EXHIBIT 41

Common Carrier, Rate or Tariff, Unlawful
Divestiture
Tariff, Investigation
Tariff, Revision of
Telephone Exchange

Certain tariff material submitted under Exchange Carrier Assn. (ECA) transmittal 1 unlawful. ECA ordered to file revised tariff material in compliance with Order.
—*Investigation of Access/Divestiture Tariffs*
CC Docket No. 83-1145

FCC 84-51

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	
Investigation of Access and	CC Docket No. 83-1145
Divestiture Related Tariffs	Phase I

MEMORANDUM OPINION AND ORDER

Adopted: February 16, 1984; Released: February 17, 1984

BY THE COMMISSION: *COMMISSIONER DAWSON ISSUING A SEPARATE STATEMENT; COMMISSIONER PATRICK NOT PARTICIPATING.

I. Background

1. In our Access Charge Orders, *MTS/WATS Market Structure, C.C. Docket No. 78-72, Phase I, Third Report and Order*, 93 FCC 2d 241 (1983), (Access Charge Order), *modified on reconsideration* FCC 83-356, released August 22, 1983 (*First Reconsideration Order*) we established a single uniform mechanism through which local telephone exchange companies will recover the costs of providing access services needed to complete interstate and foreign telecommunications. The access charge plan reflected our efforts to adapt existing compensation mechanisms to rapidly changing telecommunications technologies and market dynamics. We sought to allow full and fair competition in interexchange services,

and the benefits such competition would provide to consumers, while achieving a proper balance among four primary policy objectives: (1) elimination of unreasonable discrimination and undue preferences among rates for interstate services; (2) efficient use of the local network; (3) prevention of uneconomic bypass; and (4) preservation of universal service.

2. The Access Charge Plan as thus developed had these major features:

> * All charges for interstate and foreign access are to be assessed by annual tariffs filed with this Commission, replacing the variety of existing compensation mechanisms.
>
> * An Exchange Carrier Association (ECA) was established to prepare and file tariffs on behalf of carriers wishing to join it and to collect and distribute all Carrier Common Line rate element revenues.
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> * End user charges for 1984 were to be $2 for residential lines and up to $6 for business lines. These charges would be added to local exchange rates (unless a lifeline waiver were granted in order to preserve universal service) and offset by lower long distance rates.
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> * Carrier rate elements are to be based on costs computed and allocated as set out in the rules, and generally assessed per access minute of use.
>
> * To reasonably approximate carrier charges for "leakage" (*i.e.*, use of the local exchange for interstate communication without payment of a corresponding usage charge) a surcharge of $25 per Special Access line termination is applied pending development of techniques to measure and charge for actual usage.
>
> * For Special Access (basically local private lines used for access), carriers were to establish appropriate subclassifications, with charges designed to produce the associated revenue requirement and reflect cost differences in a manner that complies with Commission rules and decisions.

3. Tariffs implementing the access charge plan were directed to be filed on at least 90 days' notice to be effective January 1, 1984. Concurrently, the American Telephone and Telegraph Company (AT&T) and the local Bell Operating Companies (BOCs) also filed interstate tariffs reflecting the access tariffs and implementing the massive divestiture of AT&T pursuant to the Modification of Final Judgment (MFJ) adopting a consent agreement with the U.S. Department of Justice.[1] Altogether, by October 3, 1983, about 43,000 tariff pages (including 76 separate access tariffs) and 160,000 pages of associated support material were filed in response to the access charge plan and divestiture.

4. This Commission recognized the important benefits of implementing access tariffs to coincide with the January 1 date for divestiture. However, based on its initial review of the filed material, it was clear that the tariffs presented numerous substantial questions of lawfulness, notably in areas where the Access Charge Orders are silent or provide

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[1] United States v. American Telephone and Telegraph Company, 552 F.Supp. 131 (D.D.C. 1982), *aff'd sub. nom.* Maryland v. United States, 103 S.Ct. 1240 (1983).

only general guidelines. For example, the tariffs propose substantial ordering charges and other non-recurring charges (an area we pledged to scrutinize carefully) and widely varying Special Access charges. Approximately 50 local carriers also had not filed or joined in access tariffs. AT&T's interstate tariffs reflecting access and implementing divestiture also presented significant issues of lawfulness. Altogether, the filed tariffs fundamentally revised the rates and terms for virtually every interstate telecommunications service. Moreover, divestiture could proceed even if access tariffs were delayed. As a result, we concluded that the benefits of early implementation were outweighed by the need for careful review and meaningful opportunity for public comment.

5. Accordingly, the Commission set all the access and divestiture related tariffs for investigation. *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, FCC No. 83-470, released October 19, 1983. (*Investigation Order*). We also judged that a three month suspension period would enable us to resolve at least the major issues necessary to achieve workable tariffs. We therefore suspended all the tariffs until April 3, 1984 and established three separate pleadings cycles for public comments and carriers' replies. In this, Phase I of the investigation, concerning the access tariffs filed by local telephone exchange companies (telcos), fifty-five sets of comments were filed raising numerous issues concerning the ECA and other access tariffs. The commenters are listed in Appendix B.

6. Two related matters also affect our evaluation of the filed tariffs. The National Association of Broadcasters (NAB) on December 23, 1983, requested that the Commission separate the issues in this investigation and establish additional procedures; specifically it urged that carriers be required to file "baseline tariffs" containing only those minimal changes necessary to comply with Commission orders, leaving other matters to separate, additional transmittals.

7. Most importantly, in our decision on further reconsideration of the Access Charge Plan, (*Second Reconsideration Order*, FCC 84-36, released February 15, 1984, we adopted a number of important changes to our rules which necessitate changes in the filed tariffs.

* We decided to defer end user charges for residential and single-line business customers until June 1, 1985. This deferral may be expected to require an increase in the carrier portion of common line charges.[2]

[2] The delay will enable the Commission to conduct supplemental proceedings to devise an exemption for persons who cannot afford to pay any end user charge, reevaluate the transition plan for end user charges, and explore alternative mechanisms to assist customers of small telephone companies. To assist us in making those decisions, we decided to conduct further studies of bypass and the transition plan's effects on universal service. Since we determined that reevaluation of the transition plan for end user charges was necessary, the existing Sections 69.202-69.204 are to be removed from the Rules and

* We revised the rates for non-premium access charged to OCCs. The old rates were initially to be priced on a per minute basis at 65% of the premium rate for some elements and the same rate for others. The premium would be phased out on a nationwide average basis as equal access was achieved. The revised rules provide that unequal access is to be priced on a per line, per month basis at 45% of the level of premium access. This monthly rate is based on 9000 minutes, which is typical of OCC usage. This charge will increase yearly based on changes in the Consumer Price Index. The rate differential will end when equal access is offered by individual companies to all OCCs.

* We clarified that FX customers will pay access rates at the open end on a per minute basis, at the level charged to OCCs, (*i.e.*, per minute rate computed by dividing the monthly rate for equivalent access by 9000 minutes). Where AT&T obtains switched access to provide FX service it will pay the same rate.

* Because expected changes in treatment of the closed end of WATS have not been made for purposes of separations, we modified the access rules to conform. WATS access lines will therefore not be treated as Special Access lines, but in the same manner as other common lines. Minutes of use at the closed end of interstate WATS lines will be counted in calculating and assessing the carrier common line charge, the business end user charge will apply to all WATS access lines, and no special access surcharge will be assessed for the WATS closed end.

* We clarified and modified the application of the $25 Special Access Surcharge to more closely target private lines that "leak." Private line customers certifying that their private line is not interconnected with the local exchange through a PBX or other device capable of switching traffic to or from the local exchange will be exempt from the special access surcharge.

* We clarified that access charges are not applicable to carriers in the Public Mobile Service (Part 22 of the Commission's Rules).

* We reaffirmed our decision to establish a gradual phase-in of end user charges for Centrex-Co users. Accordingly, the end user charge for "embedded" Centrex lines in place or on order by July 27, 1983, will be limited to $2.00 for 1984-85. Only Centrex lines not in place or on order by that date will be charged the full multiline business rate, which could be up to $6.00.

* Each of these changes in the Access Charge Plan and Rules must be given effect by revisions in the pending access tariffs.

II. Discussion

8. As we explained in the *Investigation Order*, our goal is to resolve at least the major issues necessary to assure that generally reasonable, workable access tariffs are in place from the outset. These tariffs substantially transform the relationship among telecommunications customers, carriers and equipment suppliers. Significant unreasonable or unjust provisions could have profound effects on the telecommunications industry and on the public. At the same time because of the novelty, breadth, and complexity of the issues raised by these tariffs, it may not be possible to resolve all issues immediately. Actual operational experience

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a new Section 69.202, which describes the end user charges for 1984-85, will be substituted. Sections 69.203 and 69.204 are reserved for the new transition rules that we will be adopting in supplemental proceedings.

and the rapid changes in technology and market forces may also reveal new issues over time.

9. Our approach in seeking to resolve the major issues in this investigation has been to direct our attention most closely to the ECA tariff. There were several reasons for this. Of the 1540 local telephone exchange carriers in the U.S., 1328 joined the ECA for all rates and regulations as issuing carriers of the ECA access tariff. Many others, including 10 of the BOCs, participated in ECA revenue pools for one or more groups of rate elements. The ECA tariff is also the only complete self-contained access tariff — all local companies participate in the ECA to recover carrier common line revenues, as required by our rules. This element is by far the largest carrier rate element. Moreover, the ECA tariff and accompanying support material were prepared by the Central Service Organization (CSO), which is now maintained jointly by the BOCs, and at that time was a part of the not-yet-divested AT&T. As a result, perhaps, of this common parentage, the ECA tariff was the model for and is identical in format and structure to the tariffs of the BOCs, who provide service to over 80% of all telephone customers; the BOC tariff regulations and provisions also are largely identical to those in the ECA tariff. The other, independent telcos employ provisions which depart somewhat more widely from the pattern of the ECA tariff, but those tariffs also are most often either identical or at least similar to the ECA's. An evaluation of the ECA tariff, in short, will constitute an evaluation of the great majority of the terms and conditions of virtually all access tariffs.

10. The filed tariffs do differ from the ECA tariff, and among themselves, in one very important respect: the rates. These differences are often substantial. Rates for identical special access elements, for example, vary by factors as great as a hundred times or more. We cannot with complete reliability judge the reasonableness of one carrier's rates from those of another. Costs of local exchange companies may differ substantially even for identical facilities or services because of the longer distances and lower relative demand factors in less populated or less accessible areas, different salary schedules in different parts of the country, variations in the vintage and types of equipment, and other factors. Nevertheless, the ECA's rates and rate development do provide a useful starting point for considering all the proposed access rates. The ECA averages costs for many different telcos subject to a wide range of cost factors, including for some rate elements both BOCs and large and small independents. The methodology used by the ECA is both similar to that employed in other filings (particularly the BOCs) and generally more completely described. Our conclusions on the validity of that methodology and its correspondence with the access rules, the Communications Act, and the policies we have developed to implement it will apply in large part

to the other filings. Such conclusions will be useful benchmarks for analysis of all access tariff rates.

11. The analysis of the ECA rate methodology and the actual rates themselves is presented in the next section. This is followed by a corresponding analysis of the rates proposed in the other access tariffs, a description of our evaluation of the tariff provisions and regulations, a discussion of miscellaneous issues, and specific requirements for the refiling of tariffs to correct the errors and deficiencies we have identified. In the appendices, the bulk of this order, we provide further information on the rates and a section-by-section analysis of the ECA tariff with specific directions for needed changes in tariff language and other further action by the local telcos.

III. ECA Rates

12. The filed ECA rates were developed based on the *Access Charge* and *First Reconsideration Orders.* Thus changes in some of the filed rates will be necessary to implement and reflect the *Second Reconsideration Order.* With the deferral of the residential and single line business end user charges, the carrier common line rate element will presumably increase to recover this shortfall. The flat monthly rate for ENFIA-type access for OCCs may require adjustments in other carrier rate elements. Other rates, such as Special Access, may be indirectly affected because of shifts in demand caused by other rate changes and the revised application of Special Access Surcharges. We have also concluded that rate structure changes are needed for some service categories, notably Special Access. We expect, accordingly, that many of the pending rates filed in the ECA and other tariffs will require revision.

13. We can, nevertheless, review and evaluate the proposed cost and rate development, including many individual rates which are not likely to change substantially, in order to determine the reasonableness of the methodology and support information used in the pending filing. To the extent the methodology is reasonable and information filed in support adequate, only incremental adjustments to the pending tariffs and filings may be necessary under the *Second Reconsideration Order.* On the other hand, should we identify problems with the pending filings which require changes in either the basic methodology or the justification and support, the filing carriers will be able to make needed corrections at the same time that they perform the analysis and revisions occasioned by the *Second Reconsideration Order.* Our immediate review and resolution of fundamental cost and rate development issues should permit reasonable access rates to become effective at the earliest possible date.

14. Although we have mandated some important aspects of access cost identification and rate development in Part 69 of our Rules, the process is nonetheless exceedingly complex, requiring massive amounts

of data, complex procedures to allocate raw expense and investment figures to specific cost accounts, the separation of costs between intrastate and interstate categories, the distribution of interstate costs among particular services in an equitable manner, and the development of demand estimates. In the present case, this process is complicated by a further order of magnitude, because it involves all separated interstate costs, all local telcos, entirely new procedures replacing the settlement and division of revenues processes, a wholly restructured industry, thousands of individual rates (many of them for restructured services filed in federal tariffs for the first time) and 76 separate filings. In the specific case of the ECA tariff, each rate is based on costs aggregated from over 1300 different local telcos.

15. Each of these tariffs must carry out the carrier's overall obligations under the Communications Act and implement the specific requirements of our rules. Under Section 201(b) and 202(a) of the Act, 47 U.S.C. §§ 201(a), 202(b), all charges must be just, reasonable, and not unreasonably discriminatory or preferential. The Part 69 Access Rules seek to accomplish this by requiring that costs as derived from Separations Manual accounts be distributed to specific, identified rate elements and categories. These rules do not, however, address the issue of the reasonableness of the amounts claimed by telcos as overall system or separated interstate costs. Section 61.38 of our Rules specifies the material which must be submitted in support and justification of new and changed tariff material, including economic data and information. In the case of a proposed rate increase, the data must be in appropriate form to serve as the carrier's direct case in the event it is set for hearing. The burden of proof at any such hearing involving a proposed rate increase is upon the carrier. 47 U.S.C. § 204(a).

A. Development of the Overall Revenue Requirement in the ECA Tariff Filing

16. The starting point for developing or reviewing a rate filing is establishing an overall revenue requirement. A carrier is entitled to charge rates which recover allowable expenses and a reasonable return on the investment in property used and useful for service to the public. This amount is the revenue requirement. For Switched and Special Access services, we have allowed telcos a revenue requirement based on a 12.75% return, equal to that allowed AT&T for its interstate and foreign operations since 1981. This is higher than the achieved return of AT&T while it was operating in partnership with the BOCs and the independent telcos before divestiture.

