003 *Ex Parte* Letter at 2, 5.

⁴³ *See* NECA Rulemaking Reply at 6.

⁴⁴ *See SLC T-1 Rulemaking Petition* at 4; NECA Rulemaking Reply at 4-7.

⁴⁵ *See* Letter from Colin Sandy, NECA, to Marlene H. Dortch, Sec'y, FCC, RM-10603 at 1 (filed June 17, 2003) (NECA June 17, 2003 *Ex Parte* Letter) (correcting Letter from Colin Sandy, NECA, to Marlene H. Dortch, Sec'y, FCC, RM-10603 at 1-3 (filed March 27, 2003) (NECA March 27, 2003 *Ex Parte* Letter) and NECA Rulemaking Reply at 6).

⁴⁶ On November 8, 2002, comments were sought on the *SLC T-1 Rulemaking Petition*. *See Wireline Competition Bureau Seeks Comment on NECA's Petition for Rulemaking to Adjust the Application of End User Common Line Charges on Certain T-1 Exchange Access Services*, RM No. 10603, 17 FCC Rcd 22505 (WCB 2002).

⁴⁷ *See, e.g.*, NCTA Rulemaking Comments at 1-5; OPASTCO Rulemaking Comments at 1-4; TDS Telecom Rulemaking Comments at 1-4; CenturyTel, Inc. Rulemaking Reply at 1-6; TDS Telecom Rulemaking Reply at 1-3; USTA Rulemaking Reply at 1-3; Verizon Rulemaking Reply at 1-4.

rules for both services should be the same.⁴⁸ TDS Telecom and NECA further contend that many of their members do not offer PRI ISDN services, at least in part because of the high switch vendor right-to-use fees associated with PRI ISDN switch software, and therefore are at a competitive disadvantage compared to larger carriers that offer PRI ISDN service.⁴⁹ The Ad Hoc Telecommunications User Group also supports initiating a rulemaking, again essentially for the reasons stated in NECA's initial petition.⁵⁰

13. AT&T, the only party to oppose the *SLC T-1 Rulemaking Petition*, claims that NECA inappropriately seeks to shift recovery of common line costs from business end users through the payment of SLCs for these services to other telecommunications carriers, including AT&T, through contributions to ICLS and payment of the CCLC.⁵¹ AT&T also claims that NECA fails to provide sufficient cost support evidence to warrant the initiation of a rulemaking and that NECA members could voluntarily reduce the number of SLCs they assess for derived channel T-1 services if such reductions are necessary for them to compete with carriers that offer PRI ISDN services.⁵² No party challenges NECA's claim regarding the cost relationship between PRI ISDN loops and loops used to provision derived channel T-1 services.

14. NECA contends that AT&T misses the point of the *SLC T-1 Rulemaking Petition* – better aligning rates with costs.⁵³ The Commission previously aligned rates with costs for PRI ISDN services, and NECA argues that it is merely asking the Commission to do the same for derived channel T-1 service.⁵⁴ NECA also estimates that the proposed rule change would cause the ICLS universal service fund to grow by only approximately \$11.5 million and SLC revenues to decline by only 1.4 percent.⁵⁵ NECA claims that this increase in ICLS would be “extremely small” when compared to the overall size of the fund, and that the increase is preferable to continuing to assess above-cost rates for derived channel T-1 services.⁵⁶ NECA further explains that AT&T's concerns regarding the effect of the proposed rule change on the CCLC are unfounded because, for rate-of-return carriers, the CCLC was eliminated on June 30, 2003.⁵⁷

B. Discussion

15. We grant the *SLC T-1 Rulemaking Petition* and initiate a rulemaking to examine the assessment of SLCs on derived channel T-1 services where the customer provides the terminating channelization equipment. We find that NECA and the parties supporting NECA have shown that our current rules, which require the assessment of 24 SLCs for these derived channel T-1 services, may be

⁴⁸ See ALLTEL Communications, Inc. (ALLTEL) Rulemaking Comments Erratum at 6-7 (filed Dec. 10, 2002); GVNW Consulting, Inc. Rulemaking Comments at 2-3; NCTA Rulemaking Comments at 2-4; OPASTCO Rulemaking Comments at 2-4; TDS Telecom Rulemaking Comments at 2-3; USTA Rulemaking Comments at 2-4.

⁴⁹ See NECA Rulemaking Reply at 6-7; TDS Rulemaking Comments at 3; *SLC T-1 Partial Waiver Petition* at 7 n.17. In the *SLC T-1 Partial Waiver Petition*, the petitioning parties state that “170 of over 1000 companies in the NECA pool offer PRI ISDN service.” *SLC T-1 Partial Waiver Petition* at 7 n.17.

⁵⁰ Letter from Kevin DiLallo, Counsel, Ad Hoc Telecommunications Users Group, to Marlene H. Dortch, Sec’y, FCC, RM-10603 at 1-4 (filed Feb. 14, 2003).

⁵¹ AT&T Rulemaking Opposition at 1-2, 4-8.

⁵² *Id.* at 2-3, 8-12.

⁵³ NECA Rulemaking Reply at 4-5.

⁵⁴ *Id.*

⁵⁵ *Id.* at 6 (as corrected by NECA June 17, 2003 *Ex Parte* Letter at 1).

⁵⁶ *Id.*

⁵⁷ *Id.* (citing *MAG Order*, 16 FCC Rcd at 19644-45, at para. 65).

inconsistent with the Commission's long-standing efforts to align rates with costs.⁵⁸ We also find it appropriate to re-examine our earlier finding, based on BOC cost studies from the mid-1990s, that up to five SLCs may be assessed on customers of PRI ISDN service.⁵⁹ Our examination of these issues will encompass both rate-of-return and price cap carriers.

