

LOUISIANA PUBLIC SERVICE COMMISSION

GENERAL ORDER

LOUISIANA PUBLIC SERVICE COMMISSION, EX PARTE

Docket No. U-22393 - *In Re: Investigation of access charge reduction flow through to end users.*

(Reported on the Record - Decided at the Open Session held March 18, 1998)

Nature of the Case

At its February 18, 1998 Business Meeting, the Commission directed that the Administrative Hearings Division issue, in the form of a recommendation, a legal interpretation of the record-keeping and filing requirements regarding flow through of Access Charge Reductions, contained within Orders issued by the Commission in Docket Number U-17949, beginning with Order Number U-1749-AA, issued August 23, 1993. The Commission directed that the recommendation be available for consideration at the Commission's March Business Meeting. Parties were given the opportunity to file briefs on the matter. Briefs were received from AT&T, MCI, Sprint, and Staff on February 27, 1998.

At the March 18, 1998 Commission Business Meeting, on the Motion of Commissioner Dixon and seconded by Commissioner Field, the Commission unanimously voted to accept the Recommendation. This Order is a reiteration of existing Commission orders already in effect. The purpose of issuing this Order is to make the requirements of existing orders regarding access charge reduction flow through record keeping and filing more readily accessible¹.

CONTENTS OF ORDERS U-17949-AA THROUGH U-17949-WW

Provided below is a summary of the record keeping and filing requirements regarding flow through of access charge reductions found in U-17949-AA through U-17949-WW.

ORDER NO. U-17949-AA

Order No. U-17849-AA was predicated on existing orders in Docket No. U-17949 mandating flow through of access charge reductions, and was occasioned by the Commission's directive to Special Counsel to confirm and verify that access reductions were being flowed through to ratepayers. Order No. U-17949-Z required Special Counsel to "examine the subsequent filings made by Interexchange carriers to assure compliance with the flow through of the access reduction and . . . confirm that previous access reductions were made timely and were likewise flowed through as rate reductions to the ratepayers."²

¹The Commission's adoption of the ALJ Recommendation is now being issued as a general order to facilitate the accessibility of the record keeping and filing requirements regarding flow through of access charge reductions contained within previously issued Commission Orders issued under Docket Number U-17949.

² In LPSC Order No. U-17949-Z, the Commission found that with regard to the rate reductions, protective measures should be taken to assure that the rate reductions are in fact accomplished and that they have the effect intended by Order No. U-17949-R. U-17949-Z provides in section (b) that the Commission will confirm through monitoring that **the filed tariffs** have accomplished the effects of the reduced rates required by the "R" Order. Section (d) continues that, "On tariffs that reduce intrastate access services, the Commission should be able to confirm and verify that access reductions have been flowed through by the Interexchange

Counsel reported that he experienced a delay in obtaining information which should have been provided in accordance with U-17949-Z, attributable in part to claims that the pertinent flow through data had not been maintained and that certain data need to be reconstructed. Order No. U-17949-AA addresses the record retention issue. Order No. U-17949-AA states that the Commission has repeatedly expressed its requirement that access rate reductions by Bell must be flowed through to Louisiana ratepayers. The Commission's requirement is based on its concern that if a flow through does not occur, then the access carriers, and not the ratepayers are the beneficiaries of the access rate reductions which are paid for with funds collected from ratepayers. The Commission found it "imperative, therefore, that all data pertinent to the calculation of access rate reduction flow through filings be assembled and preserved by the filing parties. Unless such data is assembled and preserved, this Commission cannot determine if, in fact, a proper and timely flow through has occurred." In Order No. U-17949-AA, the Commission directed that:

All Interexchange companies and resellers are hereby ordered to assemble and preserve for a period of not less than five (5) years all data, including minutes of use, pertinent to the filing of a tariff designed to flow through an access rate reduction by Bell. (dated August 23, 1993)

Record keeping and filing requirements as stated in the August 23, 1993 Order can be broken down as follows:

1. Tariffs designed to flow through access charge reductions by Bell are to be filed with the Commission.
2. Data pertinent to the filing of a tariff designed to flow through an access rate reduction must be assembled and preserved by the IXC's and Resellers.
3. The data assembled and preserved must include minutes of use.
4. Required information must be preserved for at least five years.
5. The five year preservation period commences with the filing of a tariff designed to flow through an access rate reduction.

There is no explicit statement in the ordering paragraph requiring that the information supporting the flow through tariff must be filed with the Commission, although it is clear that tariffs designed to provide for the access reduction flow through are required filings.