17. Because the ECA itself is not a carrier, its tariff is based on cost information submitted to it by local telcos with respect to the ECA rate element pools in which each participates. To develop these costs the ECA

directed data requests to the telcos, separately tailoring requests for BOCs, cost schedule independents, and average schedule independents. The major part of the costs thus developed are taken from the BOCs' reports. For example, of overall common line rate elements, $8.53 billion of the claimed $10.8 billion revenue requirement, or 79%, was attributable to the BOCs. Of the remainder, $1.93 billion, (18%) was for cost schedule independents, and $347 million (3%) for average schedule independents. Possibly because the ECA tariff was prepared by the Central Services Organization (CSO) of the BOCs, the BOC revenue requirement figures were accepted by the ECA. The ECA simply used the overall interstate revenue requirements claimed by each of the BOCs in their individual filings for its development of the ECA rates.[3] To evaluate the claimed ECA revenue requirement, we must therefore examine the revenue requirements claimed by each BOC.

18. These requirements are presented in essentially identical fashion in each of the 20 BOC filings.[4] In each case, the claimed revenue requirement is stated to be the company's estimated 1984 "budget view", that is, the company's "best estimate of future costs" (*e.g.*, New York Tel., Vol. 1, p. 3-2). The budget view is a list of approximately 59 items relating to unseparated investment, expenses, taxes, and reserves listed in work papers. However, no documentation is presented to explain the source and development of the budget view figures. Although the Budget View is the source for all the figures which are used to derive interstate amounts, and thus the basis for all the access costs and rates, the discussion of the budget view occupies less than two and a half pages in each BOC filing. The following quotation states the main point presented in these pages:

> These estimates (i.e., the budget view) are consistent with the principles and procedures outlined in the modified Plan of Reorganization (POR), which implements the Modification of Final Judgment (MFJ). As such they reflect the estimated financial data subsequent to transfer of assets and personnel to various units of post-divestiture AT&T. (Vol. 2-1, p. 2-1 of each BOC filing.)

The budget view figures are then put through three stages of adjustment and allocation: 1) they are adjusted to delete costs associated with (and recovered from) AT&T — BOC post divestiture contracts; 2) they are put into the separations process to derive detailed interstate category costs; and, finally, 3) they are allocated as the revenue requirement for each access rate element based on estimated demand. Those revenue requirement figures are used by the ECA to calculate the ECA tariff rate

[3] It also proposes a single Transport rate element rather than the separate Common and Dedicated Transport rate elements required by Sections 69.11 and 69.112 of our Rules, as permitted by our one year waiver of those rules, *American Telephone and Telegraph*, FCC No. 83-287, released June 28, 1983.

[4] Diamond State Telephone, a BOC, filed jointly with Bell of Pennsylvania.

elements where some or all of the BOCs participate in the ECA pools; where the individual BOC has not joined the ECA pool for a particular rate element, the revenue requirement is used to derive the rate in the BOC's own tariff. Various commenters urge that the revenue requirements thus claimed in the ECA and BOC support material are not auditable, not cost supported as required by Section 61.38, and otherwise flawed.

19. We discuss first the budget view figures, themselves. SBS contends that no information at all is provided for the budget view numbers. MCI and Western Union believe, based on workpapers, that the 1984 budget view figures are derived from 1982 cost data adjusted to reflect "post-divestiture" conditions, but that the data and mechanism used are not presented or adequately documented.

20. In reply, the BOCs and CSO state that the 1984 budget views are based on 1982 accounting records, adjusted for growth to 1984 levels and for the impact of divestiture. They contend the accounting systems used are subject to continuing FCC review and thus auditable, and that back-up documentation is so voluminous as to be both virtually impossible for the telcos to assemble and submit and an intolerable burden on the Commission if filed. They state their willingness to supply information or documentation the Commission may deem essential. The BOCs assert, however, that providing the details of the development of the pieces of the 1984 budget would impose an enormous burden, without commensurate benefits, since serious forecasting errors can be adequately dealt with by monitoring actual experience under an appropriate accounting order.

21. As we pointed out above, the budget view is of crucial importance in these filings as the direct basis for the BOCs' claimed revenue requirements, the root for every individual rate. It is additionally important because of the BOC and ECA "top-down" methodology. That methodology is essentially a mechanism to distribute the budget view figures by applying first allocation and then demand factors to derive rate elements which recover the revenue requirement derived from the budget view. Any errors in the budget view would affect essentially every rate under this approach.

22. We have examined the BOC budget views in light of the comments and reply. As the commenters claim, it is not possible from these filings to evaluate or verify the figures in the budget view. First, the sources of the budget view figures are not clearly specified and cannot be checked. The support material only indicates that the budget views are 1984 estimates, without specifying the basis for such estimates. The BOCs/CSO reply states that the underlying data used to develop the 1984 revenue requirement is the accounting data for 1982 in each of the exchange carrier filings, derived from separations data, and that this data was adjusted by each exchange carrier to reflect both anticipated growth from

1982 to 1984 and the effects of divestiture. Yet without specific tracking of the figures from the 1982 data and specific explanation and justification of the adjustments the figures are not reviewable.

23. The reply suggests first, with respect to adjustments for divestiture, that the intense scrutiny by the Commission and the MFJ court in the course of the divestiture proceeding is sufficient to assure that the adjustments to reflect divestiture are correct. With respect to other adjustments, it urges that the local telephone exchange companies (telcos) have no incentive to overestimate growth in 1984 revenue requirements, because excess earnings might be refunded under an accounting order and the telcos could suffer diminished credibility with this Commission.

24. We cannot accept this reasoning as a substitute for proof. Close scrutiny now is essential to assure both that these initial filings are as reasonable as possible given the substantial changes in the industry, and that later filings correctly reflect modifications which prove necessary. Our responsibility also is to prevent both inadvertent and intentional overstatements of the local companies' revenue requirements; reliance on refunds to correct any errors in an expensive, and undesirable alternative to identifying and preventing them.

25. We recognize that the reply is correct in claiming that a full inquiry into all the background data, assumptions, and studies underlying even the development of the revenue requirement would involve massive amounts of information. It is said that support material to reflect divestiture adjustments exceed 250 pages for each BOC. It could be impractical or unproductive to attempt a complete review of such material. Since all BOC filings use a consistent methodology, which does not appear to be unreasonable *per se*, acquiring this level of detail also appears unnecessary. As discussed below, we believe that by requesting specific sample and case study information, the staff can probe the filings sufficiently to make an initial judgment of their reasonableness in order to determine whether the ECA and BOC rates, with any necessary modifications, may be allowed to take effect in April.

B. Adjustments and Allocations of the Budget View Figures

26. The supporting documentation and methodology used to devise individual rates from the budget view figures, also are difficult to evaluate. The assumptions and estimates applied to the figures are often not specified or justified and the process relies on a series of computer programs which are not documented and have not been fully reviewed or approved as accounting mechanisms.

27. Once the 1984 budget view figures for expenses, investment and other categories were obtained, each figure was divided between the state and interstate jurisdictions. This involves three steps. First, 1982 data from the Interstate Settlement Information System (ISIS) was adjusted to

estimate what that data would have been if divestiture had occurred at the beginning of 1983. These results (referred to as the "1982 post-divestitures view") were used to develop separations allocation factors. That is to say, the apportionment between state and interstate in these adjusted 1982 figures for each category was calculated for use as an allocation factor to be applied to separate the 1984 budget figures for each corresponding category. Second, non-operational amounts arising from post-divestiture contracts between the BOCs and AT&T were removed from the 1982 post-divestiture view (*e.g.*, leases to AT&T of facilities assigned to the BOCs by the MFJ but used in part by AT&T). These calculations are stated to comply with the MFJ, but no explanation or documentation is provided. Third, these 1982 post-divestiture interstate allocation factors were applied to the 1984 budget view category figures to develop 59 estimated 1984 expense and investment figures. These calculations are shown in the work papers in the support material. However, in many cases, where "known future events or documented trends clearly indicate that 1984 relationships will vary significantly from the 1982 post-divestiture view ("*e.g.*, New York Tel. Vol. 2-1, p. 4-6), the BOCs used other allocations factors. For example, Pacific Telephone uses adjustment factors from 1.10 to 1.22 to increase interstate allocations of Central Office Equipment (Pac. Tel. Vol. 2-1, p. 5-33. Other adjustments were made to Traffic, Commercial, and Maintenance Expenses. New York Telephone uses an allocation factor of .29 rather than the calculated factor of .264 for depreciation and amortization expenses, a revision which SBS claims adds $19.25 million to the total 1984 interstate revenue requirement. Where the 1982 post-divestiture view figures are not used, in general no explanation or documentation of the factors actually chosen is provided. The commenters cite in addition numerous specific instances of mistakes, deletions, indecipherable material, and other asserted deficiencies in the ECA and BOC support material.[5]

28. The 59 estimated interstate costs derived from this procedure are then used to determine the access rate elements using the CSO's newly developed Access Charge Analysis System (ACAS), which consists of 8 subsystems. First, the 59 cost items are disaggregated into 740 sub-items. This disaggregation is based on the 1982 separations ratios, adjusted for growth and divestiture. These adjustments are not explained and it is not clear what relation they bear, if any, to the adjustments used to develop the 1984 budget view. Next, each of the 740 items is assigned to a Part 69 access rate element or to a non-access element. Eight special studies were

[5] Although it may be unrepresentative, one allocation module in New York Telephone's support material, cited by MCI, contains unsupported data, questionable treatment of post-divestiture contracts, arithmetic errors, unexplained adjustments to interstate allocations, and missing support information.

applied to determine allocations, primarily allocations between Switched and Special Access rate elements. Investment accounts are multiplied by the 12.75% rate of return to determine the return requirement, *i.e.*, the allowed profit. A report of these allocations and calculations is then put through a computer program to create a revenue requirement for each of 16 access rate elements.

29. Commenters contend that the models and studies used in this system are not adequately documented. (MCI, Lexitel, Western Union, ITT, U.S. Tel.) They note for example that the adjustments for divestiture and growth are undocumented and that the computer programs are new and have not been reviewed. The BOCs/CSO reply that a full display of the underlying details for divestiture adjustments would be extremely voluminous, and that it made available extensive documentation of these procedures of the allocation process, in response to a detailed request by Western Union as early as August 1, 1983 even though all of this material is not reproduced in the filing.

30. We are sympathetic to both sides on this point. The CSO did, commendably, make available extensive backup documentation before the ECA tariff was even filed. Nevertheless, as we discuss below, further information is needed to evaluate the methods used in the ECA and BOC filings. Additional data will also be necessary with respect to the Special Studies, for which only cursory documentation is submitted.[6] Further information is also necessary to evaluate the computer programs, *see* Section 1.363 of the Commission's Rules. 47 C.F.R. § 1.363.

31. The final step of the rate development process was to estimate demand for the rate element and derive an initial unadjusted rate -a rate calculated basically by dividing the revenue requirement for that element by the quantity of demand forecasted. This initial rate was then adjusted to reflect the "feedback" effect the rate itself and rates for substitutable

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[6] The reply agrees with some comments that the allocation approach apparently used in Special Study H is incorrect under Section 69.306(g) or our Rules. The ECA allocated half of the traffic sensitive costs of Feature Group A (FGA, line-side ENFIA A type service) dial equipment minutes (DEMs) in Category 6 Central Office Equipment to Local Transport, to reflect tandem switching in that element. Section 69.306(g) provides that all traffic sensitive COE 6 shall be assigned to the Local Switching element. The reply agrees that the COE 6 costs allocated to Local Transport should thus be reallocated to Local Switching, specifically to LS 1 which is the rate element for FGA switching. Because the ECA filing assigns two DEMs to each FGA access minute (reflecting two dial switch connections for each line side connection), the effect would, it is estimated, double the LS 1 element which applies to FGA. Local Transport rates would not change measurably. As MCI points out, however, at least some FGA traffic will make a single local switch appearance, in instances where a single end office serves both the IC and its customer. Doubling the access minutes thus apparently over-allocates costs to LS 1. The reply suggests that readjustment of the LS 1 rate could be deferred and we believe such deferral is the better course for purposes of developing the monthly FGA rate.

services would have on demand. Based on simple supply and demand considerations, a rate increase will tend to suppress demand, and a rate reduction will tend to stimulate it. This demand response, anticipating customer reactions to the end user rates, is used to adjust rates until rates, demand, and costs are balanced.

32. The ECA and BOC demand methodology parallels the cost methodology. Baseline demand estimates were harvested from the 10 BOCs who participated in the non-mandatory carrier's carrier rate elements in the ECA tariff. Those estimates of 1984 interstate minute volumes are said to be based on actual 1982 minutes of use that would have been subject to interstate access charges if divestiture had taken place in 1982. No documentation is provided for these Corporate Views. The corporate view figures were then disaggregated into forecasted access minutes for categories of service (*e.g.*, intra- and inter LATA, intra- and interstate, and into mileage bands) using the LATA Analysis Data System (LADS) computer program. Forecasts of other Switched Access, Special Access and Billing Collection demand quantities were also developed. Special Access demand was estimated from the inventory of private lines in service in 1982 which were "grown to 1984 levels using broad aggregate private line service rates." ECA, Vol. 4, p. 3-3. A surrogate flat rate for FG A lines which were not measured (*i.e.*, ENFIA and FX/ONAL lines from switching machines without measurement capability) was also computed based on usage data submitted by the BOCs. Similar demand data was collected from the independents.

33. The ECA asserts that there is no historical demand from which future access tariff demand can be forecast directly. Based on certain simplifying assumptions, however, it developed forecasts for pre- and post-access charge end user service prices. These forecasts (which of course predate changes mandated by the *Second Reconsideration Order*) are as follows for major services:

Percentage Change in
Service Prices (National)

Service	*Estimated Percentage Price Change*
Residence MTS, MTS-like	–12.34
Business MTS, MTS-like	–12.34
WATS and WATS-like	–15.55
Private Line	+16.04

Based on these estimates, estimates of cross-elasticities of demand for these services, and estimates of traffic that will bypass the local network in 1984, changes in service quantities from the 1984 baseline forecast

were calculated. The independents were assumed to closely approximate the aggregate of the BOCs for the demand response. The final rates were based on demand figures derived from this process.

34. An example of this process can be seen in calculation of the Carrier Common Line rate element. Initial estimates of total MTS and WATS access minutes (excluding closed end WATS) and OCC minutes, subject to a 65% non-premium discount, were used to calculate the preliminary Carrier Common Line rate as follows:

Carrier Common Line Charge

1.	Revenue Requirement	$ 6,902,455,420
2.	Total MTS and open end WATS access minutes	131,358,256,006
3.	ENFIA A, B, and C OCC minutes	19,481,097,272
4.	Premium Carrier Common Line Charge L1/(L2 + (L3 × .65))	$ .0479 per minute
5.	Non-premium Carrier Common Line Charge (L4 × .65) (ECA, Vol 3-6, p. 5-9)	$ .03115 per minute

The demand response was then calculated based on the following projections of the effect on end user demand of the per line access charges, surcharge, and other rate changes: the total revenue requirement would increase slightly; demand would decline for local private lines by 1.11%, for residence lines by 0.7%, and for business lines by 0.88%; OCC minutes were estimated to increase by 5.10% and MTS and WATS minutes by 4.39%. These estimates reflect shifts in usage from the private line services (projected to experience rate increases) to MTS, WATS and OCC services (projected to experience rate reductions.) These demand responses were then used as the basis for the final Carrier Common Line calculation.

