

WCB Grants LECs' Petitions for Conversion to Price Cap Regulation

Legal Alert
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Garvey Schubert Barer Legal Update, May 17, 2010.

The FCC's Wireline Competition Bureau (WCB) has granted petitions for waiver of several local exchange carriers (LECs), thereby permitting these carriers to convert certain of their operations from rate-of-return regulation to price cap regulation. Consistent with existing FCC precedent, the FCC also granted waivers allowing each of these carriers to continue receiving interstate common line support (ICLS) for the converted study areas, subject to certain conditions. See *In the matter of Petition of Virgin Islands Telephone Corporation, for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules; China Telephone Company, FairPoint Vermont, Inc., Maine Telephone Company, Northland Telephone Company of Maine, Inc.; Sidney Telephone Company, and Standish Telephone Company Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief; Windstream petition for Limited Waiver Relief*, WC Docket No. 10-39, WC Docket No. 10-47, WC Docket No. 10-55, DA 10-802, Order (rel. May 10, 2010).

The FCC's rules do not make ICLS available to price cap carriers. Absent an FCC waiver, the proposed conversions to price cap regulation could result in the loss of explicit support by these carriers to offset the interstate portion of their loop costs that are not recovered through interstate access charges. Accordingly, the FCC concluded that these carriers should continue to receive high-cost support for loop costs via ICLS even though they have elected price cap regulation. Under this approach, the carriers would forego any primary interchange carrier charge (PICC) or carrier common line charge (CCL) that might otherwise be assessable under the FCC's price cap rules, and would forego an increase in the non-primary residential subscriber line charge (SLC) cap in return for receiving high-cost support for loops via ICLS.

The FCC also waived its "all-or-nothing" rule, allowing certain of the carriers to operate as a price cap carrier in some study areas, and as a rate-of-return carrier in others. Section 61.41 of the FCC's rules provides that, if an individual rate-of-return carrier or study area converts to price cap regulation, all of its affiliates or study areas must also do so, except for those using average schedules. That rule also provides that, if a price cap carrier enters into a merger, acquisition, or similar transaction, it must continue to operate under price cap regulation after the transaction. Additionally, the rule provides that when rate-of-return and price cap carriers merge or acquire one another, the rate-of-return carrier must convert to price cap regulation within one year.