The body of the order states that it is imperative that this data be preserved so that the Commission can determine whether a proper and timely flow through has occurred. The Commission cannot make this determination unless the information is placed before it. Therefore, the data must not only be maintained for at least five years, the data must be readily available to the Commission in response to a request for production during the retention period. The data required to be retained for the minimum five year period specifically includes the minutes of use.

Order No. U-17949-AA does not dictate that the data must be preserved in a form to serve as input in a particular study. It is clear that what must be preserved is the evidence necessary to demonstrate the structuring of the flow through tariff to enable the Commission to verify that the ordered flow throughs actually occurred.

ORDER NO. U-17949-HH

Pursuant to Order No. U-17949-Z, the Commission had directed Special Counsel to examine and verify whether Louisiana Intrastate switched access reductions by South Central Bell were timely flowed through to ratepayers. Special Counsel presented a report regarding the August 1, 1990, the April 1, 1991, the February 5, 1992, and the February 1, 1993 access reductions at the Commission's

carriers."

October 7, 1993 Open Meeting,³ and suggested to the Commission that it might be desirable for the Commission to issue a generic order setting forth all pertinent requirements for future flow through of access savings.⁴ Pursuant to Commission authorization, Special Counsel submitted a proposed order, and the IXCS's submitted a counter proposal. The IXCS's proposal was accepted and became U-17949-HH. Attached to U-17949-HH, as Exhibit "A", was Special Counsel's proposal, which could be activated prospectively by the Commission. The following provisions are found in U-17949-HH:

1. IXCS's and resellers registered in Louisiana that have 2% or more of all Louisiana Intrastate Switched Access Minutes of Use are required to file quarterly reports with the Commission. (Any information alleged to be proprietary will be subject to the Commission's August 31, 1992 General Order concerning treatment of information designated confidential.)
2. The quarterly reports are to contain the switched service revenues on a per conversation minute of use basis and the switched access paid on a per conversation minute of use basis.
3. The Commission will review this data quarterly and at the end of twelve months, the Commission will assess the data to determine if the reduction in rates for a company, on a per unit (minute) basis is equal to or greater than the reduction in switched access rates.
4. If the reduction in rate on a per minute basis equals or exceeds the reduction in switched access rates, the Commission will consider this proof that the competitive market has provided the appropriate stimulus to pass through access savings to ratepayer, and no further access flow through requirements will be necessary.
5. If the reported data at the end of the 12 month period does not demonstrate the required reduction, the IXCS or Reseller who has failed to make the required reductions shall immediately file a written report explaining why the necessary reductions did not occur. The Commission order calls for immediate flow through of the deficient amount, with judicial interest.
6. If the Commission is not satisfied with the 12 month test results, then the Commission may impose the reduction flow through requirements recommended by Special Counsel and contained in Exhibit "A". The Commission may choose to modify Exhibit "A", as well as impose any other requirements.
7. IXCS's and Resellers shall comply with the terms of this Order commencing with Bell's 5 million switch access reduction effective March 1, 1994.

³A number of U-17949 Orders were issued making findings regarding a particular party's compliance with flow through requirements, including U-17949-CC (9/22/93) relating to Sprint, U-17949-EE relating to MCI, and U-17949-FF relating to AT&T. In their briefs, MCI and Sprint touched upon the possibility that "res judicata", or the issue already having been decided, could preclude re-examination of compliance during the period already considered. It could well be that the Commission would be barred from reopening their findings on Sprint's, MCI's, and AT&T's compliance with flow through requirements for the period previously investigated. However, as the nature of this recommendation is an elucidation of record keeping and filing requirements as set forth by Orders issued in Docket No. U-17949, and not a finding as to whether a particular company complied with those record keeping and filing requirements during a particular time, the issue need not be considered in this Recommendation.

⁴ Special Counsel stated that he believed that, due to lack of fixed requirements, there had been some confusion as to how the flow through should be structured, and that uneven and unanticipated results had occurred, producing a lack of uniformity as to the flow through structure and calculation of access savings that must be flowed through.

The Commission's stated objective in U-17949-HH was "to make sure that access reductions by Bell are flowed through on a dollar-for-dollar basis to the consumers." The Commission likewise had as an objective, the fostering of effective and meaningful competition in the marketplace. For that reason, the Commission was willing to do a 12 month trial to see if the IXCs' proposal would work.