16. We find unpersuasive AT&T's claims that we should deny the *SLC T-1 Rulemaking Petition*. Its claim that NECA's proposal would inappropriately increase the size of the ICLS fund is one we will explore in the rulemaking proceeding. Without some further explanation as to why such an increase violates the statute or our rules, is contrary to the goal of basing rates on costs, or is otherwise contrary to the public interest, AT&T's bare claim fails to persuade us not to undertake the rulemaking. AT&T's allegation that NECA did not produce sufficient evidence to compel a rulemaking is similarly misplaced. NECA disclosed sufficient reasons in support of the action requested to justify the institution of a rulemaking proceeding, and that is all that is required under our rules.⁶⁰

17. As a threshold matter, we request that any party that proposes the Commission change its rules in this proceeding include in its comments the specific language of its requested rule change(s).⁶¹

1. Cost of Provisioning and Cost Studies

18. Circumstances in the telecommunications industry have changed considerably since 1997 when the Commission last examined data on the cost relationship between certain derived channel services – PRI ISDN – and basic, analog service. NECA and others have introduced evidence that the common line components of derived channel T-1 services, where the customer provides the terminating channelization equipment, and of PRI ISDN services are provisioned in substantially similar manners, and, therefore, would be expected to have similar cost relationships to basic, analog service.⁶² No commenter challenged this claim or the claim that the common line cost relationship between derived channel T-1 service and basic analog service is at most 5:1. TDS Telecom, moreover, claims that the common line cost ratio of derived channel T-1 to basic, analog service may be even lower (4.02:1).⁶³ TDS Telecom appears to have included certain non-common line cost components in its comparison.⁶⁴ Removal of these costs results in a lower ratio of 1.50:1. We tentatively conclude, therefore, that the number of SLCs that may be assessed on customers of derived channel T-1 service where the customer provides the terminating channelization equipment should be based on the actual common line cost

⁵⁸ See, e.g., *Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 99-249, 96-45, Order on Remand, 18 FCC Rcd 14976, 14977-78, para. 2 (2003) (“The Commission has long recognized that, to the extent possible, interstate access costs should be recovered in the manner in which they are incurred.”).

⁵⁹ We are not questioning our earlier decision to base the number of SLCs that may be assessed for PRI ISDN service on its common line cost relationship to basic, analog service. Rather, we question whether that cost relationship remains 5:1.

⁶⁰ See 47 C.F.R. § 1.407.

⁶¹ For example, NECA included a specific proposed rule change in its petition. See *SLC T-1 Rulemaking Petition* at App. A; see also *supra* section III.A.

⁶² See, e.g., *SLC T-1 Rulemaking Petition* at 5-9; OPASTCO Rulemaking Comments at 1-4.

⁶³ See NECA Feb. 27, 2003 *Ex Parte* Letter, Attach. at 4. NECA also claims that an analysis of its federally tariffed rates shows a relationship of 3.76:1. See NECA Oct. 24, 2003 *Ex Parte* Letter at 2, 5; NECA Oct. 29, 2003 *Ex Parte* Letter at 2, 5. We do not rely on this showing because it is based on a rate relationship and not necessarily a cost relationship.

⁶⁴ In particular, it appears to have included (1) wire center costs, which would be recovered either through a switching charge or a line port charge, and (2) customer premises equipment, which would not be relevant to a cost comparison where the customer instead of the carrier provides this equipment. See NECA Feb. 27, 2003 *Ex Parte* Letter, Attach. at 4. When these costs are excluded, the ratio of remaining common line costs is 1.50:1.

relationship between these services, rather than on a per channel basis. We seek comment on this tentative conclusion and on its underlying rationale.

19. Although the current record suggests that this relationship may be somewhere between 1.5:1 and 5:1, this record does not include any cost studies and instead is based on only descriptive relationships and summary analysis. It, therefore, is insufficient to support any specific rule changes.⁶⁵ We thus seek comment on the actual common line cost relationship between these services, and ask parties asserting a particular cost relationship to support their claims with a cost study showing the common line costs for derived channel T-1 service and basic, analog service, respectively. The cost studies should be sufficiently detailed to enable us to discern the common line cost relationship between these services with reasonable accuracy.

20. We also note that the cost data relied on by the Commission in 1997 in the *Access Charge Reform First Report and Order* is no longer current. We therefore seek comment on the current relationship between PRI ISDN common line costs and basic, analog common line costs. Again, we ask parties asserting a particular cost relationship to support their claims with a cost study showing the common line costs for PRI ISDN service and basic, analog service, respectively. The cost studies should be sufficiently detailed to enable us to discern the common line cost relationship between these services with reasonable accuracy.

21. We ask that all cost studies include all of the underlying data used in the study, as well as the source(s) of the data, and clearly identify all of the assumptions made and formulas used. In particular, we ask parties to identify clearly all of the demand and growth assumptions reflected in their cost studies. In order to facilitate review by other parties and Commission staff, all cost studies should be fully transparent and verifiable. To the extent that a party expects to include confidential or proprietary data in a cost study, it may seek a protective order.

2. Impact of Network Architecture

22. Different carriers may use different loop network architectures to provide derived channel T-1 service and PRI ISDN service, and use of different network architectures may result in different cost relationships between these services and basic, analog service. For example, NECA has indicated that its members generally provision derived channel T-1 service using short copper loops.⁶⁶ We seek comment on what other network architectures are used to provide these services. For example, are carriers using fiber-based digital loop carrier systems to provide these services? Are carriers providing these services using all fiber loops, fiber to the premises, or other fiber-based loop architectures? Commenters should identify clearly the loop network architectures that they use to provide derived channel T-1 service, PRI ISDN service, and basic, analog service, including the relative frequency with which they deploy different architectures to provide these services. Commenters should also identify whether and, if so, why the loop architectures and their relative deployment frequencies are different from those used in their cost studies. We further request that commenters identify the key factors they consider to determine which loop network architecture(s) to deploy to provide derived channel T-1, PRI ISDN, and basic, analog services.

23. To the extent carriers do, in fact, use different loop network architectures to provide these services, we seek comment on whether we should establish different rules for different loop architectures. Do variations in cost relationships resulting from the use of different architectures support different SLC

⁶⁵ See *Access Charge Reform First Report and Order*, 12 FCC Rcd at 16033, para. 120 (declining to take any action with respect to other derived channel services because the limited record did not contain any cost studies for these services).

⁶⁶ Letter from Colin Sandy, NECA, to Marlene H. Dortch, Sec'y, FCC, RM-10603 at 3-4 (filed Jan. 31, 2003) (NECA Jan. 31, 2003 *Ex Parte* Letter).

assessment rules reflecting these cost relationships? For example, what incentives might different SLC assessment rules create regarding the deployment of efficient loop technologies? If we conclude that cost disparities among different network architectures counsel against adoption of SLC assessment rules based on relative cost relationships, are there alternative means of aligning common line costs with SLC cost recovery rules.

24. We also seek comment on whether carriers might incur different costs in providing derived channel T-1, PRI ISDN, and basic, analog services, even if those services use the same loop architectures. For example, are copper loops used to provide T-1 or PRI ISDN services shorter or longer, on average, than copper loops used to provide basic, analog services? Do derived channel T-1 or PRI ISDN loops cause interference when they share cables with loops providing other services? Should factors like these affect our analysis? If so, we seek comment on the effect of any such factors on the costs and relative costs of loops used to provide these different services.