Carrier Common Line Charge with Demand Response

1.	Revenue Requirement	$ 6,930,015,875
2.	Total MTS and open end WATS WATS access minutes	137,125,148,875
3.	ENFIA A, B, and C OCC access minutes	20,473,685,625
4.	Premium Carrier Common Line Charge L1/(L2 + (L3 × .65))	$ .0461 per minute
5.	Non-premium Carrier Common Line Charge L4 × .65	$ .0299 per minute

(ECA, Vol. 4, p. 8-20)

35. Our concerns with the demand methodology are similar to those for costs. The corporate view from which all disaggregated demand figures are derived is said to be "grown" from actual 1982 demand figures, but the bases for the growth factors are not stated or documented. The reply states, again, that that material would be extremely voluminous yet the demand figures are essential to the rate calculations under the "top down" methodology. The estimates of AT&T and OCC minutes of use directly determines the Carrier Common Line rate element, as we have seen, as well as the other usage—sensitive carrier rate elements. Any error in the demand forecasts would directly affect the rate. *Cf, AT&T, (DDS),* 62 FCC 2d 774, 780-81 (1977). The fact that the demand figures are based on estimates from the corporate views, the basis for which are not stated, is thus of substantial concern in evaluating the resultant rates. For example, demand for long distance telephone service is significantly affected by overall economic conditions. Without information on the assumed status of the national economy it is impossible to evaluate whether the projections from 1982 data are likely to be accurate, or indeed whether they are reasonable in view of actual 1983 data. The private line (Special Access) demand forecasts also are lacking in substantiation. For example, New York Telephone (which joined the ECA for these services) based its estimates of Special Access rate elements on studies of its private line inventory dating back to 1977 and its estimates of 2 and 4 wire access connections and voice grade protocol combinations on the views of panels of experts. (NYT, Vol. 4, p. SAI-1-2.)

36. We recognize that demand forecasts inevitably require assumptions and guesses. We expect these to be reasonable and educated guesses. Moreover, substantial changes in the communications industry and in the rate elements create specific conceptual problems here. As the

reply points out, forecasting "is especially difficult here, where it is necessary to predict demand under the access charge structure in the post-divestiture environment." BOCs/CSO reply, p. II-61. The ECA and BOCs have also submitted substantial amounts of data and background on the disaggregation of demand. Nevertheless, because the initial corporate view figures are unsupported and many aspects of the disaggregation process are unclear or based on unknown assumptions, further information is necessary. The demand forecasts also need to be clarified to prepare us to monitor actual demand and determine how closely it corresponds to the forecasts.

C. Switched Access Rates

37. Switched Access services are those that involve use of local switching by the telco's end office for access. In the *Second Reconsideration Order*, we deferred end user charges for residential and single-line business customers for Switched Access until June 1985. For the Switched Access provided to ICs, we prescribed eight rate elements, to be assessed where the IC used the service provided under the element. The ECA has filed rates for each of these elements with the exception of Limited Pay Telephone for which it reports no service.[7] These rates are listed in the accompanying table:

Proposed ECA Switched Access Rates

Element	*Rate*
Carrier Common Line	
Premium	$.0461 per minute
Non-premium	.0300 per minute
Line Termination	.0070 per minute
Local Switching	
LS 1 (OCCs)	.0058 per minute
LS 2 (AT&T)	.0090 per minute
Intercept	.0085 per 100 minutes
Information	
Directory Assistance	.4963 per DA call

[7] It also proposes a single Transport rate element rather than separate Common and Dedicated Transport rate elements required by Sections 69.11 and 69.12 of our Rules, as permitted by our one year waiver of those rules, *American Telephone and Telegraph*, FCC No. 83-287, released June 28, 1983.

Proposed ECA Switched Access Rates

Element	*Rate*
Directory Transport	.0020-.0203 per call (based on distance)
Transport	
Call Miles	Rate per minute
0 to 1	.0044
Over 1 to 8	.0101
Over 8 to 16	.0117
Over 16 to 25	.0126
Over 25 to 50	.0203
Over 50 to 100	.0285
Over 100	.0453
Billing and Collection	Various rates for recording, billing, billing analysis, and billing information.

The tariff also proposes an additional nonrecurring Access Connection charge (which we discuss in the Nonrecurring Charge section, *infra*) and other service and optional charges. There is also a minimum monthly usage charge.

38. As we discussed in our review of the overall methodology for allocating costs, we can not accurately judge the reasonableness of specific rates without further information. Moreover, the changes mandated in the Second Reconsideration Order will require adjustment of many of these charges, and will alter or moot some of the issues raised by the comments. No definite conclusions can be made with regard to these rates as filed. In general, however, although various questions remain with respect to assumptions, allocation methods, and details, the overall methodology appears to conform to that prescribed by the Part 69 Rules.

39. Some issues raised by the comments can usefully be addressed here. SBS and other commenters assail the Local Transport rate structure and choice of mileage bands. SBS contends that a fairer structure would have a flat per mile charge rather than the declining per mile charge as rate bands are passed which the ECA and BOCs propose. The BOCs/CSO reply contends that the proposed structure more accurately reflects the mix and costs of transmission facilities used to provide Transport. We have not determined a single reasonable Transport rate structure. Facility costs and types are likely to vary among carriers and we are not prepared to conclude that one or another structure is correct. In the access tariffs at least three different approaches are proposed. The ECA and BOCs as

we have seen propose a declining rate per mile. The GTE companies propose a flat rate per mile. Rochester proposes a flat rate for all Transport, regardless of distance. None of these is unreasonable facially, for the important issue is the underlying costs of all aspects of Transport, including general overhead and administrative costs, the nature of the facilities network, and the cost characteristics of the facilities. We will allow each of these approaches to be used pending a determination of a preferred or optimal rate structure.[8] We are concerned, however, about the choice of rate bands and the associated rate jumps in the ECA tariff. The "0-1 mile" band is quite small and the rate increase abrupt, 129% for an extra mile or more. The rate increase from the 1-8 to the 8-16 band, by contrast, is only 15%. We are requesting further justification for the specific rate bands. See Appendix D, Section 6.

40. Some commenters urge that the cost of nonchargeable options available only to AT&T to provide WATS should be made chargeable features, or should not be provided solely to AT&T at all. While we agree that the optional features for WATS (such as blocking and screening) should be accurately assessed to that service, and probably unbundled eventually, it appears that facilities limitations in this as in other cases prevents making these features available to other ICs immediately. We also have no specific basis for concluding that the costs of these options are not recovered from the overall charge.

41. Significant rate variations do exist among the Switched Access rate elements filed by various carriers, although not nearly as extreme as the variations among Special Access rates. Changes will be required in many of those rates to comply with the *Second Reconsideration Order* and this order. Given the substantial changes in the industry, the difficulty of projecting costs and demand, and the need to establish initial access charges, we believe generally that it will be preferable to allow Switched Access rates to become effective if not obviously unreasonable and if adequate information is provided to understand their development. Monitoring of the effects of the rates should be more practical and effective than attempting to fine tune these rates initially.

D. Special Access Rates

42. Special Access includes a variety of services and facilities which we have included in the access charge plan so that the divested BOCs may offer them under access tariffs as mandated by the MFJ. These include segments of interstate or international private lines, ranging from telegraph grade and voice grade to high capacity analog and digital channels. Neither the access charge plan nor the MFJ requires changes in the rates, rate structures or provisions currently applied to these services,

[8] We grant Rochester's request for wavier pending further consideration of this issue.

with certain limited exception.[9] Although we contemplated that Special Access could be unbundled into several separate subelements, we did not specify a structure. We emphasized, however, that the subelements, must be consistent with applicable Commission rules and decisions and that we would scrutinize carefully the choice of subelements and data to ensure compliance with the Communications Act. *First Reconsideration Order*, para. 12 and Section 69.113(d) of the Commission's Rules.

43. The Special Access portion of the ECA tariff is 230 pages long and lists hundreds of separate rates plus extensive technical material. It is the most controversial section. Commenters point out that the rate structure is totally changed and the rates generally increased substantially from existing rates for these facilities. Rates in many cases are 200 to 400% higher. Rates for identical facilities also vary substantially, by factors of a hundred or more in some cases, among the various access tariffs. Ordering requirements are more onerous and associated nonrecurring charges are also subject to dramatic increases.

44. The ICs (except for AT&T) currently obtain these facilities under the various BOC tariffs providing Facilities for Other Common Carriers (OCCs), filed in the mid 1970s to implement the Docket 20099 Settlement Agreement. Because of the basic changes in the rate structure it is impossible to compare rates directly—there are no comparable rate elements. Comparing typical channels indicates the magnitude of the proposed increases as they would be experienced by the ICs and, since these charges are generally passed through directly, by the ICs' customers. For a two wire voice grade local loop from an end user to an IC within the same wire center the price would increase by from 117 to 855% in selected BOC filings, and the total cost from current rates as low as $4.20 to proposed rates as high as $80.20.

Current and Proposed Monthly Special Access Charges

Two-wire Voice Grade Interexchange, intra-wire center
3 Airline Miles
Zero Special Transport

	PA	SD	CA	NY (ECA)	TX (ECA)	IL	DC
Current OCC charges, total	$13.78	4.20	8.81	12.93	9.10	5.11	8.40
Proposed SA charges, total	29.92	26.44	41.17	61.39	61.39	32.96	80.20
Percent increase	117%	530%	367%	217%	575%	545%	855%

[9] The tariffs must implement the MFJ with respect to LATA boundaries and the offering of services to AT&T on the same terms as other ICs. The tariffs must also apply the Special Access Surcharge we developed to recover a reasonable contribution to local exchange revenues from unmeasured traffic which "leaks" into the local exchange by means of PBXs and other switching devices.

Other facility arrangements would experience similar or greater rate increases. It appears to be the case that virtually all Special Access loop rates would at least double in price and many would increase 8 times or more.

45. The proposed rates also vary enormously from one tariff to another. The two-wire special access line (SAL) rate element is $9.39 for South Dakota, $34.28 for the ECA and $58.50 for the District of Columbia. The four-wire SAL varies from $26.50 in Missouri to $74.81 in D.C. Other charges are far more widely split. C-type conditioning which costs $.42 in Delaware and $1.15 in Ohio costs $15.38 in Maryland and $45.12 in California. A NO/NO voice grade to telex facility interface which is less than a dollar in 5 states[10] costs over $10 in ECA regions and three other jurisdictions.[10A]

46. Individual customers report similar increases. Dow Jones states that rates for local connections in its private line network will increase by 152 to 551%, its installation charges by 580 to 2000%, and its overall yearly costs for local loops on one multipoint circuit from $3.4 million to a minimum of $8.6 million. The American Library Association states that the cost of private lines used to access the largest bibliographic data base would be increased by 60 to 84% and that an increase of this magnitude could threaten the viability of many library databank systems. Western Union calculates that its monthly charges for Special Access facilities used for telex, TWX and private line services will increase by 237% or $139 million, from $57.7 million to $197.7 million. The increase for nonrecurring charges would be even greater, from $1.9 million currently to $36 million, an increase of 1800%. Some of its individual circuits would experience rate increases as great as 11,000%. The effect of passing through these charges, it estimates, would be a 40% increase in its telex rates, which would cause a drastic shrinkage in its subscriber base. It estimates that 50% would discontinue telex service, especially because AT&T's competing Dataphone service is scheduled to decrease in price. Western Union asserts that if the Special Access charges proposed by the ECA and the BOCs is permitted to take place, it will seriously threaten the viability of all non-AT&T services employing Special Access facilities.

47. The comments argue strenuously that these major rate increases are unreasonable and unjustified, based on inflated or misallocated costs, flawed or undocumented studies, and a discriminatory rate structure. They contend that the telcos have failed to bear the burden of proving that the rates are cost justified. They urge the Commission to hold unlawful and cancel the proposed charges, or at the very least phase in

[10] Missouri $.60; Ohio (Ohio Bell) $.64; Nebraska and Wisconsin $.92, and Delaware $.98.

[10A] District of Columbia $11.90; Idaho (Pacific Northwest Bell) $12.10; ECA $13.30; and Washington $16.88.

the increase over an adequate transition period. The BOCs/CSO reply defends the overall allocation of costs to Special Access and the particular approaches to disaggregate those costs to Special Access rate elements. It defends the variations in loop and other costs on grounds that costs vary significantly among jurisdictions and costs also are affected by the extent to which AT&T is colocated with an exchange carrier. For example, it cites figures indicating that composite N—and T — carrier unit investment costs are 80% higher in Arizona than in Georgia. It does not dispute the rate increases calculated by the commenters, but argues that short haul channels have been underpriced in comparison to longer haul and that the filings correct this.

48. As we discuss in detail in Appendix B, with respect to Section 7 of the tariff, we have concluded that the proposed Special Access rate structure is unreasonable, discriminatory, and violative of Commission decisions and policies. The filed structure will therefore have to be replaced. The proposed nonrecurring charges are also unlawful, as we discuss in the next section. We also have inadequate information upon which to judge the reasonableness of the overall allocation of costs to Special Access by way of the budget and corporate views or the specific allocation of costs to Special Access services. The shift of WATS closed end loops to Switched Access will also cause significant changes in Special Access costs. It is apparent as well that additional information will be necessary in to understand the bases and justification for the proposed rate changes. The magnitude of the increases makes it clear that the telcos are proposing to radically change the manner in which local private lines are priced and provided. While we recognize that even large percentage increases may be justifiable in those instances where rates have not changed over a long period of rising costs, the present filings provide virtually no information on these matters.

49. It is clear from these circumstances that the Special Access section must be substantially replaced, at least to correct its structure. Further information and, most likely, a further investigation will also be needed to probe the development and justification for these rates. Although we could adopt the suggestion of some of the commenters and prescribe the continuation of the OCC Facility Tariff rates until an acceptable lawful filing can become effective, or require the filing of a "baseline" Special Access tariff which implements only changes necessary to implement access charges and divestiture (proposed by the National Association of Broadcasters and other parties), or extend the suspension period an additional two months while we investigate Special Access (proposed by Western Union), we have decided to defer the possible application of some or alls of those approaches at least for the moment. Because a new Special Access section will be necessary in any event, and we wish if at all

possible to implement a complete access tariff by our April 3 target date and avoid the need to extend the BOC-AT&T contracts any further past the January 1 date of divestiture, we will give the telcos an additional opportunity to file Special Access provisions which can be allowed to go into effect April 3. The filing must explain fully the basis for any change in rates proposed, not just the top-down allocation process described in the present filings and the overall projected revenue changes which the carriers will experience. We will scrutinize the proposed filings carefully within the notice period to determine whether they may be allowed to become effective.