There is no finding that appears in Docket U-17949 series as to the effectiveness of the 12 month trial under U-17949-HH as implemented in U-17949-II. The subsequent Order, U-17949-OO refers to *the Commission's standing flow through order (Order No. U-17949-HH)* which is evidence that HH was not rejected. In addition, a discussion related to the passage of U-17949-VV was recorded at the April 1996 Business and Executive Meeting in which Special Counsel reported that based on the compliance reports filed for the access reduction that took place in March of 1994 and the information submitted by the IXCs, the flow through, as required by the Commission's standing order, seems to be occurring.⁵

ORDER NO. U-17949-II

The \$5 million access reduction referenced in U-17949-HH was implemented in Order No. U-17949-II, dated March 18, 1994. Intrastate switched access was reduced in the amount of \$5,000,000.00, creating a flow through obligation to equal or exceed \$5 million reductions to the ratepayers. Quarterly reports containing the switched service revenues on a per conversation minute of use basis and the switched access paid on a per conversation minute of use basis, as described in U-17949-HH, were to be filed with the Commission.

ORDER NO. U-17949-OO

In Order No. U-17949-OO intrastate switched access was reduced to the level of interstate switched access by the Commission, a reduction of \$5,186 million. Section 5 of U-17949-OO provides that, "the intrastate switch access rate reduction shall be **subject to the Commission's standing flow through order (Order No. U-17949-HH)**. All parties affected by said order shall comply with the flow through requirement set for therein. (5/25/95)

ORDER NO. U-17949-VV

An Intrastate switched access reduction and flow through in the amount of \$13,000,000.00 was ordered by the Commission in U-17949-VV. (5/3/96)

ORDER NO. U-17949-WW

An intrastate switched access reduction and flow through in the amount of \$10,366,333.00 was ordered by the Commission in U-17049-WW. (5/7/97) Order No. U-17949-WW provides that access charge reductions are to be accomplished **in accordance with the methodology set forth in Exhibit "A" of Order No. U-17949-HH**, subject to the modification and requirement that **all access reductions shall be applied exclusively to message telephone service** on a continuing basis.

Exhibit "A" to Order No. U-17949-HH includes certain record keeping and filing requirements regarding access charge reduction flow through, including the following:

1. Flow through tariffs designed to affect as many ratepayers as possible, rather than to serve special promotions, shall be filed with the Commission.
2. All flow through tariff filings shall be filed within thirty days of the date of an access reduction. (The Commission modified this requirement to be 30 days after Bell's tariff is filed B&E 5/16/97, p.41, 45)

⁵ Special counsel did further elaborate that he could not say that the flow through has occurred 100% as he did not have as many tools to truly monitor it completely under U-17949-HH, as Exhibit "A" would have provided

3. Each flow through tariff shall be filed with an accompanying cover letter that includes:
 - a) a representation that the tariff is intended as a flow through filing
 - b) a reference to the applicable access reduction by Bell
 - c) a summary of the rate reduction involved
 - d) the ratepayer groups effected by the filing
 - e) certification that the reductions shall remain in effect (subject to the modification procedures contained in this order) for not less than one year.
4. After 12 months, a flow through obligor may file a substitute tariff as long as such tariff conforms to the terms and requirements of this order.
5. After a flow through tariff has been in effect for 12 months, the flow through obligors shall file a compliance report with the Commission within 60 days.
6. The compliance report shall contain the following information:
 - a) projected access savings
 - b) actual access savings based on minutes of use from the effective date of the access reduction
 - c) amount flowed through during the 12 months (including pursuant to a temporary tariff)
 - d) Explanations must be included for any deficiencies or modifications.

Contentions of the Parties

All parties who filed briefs were in agreement that the record keeping and reporting requirements in regard to access charge reduction flow throughs placed on IXC's by the Commission have been modified by a number of Orders in Docket No. U-17949. The parties' interpretation of the successive Orders in relation to each other however, varies considerably.

AT&T:

AT&T acknowledged that U-17949-AA imposed a record keeping obligation on all IXC's and resellers, but argued that: (1) U-17949-HH superseded U-17949-AA in all respects, and (2) at the end of the one year trial reporting period under U-17949-HH, no flow through information requirements remained, since the specific reporting requirements of U-17949-HH expired at the end of that trial period. AT&T stressed the fact that U-17949-HH was issued at the conclusion of Special Counsel's investigation, while U-17949-AA was issued at the beginning of that investigation, from which AT&T concluded that the Commission, after considering Special Counsel's detailed report, decided to adopt a market based flow through process, rather than the specific reporting requirements recommended by Special Counsel in Exhibit A of that Order. AT&T noted that the Special Counsel's report, as summarized in U-17949-HH, states that "at the present time, the Commission has no fixed requirements to ensure a uniform and timely flow through of access savings".

According to AT&T, under the terms of U-17949-HH, not only were access flow through tariffs unnecessary, but *no* reporting requirements of any kind remained in effect, because the terms of U-17949-HH themselves expired at the end of the 12 month trial period. AT&T interpreted the language of U-17949-HH, "*without the necessity of further access flow through requirements*" to signify the expiration of the terms of U-17949-HH at the end of the 12 month trial period.