25. We also seek comment on the relationship between loop costs for derived channel T-1 loops and the loop costs of T-1 special access services. To the extent that these costs differ, we ask parties to explain in detail the causes of such variances.

3. Line Port Charges

26. Sections 69.130 (for rate-of-return carriers) and 69.157 (for price cap carriers) of the Commission's rules permit carriers to assess a separate line port charge for ISDN line ports, and for other line ports, to the extent that the costs of these line ports exceed the costs of line ports used for basic, analog service.⁶⁷ We further note that carriers have been assessing a port charge for PRI ISDN service in the range of \$23 per port pursuant to these rules,⁶⁸ and that NECA estimates that, under its proposed rule change, it would recover \$1.5 million of "lost" SLC revenues from a port charge for derived channel T-1 service. We ask parties to identify with specificity the amount of (as well as the methodology used to calculate) the port charge that they would expect to assess for the port associated with derived channel T-1 service, as well as the amount (and calculation methodology) of the PRI ISDN port charge they currently assess upon end user customers. In light of the partial waiver of rule 69.104 that we grant herein to rate-of-return carriers,⁶⁹ rate-of-return carriers should include in their comments the amount of the port charge that they may have developed prior to the comment date. More generally, we ask parties to comment on the principles that should be used to determine whether a cost should be included in the basic common line costs recovered through the SLC or in the line port costs recovered through the separate line port charge.

4. Impact on ICLS and Other Universal Service Issues

27. ICLS seeks to ensure that each rate-of-return carrier continues to provide affordable, quality telecommunications services to its customers while also recovering its common line revenue requirement.⁷⁰ It operates by providing each carrier with explicit universal service support for the difference between its study area common line revenue requirement and its common line revenues, which include SLC revenues, special access surcharges, and line port charges.⁷¹ We recognize that assessing fewer than 24 SLCs for derived channel T-1 services will tend to decrease each carrier's revenues from

⁶⁷ See 47 C.F.R. §§ 69.130, 69.157.

⁶⁸ See NECA Tariff F.C.C. No. 5, § 17.1.4(B) (\$23.51 per arrangement ISDN PRI Line Port charge); Verizon Tariff F.C.C. No. 1, § 4.1.7(C)(2) (\$23.43 per service ISDN PRI line port charge).

⁶⁹ See *infra* section IV.B.

⁷⁰ See *MAG Order*, 16 FCC Rcd at 19667-68, para. 128.

⁷¹ See *id.* at 19673-74, para. 142.

SLCs and increase its ICLS. We seek comment on whether this is consistent with the goals of universal service.

28. We seek comment from rate-of-return carriers and any other interested party on the effect that changes in the SLC assessment rules for PRI ISDN and for derived channel T-1 services (including the development of any new port charges for derived channel T-1 service) will have on ICLS. We ask parties to quantify the changes in the size of ICLS that they would expect as a result of possible rule changes that would alter the number of SLCs assessed for PRI ISDN service or for derived channel T-1 service. In so doing, parties should clearly identify the methodology used to perform such a calculation, including all of the underlying data and assumptions. In particular, parties should identify any changes in the demand for these services that would result from changing the SLC assessment rules and should identify how demand assumptions are used in their cost study calculations. With regard to the changes to ICLS resulting from any SLC assessment rule change for derived channel T-1 service, we expect that the parties' demand assumptions will differ from current demand figures and we ask parties to identify clearly the current demand figures, the anticipated demand figures associated with the proposed rule changes, and the basis for changes in demand assumptions resulting from any rule changes.

29. We also seek comment on the implications of the proposed rule change for other universal service issues. Commenters should address the effect of the proposed change on competitive eligible telecommunications carriers (ETCs) and the portability of universal service under our current ETC and portability rules.⁷² In particular, we seek comment on whether, pursuant to any rule change, competitive ETCs should report 24 lines for derived channel T-1 services or should report the same number of lines for these services that the incumbent LECs are required to report.⁷³ Commenters should also address whether changing the method of developing line counts will affect universal service support mechanisms.

5. Impact on PICC, CCLC, and Retail Rates

30. We seek comment from price cap carriers and any other interested party on the effect that changes in the SLC assessment rules for PRI ISDN and for derived channel T-1 services (including the development of any new port charges for derived channel T-1 service) will have on the MLB PICC and on the CCLC. To the extent that we modify the SLC assessment rule for derived channel T-1 service so that the number of SLCs assessed for this service is no longer based on the number of lines (*i.e.*, channels), should we also modify the PICC rule to make the same change?⁷⁴ Verizon requests that we modify the SLC and PICC assessment rules for "new services with T-1 interfaces," but that we change neither the SLC nor the PICC rules for existing T-1 services unless we also modify the maximum CMT revenue per line permitted under section 61.3(d) of the Commission's rules.⁷⁵ This modification would ensure that price cap carriers recover any lost revenues caused by assessment of fewer SLCs and PICCs.⁷⁶ We seek comment on Verizon's proposal. Should SLC or PICC rules for price cap carriers distinguish between new and existing T-1 services? If we change the SLC and PICC assessment rules, should we also modify the maximum CMT revenues per line permitted under section 61.3(d) of the Commission's rules?

⁷² We note that the Joint Board recently reviewed related issues concerning the portability of universal service support and the designation of competitive ETCs. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 04J-1 (rel. February 27, 2004).

⁷³ *See* 47 C.F.R. § 54.307. Currently, competitive ETCs receive per line support equal to that received by the incumbent carrier. *See id.*

⁷⁴ When the Commission modified the SLC assessment rules for PRI ISDN services, it also mirrored this change in the rule governing the assessment of the PICC. *See* 47 C.F.R. § 69.153(d).

⁷⁵ *See* 47 C.F.R. § 61.3(d).

⁷⁶ Verizon Rulemaking Reply at 1, 3-4.

31. Commenting price cap carriers should also identify the new SLC (both RES/SLB and MLB), MLB PICC, and CCLC rates that would result from their proposals. In so doing, parties should identify clearly the methodology used to perform such calculations, including all of the underlying data and assumptions. We ask parties to quantify, based on their individual proposals, the amount of foregone SLC revenues (on an annualized basis) that they expect to recover from the MLB PICC and the CCLC.