50. Some commenters argue that there is an independent legal ground requiring rejection of the Special Access rates, arising from the Docket 20099 Settlement Agreement. Pursuant to that agreement, AT&T and the BOCs filed the OCC Facility tariffs and agreed also that during an interim period they would make changes in the rates only upon 6 months' notice (including any period of Commission suspension) and supported as required by Part 61 of the Commission's Rules.[11] The interim period ends when the revised rates become effective. Western Union contends that the support information filed does not comply with Part 61 and that the "outrageous multiplicity" of rates indicates that the numbers must simply have been made up. It argues that part of the bargain in the Agreement was that the rates would be cost supported, and that this bargain circumscribes the normal discretion of the Commission in rate setting matters, citing *MCI Telecommunications Corp. v. F.C.C.*, 665 F.2d 1300 (D.C.Cir. 1981). We differ somewhat in our view of the Agreement, which we believe does not limit the Commission's discretion. The Agreement provides only for longer than normal notice and the support information normally required under Part 61. The OCCs will have received the required six months' notice by April 3 and substantial cost support, including specific information on the costs of providing OCC and ENFIA facilities for 1982, the most recent calendar year for which data are available. This is all the parties bargained for. What they are now entitled to is the same as any other party or member of the public—that the Commission will carry out its duties to ensure just and reasonable rates. By suspending and investigating the filings we have sought to carry out these duties. We will seek to probe the support information further to determine whether the further Special Access filing is lawful, but the rights of parties under the Settlement Agreement will terminate by operation of that Agreement when Special Access rates become effective, either under Section 204 of the Act or further Commission order.

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[11] *AT&T*, 47 FCC 2d 660 (1974), 52 FCC 2d 727 (1975), *aff'd sub nom.* Carpenter v. FCC, 539 F.2d 242 (D.C.Cir. 1976).

E. Nonrecurring Charges

51. The Access Charge Rules and Orders provide no specific directions for nonrecurring charges (NRCs) to cover the planning, development and installation of facilities. We decided to scrutinize such charges carefully when filed and, if necessary, develop guidelines for costs that may be recovered from such charges. *First Reconsideration Order*, para. 145.

52. For Switched Access, the major NRC is the Access Connection rate element. This is essentially an installation charge. The ECA explains that the NRC cost "covers the activities required to negotiate and process the service order, design the circuit, assign equipment and facilities, and install the service between the IC and the entry switch." To compute the revenue requirement to be recovered by this rate element, the ECA and BOCs disaggregated these upfront costs from other costs of Local Transport. The charge for Access Connections is based on the capacity ordered, measured as Busy Hour Minutes of Capacity (BHMCs).[12] The proposed ECA rate is $10 per BHMC. Since a voice grade line is considered to represent capacity of 30 BHMCs, the Access Connection charge for a voice grade local loop would be $300. Channels of higher bandwidth would have correspondingly higher charges. This charge varies substantially among other telcos. Among the BOCs who have not joined the ECA for Switched Access, the lowest charge is $6.08 in Michigan. The highest is Bell of Pennsylvania which would charge $17.78 in Pennsylvania and $48.96 in Delaware. A comparison of the proposed ECA rate with selected BOC and independent company rates is presented in the following table:

Access Connection Rate Element per BHMC
Selected Exchange Carriers

ECA	$10.00
Rochester	None
Ohio Bell	10.00
Bell of Penn.	17.78
United Tel.-Ohio	1.00
New Jersey Bell	11.41
Illinois Bell	12.59
Pacific Tel.	15.37

Other NRCs apply to performance options.

53. The rationale for basing the nonrecurring Access Connection rate element on BHNCs given by the carriers is that the MFJ requires of the BOCs that "the charges for delivery or receipt of traffic of the same type

[12] The busy hour is defined as the average time-consistent busy hour for the highest twenty consecutive business days in a calendar year.

between end offices and facilities of interexchange carriers within an exchange area . . . shall be equal per unit of traffic . . . " MFJ, 552 F.Supp. at 233-34.

54. Many of the comments vigorously oppose the Access Connection charge, arguing that it is exorbitantly high to recover the costs associated with ordering and installing service, that the methodology used is flawed and arbitrary, and that the wide variation in charges demonstrates the lack of justification for the proposed charges.

55. We have examined the support information and conclude that the development of the Access Connection costs and rates is seriously flawed and lacking in adequate support. First, conceptually, we should point out that while nonrecurring costs can generally be more efficiently and equitably recovered by nonrecurring charges, if those charges accurately reflect costs, this is not essential; nonrecurring costs need not be charged separately. Some or all of those costs are often included in the overall costs recovered by the monthly rate for the service, in this case Local Transport. We did not require that Local Transport costs be disaggregated, nor is it always easy to separately identify those costs which are part of overall operations and those which should be assigned to individual service requests. Several of the independent telcos have, for example, proposed no Access Connection charge for Switched Access.

56. In addition, the rationale for assessing the Access Connection rate per BHMCs is unpersuasive. The only basis cited is that the MFJ requires it. In fact, however, the MFJ provides no apparent support for BHMCs, as Allnet for example points out. The MFJ requires that the rate for local transport shall be equal per unit of *traffic* for all ICs. The access Connection charge, by contrast, imposes a rate for local transport costs per unit of *installed capacity.* The difference is substantial, particularly in its effect on the rates charged to AT&T and competing ICs. AT&T will pay no Access Connection charges for the capacity in place to carry its traffic; it will pay only a rate based on use, per minute of traffic. The newer ICs, who will be initiating or expanding their networks, will require more installation and rearrangements. They will thus be likely to pay greater relative shares of any charge based on capacity and will, in addition, pay the same per minute charge for traffic.

57. Even if the MFJ supported use of BHMC, the carriers would still be required to demonstrate that the practice is consistent with the Communications Act and Commission rules, policies, and requirements. The distribution of nonrecurring costs by rates based on BHMCs, however, is unreasonable as a form of equitable cost recovery. It is unlikely that all the up-front administrative and technical costs of beginning transport service are related in any direct way to the capacity ordered. Many of the functions are likely to be identical whether the order

is for 2 circuits or 200. Other costs, such as installation costs, where not already recovered in usage rates, may well be higher when greater capacity is installed, but probably not in direct, linear proportion. It may, for example, be little more costly to connect one high capacity channel than one voice grade, and it probably is not ten times as expensive to connect ten circuits as it is to connect one. Setting nonrecurring charges on the basis of BHMCs ignores these actual cost considerations. While some averaging of costs by setting NRCs on the basis of the size of an order might be reasonable, an explanation and justification would be necessary. Here the only justification is the apparently baseless one that the MFJ requires it.[13]

58. The actual methodology used to establish the revenue requirement for nonrecurring costs is also of serious concern. As in the case of other aspects of cost development, the ECA uses the BOCs' methodology, studies, and actual figures. Yet because of the variations and gaps in these methods, and differing adjustments, the figures and results appear to be highly unreliable. A similar approach was used for Special Access nonrecurring charges, and it has similar problems. An analysis of the nonrecurring charge cost and rate development is included in Appendix A.

59. In summary, we find that the rate structure proposed for Access Connections, which bases the rate on BHMCs ordered, is unreasonable. Although a nonrecurring charge which better expresses actual up-front costs could be reasonable, we also conclude that the development of the nonrecurring costs in the present ECA and BOC filings is nevertheless inadequate as a basis for such charges. Based on these conclusions, and the need to bring workable Switched Access rates into effect as soon as possible, we are directing the ECA and BOCs to eliminate the Access Connection element for switched access. On an interim basis, carriers may recover nonrecurring Local Transport costs in either of two ways. First, the legitimate costs which the ECA and BOCs disaggregated from the overall Local Transport revenue requirement may be recovered by inclusion in the Local Transport rate element. Second, while we will consider proposals for other nonrecurring charges in future filings, on an interim basis, for purposes of the tariff filings we are ordering in this decision, any nonrecurring charge for Switched Access shall be no higher than the existing charge under the OCC Facility tariffs. This will allow the status quo to continue and a reasonable opportunity to consider other proposals under normal notice periods. Carriers wishing to propose such

[13] The failure of BHMC pricing to reflect nonrecurring costs also has a snowball effect on other provisions in the ECA and BOC tariffs. Nonrecurring charges are used generally as a basis for calculating rearrangement, move, and cancellation charges, and short notice-short duration surcharges. To the extent that BHMCs do not correlate with nonrecurring costs, these other rates are also likely to be distorted.

charges must specifically reference the charge and its application from the corresponding OCC tariff in their support material.

F. Section 61.38

60. Section 61.38 of our Rules specifies the material to be submitted in support of tariff offerings.[14] For changed matter, this includes a cost of service study for all elements of costs for the most recent 12 month period. Section 61.38(a)(i), 47 C.F.R. § 61.38(a)(i) The ECA and BOCs did not submit a general cost of service study with their filings,[15] stating that the rates filed are for new service offerings. They also contend there is no experience with the filed access rates from which to develop a study, and that the complete restructuring of access terms and conditions would render the attempt to develop one impossible or meaningless. ITT contends that access service is not new, but a repackaging of an old service which requires a past year study.

61. We believe that the ECA and BOCs are correct that a past year cost of service study would be burdensome and of little value given the major changes in services, arrangements, and the carriers themselves. We are, however, directing an information request to carriers which we hope will elicit comparable information in a more useful form.

G. Conclusions on Rates and Rate Methodologies and Further Information Requests

62. Our review of the ECA and BOC filings reveals no unacceptable approaches in the cost and rate methodology. A "top-down" approach is not unreasonable *per se*; there are various cost and rate development methodologies which may be acceptable to develop costs and rates. The chosen approach also corresponds to that anticipated in our Part 69 rules, including the use of 1984 estimates (*e.g.*, Section 69.502(a), 47 C.F.R. § 69.502(a)), the use of Separations Manual procedures to assign cost elements, and the calculation of specific Commission-designated rate elements. The ECA and BOCs have also submitted substantial support information, which for the most part appears to describe adequately the process as a whole and its specific stages.

63. Nonetheless, the filings do present substantial problems and issues which lead us to conclude that further information is needed before we can conclude that the tariffs should be allowed to become effective. As described above, the budget views, of which the rates and rate levels are direct mathematical descendents, are undocumented. It is impossible to judge their initial reasonableness, nor will we be able to identify how closely they correspond to actual operational experience. The company

[14] Section 69.1(b) of our Access Rules expressly provides that access tariffs be filed and supported as provided in Part 61, which includes Section 61.38.

[15] The BOCs did submit historical information for 1982 on ENFIA and OCC facility costs.

view used to project demand is similarly undocumented, and equally important. In the absence of further information, we cannot evaluate the basic assumptions determining the filed rates. Because no comparisons with past rates are provided, we also cannot accurately assess the changes which these filings represent for telcos, ICs, and customers. In addition, the many assumptions, judgments and estimates used throughout the cost development processes present formidable problems to both initial and continuing review.

64. Our goal in this investigation remains to resolve the major issues necessary to assure that the initial access tariffs are generally reasonable. Although further information is needed, we believe that a limited information request to clarify and test the major assumptions in the ECA and BOC filings and fill in important gaps will allow us to meet this goal, if the information confirms the reasonableness of the filings. The Common Carrier Bureau is accordingly preparing a letter describing the necessary information to be supplied by the ECA and BOCs with revised tariff filings implementing revisions mandated by the *Second Reconsideration Order* and other sections of this order. The letter requests primarily additional specific information on the budget and corporate view figures and assumptions, plus further details on the methodology as it was applied in practice by a specific BOC. Because a single overall methodology was used, this case study should provide useful insight into the process without unmanageable and unnecessary submissions. One exception to this approach is for the Information or Directory Assistance rate element. We are requiring additional information on local and state rates and costs for directory assistance in order to develop data to consider issues of costs, potential discrimination, and the likely advantages of a phase-in for long distance directory assistance charges.

65. The information request should be useful in preparing us to monitor the effects of the access tariffs on customers and the extent to which operational experience corresponds to the projections on which the rates are based. Some of the commenters have also suggested that we establish a specific monitoring plan for this purpose. We believe this is desirable, particularly in view of the major changes in the industry resulting from divestiture, the changes in relationships which will result from access tariffs, and the responsibility we have assumed to assure that the access charge process accomplishes our goals. Accordingly, the Bureau is directed to prepare a further information request to monitor how closely the telcos meet the projections on which their rates are based and what their actual numbers are.

66. If we are to avoid additional delay in the effective date of access tariffs, the filing schedule we establish must necessarily be more limited than we prefer. The carriers will require time to make changes to comply

with this order and the *Second Reconsideration Order*. We will require sufficient notice between the filing and scheduled effective dates to verify such compliance. This filing schedule is set out in the conclusion of this Order. With respect to the costs and rates, it is particularly important that telcos comply fully with this information request and that necessary rate changes are properly filed. Failure to comply fully will of course require further delay in the effectiveness of the tariffs of non-complying carriers.

IV. Tariff Provisions and Regulations

67. Our review and investigation of the access tariff provisions - the regulations, restrictions, format, structure and other non-rate aspects of the tariffs - have been directed to assure both their general justness and reasonableness and their compliance with Commission rules, orders, and policies. Tariffs are required to show, in schedules open to public inspection, all charges and the classifications, practices and regulations affecting such charges. Sec. 203(a) of the Act 47 U.S.C. § 203(a). Unjust or reasonable terms and conditions unreasonable discrimination or preferences are forbidden. Sec. 202(a), 47 U.S.C. § 202(a) A tariff states the terms of the contract for service the carrier offers to all eligible members of the public.

68. That offering must comply with both technical and substantive requirements. Technically, under Part 61 of our Rules, the tariff must contain "clear and explicit terms regarding rates and regulations . . . so as to remove all doubt as to their proper application." Section 61.55(f), 47 C.F.R. § 61.55(f) All rules, regulations, exceptions and conditions are to be clearly stated, Section 61.55(g), 47 C.F.R. § 61.55(g), and all charges stated in a simple or systematic manner, Section 61.55(h), 47 C.F.R. § 61.55(h). The tariffs must comply with these and the other filing, format and content requirements in order to ensure that their terms are explicit, understandable, and reviewable.