AT&T took this interpretation one step further in interpreting the effect of Order U-17949-OO, which provides: "The intrastate switched access rate reduction shall be subject to the Commission's standing flow through order (Order No. U-17949-HH). All parties affected by said order shall comply with the flow through requirements set forth therein." AT&T argued that the terms of U-17949-HH are that the switched access rate reductions shall be flowed through to consumers as the market dictates, and that no reporting is required after the first year, thus, AT&T argued, Order U-17949-OO, incorporating the "standing flow through order (Order No. U-17949-HH)", imposes no flow through reporting requirements, the latter order having expired after the 12 month trial period.

The Commission's adoption, in Order No. U-17949-WW, of the terms contained in Exhibit A of Order No. U-17949-HH, AT&T asserted, is confusing, since the terms of U-17949-HH required a specific finding by the Commission that the market force methodology had proven unsuccessful, and the Commission never adopted Exhibit A following the 12 month trial period. AT&T appeared to suggest that the terms of U-17949-HH (as interpreted by AT&T to remove *any* flow through requirement at any point) limits the Commission's discretion to adopt any flow through requirement (such as the terms of Exhibit A) at a later point.

MCI:

As a preliminary note, MCI stated that the Commission's record keeping and reporting requirements for IXCs have continually changed, and were not always specific; that IXCs might have preserved data to support their flow through calculations, but due to the lack of specificity in some Commission orders on precisely what data is to be maintained, and due to the fact that various methodologies could be used to calculate access savings and resulting flow through, they might not have had the data needed to determine access flow through under a particular methodology used in an investigation, especially data necessary for input in the methodology developed by Theodore Barry & Associates, BellSouth's paid consultants. MCI also noted that access charges are a substantial source of BellSouth's profits, and it is in BellSouth's interest to prevent further access reductions.

Based on the ordering language of Order No. U-17949-AA⁶, which governs the flow through requirements for the year 1993, MCI asserted that the record keeping obligations of that Order apply only when an IXCS files an access flow through tariff in response to an access reduction by Bell. MCI averred that the language of U-17949-AA shows that Order relates directly to the calculation of access savings and the resulting rate reductions in the tariff, to ensure that the calculation of the reduction was appropriate, and that the IXCS did not delay its filing.⁷

For the year 1993 and preceding years, MCI stated that the present inquiry by the Commission into access flow through is res judicata to the extent that MCI's compliance with the continually changing record keeping and reporting requirements pertaining to all access reductions including and prior to February 1, 1993 has been ascertained by the Commission in U-17949-EE.

MCI averred that the flow through record keeping and reporting requirements for the year 1994 are governed by Order No. U-17949-HH, which requires quarterly reports listing switched access revenues on a CMOU basis, as well as switched access paid on a CMOU basis. Since U-17949-HH does not require flow through tariffs to be filed for the year of 1994, MCI argued, the record keeping requirements of U-17949-AA are inapplicable for all flow through that occurred in 1994, during which an IXCS was to file quarterly reports, but no flow through tariffs, pursuant to U-17949-HH. Unlike AT&T, MCI did not contend that the provisions of U-17949-AA are superseded entirely, but rather, that U-17949-AA requirements merely do not apply where no flow through tariff is filed.

For the year 1996, MCI contended, under Order No. 17949-OO which ordered a \$5.186 million access reduction by Bell and required the IXCs to comply with the standing flow through order (Order No. U-17949-HH), no flow through tariff filing was required, rendering the record keeping requirements of U-17949-AA inapplicable. MCI further argued that no quarterly reports were required because the 12 month trial period of U-17949-HH had not elapsed in February 1995 when U-17949-OO was adopted.

⁶ "All Interexchange companies and resellers are hereby ordered to assemble and preserve for a period of not less than five (5) years all data, including minutes of use, pertinent to the filing of a tariff designed to flow through an access rate reduction by Bell"

⁷"It is imperative, therefore, that all **data pertinent to the calculation of access rate reduction flow through filings** be assembled and preserved by the filing parties. Unless such data is assembled and preserved, this Commission cannot determine if, in fact, a proper and timely flow through has occurred." [Emphasis provided by MCI]

For the year 1996, MCI voluntarily filed a flow through tariff, although the Commission did not impose specific flow through requirements in U-17949-VV for the access reduction ordered therein. The record keeping obligations for a minimum of five years provided for in U-17949-AA, MCI states, therefore apply to MCI's flow through tariff filed in 1996. MCI stated that it supplied the information to the Commission, and has maintained that data.