32. Commenting carriers, both rate-of-return and price cap, that currently assess the SLC at rates below the SLC cap(s) should identify the increase in the level of the SLCs they assess (both RES/SLB and MLB) that would result from their desired rule change(s).

33. We note that, to the extent that a carrier is operating at the MLB SLC cap, setting the number of SLCs that may be assessed equal to the common line cost ratio between derived channel T-1 or PRI ISDN (as the case may be) and basic, analog service may result in MLB customers paying less than the full common line costs, with carriers recouping the shortfall from ICLS (for rate of return carriers) or from the MLB PICC and CCLC, if any (for price cap carriers).⁷⁷ We seek comment on whether such a result is consistent with our policy goals and, if not, ask parties to propose an alternative that would result in all of the common line costs, but no more, for these services being recovered from MLB customers.

34. We also seek comment on the effect of any proposed rule changes on all classes (*i.e.*, residential, SLB, MLB) of end user customers. In particular, we ask parties that propose changes to the SLC assessment rules for customers of derived channel T-1 service to identify with specificity the rate change(s), both interstate and intrastate, that would result for customers of this service. In so doing, parties should identify the aggregate rate change(s) for these customers, and should further identify the changes that would result from Commission rule changes, and any changes in intrastate rates that the commenter anticipates would result.⁷⁸ In light of the waiver we grant herein, *infra* at section IV.B, we ask that rate-of-return carriers identify with specificity the changes that they may have made by the comment date to the rates for their derived channel T-1 service.

IV. PETITION FOR INTERIM, PARTIAL WAIVER

A. Background

35. Because the Commission had not yet acted on the *SLC T-1 Rulemaking Petition*, on August 19, 2003, NECA and other LECs and LEC organizations filed a petition requesting that the Commission, on an interim basis, pending completion of the rulemaking proceeding, partially waive section 69.104 of its rules to permit rate-of-return carriers to reduce from twenty-four to five the number of SLCs they may assess on customers of derived channel T-1 service (where the customer provides the terminating channelization equipment) without foregoing recovery of the associated SLC revenues from ICLS.⁷⁹ The

⁷⁷ For example, if, without the cap, the MLB SLC would be \$12.00 and we assume that five SLCs is the appropriate number to assess for derived channel T-1 service, then only \$46.00 ($\$9.20 * 5$) of the \$60.00 in common line costs would be recovered from SLCs. The remaining amount (\$14.00, less some amount recovered from a line port charge) would be recovered from ICLS or the PICC. The calculations underlying this example are as follows:

$$\text{Common line costs} = (\text{Uncapped SLC}) * (\# \text{ SLCs assessed}) = 12.0 * 5 = 60.00$$

$$\text{SLC Revenues} = (\text{Capped SLC}) * (\# \text{ SLCs assessed}) = 9.20 * 5 = 46.00$$

$$\text{Shortfall (i.e., revenues - costs)} = 46.00 - 60.00 = -14.00$$

⁷⁸ We understand that the rates end user customers pay for derived channel T-1 services reflect both interstate rate components and intrastate rate components. In order to understand the effect any rule change would have on end users, we are therefore requesting commenters to provide data on both interstate and intrastate rate changes that would result from SLC rule changes.

⁷⁹ See *SLC T-1 Partial Waiver Petition* at 1-4. Specifically, the following carriers and carrier organizations filed on behalf of themselves and their member carriers for this interim, partial waiver: Eastern Rural Telecom Association; Independent Telephone and Telecommunications Alliance; John Staurulakis Inc.; Matanuska; NECA; NTCA;

(continued....)

Waiver Associations seek this interim, partial waiver for the same reasons that NECA and other parties support initiation of a rulemaking proceeding.⁸⁰ They claim that SLC assessments for derived channel T-1 services do not reflect costs and are inconsistent with the assessment of SLCs for comparable PRI ISDN service, thereby sending incorrect price signals to the marketplace regarding derived channel T-1 service and PRI ISDN service.⁸¹ These problems are exacerbated for rural carriers and rural customers because ISDN service is often not available in rural areas.⁸² The Waiver Associations also claim that the effect on ICLS of granting the interim, partial waiver would be minimal.⁸³

36. Commenting LECs, LEC associations, and tariffing consultants support the *SLC T-1 Partial Waiver Petition*.⁸⁴ These parties claim that grant of the waiver is in the public interest because (1) the record demonstrates that loops used to provide derived channel T-1 services and PRI ISDN services are functionally comparable, are provisioned in a comparable manner, and therefore have comparable common line costs;⁸⁵ (2) the waiver would achieve the goal that underlies this aspect of rule 69.104 – aligning rates with costs – better than strict enforcement of the rule;⁸⁶ and (3) the current pricing dichotomy between these similar services hinders investment in advanced services in rural America.⁸⁷

37. AT&T and Sprint Corporation oppose the waiver.⁸⁸ They allege that the *SLC T-1 Partial Waiver Petition* represents not an attempt to align rates with costs, but rather an attempt to acquire additional receipts from ICLS.⁸⁹ They claim that the petitioning parties may reduce from 24 to 5 the number of SLCs they assess on customers of derived channel T-1 services without a waiver, and that it is only their desire to recover from ICLS the foregone SLC revenues that requires any Commission action.⁹⁰ AT&T also claims that the waiver sought by the Waiver Associations would result in an impermissible

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OPASTCO; TDS Telecom; USTA; and Western Alliance (collectively, the “Waiver Associations”). *Id.* at 2, 10-12. In its Waiver Comments, Great Plains Communications, Inc. (Great Plains), as a member of OPASTCO and of NECA (but not the NECA pools), requests that the waiver (if granted) apply to it, as well. Great Plains Waiver Comments at 1-3, 5-6.

⁸⁰ *SLC T-1 Partial Waiver Petition* at 1-10.

⁸¹ *See id.* at 1-8.

⁸² *See id.* at 3-4.

⁸³ *See id.* at 8-9.

⁸⁴ Arlington Telephone Company, The Blair Telephone Company, Eastern Nebraska Telephone company, Rock Count Telephone Company, Hershey Cooperative Telephone Company, City of Faith Municipal Telephone Company, Kennebec Telephone Company, Roberts County Telephone Cooperative Association, RC Communications, and Northwest Telephone Cooperative Association Waiver Joint Comments (Joint Arlington Waiver Comments) at 1-3; GVNW Consulting Waiver Comments at 1-4; Great Plains Waiver Comments at 1-10; Matanuska Waiver Comments at 1-9; TDS Telecom Waiver Comments at 1-8; Great Plains Waiver Reply at 1-8; and Waiver Association Waiver Reply at 1-9 (we note that two additional parties, North Pittsburgh Telephone Company and North State Communications, joined as signatories to the Waiver Association Waiver Reply that were not parties to the *SLC T-1 Partial Waiver Petition*).