69. Substantively, the access tariffs must properly carry out both the Part 69 Access Charge Rules and other Commission orders and policies. A fundamental Commission goal is to foster a competitive market, open to all, for communications services and equipment. Tariffs may not generally prohibit or restrict resale, *AT&T v. FCC*, 572 F.2d 17 (2d Cir. 1978), *cert. denied* 439 U.S. 875, or the interconnection of equipment, *Carterfone*, 13 FCC 2d 420, 14 FCC 2d 571 (1968), or services, *AT&T, Interconnection of Private Line Services*, 60 FCC 2d 939 (1976). Customers may use communications services in any way which is privately beneficial, so long as it is not publicly harmful, and the burden of demonstrating public harm is on the carrier proposing the restriction, *Hush-A-Phone Corporation v. U.S.*, 238 F.2d 266 (D.C. Cir. 1956), *Carterfone*. A carrier also may not have different tariffed rates for like service, absent justification for applying different rates, *Western Union*

International, Inc., v. FCC, 568 F.2d 1012 (2d Cir. 1977), *cert. denied* 436 U.S. 944 (1978), *American Trucking Ass'n v. FCC*, 377 F.2d 121 (D.C. Cir. 1966), *cert. denied* 386 U.S. 943 (1967).

70. Based on the record in a notice and comment investigation such as this, if we conclude that a tariff charge, classification, regulation, or practice is or will be unlawful, we may, within the broad limits of our discretion, select from a number of options to remedy the defects. We may, for example, prescribe reasonable provisions, Sec. 205(a), 47 U.S.C. § 205(a) and Sec. 201(a), 47 U.S.C. § 201(a), direct the carrier to file revisions correcting the unlawfulness, *National Association of Motor Bus Owners v. FCC*, 460 F.2d 561 (2d Cir. 1977), or take such other action not inconsistent with the Act as may be necessary to exercise our functions Sec. 4(i), 47 U.S.C. § 154(i) *Lincoln Telephone and Telegraph Company v. FCC*, 659 F.2d 1092 (D.C. Cir. 1981). We may institute broad policy changes while leaving fine-tuning for future proceedings, *AT&T v. FCC*, 572 F.2d 17 (2d Cir. 1978), *cert. denied* 439 U.S. 875, *cf. WJG Telephone Company v. FCC*, 675 F.2d 386 (D.C. Cir. 1982).

71. Our section-by-section review of the ECA tariff, the comments, and the reply is presented in Appendix D. These findings, both in the overview and individual modules, constitute the bulk of our decisions and orders. We have attempted to review all sections of the tariff, but have not listed all necessary changes. Where changes in other sections are necessary to conform to the decisions in an overview or specific section, these also are required. Overall, the ECA tariff appears to be a functional vehicle for implementing access charges, although changes will be necessary to implement the *Second Reconsideration Order*. Many of our comments and directions are editorial in nature, to eliminate ambiguity or duplication, or to obtain further explanation. In other circumstances, we might have been able to remedy these problems informally in the course of the tariff review process. However, we also find that numerous specific provisions and a number of important segments of the tariff are unreasonable or unjustified. This is particularly true in areas for which the Commission did not draft specific rules, but left implementation to carrier initiative and close scrutiny in the tariff review process.

72. In each case, where changes proved necessary, we have sought to select the most appropriate remedy within the span of our authority and discretion, balancing the needs of telcos, equipment vendors, and customers. In some cases we have deferred action to a later proceeding, for example by requiring the carrier to file revisions or further information at or before the time of the 1985 tariff filing. In other cases we have requested additional justification immediately before permitting a provision to take effect. In yet other cases, we have prescribed interim remedies pending further action based on a more complete record. We

have also prescribed terms and conditions, where we have concluded both that the existing provision would be unjust, unreasonable, unreasonably discriminatory, or unlawfully vague, and that another provision would be just and reasonable.

73. The ECA also proposes to include in the access tariff extensive technical material dealing with interconnection and transmission standards. We are concerned with both of these areas. The interconnection sections propose to apply our Part 68 rules for terminal equipment to carrier-carrier interconnection, by largely incorporating but in some cases modifying those rules. Applying Part 68 to carriers, however, would apparently impose new restrictions on carrier-carrier arrangements, stricter than those in currently effective OCC tariffs which have proven effective in protecting the network from harm. No justification is provided for new restrictions, and we conclude that the proposed approach is thus in conflict with principles of *Hush-a-Phone and Carterfone.* As an interim matter, we are requiring carriers to maintain the standards in existing carrier tariffs by extracting the relevant material and incorporating it in the access tariff by a technical reference. We are considering tariff requirements and appropriate procedures for arriving at standards in MTS and WATS-Market Structure. Notice of Proposed Rulemaking, Structure Phase III, C.C. Docket No. 78-72, FCC 83-178, released May 31, 1983. The inclusion of a somewhat modified version of Part 68 in the tariff could also be confusing (and improper) where Part 68 applies: a carrier may not alter our rules by tariff. We direct the carriers to remove the Part 68 material and reference the rules directly.

74. Some commenters claim that the proposed transmission standards are lower than currently provided and in some cases unacceptable to meet service needs. The BOCs/CSO reply that standards in most cases meet or exceed current standards. It is difficult to compare standards because of questions as to what the standards mean (for example, whether they represent guarantees of minimum performance or signals triggering the need for maintenance) and because the standards do not apply when the facilities are grandfathered or whenever the standards cannot be met. The circuit elements to which standards are applied have also changed in some cases. In general, the standards do not appear unreasonable despite these concerns, but they do raise a more fundamental concern. Before divestiture, a single network manager, the Bell System, could often provide end-to-end service by choosing among design and routing options that normally exist to optimize performance. Impairments in transmission[16] along particular portions of a route[17] could be accommodated to provide an end-to-end service which met a customer's needs while making optimal

[16] *E.g.*, maximum noise on a channel, signal dropouts, envelope delay, impulse noise.

[17] *E.g.*, local loop interexchange plant, toll plant.

efficient use of the network. Trade-offs could be made. We believe the benefits of this optimization process should be maintained to the extent feasible in the post-divestiture environment, though the Bell System can no longer serve as a single network manager. Within this content, proposals for standards which would apply to one segment of the network must be considered as elements in the overall network optimization process. We believe that resolution of such technical issues can best be handled by an industry-wide forum, as proposed in our CC Docket No. 78-72, Phase III Notice, *op. cit.* Our decisions in this case are thus tentative and interim in nature.

A. Other Matters

75. We have attempted in this order to deal with all major issues in this phase of this docket. Some specific matters warrant further mention.

76. As we noted in the *Investigation Order,* approximately fifty exchange carriers neither joined the ECA tariff for all its provisions nor filed or participated in any other access tariff. Without an access tariff on file these carriers could not recover the revenue requirements associated with the access rate elements. We contacted each of these carriers to ask how each proposed to comply. Apart from carriers mistakenly omitted from the ECA tariff, twenty-five carriers wished to join the ECA tariff, six wished to join the Small Exchange Telephone Company tariff, and seventeen carriers wished to concur in the Pacific Telephone and Telegraph Company tariff. We decided to permit the carriers to join the respective tariffs, (see CCB Mimeo 1358, released December 15, 1983), because it allowed the carriers to participate in access revenues and the effect on the rates and revenue pools was *de minimus.*

77. New York Telephone and Pacific Telephone and Telegraph filed requests for somewhat different "lifeline waivers" of the $2 end user charge. Because the $2 charge was deferred until June 1985 in the *Second Reconsideration Order,* those petitions are moot.

78. The ECA and other tariffs contain no rate element for Limited Pay Telephone, *i.e.*, pay telephones and coinless pay telephones which can access the services of only one interexchange carrier. The ECA states that public phones such as Charge-a-Call Station are not dedicated to the interexchange services of a particular carrier. We will monitor these services to verify that they are correctly rated.

79. Some commenters, (Allnet, AT&T), urge that the per minute rates for Switched Access should properly be time-of-day sensitive, with lower evening and night rates to reflect the lower costs of such off-peak usage. While we agree that a time of day structure should eventually be established for these rates, we have not required this additional step in these initial access tariffs. Other comments also raise issues not properly

within the scope of this proceeding, *e.g.*, issues considered and resolved in the *Second Reconsideration Order*. We do not address these here.

80. A general problem in the ECA tariff is the use of a single rate, $26.21, for a wide range of administrative activities, including the altering of an address, the switch to a different presubscribed carrier, and the modification of an order. We have found no explanation for how this charge was established; the charge also does not take into account likely differences in the typical costs of such functions. It may also be counterproductive for a telco to impose a charge in some cases, for example, to correct inaccurate or changed customer information, since the customer's failure to come forward may cause the telco's own records to remain inaccurate. We request further justification for the charge and its application.

81. Foreign exchange (FX) service presents a number of problems. Interstate FX is presently priced as a composite service, including an interstate private line component and local exchange service. In the *Second Reconsideration Order*, both to eliminate the discrimination inherent in pricing FX at a very different rate than the essentially identical ENFIA-A, and to reflect the very different usage of many FX and ENFIA customers, we retained FX billing on the basis of minutes of use even though we prescribed interim flat rates for OCC ENFIA-A type services. A small percentage of local end offices, however, are not presently equipped to measure FX usage. In these offices, per minute rate cannot be applied. The ECA has proposed a monthly rate based on 4076 minutes. However, this figure would impose a substantial hardship on a small user who would pay the higher assumed rate if it happened that the local telco end office was not equipped to measure usage. The average also does not appear to be based solely on end user usage in those exchanges. As an interim measure, until measurement capability is available, we will permit telcos either to continue to charge a rate equivalent to the local business rate to end users receiving FX or to propose alternative usage surrogates. Another problem involves so-called "string FXs," a local exchange service provided across adjacent state borders or telephone company boundaries which is generally little different from other local exchange service. In some cases the "FX" line might be simply across a highway which is also a border. Regions using string FX are generally rural areas which look to a cross-border town for community services. A number of exception rates are included in current applicable tariffs (e.g., AT&T Tariff F.C.C. No. 260, § 3.2.2(c)(1)(d)) which bar imposing interstate private line rates upon the facilities used. We have received a number of letters and petitions from communities subject to such rates suggesting that applying access charges or eliminating exception rates could result in very substantial rate increases for no

changes in service. We will examine carefully any carrier requests to eliminate these exceptions or any other actions which have that effect. The carriers should, at a minimum, explain why other alternatives, such as modifying the exchange boundary or an Extended Area Service arrangement, would not be preferable and better recognize the essentially local character of such services.

V. Major Conclusions Requiring Further Action

82. Special Access is a primary concern. Neither the Access Charge Orders nor divestiture required changes in the rates or rate structures for the private line services provided under Special Access. The ECA and other access tariffs, however, propose to restructure these offerings radically, although little justification is given for the need for such changes. Rates would also increase enormously in many cases. Moreover, the rates for carriers ostensibly using the same methodology vary drastically for the same services and facilities. These differences are so great as to forfeit the credit which might be placed in any of the rates. The rate structure is also seriously flawed, as we describe more fully in Appendix D.

83. Directory assistance charges present analogous problems on a smaller scale. One of our basic policy goals is to move toward rates which recover the costs of service from the cost-causer where feasible. The costs of long distance directory assistance appears to be a service where calls can and should be recovered from those who place the calls, rather than spread to all long distance callers. A high proportion of long distance information calls are in fact made by large businesses such as credit agencies which have taken advantage of directory assistance being provided as a free good. Others, including local residential customers, should not bear the burden of such costs. Assigning an accurate rate to these calls will also encourage overall efficiency in use of the service, and possibly competitive offerings. A cost-based rate should thus be both more equitable and more efficient.

84. In the present case, however, the cost basis for the directory assistance rates is very doubtful. The rates vary widely for no discernable reason. For example, the rate in the District of Columbia is $.22 and in West Virginia $.93 though both are C&P Telephone companies. The support material also present substantial questions, including whether costs are fairly assigned to state and interstate use. These rates are also substantially higher than the state rates in most cases, and state rates generally permit a number of free calls. The charging of very different rates to customers for the same service is a matter of concern. For these reasons - to move toward rates fairly based on costs, and to permit consideration of the actual costs and possible issues of discrimination, - we are prescribing an interim one year charge no higher than 25 cents for the

directory assistance service call element of access tariffs for carriers whose charges are on a per call basis. We are also requesting further information from the carriers in order to resolve issues relating to directory assistance and will consider these issues later in this investigation.

85. The proposed ordering arrangements, including the planned facilities order provision, are also unjustified and in substantial part unreasonable. The nonrecurring charges represent large increases to existing charges, though no obvious changes in costs are involved and it is unclear that the increases are reasonably related to costs. Many of the features would also allow telcos to decide arbitrarily the amount an IC would pay and the obligations to which it would be subject.

IV General Conclusions and Directions to Local Exchange Carriers

86. In the *Investigation Order* which began this proceeding less than four months ago, we expected that enormous effort would be required by this Commission, the carriers, and the interested public. This was not an overstatement. The mass, detail, and level of analysis of the comments and reply give testimony to the importance and range of the issues for carriers, equipment suppliers, and the public. Much has been accomplished and many issues resolved. Yet even more may remain to be done. The Common Carrier Bureau will very shortly be sending further information requests to certain carriers and the ECA. It will also act on delegated authority to adopt an order addressing changes needed in other, non-ECA access tariffs. Although the policy decisions and specific corrections required by this order apply to all access tariff provisions which are the same or relatively similar to the ECA's, others with differing provisions raise separate problems. These are relatively scattered in the other 75 access tariffs and those carriers should proceed with the work of preparing whatever changes are necessary in their tariffs because of this order. Where we have addressed specific provisions of non-ECA tariffs, the respective carriers should of course prepare to implement our conclusions. The Bureau will release the order for non-ECA tariffs to give additional directions as soon as possible. We will also consider orders dealing with the divestiture related tariffs in Phase II of this docket, including AT&T's interstate tariffs, within the next few weeks.

87. We expect that the information supplied with the new filings and the specific rates and provisions will comply with this order, so that we may allow the revised tariffs to become effective. In any event, we will continue this investigation to monitor the filings and consider the additional issues which we have not fully or permanently resolved here, and the many new issues certain to arise. Any issues which have not been

fully addressed or resolved in this order will be included in the continuing investigation.

88. Because of the tight schedule we are trying to meet and the mass of material the filing carriers must prepare and we must review, by this order we are establishing a specific set of requirements for all revised access filings:

* Filing carriers must make no changes in section or page numbers of pending access tariffs except as specifically required in this or in forthcoming orders. Revisions required by these orders should be made without changes in section numbering. Section numbers of provisions required to be deleted should not be used for new material, except where the new material is a replacement dealing with the same subject.

* Filing carriers must make no revisions, corrections, alterations, or other changes in the rates, terms, or conditions of the access tariff in the prescribed filing, (other than to correct typographical errors such as spelling) except as expressly required or approved in this order and the *Second Reconsideration*. These revisions shall conform to the applicable rule requirements in Part 61 of our Rules, particularly the symbolization requirements of Sections 61.55(e), 61.94 and 61.118(a). However, the carriers need not symbolize material reissued without change as is required by Section 61.118(b). To do so would result in symbolization that would be confusing. Specific instructions concerning the administrative details of filing these revisions can be found in Appendix C. Other changes which the filing carrier wishes to propose must be made in a separate filing pursuant to Part 61 of the Commission's Rules. 47 C.F.R. § 61.