For the year 1997, MCI stated that the record keeping requirements of 17949-AA do apply. Order No. U-17949-WW, authorizes a \$10.36 million reduction and imposes the flow through requirements contained in Exhibit A of Order No. U-17949-HH with some modifications. Exhibit A requires the filing of a flow through tariff with supporting information and subsequent reporting after the flow through has been in effect for 12 months. MCI stated that under U-17949-WW, the Company is under the obligation to maintain its supporting calculations for its 1997 access savings and rate reductions for its flow through tariff filing for five years, in addition to filing compliance reports at the end of the 12 months and maintaining the necessary data to meet the requirements of the compliance report.

Sprint:

Sprint stated that the record keeping and reporting requirements of Order No. U-17949-AA were substantially modified by Order No. U-17949-HH, which adopted a new experimental 12 month trial period of quarterly reports with data on switched access revenues on a CMOU basis and switched access paid on a CMOU basis. These quarterly reports were to begin after the next Commission-ordered BellSouth access reduction. Sprint noted that the proposed order contained in Exhibit A of U-17949-HH was never adopted by the Commission, although the Commission reserved "the right to impose prospectively at the end of the 12 month period the fixed access reduction flow through requirements recommended by Special Counsel".

Order No. U-17949-OO, Sprint noted, imposed access flow through obligations on IXC's in compliance with U-17949-HH in connection with the \$5.2 million rate reduction mandated therein. This order, Sprint argued, contained no record keeping or reporting requirements.

The most recent order relevant to flow through requirements, Sprint stated, is Order No. U-17949-WW, which, according to Sprint, mandates no record keeping or reporting, although the Commission imposed the requirements proposed by the Special Counsel in Exhibit A of Order No. U-17949-HH.

LPSC Staff:

The Staff viewed the central issue for the Commission's consideration to be the interaction between Order No. U-17949-HH and U-17949-AA, in particular, whether the former impliedly or expressly repealed the latter. Citing the provisions of Article 8 of the Louisiana Civil Code⁸, the Staff asserted that Order No. U-17949-HH expressly repealed the requirement of a flow through tariff filing contained in U-17949-AA, but that repeal of the filing requirement of a flow through tariff was applicable only for the 12 month period that followed the next Commission ordered switch access reduction by Bell.

As to the record retention requirement contained in U-17949-AA, the Staff stated that the Commission neither expressly nor impliedly repealed that requirement, because, under Article 8 of the Civil Code, the continual obligation of IXC's to maintain and preserve data is not contrary to the provisions of U-17949-HH.

⁸La. C.C. Art. 8 provides in pertinent part:

Laws are repealed, either entirely or partially, by other laws.

A repeal may be express or implied. It is express when it is literally declared by a subsequent law. It is implied when the new law contains provisions that are contrary to, or irreconcilable with, those of the former law.

The Staff further noted that Article 10 of the Civil Code should guide the Commission in interpreting any otherwise unclear or ambiguous provisions of the relevant flow through orders. Article 10 provides that when the language of a law is susceptible of different meanings, it must be interpreted as having the meaning that best conforms to the purpose of the law. The Staff noted that the Commission's purpose in adopting these various orders has always been to ensure proper and timely flow through of all access savings resulting from Commission-ordered access reductions by BellSouth. Therefore, the Staff contended, any ambiguity should be interpreted in light of that purpose.

Legal Analysis

In the instant case, the Commission requested the Administrative Hearings Division to aid in the interpretation of all applicable orders on the record keeping and reporting requirements for flow through of access charge reductions, beginning with Order No. U-17949-AA. As a preliminary matter, the Commission should note that it has great discretion in interpreting its own rules and regulations, and the administrative interpretation is controlling subject to limited exceptions.⁹; courts should give reasonable leeway to Public Service Commission in its interpretation and application of its own rules.¹⁰ The constraints on the agency's discretion are that the agency interpretation will not be controlling if: (1) the administrative interpretation is not based on expertise in the particular field, but based on general common law principles.¹¹ (2) the interpretation is plainly erroneous, or, in conflict with the rule that it purports to interpret;¹² or, (3) the interpretation conflicts with a federal statute, or the Constitution.¹³ An agency is not allowed to change a rule retroactively through the process of disingenuous interpretation of the rule to mean something other than its original meaning.¹⁴ An administrative agency may interpret its own rules and such an interpretation becomes part of the rule¹⁵.

