

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. P-100, SUB 164

|                                   |   |                         |
|-----------------------------------|---|-------------------------|
| In the Matter of                  | ) |                         |
| Petition for Rulemaking to Revise | ) | ORDER GRANTING PETITION |
| Requirement for Cost Studies      | ) | TO REVISE COMMISSION    |
| Included with Tariff Filings      | ) | RULE R9-4(d) UNLESS     |
|                                   | ) | OBJECTIONS ARE RECEIVED |

BY THE COMMISSION: On April 17, 2008, the Public Staff filed a Petition to Revise Commission Rule R9-4(d) which governs the filing of tariffs by regulated telephone utilities. Specifically, the Public Staff is proposing a change in the rule to provide that the requirement for filing cost study data does not apply to a company that is subject to price regulation unless that data is requested by the Public Staff or the Commission or is required to be filed in response to a complaint alleging anticompetitive conduct.

The Public Staff noted that Rule R9-4(d) requires companies with more than 12,500 access lines to file cost studies for each new tariff rate or proposed change to an existing tariff rate. The Public Staff stated that companies with 12,500 access lines or less are required to either submit cost studies in support of proposed rates, or adopt rates already on file for some other company. The Public Staff maintained that this section of Rule R9-4 has not been modified since 1994, when the number of access lines required for companies to avoid having to provide cost studies was increased from 4,000 to 12,500.

The Public Staff asserted that the competitive environment under which telephone utilities operate has changed dramatically since Rule R9-4 was promulgated in 1973. The Public Staff noted that, prior to 1996, all regulated incumbent local exchange companies (ILECs) in North Carolina operated under rate-of-return regulation. The Public Staff opined that, in that regulatory environment, cost studies were required to ensure that rates for new services, as well as revised rates for existing services, adequately covered the fully allocated cost of providing the service and provided some contribution to support basic local exchange service. The Public Staff stated that reviewing cost studies to ensure their completeness and accuracy was an important tool used by the Public Staff to achieve this public policy goal.

The Public Staff maintained that, as competition has developed and companies have moved from rate-of-return regulation to price plan regulation, the use made of cost studies submitted by companies operating under price plan regulation has changed. The Public Staff noted that cost studies filed in support of new tariff services are now evaluated for the purpose of determining whether the proposed rates exceed Long Run Incremental Cost (LRIC) instead of fully allocated cost. The Public Staff stated that,

further, many price plan companies have language in their plans that explicitly allow rates for individual rate elements to be priced below LRIC when such prices are necessary to meet competition for an equivalent service provided by a competitor.

The Public Staff asserted that another significant change resulting from the transition from a monopoly environment to an increasingly competitive environment is the increased use of packages of regulated services and bundles of regulated and nonregulated services. The Public Staff noted that customers are being encouraged to move from ordering services on an individual basis to ordering packages and bundles which provide the combinations of services they believe best meet their telecommunication needs. The Public Staff stated that companies are offering packaged and bundled services both in response to competitive offerings and in an effort to increase the likelihood of retaining existing customers. The Public Staff opined that companies are also feeling pressure to react more quickly in terms of developing and marketing new service offerings, particularly new packages and bundles.

The Public Staff stated that it believes that this is the appropriate time to relax the requirement that cost studies be provided to support rates for new services filed by companies operating under price plan regulation. The Public Staff maintained that relaxing this requirement will reduce the administrative effort required to tariff new services, and it should allow companies to react to market pressure more quickly. The Public Staff argued that it would also level the playing field to some extent, since the companies the ILECs are competing against have no obligation to either file tariffs or prepare cost studies for regulatory review.

The Public Staff asserted that the public interest will continue to be protected in several ways in the event that the recommended rule change is adopted. The Public Staff stated that, first, the price plans prohibit anticompetitive behavior on the part of ILECs, and the Commission will continue to have oversight responsibility for company compliance with the terms of their respective price regulation plans. The Public Staff noted that, if a competing company alleges that an ILEC is pricing services below LRIC, the Commission has the ability to investigate that complaint and can require the ILEC to submit cost studies in support of its tariff rates. The Public Staff also noted that the competitive market for packages and bundles should operate to ensure that prices cover the cost of providing such services, and the price plans themselves are structured so that prices for packages and bundles are assigned to service categories separate from standalone company services, particularly basic residential and business local exchange service. The Public Staff noted that, finally, the proposed amendment to Rule R9-4(d) will allow the Public Staff, at its own initiative, to request cost studies relating to new tariff services, and this should be a disincentive to any company contemplating filing tariffs for services that include anticompetitive rates.

The Public Staff requested that the Commission issue an order adopting the proposed revision on an interim basis and, if no significant objections are received after notice and an opportunity for interested parties to comment, issue a further order making the proposed revision permanent.

WHEREUPON, the Commission now reaches the following

### CONCLUSIONS

After careful consideration, the Commission concludes that it is appropriate to grant the Public Staff's Petition to Revise Commission Rule R9-4(d), unless objections are received by no later than Friday, May 9, 2008. The Commission tentatively agrees with the Public Staff that this is the appropriate time to relax the requirement that cost studies be provided to support rates for new services filed by companies operating under price plan regulation. The Commission further tentatively agrees that relaxing this requirement will reduce the administrative effort required to tariff new services and allow companies to react to market pressure more quickly. Further, the Commission tentatively agrees that making this change in the rule would also level the playing field to some extent, since the companies the ILECs are competing against have no obligation to either file tariffs or prepare cost studies for regulatory review.

Any party that objects to the change should file an objection by no later than Friday, May 9, 2008. If no objections are received, the change in Rule R9-4(d) requested in the Petition will be effective on Monday, May 12, 2008.

IT IS, THEREFORE, ORDERED as follows:

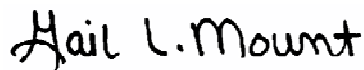
1. That the Public Staff's Petition to Amend Rule R9-4(d) is hereby granted effective Monday, May 12, 2008, unless objections are received by no later than Friday, May 9, 2008.

2. That Rule R9-4(d) shall be amended as outlined in Appendix A attached hereto, effective May 12, 2008, unless objections are received by no later than May 9, 2008.

ISSUED BY ORDER OF THE COMMISSION.

This the 24<sup>th</sup> day of April, 2008.

NORTH CAROLINA UTILITIES COMMISSION



Gail L. Mount, Deputy Clerk

## APPENDIX A

### Rule R9-4 Filing of Telephone and Telegraph Tariffs and Maps

(d) Cost Study Data. — Full cost data (2 copies) shall be submitted for each new or changed rate by any telephone utility with more than 12,500 access lines. If full cost data is not available, explanation should be given including the available data, the reason full data is not available and on what information the proposed rates are based.

Any telephone utility with 12,500 or fewer access lines in service shall submit cost data or file a rate already on file by some other company in North Carolina. Should the latter choice be made, explanation shall be included as to the name of the company from whom the rates were copied and the tariff section, sheet and item number of the other company's tariff.

Supporting data and/or explanations of how dollar amounts appearing on cost studies were obtained shall be included.

**This subsection shall not apply to a telephone utility that is subject to price regulation unless cost study data (i) is requested by the Public Staff or the Commission; or (ii) is required to be filed in response to a complaint alleging anticompetitive conduct by the utility.**