* The filing carrier shall file in a separate volume as part of its support material a report specifying all revisions on a section-by-section basis, listing the language now pending, the proposed language (if any) and a reference to the specific Commission order, page and section or paragraph number which is implemented. The carrier may include any explanation or justification of the proposed revisions in a separate section-by-section format.

89. We do not expect to modify or waive the requirements of this order before the effective date of conforming tariffs absent exceptional circumstances. Reconsideration petitions or additional tariff filings should provide adequate opportunities to present any claims that revisions are needed. If a carrier does wish to request a waiver to allow a tariff provision which does not conform with this order to become effective immediately, it should present a full explanation and justification all requests for immediate relief in the form of a single waiver request submitted no later than February 29, 1984.

90. Carriers are directed to file revised tariffs conforming with this order no later than March 15 to be effective April 3, 1984. We will strive to maintain this schedule. However, we realize that the task of revision will be a lengthy and difficult one. It is nonetheless of crucial importance to meeting the April 3 date that filings be done correctly and well - and even more important that they be done quickly. We have completed this initial review of the tariffs well before the overall target date so that it might be possible for new tariffs to become effective April 3 as planned. We hope

that the information provided and modifications made by carriers to the provisions and structure of their tariffs will remedy most of the problems identified concerning rates. However, as can be seen from the body and appendices of this order, many of the problems we have identified, both rate and others, are serious; it may be difficult for carriers to correct the provisions or demonstrate that no correction is needed. We need to know as soon as possible whether the carriers will be able to meet this schedule. We therefore direct the ECA to poll the filing carriers and report to us no later than February 29, 1984 whether the carriers will be able to meet the March 15 filing date. If the carriers require more time, an appropriate motion for extension should be filed with the February 29 report.

91. Several telcos have submitted applications for special permission to file various revisions to their respective access tariffs. Subsequent to the filing of these applications, modifications required by this Order and by the *Second Reconsideration* have rendered many of the revisions requested in those applications inappropriate or inaccurate. Accordingly, we are denying the pending applications for special permission listed in Appendix C.

92. Nonsubstantive revisions (correction of typographical errors such as spelling) may be made at the same time as required modifications under this Order.

Ordering Clauses

93. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 201, 202, 203, 204(a) and 205, of the Communications Act, 47 U.S.C. §§ 154(i),(j), 201, 202, 203, 204(a), and 205, that the tariff material submitted under Exchange Carrier Association Transmittal No. 1 is unlawful to the extent indicated herein.

94. IT IS FURTHER ORDERED, That the Exchange Carrier Association shall file revised tariff material in compliance with this order no later than March 15, 1984 with a scheduled effective date of April 3, 1984.

95. IT IS FURTHER ORDERED that the Exchange Carrier Association shall reference appropriate AT&T and BOC Tariffs for Other Common Carriers (and other applicable material resulting from meetings on interconnection pursuant to CC Docket 20099) as existed on April 2, 1984, to the extent necessary to substitute for material in Section 2.5 found unlawful. For this purpose, waiver of Section 61.74 of the Rules is granted. To the extent that no existing tariff contains necessary connection provisions (for example, those for services such as HC1C-4), any special provisions such as the Interim Programs for customer provided CSU and CSU-equivalent connections should be delineated in the ECA tariff. Moreover, IT IS ORDERED that the appropriate material referenced by the ECA tariff, including any presently used documents which resulted from the CC Docket 20099 meetings on interconnection, should

be retained in posting locations required pursuant to Section 61.72 of the Rules.

96. IT IS FURTHER ORDERED, That Sections 61.58, 61.59, 61.74 and 61.118(b) of the Commission's Rules, 47 C.F.R. §§ 61.58, 61.59, 61.74 and 61.118(b) are waived to the extent required to file tariff revisions implementing this Order.

97. This order is exempt from the provisions of the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.* It involves a rule applicable to particular rates and to practices relating to such rates within the meaning of the exemption contained in 5 U.S.C. § 601[2].

FEDERAL COMMUNICATIONS COMMISSION

WILLIAM J. TRICARICO, *Secretary*

*Commissioner Dawson's statement may be seen with Memorandum Opinion and Order, FCC 84-36, 97 FCC 2d________

APPENDIX A: Rates

Switched Access Service Elements: Rate Comparison

Company	*Access Connection[1] NRC[2]*	*Local Transport[1] MRC/Min[3]*	*Local Switching[1] MRC/Min LS1*	*LS2*	*Line Termination[1] MRC/Min.[3]*	*Intercept[1] MRC/100 Min.[4]*
ECA	$10.00	$.0044-.0453	$.0058	$.0090	$.0070	$.0085
Bell of Pennsylvania:						
Pennsylvania	17.78	.0008-.0239	.0051	.0080	.0051	.0075
Delaware	48.96	.0002-.0299	.0060	.0085	.0047	.0036
C&P Telephone:						
District of Columbia	10.00	.0092-.0092	.0061	.0080	.0089	.0001
Maryland	10.00	.0078-.0537	.0050	.0072	.0056	.0001
Virginia	10.00	.0084-.0590	.0064	.0082	.0071	.0001
West Virginia	10.00	.0094-.0803	.0072	.0116	.0081	.0005
Cincinnati Bell:	ECA					

[1] See introduction to Section 6, Appendix D for a description of these Switched Access Service rate elements.
[2] Nonrecurring charge.
[3] Monthly recurring charge per minute.
[4] Monthly recurring charges per 100 minutes.

Switched Access Service Elements: Rate Comparison

Company	Access Connection NRC	Local Transport MRC/Min	Local Switching MRC/Min		Line Termination MRC/Min	Intercept MRC/Min
			LS1	LS2		
Bell:	$ ECA	$	$	$	$	$
Illinois Bell:	12.59	.0064-.0375	.0065	.0090	.0073	.0001
Indiana Bell:	ECA					
Michigan Bell:	6.08	.0018-.02	.0041	.0083	.0061	.0001
Arizona	ECA					
Colorado	ECA					
Idaho	ECA					
Montana	ECA					
New Mexico	ECA					
Utah	ECA					
Wyoming	ECA					
Nevada Bell:	ECA					
New England Telephone:	ECA					
Maine	ECA					

Switched Access Service Elements: Rate Comparison

Company	*Access Connection NRC*	*Local Transport MRC/Min*	*Local Switching MRC/Min LS1*	*LS2*	*Line Termination MRC/Min*	*Intercept MRC/Min*
Massachusetts	*ECA*					
New Hampshire	*ECA*					
Rhode Island	*ECA*					
Vermont	*ECA*					
New Jersey Bell:	*11.41*	*.0037-.0121*	*.0047*	*.0065*	*.0049*	*.0054*
New York Telephone:						
New York	*ECA*					
Connecticut	*ECA*					
Northwestern Bell:						
Iowa	10.00	.0087-.0462	.0051	.0081	.0065	.0122
Minnesota	10.00	.0031-.0462	.0049	.0073	.0064	.0088
Nebraska	10.00	.0050-.0586	.0043	.0068	.0056	.0390
North Dakota	10.00	.0074-.0602	.0065	.0104	.0083	.0158
South Dakota	10.00	.0049-.0535	.0083	.0124	.0108	.0178
Ohio Bell:	10.00	.0108-.0642	.0057	.0079	.0055	.0060
Pacific Northwest Bell:						
Idaho	10.00	.0097-.0760	.0053	.0104	.0094	.0197
Oregon	10.00	.0057-.0430	.0052	.0094	.0085	.0267

Washington	10.00	.0047-.0294	.0053	.0092	.0081	.0197

Switched Access Service Elements: Rate Comparison

Company	*Access Connection NRC*	*Local Transport MRC/Min*	*Local Switching MRC/Min LS1*	*LS2*	*Line Termination MRC/Min*	*Intercept MRC/Min*
Pacific Bell:	*15.37*	*.0051-.0837*	*.0095*	*.0128*	*.0102*	*.0111*
South Central Bell:						
Alabama	*ECA*					
Kentucky	*ECA*					
Louisiana	*ECA*					
Mississippi	*ECA*					
Tennessee	*ECA*					

Switched Access Service Elements: Rate Comparison

Company	*Access Connection NRC 2*	*Local Transport MRC/Min 3*	*Local Switching MRC/Min LS1*	*LS2*	*Line Termination MRC/Min.*	*Intercept MRC/100 Min.*
GTE:[1]						
Alabama	$14.31	$.00048838	$.00722466	$.01359616	$.01188930	$.00002347
Alaska	17.13	.00286722	.00708340	.01642519	.01494464	.00000000
Idaho	13.23	.00084982	.01154923	.02193616	.01968821	.00007927
Wisconsin	10.06	.00090538	.00734795	.01619691	.01334682	.00000000

[1] *We listed only a few of the states within the territories of these independent telcos.*

Switched Access Service Elements: Rate Comparison

Company	*Access Connection NRC*	*Local Transport MRC/Min*	*Local Switching MRC/Min*		*Line Termination MRC/Min.*	*Intercept MRC/100 Min.*
			LS1	*LS2*		
Centel:[1]						
	[2]		[3]	[4]		
Illinois	$.00197906	$.00197906	$.00559837	$.01024239	$.01002054	$.001309
North Carolina	.0059035	.0059035	.00284481	.00284481	.00632006	.000599
Texas	.005753	.005753	.004443	.004443	.01434	.0008
United:[1]						
Arkansas	2.00	.0235-.0680	N/A	.0114	.0132	N/A
Florida	7.00	.002-.016	.008	.013	.019	.01175
New Jersey	1.00	.002-.028	.006	.010	.010	.00533

[1] *We listed only a few of the states within the territories of these independent telcos.*
[2] *Same as Local Transport.*
[3] *Used FGA.*
[4] *Used FGC.*

Special Access Service Elements: Rate Comparison

Company	*Access Connection:*[1] *MRC 4 - Wire Facility*
New Jersey Bell:	$ 2.73
Bell of Pennsylvania:	
Delaware	1.70
Northwestern Bell:	
Minnesota	21.78
	Access Connection: MRC DS 1 Facility
ECA	$ 102.35
C&P Telephone:	
District of Columbia	60.84
Maryland	186.38
Virginia	242.03
West Virginia	2.71
Illinois Bell:	405.25 + 54.60 per mile
Michigan Bell:	2.63
Northwestern Bell:	
Iowa	102.35
Nebraska	102.35

[1] *See introduction to Section 7, Appendix D for a description of the Special Access Service rate elements.*

Special Access Service Elements: Rate Comparison

Company	*Special Transport:*[1] *MRC DS 1 Facility*
ECA:	$ 38.02 + 15.09 PMI[2]
C&P Telephone:	
District of Columbia	60.84
Maryland	986.38
Virginia	242.03
West Virginia	2.71
Michigan Bell:	15.63
Northwestern Bell:	
Iowa	38.02 + 15.09 PMI
Minnesota	38.02 + 15.09 PMI
Nebraska	38.02 + 15.09 PMI
Wisconsin Bell	4.27 + 5.84 PMI

[1] *See introduction to Section 7, Appendix D for a description of the Special Access Service rate elements.*

[2] *Per mile.*

Special Access Service Elements: Rate Comparison

Company	*Special Access Line:*[1] *MRC 2 - Wire Facility*
ECA	$ 34.28
C&P Telephone:	
District of Columbia	58.50
Michigan Bell:	20.20
New York Telephone:	20.97
Northwestern Bell:	
South Dakota	9.39
GTE:	
Alabama	23.93
Arkansas	7.27
California	20.74
California-NW	37.37
Montana	78.99

Special Access Service Elements: Rate Comparison

	Special Access Line: MRC 4 - Wire Facility
ECA:	$ 54.20
Bell of Pennsylvania:	36.35
C&P Telephone:	
District of Columbia	74.81
Michigan Bell:	26.50
GTE:	
Alabama	47.86
Arkansas	14.54
California	41.48
California-NW	74.74
Montana	157.98

[1] *See the introduction to Section 7, Appendix D for a description of the Special Access Service rate elements.*

2. ECA Non-Recurring Charges

Introduction

The ECA's proposed plan for recovering non-recurring costs for facility installation and related services[1] represents a significant departure, from the present rate structure and levels of exchange carriers. Comparisons with current levels of non-recurring charges (NRCs) for switched and special access facilities reveal enormous proposed increases. SBS estimates that proposed NRCs for switched access represent increases of 800% over levels the OCCs are currently assessed and proposed NRCs for Special access represent increases of up to 1000%.[2] Western Union asserts that its annual NRCs would increase $34,074,000 from the current level of $1,902,000, a increase of 1,800%.[3] In New York, for instance, Western Union estimates its NRC for installation of a 2-wire voice grade facility would increase from $42.00 to $568.95, an increase of 1,255%; in California, the increase would be from $10.50 to $748.00, an increase of 7,024%.[4] The magnitude of these increases does not appear to be atypical.

If we were to allow the ECA's proposed NRCs to go into effect, grave economic consequences might result. Non-recurring installation charges of the magnitude the ECA is contemplating would probably pose significant barriers to entry for small and growing firms. Such charges would tend to lock customers into their existing carriers. Such a result would be in direct contradiction to the purpose of our *Access Charge Orders*. At the very least, these NRC increases would cause significant market dislocation, creating new burdens for interexchange carriers and customers alike.

Besides the need to address the public policy implications of increases of such magnitude, justification of such increases would require, at the very least, thorough cost support for the proposed rates. In addition, cogent arguments would have to be made in support of the new rate structures proposed (e.g., assessing switched access NRCs on ordered busy hour minute of capacity). Indeed, the burden of proof that such increases are "just and reasonable" lies with the carrier.[5]

General Cost Methodology

The NRC cost support material that the ECA has submitted[6] relies on "Special Study M," conducted by each BOC, to allocate cost items developed by the Access Charge Analysis System (ACAS) into recurring and non-recurring components. Special Study M uses "top-down" disaggregation methods to develop the non-recurring revenue requirements for switched and special access service. Therefore, the accuracy of Special Study M is critical for the validity of the proposed switched and special access NRCs and related order modification NRCs. However, Special Study M appears to suffer from significant problems of methodology and documentation.

The ECA itself casts doubt on the results produced by Special Study M. It states:

> "The nonrecurring results for Switched Access, . . .which were obtained using the top-down disaggregation procedures, were evaluated for reasonableness. The work activities associated with installing a circuit for Switched Access were compared to work activities

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[1] The ECA proposes non-recurring charges for installation of Switched and Special access services, for order modifications and for additional engineering, including presubscription changes.

[2] SBS, *Comments*, p. 45-46.

[3] Western Union, *Comments*, p. 6.

[4] Western Union, *Comments*, table 5.

[5] Section 204(a) of the Communications Act, 47 U.S.C. § 204(a).

[6] ECA, Volume 1 and Volume 3-5.