⁸⁵ *See, e.g.*, TDS Telecom Waiver Comments at 1-2 (claiming that the cost relationship of T-1 services to basic analog services is closer to 4:1 than to 24:1).

⁸⁶ *See, e.g.*, Great Plains Waiver Comments at 5-6.

⁸⁷ *See, e.g.*, Matanuska Waiver Reply at 7.

⁸⁸ *See* AT&T Waiver Opposition at 1-7; Sprint Waiver Reply at 1-4.

⁸⁹ AT&T Waiver Opposition at 2-3, 5-7; Sprint Waiver Reply at 2-3.

⁹⁰ AT&T Waiver Opposition at 3-4; Sprint Waiver Reply at 2-3.

evisceration of the rule by waiver, and that a rulemaking proceeding is the proper venue to consider their claims.⁹¹

38. The Waiver Associations and Great Plains respond to AT&T and Sprint by stating that ICLS was expressly designed to enable rate-of-return carriers to meet their common line revenue requirements after recovery of SLCs and any appropriate port charges.⁹² The Waiver Associations and Great Plains agree that a rule change would be a better result than a waiver; they sought a waiver only on an interim basis, until completion of the rulemaking, and only because more than one year had elapsed since they sought the initiation of a rulemaking proceeding.⁹³

B. Discussion

39. The Commission has discretion to waive a rule for “good cause” shown.⁹⁴ Generally, the Commission may grant a waiver of its rules where the particular facts make strict compliance inconsistent with the public interest if applied to petitioner and when the relief requested would not undermine the policy objective of the rule in question.⁹⁵ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁹⁶ Waiver of the Commission's rules is therefore appropriate if special circumstances warrant a deviation from the general rule, and such a deviation will better serve the public interest than strict adherence to the general rule.⁹⁷ For the reasons discussed below, we find that the Waiver Associations have shown that good cause exists to grant an interim, partial waiver of rule 69.104(q),⁹⁸ permitting rate-of-return carriers⁹⁹ to assess SLCs for five channels only upon customers subscribing to derived channel

⁹¹ AT&T Waiver Opposition at 3-4.

⁹² Waiver Association Waiver Reply at 5 (citing *MAG Order*, 16 FCC Rcd at 19617, para. 3); *see also id.* at 7-8; Great Plains Waiver Reply at 2-3. Great Plains also claims that, if rate-of-return LECs do not recover the necessary amounts from ICLS, then they will under earn. Great Plains Waiver Reply at 3-4. The Waiver Associations are not seeking a voluntary SLC reduction. Rather, any reductions in SLC revenues would not be considered voluntary revenue deductions for the purposes of calculating ICLS. *See* 47 C.F.R. § 54.901(a)(1); Great Plains Waiver Reply at 3-4; Waiver Associations Waiver Reply at 7-8.

⁹³ Great Plains Waiver Reply at 4-7; Waiver Association Waiver Reply at 3-5.

⁹⁴ 47 C.F.R. § 1.3.

⁹⁵ *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972) (“*WAIT Radio*”); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990) (“*Northeast Cellular*”).

⁹⁶ *WAIT Radio*, 418 F.2d at 1157.

⁹⁷ *Northeast Cellular*, 897 F.2d at 1166; *WAIT Radio*, 418 F.2d at 1159.

⁹⁸ *See* 47 C.F.R. 69.104(q). Although the Waiver Associations did not specify the particular subsection of rule 69.104 that they desire waived, we note that it is subsection (q). We thus partially waive subsection 69.104(q), rather than generally waiving section 69.104 of our rules.

⁹⁹ Because the Waiver Associations represent the overwhelming majority of all rate-of-return carriers, we grant the waiver to all rate-of-return carriers that wish to avail themselves of this result. *See* Great Plains Waiver Comments at 1-3, 5-6 (noting that Great Plains is a member of OPASTCO and of NECA, but not of any NECA pool, and filing separately to ensure that the waiver could apply to it).

Granting a waiver of a Commission rule to similarly situated parties that did not formally request the waiver is consistent with Commission precedent. *See, e.g., Telephone Number Portability BellSouth Corporation Petition for Declaratory Ruling and/or Waiver*, CC Docket No. 95-116, Order, FCC 04-91, at para. 1 (rel. April 13, 2004) (granting BellSouth's request for a waiver of the five-year local number portability (LNP) cost recovery rule and extending the waiver to all incumbent LECs that had yet to include certain costs in their LNP cost recovery tariffs); *BellSouth Petition for Waiver of Section 32.22 of the Commission's Rules to Permit the Implementation of Flash-Cut* (continued....)

T-1 service where the customer provides the terminating channelization equipment without foregoing recovery of the associated SLC revenues from ICLS.¹⁰⁰ The waiver we grant herein is interim and will remain in place only until we resolve the issues raised, *supra*, in the notice of proposed rulemaking, at which time the waiver will expire.¹⁰¹

40. The Waiver Associations have demonstrated that grant of the *SLC T-1 Partial Waiver Petition* would better achieve the purpose of rule 69.104 than would continued strict application of the rule. In the *Access Charge Reform First Report and Order*, the Commission modified the SLC assessment rules for loops used to provision PRI ISDN service in order to “realign[] cost recovery in a manner that more closely reflects the manner in which those costs are incurred.”¹⁰² Specifically, the Commission found that assessing a SLC for each derived channel of ISDN service “exceeds the NTS costs of ISDN service and therefore artificially discourages efficient use of ISDN.”¹⁰³

41. The evidence in this proceeding suggests that, for rate-of-return carriers, loops used to provide derived channel T-1 service and to provide PRI ISDN service are provisioned in a comparable manner and therefore should have comparable costs.¹⁰⁴ No party contests these showings with any alternative evidence; nor does any party claim that continuing to require the assessment of 24 SLCs for derived channel T-1 service aligns rates with costs for this service. Similarly, no party contests the evidence that many rate-of-return carriers do not offer PRI ISDN service and that, therefore, the harm caused by assessing 24 SLCs on derived channel T-1 services is particularly acute for rural carriers and their customers. Accordingly, grant of the partial waiver, which allows rate-of-return carriers to assess five SLCs for customers of derived channel T-1 service (where the customer provides the terminating channelization equipment), better achieves the purpose of the rule to align cost recovery (*i.e.*, rates) with the manner in which costs are incurred.¹⁰⁵

42. The Commission’s existing rules allow rate-of-return carriers to assess a line port charge on their derived channel T-1 service customers, but only to the extent that the line port costs associated with this service exceed the costs of a line port used for basic, analog service.¹⁰⁶ This is consistent with the

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Normalization Relating to Tax/Timing Difference Originating in 1988, AAD 7-1626, Memorandum Opinion and Order, 2 FCC Rcd 5146, 5147, at paras. 10, 15 (Com. Car. Bur. 1987) (*BellSouth Section 32.22 Waiver Order*) (extending BellSouth’s waiver petition to all carriers); *see also* 47 C.F.R. § 1.3 (permitting the Commission, on its own motion, to grant a waiver of its rules).

