Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Pacific Bell Petition for Interim)
Waiver of Part 69 to Offer)
ISDN-Equipped Access Lines)
to California Schools, Libraries,)
and Community Colleges)

MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

Adopted: September 20, 1996 Released: September 24, 1996

By the Commission:

I. INTRODUCTION

1. On December 11, 1995, the Commission adopted an order waiving application of Section 69.104 of its rules so that Pacific Bell (Pacific) could provide integrated services digital network (ISDN)-equipped access lines to public and private schools, libraries, and community colleges at no charge.[1] The Pacific program associated with this waiver is called "Education First." On January 11, 1996, MCI Telecommunications Corporation (MCI) filed a petition for clarification or, in the alternative, reconsideration of the *Waiver Order*.[2] Only Pacific responded to MCI's petition. For the reasons set forth below, we deny MCI's petition.

II. BACKGROUND AND SUMMARY OF PLEADINGS

2. Section 69.104 of the Commission's rules requires local exchange carriers (LECs) to assess a charge on end users that subscribe to local exchange service -- the end user common line (EUCL) charge.[3] The EUCL charge, which is also known as the subscriber line charge,

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[1] *Pacific Bell Petition for Interim Waiver of Part 69 to Offer ISDN-Equipped Access Lines to California Schools, Libraries, and Community Colleges*, Order, 11 FCC Rcd 4870 (1995) (*Waiver Order*).

[2] *Pleading Cycle Established for Comments on MCI's Petition for Clarification or, in the Alternative, Reconsideration of the Order Granting Pacific Bell's Petition for Interim Waiver of Part 69 to Offer ISDN-Equipped Access Lines to California Schools*, Public Notice, CCBPol 96-02, 11 FCC Rcd 1884 (1996).

[3] 47 C.F.R. § 69.104(a). The only exception to this requirement falls under the Lifeline program, in which eligible, low income households in 41 participating jurisdictions receive a reduction in their monthly rates up to the full amount of the maximum $3.50 per line federal residential EUCL charge. *See* Sections 36.701 *et seq.*, 69.104(j)-(l), 69.117, and 69.603(d) of the Commission's rules, 47 C.F.R §§ 36.701 *et seq.*, 69.104(j)-(l), 69.117,

is part of a comprehensive system of tariffed access charges for recovery of LEC costs associated with the origination and termination of interstate calls.[4] Twenty-five percent of the costs of the local loop -- the telephone lines that connect end-users' premises to LEC switches at local central offices -- are assigned to the interstate jurisdiction.[5] The EUCL charge is a monthly charge intended to recover a major portion of a LEC's interstate loop costs from subscribers on a flat-rate basis. The portion of local loop costs that is assigned to the interstate jurisdiction but not recovered through the EUCL charge is recovered from interexchange carriers through the per-minute carrier common line (CCL) charge.[6]

3. Section 61.46(d) of the Commission's rules sets forth a formula by which LECs that are subject to price cap regulation, such as Pacific, must calculate the maximum allowable CCL charge.[7] Essentially, the CCL charge is calculated by subtracting the revenues to be recovered through EUCL charges from the common line revenue requirement and dividing by

and 69.603(d).

4 *See MTS and WATS Market Structure*, CC Docket No. 78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983).

5 *See* Section 36.154 of the Commission's rules, 47 C.F.R. § 36.154, Subcategory 1.3.

6 *See MTS and WATS Market Structure -- Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, Report and Order, CC Docket Nos. 78-72, 80-286, 2 FCC Rcd 2953, 2954, 2957, ¶¶ 10, 29 (1987). To the extent that an end user is required to pay CCL charges, it is not required also to pay the EUCL. 47 C.F.R. § 69.104(a).

On May 30, 1995, the Commission released a Notice of Proposed Rulemaking seeking comment on how to assess EUCL charges on derived channel services, such as ISDN. *See generally End User Common Line Charges*, Notice of Proposed Rulemaking, 10 FCC Rcd 8565 (1995). The issues raised in that rulemaking concern the amount of EUCL revenues that LECs may obtain from end users.

7 47 C.F.R. § 61.46(d).

historical common line minutes of use.[8]

4. In the *Waiver Order*, the Commission granted Pacific a limited waiver of Section 69.104 of its rules to provide ISDN-equipped access lines to public and private schools, libraries, and community colleges without charge. Pursuant to the *Waiver Order*, Pacific may forego charging eligible schools and libraries the EUCL for two years, as long as the benefits of the waiver apply to each institution for no more than one 12-month period. This waiver is subject to three conditions.[9] First, Pacific was required to guarantee that it would not attempt to recover any costs associated with its Education First program by increasing its interstate access rates, including CCL charges. Second, in the event that Pacific elects an "X"-Factor that makes it subject to a potential sharing obligation or potentially eligible for a low-end adjustment,[10] the Commission required Pacific to impute the revenues foregone under the *Waiver Order* for purposes of calculating its interstate access earnings. Third, Pacific was required to submit to the Common Carrier Bureau those portions of the state monitoring reports that contain

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[8] *Id.* The formula also adjusts the revenue requirement each year to account for both inflation and growth in the number of access lines.

$$CCL_{MOU} = [CL_{MOU} * (1 + \%\Delta\ CL\ PCI)] - [EUCL_{MOU} * \frac{1}{(1+\frac{g}{2})}]$$

where:

CCL_{MOU}	=	The sum of each of the proposed carrier common line rates multiplied by its corresponding base period carrier common line minutes of use, divided by the sum of all types of base period carrier common line minutes of use;
CL_{MOU}	=	The sum of each existing maximum allowable carrier common line rates multiplied by its corresponding base period carrier common line minutes of use plus each existing EUCL rate multiplied by its corresponding base period lines, divided by the sum of all types of base period carrier common line minutes of use;
$EUCL_{MOU}$	=	Proposed end user line rates multiplied by the base period lines and divided by the sum of all types of base period minutes of use; and
g	=	The ratio of minutes of use per access line during the base period to minutes of use per access line during the previous base period, minus 1.

