



UNITED STATES GOVERNMENT
memorandum

WIRELINE COMPETITION BUREAU

DATE: August 19, 2013

TO: Robert G. Bowman, Ph.D., C.P.A.
Emeritus Professor of Finance, University of Auckland

FROM: Julie A. Veach
Chief, Wireline Competition Bureau

SUBJECT: Peer review of the Federal Communications Commission staff report,
*Prescribing the Authorized Rate of Return: Analysis of Methods for Establishing
Just and Reasonable Rates for Local Exchange Carriers*

The Wireline Competition Bureau (Bureau) of the Federal Communications Commission (Commission) is in the process of evaluating the appropriate methodology to be used in prescribing the authorized rate of return that applies to specific investment of incumbent local exchange carriers (LECs) (WC Docket No. 10-90).¹ Through this memorandum, I request that you perform a peer review of the attached Commission staff report, *Prescribing the Authorized Rate of Return: Analysis of Methods for Establishing Just and Reasonable Rates for Local Exchange Carriers* (hereafter “Staff Report”).²

In the *USF/ICC Transformation Order*, the Commission initiated a proceeding to rescribe the authorized rate of return,³ which is used to determine interstate common line rates and special access rates for rate-of-return incumbent LECs⁴ and is also used in calculating some forms of support provided by the Universal Service Fund (USF), including High Cost Loop Support (HCLS)⁵ and Interstate Common Line Support (ICLS).⁶ The currently authorized rate of

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*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

² *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*).

³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17870, para. 640.

⁴ In the *USF/ICC Transformation Order*, the Commission took rate-of-return incumbent LECs off of rate-of-return-based recovery for interstate switched access revenues. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17983-84, para. 900.

⁵ See 47 C.F.R. § 36.621(a)(1).

return is 11.25 percent, and was last set in 1990.⁷ Noting the major changes that have occurred in the market, technology, and regulation in the last 23 years,⁸ the Commission found compelling evidence that the authorized rate of return “is no longer reflective of the cost of capital”⁹ and sought comment on the data and procedures to be used to represcribe the authorized rate of return.¹⁰ The Commission’s preliminary analysis in the *USF/ICC Transformation Order* conservatively suggested that the rate of return “should be no more than 9 percent.”¹¹ 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 Universal Service Fund fees.

As part of this process, on May 16, 2013, the Bureau issued the *Staff Report* which reviews the record in this proceeding, discusses various methods and data sources that could be used to determine the Weighted Average Cost of Capital (WACC), and considers the Commission’s options for addressing the Commission’s goals and the issues raised by carriers, state regulators, consumer advocates and others. On May 16, 2013, the Commission sought public comment on the *Staff Report* with comments due on July 25, 2013 and reply comments due on August 26, 2013.¹² I direct your attention to the attached table, “List of Commenters,” which includes links to comments filed by interested parties on the *Staff Report*. The Commission will also forward you any reply comments on the *Staff Report* that it receives.

Before a federal agency may rely on influential scientific information such as the *Staff Report* in creating rules, the material must be peer reviewed to enhance the quality and credibility of the government’s scientific information.¹³ Guidance from the Office of Management and Budget (OMB) requires agencies to provide peer reviewers with “instructions regarding the objective of the peer review and the specific advice sought.”¹⁴ The objective of this peer review is to establish whether the *Staff Report* provides a solid foundation for estimating the WACC and a “zone of reasonableness” in which the authorized rate of return described above could be reasonably expected to lie. Please note that the standards for evaluation are not necessarily the same as those one might apply in evaluating studies for publication in a professional journal. For example, it is not necessary that the study present new or novel theoretical results or empirical

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⁶ See 47 C.F.R. § 54.901.

⁷ *Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 89-624, Order, 5 FCC Rcd 7507 (1990).

⁸ *USF/ICC Transformation Order*, 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.

⁹ *Id.* at 18052, para 1047.

¹⁰ *Id.* at 18052-55, paras 1048-57.

¹¹ *Id.* at 18055, para 1057.

¹² *Wireline Competition Bureau Seeks Comment on Rate of Return Represcription Staff Report*, WC Docket No. 10-90 et al., Public Notice, DA 13-1110 (Wireline Comp. Bur. rel. May 16, 2013).

¹³ See FINAL INFORMATION QUALITY BULLETIN FOR PEER REVIEW, OFFICE OF MANAGEMENT AND BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT, 70 Fed. Reg. 2664 (2005) (OMB Bulletin), available at www.ssa.gov/515/PeerReviewsFedRegNoticeForFinalBulletin.pdf (last visited Aug. 2, 2013).

