



PUBLIC NOTICE

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DA 13-1110
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WIRELINE COMPETITION BUREAU SEEKS COMMENT ON RATE OF RETURN RESCRIPTION STAFF REPORT

COMMENT CYCLE ESTABLISHED

WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, GN Docket No. 09-51,
CC Docket Nos. 96-45 and 01-92, and WT Docket No. 10-208

Comment Date: July 25, 2013

Reply Comment Date: August 26, 2013

In the *USF/ICC Transformation Order and Further Notice*, the Commission initiated a proceeding to re prescribe the authorized rate of return,¹ which is used to determine interstate common line rates and special access rates for rate-of-return incumbent LECs² and is also used in calculating some forms of support provided by the Universal Service Fund (USF), including High Cost Loop Support (HCLS)³ and Interstate Common Line Support (ICLS).⁴ The currently authorized rate of return is 11.25 percent, and was last set in 1990.⁵ Noting the major changes that have occurred in the market, technology, and regulation in the last 23 years,⁶ the Commission found compelling evidence that the authorized rate of return “is no longer reflective of the cost of capital”⁷ and sought comment on the data

¹ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17870, para. 640 (2011) (*USF/ICC Transformation Order and Further Notice*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

² In the *USF/ICC Transformation Order and Further Notice*, the Commission took rate-of-return incumbent LECs off of rate-of-return based recovery for interstate switched access revenues. *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17983-84, para. 900 (2011) (*USF/ICC Transformation Order*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

³ *See* 47 C.F.R. § 36.621(a)(1).

⁴ *See* 47 C.F.R. § 54.901.

⁵ *Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 89-624, Order, 5 FCC Rcd 7507 (1990).

⁶ *USF/ICC Transformation Order and Further Notice*, 26 FCC Rcd at 17870, 18052-55, paras. 639-40, 1048-57. The Commission noted that the monthly average yields for the past six months on ten-year United States Treasury securities had been “over 450 basis points below the monthly average yields in the six months immediately prior to the last prescription.” *Id.* at 17870, para. 640.

and procedures to be used to represcribe the authorized rate of return.⁸ The Commission’s preliminary analysis in the *USF/ICC Transformation Order and Further Notice* conservatively suggested that the rate of return “should be no more than 9 percent.”⁹ If the rate of return is higher than necessary for carriers to maintain their credit-worthiness and attract capital, it results in unreasonably high prices for consumers and businesses and creates excessive demands on USF.

To further assist the Commission in its efforts to represcribe the authorized rate of return, the Wireline Competition Bureau (Bureau) prepared the attached staff report setting forth data and procedures it recommends the Commission use to represcribe the authorized rate of return.¹⁰ Based upon the staff analysis of 16 publicly-traded incumbent LECs, using various analytical methods and sources of publicly-available data, the staff report identifies a zone of reasonable estimates of the weighted average cost of capital (WACC) ranging from 7.39 percent to 8.72 percent.¹¹ This zone of reasonable estimates reflects, among other things, different estimates of the cost of equity produced using the Capital Asset Pricing Model and the Discounted Cash Flow Model. Analyzing the effects of a new authorized rate of return with a times-interest-earned analysis, the staff report recommends that the Commission consider establishing the authorized rate of return in the upper half of this range, between 8.06 percent and 8.72 percent. We seek comment on the data, analysis and recommendations contained in the staff report. If applicable, **we ask that parties document the methodology, assumptions, data, and calculations of any alternative analyses, and submit their calculations in Microsoft Excel® format, including all relevant formulas and data relied upon.**

In addition, the Bureau is initiating an external peer review process for the staff report. Office of Management and Budget Guidelines require a peer review for any “highly influential scientific, financial, or statistical information.”¹² Because the staff report may be considered highly influential, the Bureau is seeking timely peer review and will incorporate the results of that process into these dockets to provide notice to interested parties and an opportunity for comment on the peer review results.

Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before July 25, 2013, and reply comments on or before August 26, 2013. Going forward, this proceeding will be conducted exclusively in WC Docket No. 10-90. All filings are to reference WC Docket No. 10-90.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

⁷ *Id.* at 18052, para 1047.

⁸ *Id.* at 18052-55, paras 1048-57.

⁹ *Id.* at 18055, para 1057.

¹⁰ *Prescribing the Authorized Rate of Return: Analysis of Methods for Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 10-90, Staff Report, DA 13-1111 (Wireline Comp. Bur. rel. May. 16, 2013) (*Staff Report*).

¹¹ *Staff Report* at 50, para. 143.

¹² *See* 67 Fed. Reg. 8452 (2002).

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes 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.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹³ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(a). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information regarding this proceeding, contact Craig Glenn, Pricing Policy Division, Wireline Competition Bureau, 202-418-1520 or Craig.Glenn@fcc.gov.

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¹³ 47 C.F.R. §§ 1.1200 *et seq.*