[9] *Waiver Order*, 11 FCC Rcd at 4878-79, ¶¶ 20-23.

[10] In April 1995, the Commission adopted interim changes to the original LEC price cap plan. *Price Cap Performance Review for Local Exchange Carriers*, First Report and Order, 10 FCC Rcd 8961 (1995). In that order, we established three productivity factors, or "X"-Factors, and determined that the highest "X"-Factor, 5.3 percent, presented a sufficiently challenging target to permit us to eliminate sharing. Consequently, Pacific and other LECs that elected the 5.3 percent "X"-Factor for the 1995 annual access tariff filings do not incur any sharing obligations and are also not entitled to a low-end adjustment based on interstate earnings performance during the period that their tariffs are in effect. *Id.* at 8970-71, ¶¶ 19-20.

data on administrative costs and on the amount of service being provided under its Education First program.[11]

5. In its petition, MCI asks the Commission to clarify that, "in computing the CCL cap, Pacific must use the EUCL rate that is being waived, not the zero rate that results from the waiver."[12] In essence, MCI wants this Commission to ensure that Pacific does not inflate its CCL rate cap by not assessing a EUCL charge on the access lines provided under the Education First program. MCI contends that, "[i]f the rates and demand for the ISDN lines sold to the schools are not treated consistently in the computations of the [common line] per minute rate and the EUCL per minute rate, the CCL cap may be higher than it otherwise would be, in violation of the [*Waiver*] *Order*."[13] MCI also contends that such a clarification is consistent with the conditions imposed on Pacific in granting the waiver.[14] In the alternative, MCI asks that the Commission reconsider its order if this was not its original intent.

6. Pacific responds by urging the Commission to dismiss summarily MCI's petition.[15] Pacific contends that MCI's petition serves only to create delay and administrative cost because the issue MCI raises is not in controversy.[16] Pacific notes that, in its original petition for waiver, it stated that its shareholders would absorb the cost of the Education First program. Pacific asserts that, for purposes of calculating its CCL rate, it will treat the telephone lines provided pursuant to the Education First program as if they were assessed EUCL charges.[17]

III. DISCUSSION

7. In the *Waiver Order*, the Commission found that Pacific's proposal to offer free ISDN-equipped access lines to schools and libraries would not create a new internal subsidy because the waiver would neither result in increasing other rates nor affecting sharing or low-end

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11 *Waiver Order*, 11 FCC Rcd at 4878-79, ¶¶ 20-23.

12 MCI Petition at 5. MCI explains that, under the Commission's price cap rules, the CCL charge is capped by a formula based on EUCL and CCL revenue, growth in minutes of use per line, and the change in the common line price cap index (PCI). To compute the CCL cap, a price cap LEC computes a hypothetical common line per minute rate, which is the sum of all EUCL and CCL revenues divided by the sum of all CCL minutes. According to MCI, this hypothetical rate is then increased or decreased by the percentage change in the common line PCI. From this new hypothetical rate is subtracted the EUCL per minute rate, increased by half the growth in minutes of use per line. *Id.* at 4.

13 *Id.* at 4-5.

14 *Id.* at 5.

15 Pacific Comments at 2.

16 *Id.* at 1.

17 *Id.*

adjustments.[18] As a condition to granting the waiver, the Commission required Pacific to guarantee that it would not attempt to recover any costs associated with its Education First program by increasing interstate access rates, including the CCL charge.[19] MCI's concern is that Pacific might inflate the CCL rate cap by not assessing a EUCL charge on the access lines provided under the Education First program. This concern is addressed by the condition that the Commission placed on grant of Pacific's request in the *Waiver Order*. That order clearly prohibits Pacific from increasing its interstate access rates, including its CCL rate, to recover the costs of its Education First program. Moreover, for purposes of calculating the level of its CCL charge pursuant to Section 61.46(d), Pacific has committed to treating the telephone lines provided to the schools and libraries under the Education First program as if they were assessed EUCL charges.[20] Accordingly, we conclude that our *Waiver Order* does not require the clarification or reconsideration that MCI requests.

IV. ORDERING CLAUSE

8. Accordingly, IT IS ORDERED that, pursuant to Sections 201-205 and Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201-205 and 154(i), MCI's petition for clarification or, in the alternative, reconsideration IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

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18 *Waiver Order*, 11 FCC Rcd at 4877, ¶ 19.

19 *Id.* at 4878, ¶ 21.

20 Pacific Comments at 1. We note that, in its 1996 annual access tariff filing, Pacific decreased by 5 percent its CCL rate for premium interstate access. *See* Pacific Bell Tariff F.C.C. No. 128, Transmittal No. 1864, filed April 2, 1996. That tariff transmittal took effect on July 1, 1996. *1996 Annual Access Tariff Filings*, Memorandum Opinion and Order, Transmittal No. 710, DA 96-1022 (released June 24, 1996), *erratum* (released June 27, 1996).