

# Overpayment Rules



October 2001

**CONTENTS**

- 1. OVERVIEW ..... 2**
- 1.1 Appointment of Regulator ..... 2
- 1.2 Preparation of Overpayment Rules pursuant to Section 47 of the Code ..... 2
- 1.3 Interaction with other sections of the Code ..... 2
- 2. OVERPAYMENT RULES TO BE ADOPTED ..... 3**
- 2.1 Percentage limit over the Regulatory Ceiling ..... 3
  - 2.1.1 Proposed limit ..... 3
  - 2.1.2 Regulatory Ceiling ..... 3
  - 2.1.3 Definition of three year period ..... 3
  - 2.1.4 Where revenues exceed the limit of five percent ..... 3
  - 2.1.5 Short term fluctuation ..... 4
  - 2.1.6 Long term fluctuation ..... 4
- 2.2 Excess at the end of a three years period ..... 4
  - 2.2.1 Introduction ..... 4
  - 2.2.2 Methodology to be adopted ..... 4
  - 2.2.3 Audit function and review by Regulator ..... 4
  - 2.2.4 Timing of return of any excess ..... 5

## **1. OVERVIEW**

### **1.1 Appointment of Regulator**

Dr Ken Michael has been appointed as the Acting Rail Access Regulator with effect from 1 September 2001. Concurrently, the Access Code was proclaimed and has become effective in all respects.

### **1.2 Preparation of Overpayment Rules pursuant to Section 47 of the Code**

The Railways (Access) Code 2000 requires that WestNet Rail Pty Limited (“WestNet”) prepares and submits to the Regulator the Overpayment Rules it will apply under the Code. The rules must give effect to the requirements to

- a) ensure that the defined excess must at all times be within a percentage of the relevant costs notified by WestNet to the Regulator
- b) at the expiry of a period of three years there must be no such defined excess.

The Rules will also set out the methodology to distribute amounts which fall to be dealt within items a) and b) above.

The definition of the three year period for the purposes of Section 47 (2) (b) of the Code will require consideration as it will have practical implications for the implementation of the Code.

### **1.3 Interaction with other sections of the Code**

The Overpayment Rules will interact closely with the Costing Principles because the Regulatory Ceiling will be relevant in determining the defined excess of revenue from operators.

WestNet has submitted in its Costing Principles that there should only be one Regulatory Ceiling calculated, which will be based on the combinatorial test as set out in Clause 8 (3) of Schedule 4 of the Code. WestNet will also vary the Regulatory Ceiling in accordance movements in the Consumer Price Index on an annual basis, with the Regulatory Ceiling re-calculated in accordance with the Costing Principles every three years.

## **2. OVERPAYMENT RULES TO BE ADOPTED**

### **2.1 Percentage limit over the Regulatory Ceiling**

#### *2.1.1 Proposed limit*

WestNet proposes that the relevant percentage of the Regulatory Ceiling for the purposes of Section 47 (2) (a) of the Code be five percent. This would seem to balance the interests of all parties in an appropriate and fair manner.

#### *2.1.2 Regulatory Ceiling*

The Regulatory Ceiling will be calculated based on Clause 8 (3) of Schedule 4 of the Code, that is, it will be based on one Regulatory Ceiling using the combinatorial test.

#### *2.1.3 Definition of three year period*

WestNet is of the view that to consider calculating multiple periods (and thus multiple tests under the Overpayment Rules) based on the commencement of an operator or group of operators is likely to cause significant confusion to all stakeholders. On one reading of the Code, should five different operators commence over a period, five overpayment calculations will need to be made.

This will create complexity due to the interaction between variations in Regulatory Ceilings and users commencing and ceasing access to the rail infrastructure and therefore tracing multiple contributions and entitlements.

WestNet therefore proposes that the three year period for the purposes of Section 47 (2) (b) shall commence on 1 January 2002 and for the avoidance of doubt, continue for the following three years and expire on 31 December 2004. This cycle would repeat and be linked to the recalculation of the Regulatory Ceiling noted in Section 1.3.

#### *2.1.4 Where revenues exceed the limit of five percent*

WestNet will review whether a breach of the limit of five percent has occurred on an annual basis commencing from 1 January 2002.

Within three months of the limit of five percent being breached on an annual test, WestNet will consult with all users of the relevant rail infrastructure to determine the reasons for the increased revenues occurring. For example it could be related to a short term fluctuation in traffic to meet production schedules which may not be ongoing or the movement of primary produce which could be due to unusual seasonal conditions. Alternatively, it could arise from a sustained and permanent increase in traffic flows over the relevant route.

Different actions will be warranted based on the cause of the increase as measured annually.

It is proposed that WestNet submit to the Regulator its opinion and supporting facts within one month after the consultation and analysis period as to whether the breach of five percent is due to short term or long term factors. The Regulator will within one month review the opinion and facts as presented by WestNet (and consult directly with users and other stakeholders should the Regulator deem it appropriate) and determine whether WestNet's position is reasonable or not. WestNet will proceed based on the Regulator's view as set out below.

### *2.1.5 Short term fluctuation*

This situation will arise when in WestNet's reasonable opinion and confirmed by the Regulator that the breach of the five percent limit is due to short term factors. These factors will not, based on the circumstances at the time, result in the five percent limit being breached over the three year period defined in Section 2.1.3.

No action by WestNet will be undertaken in these circumstances. Should any excess remain at the end of the three year period, it will fall to be dealt with under Section 47 (2) (b) of the Code. This is discussed in Section 2.2.

### *2.1.6 Long term fluctuation*

This situation will arise when in WestNet's reasonable opinion and confirmed by the Regulator that the breach of the five percent limit is due to long term factors. The excess will be calculated by the summation of all access revenue relating to the relevant origin and destination and deducting this sum from the relevant Regulatory Ceiling. The excess will then be calculated based on the prorata contribution from access seekers and returned to those users which have entitlement under the Code after the processes set out in Sections 2.2.2 and 2.2.3.

## **2.2 Excess at the end of a three years period**

### *2.2.1 Introduction*

In the event there is an excess at the expiry of the defined three year period, WestNet is required to return the excess to those users which have an entitlement.

### *2.2.2 Methodology to be adopted*

The excess will be calculated by the summation of all access revenue relating to the relevant origin and destination and deducting this sum from the relevant Regulatory Ceiling. The excess will then be calculated based on the prorata contribution from access seekers and returned to those users which have entitlement under the Code.

### *2.2.3 Audit function and review by Regulator*

As there are issues of confidentiality between WestNet and users of the rail infrastructure, WestNet will prepare the Statement of Excess and Return Calculation ("SERC") in accordance with the methodology set out in Section 2.2.2. The SERC will be subject to an audit by ARG's auditors and a separate SERC will be sent to each individual user setting out the total excess for distribution and that users' entitlement.

The individual user will review the SERC and either confirm its agreement or seek further reasonable details from WestNet. In the event the individual user is unable to agree with WestNet's SERC and the subsequent information provided, the dispute will be forwarded within one month to the Regulator for determination.

It is important to recognise that no distributions can be made until all users have agreed or had their entitlement determined as individual entitlements are linked to all other claims on the excess.

The Regulator has the option (at its cost) to have the SERC subject to a further audit.

### *2.2.4 Timing of return of any excess*

WestNet will prepare and have audited SERCs within two months after the expiry of the defined three year period.

Each user will have one month to review their individual SERC. In the absence of a response within that time it will be deemed to be agreed. Upon the receipt of all agreed or determined SERCs WestNet will distribute the excess to those users who have an entitlement under the Code within 21 days.