¹⁰⁰ The Waiver Associations seek permission to recover some of their foregone SLC revenues from a to be developed line port charge. *See SLC T-1 Partial Waiver Petition* at 8-9. For the reasons stated *infra*, no waiver is necessary for rate-of-return carriers to assess a line port charge for derived channel T-1 service to the extent that the costs for the T-1 line port exceed the costs for a basic, analog line port.

¹⁰¹ *See id.* at 4 (“The [Waiver] Associations request that the Commission grant a limited waiver of section 69.104 pending resolution of the issues to be considered in the recommended rulemaking proceeding.”).

¹⁰² *Access Charge Reform First Report and Order*, 12 FCC Rcd at 16032, para. 115. By implication, this rationale for modifying the rule for price cap carriers (rule 69.152) also underlies the basis for the rule change for rate-of-return carriers (rule 69.104) made in the *MAG Order*. *See MAG Order*, 16 FCC Rcd at 19641-41, para. 56.

¹⁰³ *Access Charge Reform First Report and Order*, 12 FCC Rcd at 16032, para. 115. Based on the limited record in that proceeding, the Commission did not make any findings with respect to other derived channel (including T-1) services. *Id.* at 16033, para. 120.

¹⁰⁴ *See, e.g., SLC T-1 Partial Waiver Petition* at 4-7; TDS Telecom Waiver Comments at 4-6.

¹⁰⁵ *See, e.g., Access Charge Reform First Report and Order*, 12 FCC Rcd at 16032, para. 115; *see also id.* at 15998, para. 36; *SLC Cost Study Order*, 17 FCC Rcd at 10869-70, 74, paras. 1, 3, 12.

¹⁰⁶ *See* 47 C.F.R. § 69.130.

principle of aligning rates with costs.¹⁰⁷ Indeed, in the *MAG Order*, the Commission determined that such line port charges are mandatory, and that line port costs in excess of basic, analog line ports must be recovered through a separate charge and not through universal service mechanisms.¹⁰⁸

43. We are aware that, as a result of granting the waiver, rate-of-return carriers will recover from ICLS those loop costs that previously were recovered through the additional SLCs assessed on derived channel T-1 services.¹⁰⁹ Although we share AT&T's and Sprint's concerns regarding growth of the universal service fund, this result is consistent with our rules capping the SLC to keep rates affordable in rural, high cost areas,¹¹⁰ and it will help advance the Commission's goal of ensuring that rate-of-return carriers are able to provide quality, affordable services while recovering their common line revenue requirement.¹¹¹ We also note that the Waiver Associations estimate that the grant of the waiver would lead to only a relatively small increase (\$11.5 million) in ICLS as compared to the overall size of the universal service fund.¹¹² These factors, in combination, show that grant of the waiver will not have a significant effect on universal service. To the extent that a party has evidence that the effect on ICLS will differ substantially from that predicted by the Waiver Associations – and no party has introduced such evidence to date – we encourage the submission of such evidence for our consideration in the accompanying rulemaking proceeding.

44. Carriers subject to this waiver order shall, when filing data pursuant to sections 35.611, 35.612, and 54.903(a) of the Commission's rules, calculate their line counts in a manner consistent with this order.¹¹³ Competitive ETCs, which are not subject to this order, shall continue to file line count data pursuant to section 54.307, using the existing assessment of 24 loops per derived channel T-1 service.¹¹⁴

45. Finally, as requested by the Waiver Associations,¹¹⁵ we expressly limit the duration of the waiver to not longer than the pendency of the accompanying rulemaking proceeding.¹¹⁶ By limiting the

¹⁰⁷ See *MAG Order*, 16 FCC Rcd at 19654, para. 91.

¹⁰⁸ See *id.* at 19656, para. 96.

¹⁰⁹ For the purposes of calculating interstate common line support, the reduction in SLC revenues resulting from reducing from 24 to 5 the number of SLCs assessed on customers of derived channel T-1 service is not a voluntary revenue reduction. Rather, under the waiver, rate-of-return carriers will recover foregone SLC revenues through the normal operation of ICLS. See 47 C.F.R. § 54.901(a)(1). We thus reject the suggestion of AT&T and Sprint that we treat the SLC revenue reduction as a voluntary reduction. See AT&T Waiver Opposition at 3-4; Sprint Waiver Reply at 2. To the extent, however, that a rate-of-return carrier reduces the number of SLCs it assesses to fewer than 5 SLCs, any corresponding reduction in SLC revenues will be treated as a voluntary revenue reduction and would not be recovered from ICLS. For example, if a rate-of-return carrier chooses to assess three SLCs, then the foregone revenues from not assessing the sixth through the twenty-fourth SLCs will be recovered from ICLS, but the foregone revenues from not assessing the fourth and fifth SLCs are voluntary reductions and may not be recovered from ICLS.

¹¹⁰ See *SLC Cost Study Order*, 17 FCC Rcd at 10869-70, 79, paras. 1, 3, 25; see also *Access Charge Reform First Report and Order*, 12 FCC Rcd at 16010-11, para. 73.

¹¹¹ See *MAG Order*, 16 FCC Rcd at 19667-68, para. 128.

¹¹² See *SLC T-1 Partial Waiver Petition* at 8-9.

¹¹³ See 47 C.F.R. §§ 36.611-12, 54.903(a).

¹¹⁴ See 47 C.F.R. § 54.307.

¹¹⁵ See *SLC T-1 Partial Waiver Petition* at 4.