¹⁴ *Id.* at 2668.

techniques. Consistent with the requirements of the OMB Bulletin, we are not asking you to “provide advice on policy” or to evaluate any policy implications that might arise from use of the *Staff Report*.¹⁵

Guidance from OMB further requires that “[r]eviewers shall be informed of applicable access, objectivity, reproducibility and other quality standards under the Federal laws governing information access and quality.”¹⁶ The OMB Bulletin also requires that “peer reviewers ensure that scientific uncertainties are clearly identified and characterized.”¹⁷ Finally, please be aware of two other aspects of the peer review process. First, the peer review will not be anonymous. Reviewers are identified and reviews placed in the public record. Past peer reviews conducted for the FCC can be found at: <http://www.fcc.gov/omd/dataquality/peer-agenda.html>.

Second, the OMB Bulletin requires us to assess whether potential peer reviewers have any potential conflicts of interest.¹⁸ In particular, a “conflict of interest” would exist if you have “any financial or other interest that conflicts with the service of an individual . . . because it could impair the individual’s objectivity or could create an unfair competitive advantage for a person or organization.”¹⁹ To assist our determination of whether there are any potential conflicts, please indicate whether you have participated in this rulemaking proceeding in any capacity. Please provide us any information relevant to evaluating whether you might have a real or perceived conflict of interest, including whether you have participated in the rulemaking in any capacity and whether or not you have financial ties to regulated entities, other stakeholders, and regulatory agencies.²⁰ We note that the OMB Bulletin makes clear that “work as an expert witness, consulting arrangements, honoraria and sources of grants and contracts” could trigger a potential conflict.²¹ To evaluate any real or perceived conflicts of interest, potential peer reviewers should consult applicable federal ethics requirements, applicable standards issued by the Office of Government Ethics, and the prevailing practices of the National Academy of Sciences (NAS).²²

¹⁵ The OMB Bulletin states in relevant part: “Peer reviewers can make an important contribution by distinguishing scientific facts from professional judgments. Furthermore, where appropriate, reviewers should be asked to provide advice on the reasonableness of judgments made from the scientific evidence. However, the charge should make clear that the reviewers are not to provide advice on the policy....” *Id.* at 2669.

¹⁶ *See id.* at 2675. These standards are discussed in greater detail in OMB’s GUIDELINES FOR ENSURING AND MAXIMIZING THE QUALITY, OBJECTIVITY, UTILITY, AND INTEGRITY OF INFORMATION DISSEMINATED BY FEDERAL AGENCIES, 67 Fed. Reg. 8452 (2002).

¹⁷ OMB Bulletin, 70 Fed. Reg. at 2669. The Bulletin further states that since not all uncertainties have an equal effect on the conclusions drawn, reviewers should ensure that the potential implications of the uncertainties for the technical conclusions drawn are clear. In addition, peer reviewers might be asked to consider value-of-information analyses that identify whether more research is likely to decrease key uncertainties. Value-of-information analysis was suggested for this purpose in the report of the Presidential/Congressional Commission on Risk Assessment and Risk Management. A description of additional research that would appreciably influence the conclusions of the assessment can help an agency assess and target subsequent efforts. *Id.*

¹⁸ *Id.* at 2670.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Specifically, peer reviewers who are Federal employees (including special government employees) are subject to Federal requirements governing conflicts of interest. *See, e.g.*, 18 U.S.C. § 208; 5 C.F.R. part (continued...)

For your convenience, a list of parties who have participated in the proceeding is attached. A search of the Commission's Electronic Comment Filing System (ECFS) will also be useful in identifying potential conflicts.²³

I request that you provide a written report of your review that describes the nature and scope of your review and your findings and conclusions with regard to this influential scientific information by September 9, 2013. The report shall include a short paragraph on your credentials and relevant experiences.

Attachments

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).

Wireline Competition Bureau Seeks Comment on Rate of Return Represcription Staff Report, WC Docket No. 10-90 et al., Public Notice, DA 13-1110 (Wireline Competition Bureau rel. May 16, 2013).

Table: List of Commenters

FINAL INFORMATION QUALITY BULLETIN FOR PEER REVIEW, OFFICE OF MANAGEMENT AND BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT, 70 Fed. Reg. 2664 (2005).

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2635 (2004). With respect to reviewers who are not Federal employees, agencies shall adopt or adapt the NAS policy for committee selection with respect to evaluating conflicts of interest. *See* POLICY AND PROCEDURES ON COMMITTEE COMPOSITION AND BALANCE AND CONFLICTS OF INTEREST FOR COMMITTEES USED IN THE DEVELOPMENT OF REPORTS, THE NATIONAL ACADEMIES, NATIONAL ACADEMY OF SCIENCES, NATIONAL ACADEMY OF ENGINEERING, INST. OF MEDICINE, NATIONAL RESEARCH COUNCIL (May 12, 2003), *available at* http://www.nationalacademies.org/coi/bi-coi_form-0.pdf (last visited Aug. 2, 2013).

²³ *See* Electronic Comment Filing System (ECFS) Home Page, Federal Communications Commission, <http://apps.fcc.gov/ecfs/>.