> involved in Special Access circuit installation. Based on this comparison, it was tentatively concluded that the nonrecurring cost for Switched Access should be comparable to or less than the cost for the voice-grade Special Access services. . .The costs. . .developed using the top-down disaggregation methods, however, result in a charge higher than the Special Access charge on an average circuit basis. It was decided to set the nonrecurring charge per busy hours minute of capacity at $10, which on a per circuit basis is less than the nonrecurring charge for Special Access." (ECA Vol. 3-5, p. 2-1ff).

As a result, the ECA simply reduced the NRC for switched access developed by Special Study M from $16.61 to $10.00. This $10.00 figure lacks any further support in the cost material the ECA provided us.

Many commenters strongly disputed the validity of Special Study M.[7] Among the criticisms commenters made were that the disaggregation methods used in the study resulted in the inclusion of extraneous costs; that extremely important yet capricious adjustments were made to the study results; that the study was inauditable because it was so poorly documented; that alternatives methods could have been used which would have resulted in statistically valid estimates of non-recurring costs. According to SBS, the Study's crucial calculations of non-recurring expenses resulted in sizable overestimations of switched access customer-initiated installation costs. The Study included installation costs initiated by the exchange-carrier in the non-recurring costs to be recovered from customers. Many BOCs implicity recognized this and attempted to resolve the problem by reducing the Study results by arbitrary factors.[8] For instance, New York Telephone discounted these expenses by 40%; Illinois Bell discounted certain of these expenses by 50%; yet Michigan Bell discounted the same category of expenses by only 5%. There appears to be similar motivation behind the ECA's arbitrary reduction of its $16.61 NRC for Switched Access Connection to $10.00 (an approximately 40% discount). Similar adjustment problems occur in computing special access non-recurring expenses. Together, the problems indicate significant defects with Special Study M methodology. They caution us in regard to either the casualness or the hurriedness with which Special Study M was conceived and conducted.

Switched Access NRCs

The ECA proposes to assess access connection charges on a per Busy Hour Minute of Capacity (BHMC) basis. However, there is nothing in any of the cost support material submitted to us that indicates that the cost of access connection is related to the amount of access capacity a customer orders. To the contrary, it would appear that non-recurring costs associated with "activities required to negotiate and process the service order, design the circuit, assign equipment and facilities, and install the service between the IC and the entry switch"[9] are largely independent of ordered capacity. The introduction of such a rate structure, which could be harmful to the fast-growing smaller interexchange carriers, requires convincing justification. However, the ECA's only support is a statement that the rate structure comports with the provisions of the MFJ in assessing an "equal charge per unit of traffic."[10]

[7] For instance, ITT, *Comments* p. 58ff; SBS *Comments*, Sec. 4, p. 8ff; WU, *Comments*, 25ff.

[8] SBS *Comments*, sec. 4, 14ff and table 2.

[9] ECA, Vol. 3-5, p. 2-1.

[10] *Id.*

Special Access NRCs

As discussed above, petitioners also cited defects in the top-down methodology employed for computing special access non-recurring costs, similar to those described for Switched Access.[11] In addition, commenters have criticized the bottom-up unit cost calculations developed for non-recurring special access and the BANOR top- down/bottom-up reconciliation process as being excessively casual, poorly documented and prejudicial to the OCCs.[12] Western Union points out the enormous jurisdictional fluctuations in Special Access NRCs (WU, *Comments,* Table 10). They conclude that a comparison of the NRCs for various special access facilities (e.g., 2&4-wire SAL and VG1) reveals such extreme disparities that it is unlikely that these charges are in fact related to actual installation costs.

Other NRCs

NRCs for Order Modifications and Additional Engineering expenses (including presubscription) are based on the same unsubstantialed cost studies and unsupported rate structures. As a result they share the same infirmities as the NRCs for switched and special access.

CONCLUSION

The ECA and the participating BOCs have not supplied adequate information concerning non-recurring costs, nor have they succeeded in defending the highly controversial charges and rate structures they propose. The cost information they have submitted actually argues against its own usefulness as cost support. The studies by which BOCs ascertained their non-recurring revenue requirements seem seriously flawed.

While some increases in nonrecurring charges may prove to be just and reasonable, and some modification in the manner in which they are assessed may be warranted, the material the ECA has offered in support of these changes is unconvincing. Before these NRCs could become effective, more adequate justification must be provided. There are good reasons to believe that the costs allocated to nonrecurring elements can be easily recovered, for an interim period, by slightly modified recurring charges. Only a small part of total costs have been allocated to nonrecurring elements (approximately, 8.7% for Switched Access and 12.5% for Special Access).

APPENDIX B: Regulations of the ECA

1. Introduction

Appendix B contains a number of parts relating to the regulations of the ECA access and special construction tariffs. Part 2 contains a list of parties filing comments and reply comments on these tariffs, along with abbreviations for those parties. These abbreviations are used throughout our discussion of the ECA tariffs. Part 3 contains a list, by tariff and transmittal numbers, of all access and special construction tariffs filed by October 3, 1984. This list includes tariffs filed by the ECA, BOCs and independent telcos that did not concur in the ECA tariffs. Part 4 contains the table of contents of the ECA access tariff, while Part 5 includes a table that sets out which tariffs filed by the BOCs and independent telcos cross reference the ECA access tariff. The table in Part 5 is organized according to sections of the ECA tariff, and indicates which tariffs incorporate ECA language and which contain language that differs from the ECA.

[11] See SBS, *Comments*, sec. 4, p. 24ff; ITT, *Comments*, p. 61ff.

[12] SBS, *Comments*, p. 29ff; ITT, *Comments*, p. 67ff; WU, *Comments*, p. 30ff.

2. Abbreviations of Commenters

The following parties have filed comments concerning the access charge tariffs filed by the Exchange Carrier Association, the Bell Operating Companies and independent local exchange carriers.

Ad Hoc Telecommunications Users Committee (AHTUC)

Aeronautical Radio, Inc. (ARINC)

Alascom, Inc. (AI)

Allnet Communications Services, Inc. (ACS)

American Broadcasting Companies, Inc., CBS, Inc., and National Broadcasting Company, Inc. (the Networks)

American Communications Ltd. (AC)

American Financial Services Association (AFSA)

American Hotel and Motel Association (AHMA)

American Library Association (ALA)

American Newspaper Publishers Association (ANPA)

American Satellite Company (ASC)

American Telephone and Telegraph Co. (AT&T)

Associated Press and Commodity News Services, Inc. (AP and CNS)

Association of Independent Television Stations, Inc. (INTV)

Association of Long Distance Telephone Companies (ALTEL)

Bryan 800 Communications, Inc. (BC)

Bunker Ramo - Eltra Corporation (BREC)

CAPCON Library Network (CAPCON)

City of Los Angeles (LA)

Central Committee on Telecommunications of the American Petroleum Institute (CCT)

Commissioner of Baseball (CB)

Committee of Corporate Telecommunications Users (CCTU)

Direct Marketing Association, Inc. (DMA)

Dow Jones & Company, Inc. (DJ)

Enhanced Communications Services Association (ECSA)

EMX Telecom (EMX)

General Communications Incorporated (GCI)

Federal Executive Agencies (FEA) with General Services Administration (GSA) and Department of Defense (DOD)

GTE Sprint (GTES)

Hughes Television Network (HTN)

Independent Data Communications Manufacturers Association, Inc. (IDCMA)

International Communications Association (ICA)

ISACOMM, Inc. (ISACOMM)

ITT Communications Services, Inc. (ITT)

Lexitel Corporation (LC)

Local Area Telecommunications, Inc. (LAT)

Mobile Communications Corporation of America (MCCA)

Missouri Public Service Commission (MPSC)

McCaw Communications Companies (MCC)

MCI Airsignal, Inc. (MCIA)

MCI Telecommunications Corporation (MCI)

National Association of State Universities and Land-Grant Colleges (NASULC) with Association of Community College Trustees (ACCT), American Association of State Colleges and Universities (AASCU), American Association of University Professors (AAUP) and National Association of College and University Business Officers (NACUBO)

New York Public Service Commission (NYPSC)

Online Computer Library Center (OCLC)

Office of Consumers' Counsel - State of Ohio (OCCO)

J.C. Penney (JCP)

RCA Communications, Inc. (RCA)

Rural Telephone Coalition (RTC)

Satellite Business Systems (SBS)

Satellite Data Broadcast Networks, Inc. (SATNET)

Teltec Saving Communications Co. and Satelco Incorporated (TSC/SI)

Telesphere Network, Inc. (TNI)

Telocator Network of America (Telocator)

United Press International (UPI)

United States Telephone Association (USTA)

U.S. Telephone, Inc., (USTEL)

Utilities Telecommunications Counsel (21 separate comments on individual access tarriffs) (UTC)

Vermont Department of Public Service and Vermont Public Service Board (VPSB)

Westinghouse Broadcasting and Cable, Inc. (WBC)

Western Union Telegraph Company (WU)

3. Summary List of Access Tariff Filings

PHASE I ACCESS TARIFFS

Company	*Access* Trans. No.	*Access* Tariff No.	*Special Construction* Trans. No.	*Special Construction* Tariff No.
Exchange Carrier Assoc.				
Access Charges	1	1		
Wire Centers	1	2		
Special Construction			1	3
Bell Operating Companies				
Bell of Pennsylvania	689	41	689	42
C&P Telephone	117	3	117	6
Cincinnati Bell	341	35	341	39
Illinois Bell	700	43	700	44
Indiana Bell	703	34	703	35
Michigan Bell	470a	38	470a	39
Mountain States	650	65	650	62
Nevada Bell	1	1	–	–
New England Telephone	680	40	680	41
New Jersey Bell	388	38	388	36
New York Telephone	613	41	613	42
Northwestern Bell	924	52	924	51
Ohio Bell	629	38	629	42
Pacific Northwest Bell	89	8	89	8
Pacific Tel. and Tel.	1027	128	1027	129
South Central Bell	102	4	102	9
Southern Bell	1250	61	1250	60
Southern New England	287	34	287	35
Southwestern Bell	1222	68	1222	69
Wisconsin Bell	511	38	511	39
Independent Telephone Companies				
Anchorage Telephone Utility	8	4	–	–
Canby Telephone Assoc.	1	1	–	–
Carolina Telephone (United)	8	3	–	–
Centel – Florida	1	1	–	–
Centel – Illinois	1	1	–	–
Centel – Minnesota	1	1	–	–
Centel – Nevada	1	1	–	–
Centel – North Carolina	1	1	–	–
Centel – Ohio	1	1	–	–
Centel – Texas	1	1	–	–
Centel – Virginia	1	1	–	–
Century Tel. Enterprises	1	1	–	–
Citizens Telephone Co.	1	1	–	–
Concord Telephone Co.	1	1	–	–
Eagle Telecommunications	1	1	–	–
East Ascension Tel. Co.	1	1	–	–
El Paso Telephone Company	1	1	–	–
Fidelity Telephone Company	1	1	–	–

Company	Access Trans. No.	Access Tariff No.	Special Construction Trans. No.	Special Construction Tariff No.
General Telephone Op. Cos.	1	1	2	4
Great Plains Communications	1	1	1	2
Highland Telephone Company	1	1	-	-
Kalona Coop. Telephone Co.	1	1	-	-
Matanuska Telephone Company	1	1	-	-
Merchants & Farmers Tel. Co. (Centel)	1	1	-	-
Orchard Farm Telephone Co.	1	1	-	-
Palo Pinto Tel. Co. (United)	4	2	-	-
Phillips County Telephone Co.	1	1	-	-
Pioneer Telephone Coop.	1	1	-	-
Rochester Telephone Corp.	1	1	-	-
Small Exchange Telephone Companies	1	1	-	-
Sylvan Lake Telephone Co.	1	1	-	-
Telephone Utilities Exchange Carrier Association	1	1	-	-
United Intermountain – Tennessee	9	4	-	-
United Intermountain – Virginia	10	5	-	-
United Tel – Arkansas	7	4	-	-
United Tel – Carolinas	4	2	-	-
United Tel – Florida	7	2	-	-
United Tel – Indiana	6	3	-	-
United Tel – Iowa	5	3	-	-
United Tel – Kansas	8	4	-	-
United Tel – Minnesota	4	2	-	-
United Tel – Missouri	7	4	-	-
United Tel – Northwest-Oregon	26	8	-	-
United Tel – Northwest-Washington	27	90	-	-
United Tel – Ohio	8	3	-	-
United System – Pennsylvania	1	1	-	-
United System – New Jersey	2	2	-	-
United Tel – Texas	5	2	-	-
United of the West – Nebraska	7	5	-	-
United of the West – Wyoming	8	6	-	-
Urban Telephone Corp.	1	1	-	-
Walnut Hill Telephone Co.	1	1	-	-
Wood County Telephone Co.	1	1	-	-
Wyoming Telephone Company	1	1	-	-

Other Companies

Company	Access Trans. No.	Access Tariff No.	Special Construction Trans. No.	Special Construction Tariff No.
AT&T Communications	2	8	-	-
B.S.O.C.				
Cancel tariff	89	3	-	-
Cancel tariff	89	4	-	-
Cancel tariff	89	8	-	-
Cancel tariff	89	9	-	-
Cancel tariff	89	11	-	-
California - Oregon				
Cancel COATS tariff	39	8	-	-
Hawaiian Telephone Company				
Cancel tariff	652	3	-	-
Cancel tariff	652	18	-	-
Cancel tariff	652	20	-	-

PHASE I ACCESS TARIFFS - Modification and Cancellation of Docket 20099 tariffs

Company	Access Trans. No.	Access Tariff No.	Special Construction Trans. No.	Special Construction Tariff No.
Bell of Pennsylvania	687	38	688	38
C&P Telephone	116	2	118	2
Cincinnati Bell	340	34	-	34
Illinois Bell	702	38	703	38
Indiana Bell	702	33	704	33
Michigan Bell	471	37	472	37
Mountain States	649	59	651	59
New England Telephone	681	39	682	39
New Jersey Bell	389	33	390	33
New York Telephone	614	39	615	39
Northwestern Bell	925	45	926	45
Ohio Bell	628	37	632	45
Pacific Northwest Bell	91	4	92	4
Pacific Tel. & Tel.	1028	126	1029	126
South Central Bell	103	3	104	3
Southern Bell	1252	55	1253	55
Southern New England	288	33	289	33
Southwestern Bell	1220	65	1221	65
Wisconsin Telephone	512	35	513	35

4. *Table of Contents of ECA Tariff*

Section 1.	APPLICATION OF TARIFF
Section 2.	GENERAL REGULATIONS
Section 3.	CARRIER COMMON LINE ACCESS SERVICE
Section 4.	END USER ACCESS SERVICE
Section 5.	ORDERING OPTIONS FOR SWITCHED AND SPECIAL ACCESS SERVICE
Section 6.	SWITCHED ACCESS SERVICE
Section 7.	SPECIAL ACCESS SERVICE
Section 8.	BILLING AND COLLECTION SERVICES
Section 9.	DIRECTORY ASSISTANCE SERVICE
Section 10.	SPECIAL FEDERAL GOVERNMENT ACCESS SERVICES
Section 11.	SPECIAL FACILITIES ROUTING OF ACCESS SERVICES
Section 12.	SPECIALIZED SERVICE OR ARRANGEMENTS
Section 13.	ADDITIONAL ENGINEERING, ADDITIONAL LABOR AND MISCELLANEOUS SERVICES
Section 14.	EXCEPTIONS TO ACCESS SERVICE OFFERINGS