One source consulted for guidelines to foster reasonableness of the interpretation offered of the Orders in question was the rules of statutory construction contained in Louisiana Civil Code, Articles 8-13.¹⁶

⁹*Bowles v. Seminole Rock Co.*, 325 U.S. 410, 413-414

¹⁰ *Washington-St-Tammany Elec. Co-op., Inc. v. LPSC*, 95-1932 (La. 4/8/96), 671 So.2d 908

¹¹ *Jicarilla Apache Tribe v. FERC*, 578 F.2d 289 (10th Cir. 1978)

¹² *Standard Oil Co., v. Department of Energy*, 453 F.Supp. 203, *aff'd*, 596 F.2d 1029 (TECA 1978)

¹³ *Stinton v. United States*, 113 S. Ct. 1913 (1993)

¹⁴ *Standard Oil, supra.*

¹⁵ *Hill v. Department of Health and Human Resources, Office of Mental and Substance Abuse*, 457 So.2d 781 (La. App. 1 Cir. 1984)

¹⁶

La. C.C. Art. 9:

“When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature.”

La. C.C. Art. 13:

“Laws on the same subject matter must be interpreted in reference to each other.”

La. C.C. Art. 12:

Many aspects of the Commission's orders on the record keeping and reporting requirements found in Docket No. U-17949 are "clear and unambiguous" and therefore should be applied as written, without interpretation as directed by La. C.C. Art 9. See the foregoing discussion of the content of U-17949 Orders.

There are however some areas that are not entirely clear and unambiguous and cannot be applied as written without further interpretation under La. C.C. Art. 9. To aid in interpreting an ambiguous statute, a court may look to legislative history to discern the intent of the legislature. *State, Dept. Of Social Service v. Parker*, 595 So.2d 815. (La. App. 2d Cir. 1992). *Roberts v. State Farm Mut. Auto. Ins. Co.*, 95-27501 (La. App. 2 Cir. 11/1/95), 662 So.2d 821. In interpreting an ambiguous statute, the court must take the context and purpose of the statute into consideration. *Louisiana Smoked Products, Inc. v. Savoie's Sausage and Food Products, Inc.*, 96-1727 (La. 7/1/97), 696 So.2d 1373. The legislative intent and purpose should guide the interpretation of ambiguous statutes. *Secession of Fragala v. Dubea et al.*, 28,663 (La. App. 2 Cir. 9/27/1996), 680 So.2d 1345. All of the orders that govern the IXCs' record keeping and reporting requirements should be interpreted in reference to each other. La. C.C. Art. 13. Orders that are susceptible to different meanings should be given the meaning that best conforms to the purpose of the law. La. C.C. Art. 10.

In the instant case, a number of the orders in question contain discussions of the Commission's intent, often as prefaces to the ordering language. What is repeatedly stressed is the Commission's intent that any intrastate switched access reduction that it orders be passed through to the ratepayers, whether that pass through is via a flow through tariff, or via reductions in CMOU demonstrated in quarterly report filings. U-17949-AA, for example, includes the following statement:

This Commission has repeatedly expressed its requirement that access rate reductions by Bell must be flowed through to Louisiana ratepayers. The Commission's requirement is based on its concern that if a flow through does not occur, then the access carriers and not the ratepayers are the beneficiaries of the access rate reduction.

It is imperative, therefore, that all data pertinent to the calculation of access rate reduction flow through filings be assembled and preserved by the filing parties. Unless such data is assembled and preserved, this commission cannot determine if, in fact, a proper and timely flow through has occurred.

The Commission's Findings in U-17949-HH commences with the statement that:

The Commission's objective is to make sure that access reductions by Bell are flowed through on a dollar-for-dollar basis to the consumers.

"When the words of a law are ambiguous, their meaning must be sought by examining the context in which they occur and the text of the law as a whole."

La. C.C. Art. 10:

"When the language of the law is susceptible of different meanings, it must be interpreted as having the meaning that best conforms to the purpose of the law."

La. C.C. Art. 8:

"Laws are repealed, either entirely or partially, by other laws.

A repeal may be express or implied. It is express when it is literally declared by a subsequent law. It is implied when the new law contains provisions that are contrary to, or irreconcilable with, those of the former law.

The repeal of a repealing law does not revive the first law."

Any interpretation which fails to take the Commission's stated intent into consideration is likely to be erroneous. AT&T's argument that once 12 months had passed after the implementation of U-17949-HH, no further flow through requirements and concomitant record keeping and filing requirements existed, is contrary to the Commission's intent as stated in its orders, as well as demonstrated in discussions during open sessions and in acceptance of reports of counsel, and is unconvincing:

Well, I would like to assure you that you cannot possibly be any more concerned than I am if these inter-exchange carriers are not flowing through these reductions to their customers because that has been a very strong portion of every action this Commission has taken. And if that is not being done, I think this Commission needs to do what ever is necessary to investigate it and to make certain that it is being done and will be done. . . (Tr. Jan. 26, 1993 B&E)