¹¹⁶ Grant of a waiver pending the result of a rulemaking proceeding is consistent with Commission precedent. See, e.g., *Waiver of Certain Global Maritime Distress and Safety System (GMDSS) Rules Applicable to Fishing Vessels and Small Passenger Vessels*, Order, 14 FCC Rcd 528, 534, at para. 11 (1998) (“In order to more fully examine these [GMDSS] issues, we believe it best to issue a temporary, conditional waiver of certain of the Commission's

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waiver's duration, we require parties ultimately to establish that a rule change is warranted in order to obtain long-term relief. The waiver we grant herein shall therefore expire upon the effectiveness of any order or, if applicable, rule changes, that result from the accompanying rulemaking.

V. PROCEDURAL MATTERS

A. *Ex Parte* Requirements

46. This proceeding will continue to be governed by "permit-but-disclose" *ex parte* procedures that are applicable to non-restricted proceedings under 47 C.F.R. § 1.1206.¹¹⁷ Parties making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required.¹¹⁸ Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well.¹¹⁹ Interested parties are to file any written *ex parte* presentations in this proceeding with the Commission's Secretary, Marlene H. Dortch, 445 12th Street, S.W., TW-B204, Washington, D.C. 20554, and serve with one copy: Pricing Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-A452, Washington, D.C. 20554, Attn: Jeremy D. Marcus. Parties shall also serve with one copy: Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room, CY-B402, Washington, D.C., 20554, telephone (202) 488-5300, facsimile (202) 488-5563, e-mail fcc@bcpiweb.com, or via its website <http://www.bcpiweb.com>.

B. Initial Paperwork Reduction Act Analysis

47. The incorporated *Notice of Proposed Rulemaking (NPRM)* does not contain proposed or modified information collection requirements.

C. Initial Regulatory Flexibility Analysis

48. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹²⁰ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided in paragraph 62 of the item. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).¹²¹ In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.¹²²

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GMDSS rules applicable to fishing vessels until we conclude a rule making proceeding addressing the concerns of the fishing industry and such other parties who may elect to participate."); *BellSouth Section 32.22 Waiver Order*, 2 FCC Rcd at 5147, para. 15 (granting blanket waiver of rule 32.22 until the Commission either denies the petition for rulemaking or issues a final order in the rulemaking proceeding).

¹¹⁷ See 47 C.F.R. § 1.1206.

¹¹⁸ See 47 C.F.R. § 1.1206(b)(2).

¹¹⁹ See *id.*

¹²⁰ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

¹²¹ See 5 U.S.C. § 603(a).

¹²² See *id.*

1. Need for, and Objectives of, the Proposed Rules

49. In this NPRM, the Commission continues to explore means of better aligning cost recovery (*i.e.*, rates) with the manner in which costs are incurred. SLCs are generally assessed by carriers on customers on a per channel basis. In 1997 in the *Access Charge Reform First Report and Order*, to better align rates with costs, the Commission created an exception to the SLC assessment rules for price cap carriers for PRI ISDN and BRI ISDN services, determining that five SLCs could be assessed for PRI ISDN service and one SLC could be assessed for BRI ISDN service. In 2001 in the *MAG Order*, the Commission made the equivalent rule changes for rate-of-return carriers.¹²³

50. NECA requests that we amend the Commission's SLC assessment rules to reduce the number of SLC from twenty-four to five that carriers may assess upon customers of derived channel T-1 services (where the customer provides the terminating channelization equipment), with carriers recovering the foregone SLC revenues from a line port charge and from ICLS.¹²⁴ This NPRM tentatively concludes that the number of SLCs that carriers may assess on customers of derived channel T-1 service (where the customer provides the terminating channelization equipment) should be based on the actual common line cost relationship between loops used to provide these services and loops used to provide basic, analog services, rather than on a per channel basis.¹²⁵ We seek comment on this conclusion.¹²⁶ Because the cost data relied on for the PRI ISDN exception to the general SLC assessment rules is from the mid-1990s, the Commission also seeks comment on whether the that exception in our rules should be modified.¹²⁷ The Commission also requests that parties detail the affects their proposals will have on line port charges, ICLS and other universal service mechanisms, other access charges (*i.e.*, the PICC and the CCLC), and retail rates.¹²⁸ The Commission requests that commenting parties provide detailed, transparent cost studies to support their proposals.¹²⁹

2. Legal Basis

51. This rulemaking action is supported by sections 1, 2, 4(i), 4(j), 201-205, and 303 of the Communications Act of 1934, as amended.¹³⁰

3. Description and Estimate of the Number of Small Entities to Which the Notice will Apply

52. 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 proposed rules, if adopted.¹³¹ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹³² In addition, the term "small business" has the

¹²³ See *supra* section II.

¹²⁴ See *supra* section III.A

¹²⁵ See *supra* section III.B.1.

¹²⁶ *Id.*

¹²⁷ See *supra* sections III.A, III.B.1.

¹²⁸ See *supra* sections III.B.3-III.B.5.

¹²⁹ See *supra* section III.B.1.

¹³⁰ 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-205, and 303.

¹³¹ 5 U.S.C. § 603(b)(3).

¹³² 5 U.S.C. § 601(6).

same meaning as the term “small business concern” under the Small Business Act.¹³³ 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 SBA.¹³⁴

53. In this section, we further describe and estimate the number of small entity licensees and regulatees that may also be directly affected by rules adopted in this order. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report.¹³⁵ The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers,¹³⁶ Paging,¹³⁷ and Cellular and Other Wireless Telecommunications.¹³⁸ Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

54. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a wired telecommunications carrier having 1,500 or fewer employees), and “is not dominant in its field of operation.”¹³⁹ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.¹⁴⁰ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

55. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.¹⁴¹ According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.¹⁴² Of this total, 2,201 firms had employment of 999 or fewer employees,

¹³³ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 5 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.”

¹³⁴ 15 U.S.C. § 632.

¹³⁵ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, Table 5.3 (August 2003) (*Trends in Telephone Service*).

¹³⁶ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 513310 (changed to 517110 in October 2002).

¹³⁷ *Id.* § 121.201, NAICS code 513321 (changed to 517211 in October 2002).

¹³⁸ *Id.* § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

¹³⁹ 5 U.S.C. § 601(3).

¹⁴⁰ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

¹⁴¹ 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in October 2002).

¹⁴² U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 513310 (issued October 2000).

and an additional 24 firms had employment of 1,000 employees or more.¹⁴³ Thus, under this size standard, the majority of firms can be considered small.

56. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁴⁴ According to Commission data,¹⁴⁵ 1,337 carriers reported that they were engaged in the provision of local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

57. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), and "Other Local Exchange Carriers."* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to "Other Local Exchange Carriers," all of which are discrete categories under which TRS data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁴⁶ According to Commission data,¹⁴⁷ 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees.¹⁴⁸ In addition, 35 carriers reported that they were "Other Local Service Providers." Of the 35 "Other Local Service Providers," an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees.¹⁴⁹ Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

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

58. The *NPRM* explores options for further aligning SLC rates with loop costs in the Commission's access charge regime and examines the universal service implications of any such SLC rule changes. The *NPRM* considers the varying operating circumstances of rate-of-return and price cap carriers, the implications of competitive and intrastate regulatory conditions on the options available, and the need to facilitate and ensure the deployment of advanced services in rural America. If adopted, changes to the Commission's SLC assessment rules may require additional or modified recordkeeping. For example, LECs may have to file amendments to certain aspects of their end user tariffs that set forth the SLC rates, terms and conditions.¹⁵⁰

¹⁴³ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

¹⁴⁴ 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in October 2002).

¹⁴⁵ *Trends in Telephone Service* at Table 5.3.

¹⁴⁶ 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in October 2002).

¹⁴⁷ *Trends in Telephone Service* at Table 5.3.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *See supra* section III.

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

59. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed 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 or reporting requirements under the rule for 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 small entities.¹⁵¹

60. We will consider any proposals made to minimize significant economic impact on small entities. The overall objective of this proceeding is to consider the NECA proposal, as well as other proposals, that may better align rates with costs by amending the Commission's SLC assessment rules for PRI ISDN service and for derived channel T-1 services (where the customer provides the terminating channelization equipment). The *NPRM* seeks comment on the merits of changes in the SLC assessment rules. Comments should be supported by specific economic analysis and cost studies.¹⁵² The adoption of rule changes may require LECs to amend their end user tariffs. To the extent that the Commission may adopt rule changes that better enable small rate-of-return carriers to compete in offering advanced services, such carriers may stand to benefit from this proceeding.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

61. None.

D. Comment Filing Procedures

62. Pursuant to Sections 1.415 and 1.419 of the Commission's rules,¹⁵³ interested parties may file comments on or before 60 days and reply comments on or before 90 days after publication of this *NPRM* in the Federal Register. **All pleadings must reference WC Docket No. 04-259 and RM-10603.** Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.¹⁵⁴ Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/cgb/ecfs>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to <ecfs@fcc.gov>, and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will be sent in reply. Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM-ET) at <<http://www.fcc.gov/e-file/email.html>>.

¹⁵¹ 5 U.S.C. § 603(c)(1)–(c)(4).

¹⁵² See *supra* section III.B.

¹⁵³ 47 C.F.R. §§ 1.415, 1.419.

¹⁵⁴ See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

63. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

64. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002.

- The filing hours at this location are 8:00 a.m. to 7:00 p.m.
- All hand deliveries must be held together with rubber bands or fasteners.
- Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

65. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Washington, DC 20554, telephone (202) 488-5300, facsimile (202) 488-5563, e-mail fcc@bcpiweb.com, or via its website at <http://www.bcpiweb.com>. In addition, one copy of each submission must be filed with the Chief, Pricing Policy Division, 445 12th Street, S.W., Washington, DC 20554. Documents filed in this proceeding will be available for public inspection during regular business hours in the Commission's Reference Information Center, 445 12th Street, S.W., Washington, DC 20554, and will be placed on the Commission's Internet site. For further information, contact Jeremy D. Marcus at (202) 418-0059.

66. Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting the Consumer & Governmental Affairs Bureau, at (202) 418-0531, TTY (202) 418-7365, or at [<fcc504@fcc.gov>](mailto:fcc504@fcc.gov).

VI. CONCLUSION

67. For the reasons provided herein, we grant the *SLC T-1 Rulemaking Petition* and initiate a rulemaking proceeding to examine the proper number of SLCs that rate-of-return and price cap carriers may assess upon customers that obtain derived channel T-1 service where the customer provides the terminating channelization equipment. In the rulemaking proceeding, we also will re-examine the proper number of SLCs that carriers may assess upon customers that obtain PRI ISDN service. Pending resolution of this proceeding, we grant a partial waiver of section 69.104(q) of the Commission's rules¹⁵⁵ to permit rate-of-return carriers to reduce from twenty-four to five the number of SLCs that they may assess on customers of derived channel T-1 service (where the customer provides the terminating channelization equipment) without foregoing recovery of the associated SLC revenues from the ICLS.

¹⁵⁵ See 47 C.F.R. § 69.104(q).

VII. ORDERING CLAUSES

68. Accordingly, IT IS ORDERED that, pursuant to the authority contained in section 1.407 of the Commission's rules, 47 C.F.R. § 1.407, the National Exchange Carrier Association, Inc. Petition for Rulemaking IS GRANTED.

69. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201-205, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-205, and 303, NOTICE IS HEREBY GIVEN of the rulemaking described above and COMMENT IS SOUGHT on those issues.

70. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

71. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), and 201-205 of the Communications Act of 1934, as amended, and section 1.3 of the Commission's rules, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-205 and 47 C.F.R. § 1.3, the Joint Petition for Expedited Waiver IS GRANTED to the extent stated herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

LIST OF COMMENTERS

*Petition for Rulemaking:*Comments

- ALLTEL Communications, Inc.
- GVNW Consulting, Inc. (GVNW)
- National Telecommunications Cooperative Association (NTCA)
- Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)
- TDS Telecommunications Corporation (TDS Telecom)
- United States Telecom Association (USTA)

Opposition

- AT&T Corp. (AT&T)

Reply Comments

- CenturyTel, Inc.
- National Exchange Carrier Association, Inc. (NECA)
- TDS Telecom
- USTA
- Verizon Telephone Companies

*Petition for Waiver:*Comments

- Arlington Telephone Company, The Blair Telephone Company, Eastern Nebraska Telephone Company, Rock County Telephone Company, Hershey Cooperative Telephone Company, City of Faith Municipal Telephone Company, Kennebec Telephone Company, Roberts County Telephone Cooperative Association, RC Communications, and Northwest Telephone Cooperative Association
- Great Plains Communications, Inc. (Great Plains)
- GVNW
- Matanuska Telephone Association, Inc. (Matanuska)
- TDS Telecom

Opposition

- AT&T

Reply Comments

- Eastern Rural Telecom Assn., Independent Telephone & Telecommunications Alliance, John Staurulakis Incorporated, Matanuska, NECA, NTCA, North Pittsburgh Telephone Company, North State Communications, OPASTCO, TDS Telecom, USTA, and Western Alliance
- Great Plains
- Sprint Corporation