Of major concern to the parties who filed briefs was the question of what effect the passage of U-17949-HH had on the continuing viability of U-17949-AA. An order may be repealed entirely or partially by other orders either impliedly or expressly. La. C.C. Art. 8. Prior laws are repealed by subsequent laws only in the case of positive enactment or clear repugnancy, and nothing short of irreconcilable conflict will work repeal by implication. *Caulfield v. Leonard*, 95-1043 (La. App. 5 Cir. 6/25/96), 676 So.2d 1117, *writ den.* 96-1911 (La. 11/1/96), 681 So.2d 1262. Repeals by implication require determination of whether there is some indication of legislative "intention to repeal" statutes in question. *State v. Craig*, 93-2515 (La. 5/23/94), 637 So.2d 437. Repeals of statutes by implication are not favored, and will not be indulged if there is any other reasonable construction. *Id.*

Sprint and AT&T argued that U-17949-HH repealed the filing and record keeping requirements of U-17949-AA. Staff argued that the repeal of the filing requirement of a flow through tariff was applicable *only* for the 12 month period that followed the next Commission ordered switch access reduction by Bell subsequent to U-17949-HH. MCI advanced the most convincing interpretation, suggesting that the record keeping requirements of U-17949-AA are applicable whenever the filing of a flow through tariff is required. While the language of the preamble of U-17949-AA speaks of the necessity of assembling and preserving all data pertinent to the calculation of access rate reduction flow through filings, the ordering language is slightly more specific and directs that all data, including minutes of use, *pertinent to the filing of a tariff* designed to flow through an access rate reduction by Bell be assembled and preserved.

Only to the extent that HH is actually in conflict with AA, would HH supersede the requirements of AA. When HH announces that quarterly reports of switched service revenues on a per conversation minute of use basis and the switched access paid on a per conversation minute of use basis are the only filing requirements for the trial period, HH is in conflict with the requirement under AA for access reduction flow through tariff filings and assembling and preserving of pertinent data. Therefore, during the period when HH was in effect, un-modified by other requirements, such as those found in Exhibit "A", the provisions of AA would not be in force. AA imposes a continuing requirement to assemble and preserve records to the extent that those records are pertinent to The filing of a flow through tariff. In instances when no flow through tariff is required, i.e., when quarterly CMOU reports replace flow through tariff filings, the provisions of AA are in-applicable.

Order No. U-17949-AA, dated August 23, 1993, requires "IXCs and resellers to assemble and preserve for at least 5 years all data including minutes of use, pertinent to the filing of a tariff designed to flow through an access rate reduction by Bell". While this order clearly mandates that the IXCs and resellers maintain all data relating to a flow through tariff filed by an IXCS or Reseller in response to Bell's access rate reduction, a question could arise as to whether the five year period is measured from the date of the order or the date of the access flow through tariff filed by an IXCS or Reseller. Under LSA-C.C. Art. 10, the purpose of the law should guide the resolution of this ambiguity. In view of the Commission's desire to ensure and verify timely and proper flow through in adopting U-17949-AA, the Administrative Law Judge concluded that the five year period is

measured from the date of an IXCS's or Reseller's filing of a flow through tariff and not from the date of that order. Though the order is not specific on the particulars of what data should be assembled and preserved, the order unambiguously provides that *all* data pertinent to a flow through tariff should be preserved.

Conclusion

Based on the preceding discussion, the following is a summary of the obligations regarding access charge reduction flow through to end users found in Orders issued by the Commission in Docket Number U-17949, beginning with Order Number U-17949-AA, issued August 23, 1993¹⁷.

THEREFORE IT IS ORDERED:

1. That under Order No. U-17949-AA (Aug.23, 1993), the IXC's' obligation was to file flow through tariffs and to assemble and preserve all data, including in particular, minute of use, pertinent to the filing of a tariff designed to flow through an access rate reduction by Bell for at least five years. It was made clear in Order No. U-17949-AA, that the purpose of assembling and preserving the data was to allow for Commission review of the information to confirm whether all access charge reductions ordered by the Commission were in fact passed on to ratepayers. The data must be assembled and preserved so as to be readily available to the Commission in response to a request for production during the five year retention period. U-17949-AA does not specifically require that the pertinent supporting data be filed with the Commission.
2. That the data to be preserved under U-17949-AA is data *pertinent to the filing of a flow through tariff*. Therefore, any time a flow through tariff is required, the record keeping provisions of U-17949-AA apply to that filing. From the issuance of U-17949-AA, August 23, 1993, through the implementation of U-17949-HH, March 18, 1994,¹⁸ all data pertinent to Flow Through Tariffs, including minutes of use, must have been assembled and retained.
3. That upon the implementation of U-17949-HH (issued Feb.18, 1998), through the reduction ordered in U-17949-II, March 18, 1994, the requirement for further filings of flow through tariffs, and hence the accompanying record retention requirements were suspended for a 12 month period. U-17949-HH directed that in lieu of filing flow through tariffs, quarterly reports containing the switched service revenues on a per conversation minute of use basis and the switched access paid on a per conversation minute of use basis would be filed with the Commission. Quarterly reports have been due from June 28, 1994 through March 28, 1995 (assuming that the reductions occurred on the effective date of Order No. U-17949-II).

¹⁷At the March 18, 1998 Business and Executive Session of the Louisiana Public Service Commission, the Commission directed Staff to review the Administrative Law Judge's report regarding the interpretation of all applicable orders on the record keeping and filing requirements for flow through access charge reductions. Additionally, Staff was directed to look at any information that has been filed by the IXCs regarding the flow throughs. The Commission instructed the Staff to prepare, with the assistance of David Moore, a recommendation regarding the steps that need to be taken to tighten the Commission's rules on the treatment of flow through access charge reductions. Finally, the Staff and David Moore are to determine which IXCs followed the Commission's orders and which IXCs did not follow the Commission's orders.

¹⁸ Rule 44 of the Rules of Practice and Procedure of the Louisiana Public Service Commission provides that all orders shall go into effect 10 days after mailing thereof, unless otherwise provided, or unless motion for rehearing is filed timely.

4. That the Commission ordered a further access reduction in U-17949-OO, issued May 25, 1995, and stated that the access reduction was subject to the Commission's standing flow through order, Order U-17949-HH. All parties affected by said order were required to comply with the flow through requirements set forth therein. Therefore, for the subsequent 12 months, quarterly reports containing the switched service revenues on a per conversation minute of use basis and the switched access paid on a per conversation minute of use basis were required filings. Quarterly reports would have been due from August 4, 1995 through June 4, 1996 (assuming that the reduction occurred on the effective date of Order No. U-17949-OO).

5. That U-17949-VV (May 3, 1996) imposed a \$13 million access reduction. As U-17949-HH had been identified as a "standing order" in U-17949-OO, and discussed as such at the April 1995 Business and Executive Session, the most logical interpretation is that the U-17949-VV access reduction flow through was once again to be accomplished in compliance with the flow through requirements set forth in U-17949-HH, i.e., for the subsequent 12 months, quarterly reports containing the switched service revenues on a per conversation minute of use basis and the switched access paid on a per conversation minute of use basis were required filings. Quarterly reports would have been due from August 13, 1996 through June 13, 1997 (assuming that the reductions occurred on the effective date of Order No. U-17949-VV).

6. That Order No. U-17949-WW(May 7, 1997) provides that access charge reductions are to be accomplished in accordance with Exhibit "A" of U-17949-HH. Exhibit "A", and 17949-WW requires the filing of a flow through tariff, and therefor pertinent information, including specifically the minutes of use, must be assembled and preserved for a minimum of five years as prescribed in U-17949-AA.

**BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA**

June 17, 1999

/S/DON OWEN

DISTRICT V
CHAIRMAN DON OWEN

/S/ IRMA MUSE DIXON

DISTRICT III
VICE CHAIRMAN IRMA MUSE DIXON

/S/ C. DALE SITTIG

DISTRICT IV
COMMISSIONER C. DALE SITTIG

/S/ JAMES M. FIELD

DISTRICT II
COMMISSIONER JAMES M. FIELD

/S/ LAWRENCE C. ST. BLANC

SECRETARY
LAWRENCE C. ST. BLANC

/S/ JACK "JAY" A. BLOSSMAN, JR.

DISTRICT I
COMMISSIONER JACK "JAY" A. BLOSSMAN, JR.

Service List
Docket No. U-22393

Commissioners

David Kantrow - LPSC Staff Attorney

Stanley Perkins - LPSC Auditing

C - David J. Moore, Postlethwaite & Netterville, 8550 United Plaza Blvd., Suite 1101, 10th
Floor, Baton Rouge, LA 70809

I - William R. Atkinson, Sprint, 3100 Cumberland Circle, Atlanta, GA 30339

I - David Guerry, Long Law Firm, Two United Plaza, Suite 800, 8550 United Plaza Blvd., Baton
Rouge, LA 70809-7013 (Rep. AT&T Comm.)

I - Katherine King, Kean, Miller, et al., P.O. Box 3513, Baton Rouge, LA 70821 (Rep. MCI)

IP - T. Michael Twomey, Esq. BellSouth Telecommunications Inc. 365 Canal St., Suite 3060,
New Orleans, LA 70130