5. Cross References of Other Access Tariffs to the ECA tariff

Cross References of
Other Access Tariffs
To ECA Tariff

CARRIER:	*General Regulations*	*Carrier Common Line*	*End User*	*Ordering Options*	*Switched Access*	*Special Access*	*Billing & Collection*
Bell of Pennsylvania		1					
C&P Telephone		1					
Cincinnati Bell		1		1	1	1	
Illinois Bell		1					
Indiana Bell		1		1	1	1	
Michigan Bell		1					
Mountain States		1		1	1	1	
Bell of Nevada		1		1	1	1	
New England Telephone		1		1	1		
New Jersey Bell		1					
New York Telephone		1		1	1	1	
Northwestern Bell		1					
Ohio Bell		1					
Pacific Northwest Bell		1					
Pacific Telephone and Tel.		1					
South Central Bell		1		1	1	1	
Southern Bell		1		1	1	1	
Southern New England		1		1	1	1	
Southwestern Bell		1		1	1	1	
Wisconsin Telephone		1*					
Independent							
Tel. Cos.							
Anchorage Telephone		1	1				
Canby Telephone Assoc.	2	1		1	1	1	1
Carolina Telephone (United)		1					
Centel-Florida		1**					
Centel-Illinois		1**					
Centel-Minnesota		1**					

CARRIER:	*General Regulations*	*Carrier Common Line*	*End User*	*Ordering Options*	*Switched Access*	*Special Access*	*Billing & Collection*
Centel-Nevada		1**					
Centel-North Carolina		1**					
Centel-Ohio		1**				****	
Centel-Texas		1**					
Centel-Virginia	1**						
Century Tel. Enterprises	2	2	2	2	2	2	1
Citizens Telephone Co.		1					
Concord Telephone Co.	1	2			2	2	
Eagle Tele-communications	2	2		1			
East Ascension Tel. Co.	2	1		1			
El Paso Telephone Co.	2	1		1			
Fidelity Telephone Company		1					
General Telephone Op. Cos.		1***					
Great Plains commun.	2	1		1	1	1	
Highland Telephone Co.		1		1	1	1	1
Kalona Coop.	2	1		1	1	1	1
Matanuska Telephone		1	1				
Merchants & Farmers (Centel)		1**		*****			
Orchard Farm		1					
Palo Pinto (United)		1					
Phillips County	2	1		1	1	1	1
Pioneer Telephone	2	1		1	1	1	1
Rochester Telephone		3					
Small Exchange Tele.	2	2	2	2	2	2	
Sylvan Lake		1		1	1	1	1
Tel. Utilities Exch.		1					
United Telephone of:							
Arkansas		1					
Carolinas		1		1	1	1	
Florida		1					
Indiana		1					
Iowa		1					

CARRIER:	*General Regulations*	*Carrier Common Line*	*End User*	*Ordering Options*	*Switched Access*	*Special Access*	*Billing & Collection*
Kansas		1					
Minnesota		1					
Missouri		1					
Northwest							
Oregon		1					
Pennsylvania		1					
Northwest-Washington		1					
New Jersey		1					
Ohio		1					
United							
United Inter-Mtn-Tenn.							
United Inter-Mtn. Va.							
United Tel.-Texas		1					
United of the West-Nebr.		1					
United of the West-Wyoming		1					
Urban Tel. Corp.	2	2			2	2	
Walnut Hill		1					
Wood County	2	2			2	2	
Wyoming	2	1		1	1	1	2

1= *Largely incorporates ECA provision, but differs slightly, for example, adds an introductory statement.*

2= *Incorporates ECA provision verbatim.*

3= *Rochester has same rate for Carrier Common Line as ECA but has different regulations.*

* *Omits last three paragraphs of the ECA's general description.*

** *Carrier Common Line is in Section 14 of this tariff.*

*** *Carrier Common Line is in Section 12 of this tariff.*

**** *Special Access appears in Section 5 of this tariff.*

***** *Ordering options appear in Section 9 of this tariff.*

APPENDIX C: Filing Instructions and Pending Applications

TARIFF PAGES

LOCATION	*TRANSMITTAL LETTER*	*UNCHANGED ORIGINAL PGS & REVISED*	*REVISED PAGES ONLY*[2]	*61.38 REVISED COST SUPPORT*[1] *VOL. 1 (IF APPL)*	*61.38 REVISED COST SUPPORT*[1] *ALL VOLUMES*
OFFICIAL COPIES					
SECRETARY OF F.C.C. ROOM 222	1	2[3]			
PUBLIC REFERENCE ROOM 513	1	1	1		1[4]
COMMERCIAL CONTRACTOR ITS-ROOM 330 (TRNG. RM.) OF BROWN BLDG 1220 19th ST. N. W.	1	1	1		1
COURTESY COPIES					
TARIFF DIVISION ROOM 514					
A. H. DAVID	1	1	1	1	
E. N. GOLD	1	1	1		1
J. A. NITSCHE	1	1	1	1	
R. L. SMITH	1	1	1	1	
D. F. GROSH	1	1			

1. In an effort to facilitate identification and cataloging we would appreciate the carriers doing the following:

A. Provide a list identifying all cost support volumes submitted with these revisions and associate it with the cost volumes *and* the transmittal letter.

B. Label the volumes of cost support on the spine of the binder with the name of the carrier, the volume number and the issue date of the revised filing. This may be done by marking with a felt pen and should be brief, ie: BELL OF PA, VOL 2-2, DATE.

C. All boxes in which cost support is delivered should be clearly labeled as to their contents. ie: BELL OF PA, TRANS. LTR XXX, DATE, VOLS. 1,2,3,4, BOX 1 OF 5.

2. The package of revised pages should be clearly labeled as such, ie: BELL OF PA, TRANS. LTR # XXX, DATE, REVISED TARIFF PAGES.

3. Each copy of these tariffs should be in a 3 ring, loose leaf binder clearly labeled on the spine of the binder. ie: BELL OF PA, TARIFF FCC NO. XX, ACCESS.

4. The cost support associated with Public Reference Copy should be delivered to E. N. Gold - Rm 514.

The following carriers have filed applications for Special Permission to make changes to their access tariffs.

Anchorage Telephone Utility Application #4, 1/23/83

Centel of Florida Application #2, 11/23/83

Centel of Illinois Application #2, 11/23/83

Centel of Minnesota Application #2, 11/23/83

Centel of Nevada Application #2, 11/23/83

Centel of North Carolina Application #3, 11/23/83

Centel of Ohio Application #2, 11/23/83

Centel of Texas Application #2, 11/23/83

Centel of Virginia Application #2, 11/23/83

East Ascension Application #1, 1/12/83

Great Plains Application #1, 11/2/83

GTE Service Corp. Application Nos. 6 and 7, 11/23/83

Matanuska Application #1

Merchants & Farmers Application #2 (Centel), 11/23/83

Cincinnati Bell Application Nos. 15 and 16, 12/22/83

New York Tel Application #45, 9/28/83 (life line waiver)

Pacific Bell Application #60, 9/28/83 (life line waiver)

Pacific Bell Application #63, 1/16/84 (requested withdrawal 2/2/84)

South Central Bell Application #18, 2/6/84 (add options under B&C)

Southern Bell Application #44, 2/6/84 (add options under B&C)

APPENDIX D: Section by Section Review

Appendix D contains a detailed, section-by-section review of numerous provisions of the ECA access and special construction tariffs. In this review, we set forth the language of numerous tariff provisions and discuss issues raised with respect to those provisions. We also give specific directions to the ECA for making needed changes in tariff language and other changes necessary to correct tariff deficiencies we have identified.

Our review of the ECA access tariff has revealed a rate problem that warrants discussion in this introduction. In several instances in Section 6, Switched Access Service, and numerous instances in Section 7, Special Access Service, the rates for service elements are not set forth in the tariff.[1] Rather, they are to be established on an "individual case basis" (ICB), - that is, developed based on the circumstances in each case. Because the ICB rates apply primarily to service elements not previously offered by telcos, we recognize that it will take some time for them to develop rates for certain facilities offered under these elements. For this reason, we are allowing the ECA to use the ICB approach in this filing. However, as the telcos develop rates or generally applicable regulations for these facilities we expect those rates and regulations to be set forth in the ECA access tariff.

[1] See, *e.g.* rates for Switched Access Service Local Transport optional features (Section 6.8.2(B)) and rates for Special Access Service Access Connections and Special Transport for Group, Supergroup and Mastergroup facilities (Section 7.5.1).

Section 1. Application of Tariff, and Section 2. General Regulations

Section 1 of the ECA tariff describes the applicability of the tariff, providing generally that its regulations, rates and charges are in addition to applicable regulations, rates and charges specified in other tariffs and referenced therein. Section 2 contains the general rules, regulations and procedures for the provision of access services. It includes provisions for installation and termination of service, refusal and discontinuance of service, and interference or impairment of telco facilities or equipment. Section 2 also provides for "Obligations of the IC," including payment arrangements, deposits, credit allowances for service interruptions, jurisdictional reporting requirements and trouble determination responsibilities. Finally, this section includes detailed provisions for connections of IC equipment and systems to telco facilities, and contains numerous definitions used throughout the tariff.

The Commission's access charge plan is generally consistent with the goals of the *Modification of Final Judgment* (MFJ) in seeking to eliminate any unjustified disparities in interconnection regulations so that all interexchange and information service providers will be able to compete on an equal basis, and so that any person, whether a carrier or end user, may be able to obtain access service under this tariff. In order to reach these goals within the next few years, the access charge plan establishes a phase-in period to facilitate the transition to "equal access." The Commission has made clear its intent that tariff provisions in effect during, as well as after, this transition period must avoid any unjustified discrimination among access service customers, and any unnecessary restrictions in competitive market areas, such as provision of equipment, or in provision of interstate/intra-LATA toll service, where local telephone companies may be competing with others. It is, therefore, particularly important that general provisions in the tariffs be reasonable and precise, and that definitions be clear. To this end, we are directing modifications and clarifications in Sections 1 and 2.

Many objections were raised to vague and ambiguous terms and provisions throughout Section 2, which commenters claim will fail to notify customers adequately of the provisions which will apply to them, and/or will allow the telco unreasonable discretion in their application. One important area of confusion stemmed from the nomenclature developed to identify the various customers under this tariff. The ECA developed a new term "Interstate Customer (IC)" to refer apparently to all customers of access service, both interexchange carriers and end users. In many places throughout the tariff, however, the tariff appears to treat "Interstate Customers" and end users as two distinct groups. The tariff also appears to use the term IC in many instances where it actually

intends only interchange carrier. The historical application of the acronym "IC" to represent interexchange carriers castes further confusion on these terms. We shall eliminate this ambiguity by prescribing the use of the terms used in our Access Charge proceedings, *i.e.*, interexchange carrier (IC), end user, and the term "customer" for any person who subscribes to access service under these tariffs. We have also directed clarifications of numerous other ambiguous terms and provisions in Section 2, particularly certain important definitions in Section 2.6.

Several commenters raised concerns regarding tariff provisions which they claim impose unreasonable burdens on the ICs. Some commenters urge that the Section 2.3.14 and 2.3.15 provisions for jurisdictional reporting requirements of the distribution of interstate and intrastate uses of access service would impose unreasonable administrative burdens on ICs, most of whom will lack the technical ability to develop adequate reports. Further, the commenters objected to the Section 2.3.15 provision for unilateral auditing of the IC's support data by the telco as unreasonable and anticompetitive. We are also concerned that the proposed reporting requirements may be unreasonable and intrusive. Moreover, in light of the move in our *Second Reconsideration Order* from a usage based rate to a flat rate for OCC lines telcos may wish to reconsider these usage reporting requirements. Accordingly, we will consider additional proposals by the exchange carriers for allocating their customers' intrastate and interstate usages.

We are also concerned about the reasonableness of several other provisions in Section 2. For example, we have concluded that the Section 2.3.16 provision for a 24-hour minimum service interruption for a credit allowance is unreasonable, particularly in light of substantial revenues which ICs could lose during service interruptions for that length of time. Accordingly, we are prescribing a shorter minimum service interruption period in that provision.

Certain aspects of the proposed deposit and interest penalty provisions in Section 2.4.1 drew complaints from several commenters. Commenters are concerned generally about the telco's discretion to determine when a deposit would be required, the size of the deposit, and the differences in interest proposed to be paid on the deposits and that to be collected on late payments. We are directing clarification and justification of the types and amount of deposits which may be required by the telco. In order to assure reasonable interest provisions, we are also directing that, within the bounds of relevant state laws, interest paid on customer deposits must be keyed to penalty interest charges to customers unless specifically justified.

We have two general concerns regarding the proposed connection provisions in Section 2.5. First, the provisions, many of which paraphrase

Part 68 provisions, could result in substantial confusion regarding the application of our Part 68 rules. Second, this section appears to propose establishment of Part 68-like connection regulations for equipment and systems not today subject to Part 68 of our Rules (i.e., for interconnection of carriers' facilities for through service). The telcos have not demonstrated a new potential for harm which would justify such an expansion of the scope of Part 68, and in our view any such expansion would not only be improper, but it would also be undesirable in that it might foreclose flexibility by carriers in implementing interconnection.

We have initiated a rulemaking proceeding which addresses, *inter alia*, tariff requirements governing carrier-to-carrier interconnection.[1] Pending resolution of that proceeding, we conclude that tariff provisions which previously governed interconnection of customers' and carriers' equipment and facilities in the interstate tariffs should continue in effect. Restatements in Section 2.5 of Part 68 rules for interconnection of non-carriers' equipment and facilities are confusing or unnecessary. Thus, the differentiation in previous tariffs may continue to be employed in view of our establishment herein of the separate "customer," "interexchange carrier" and "end user" categories.

We are directing changes in various other tariff provisions in Sections 1 and 2 of the ECA tariff, as indicated in the following pages. Sections 1 and 2 were largely unaffected by the Commission's *Second Reconsideration Order*, and, thus, changes in these sections required as a result of that decision should be minimal.

SUBJECT: Reference to Technical Publications

ECA TARIFF REFERENCE: p. 19

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"REFERENCE TO TECHNICAL PUBLICATIONS

The following technical publications are referenced in this tariff and may be obtained from Publishers' Data Center, Inc., P.O. Box C738 Pratt Street Station, Brooklyn, N.Y. 11205:

Compatibility Bulletin 106, Issue 2
Issued: December, 1981 Available: March 11, 1982

Technical Reference:

PUB 41451
Issued: January, 1983; Available: May 17, 1983

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[1] MTS and WATS Market Structure, Phase III, Notice of Proposed Rulemaking, CC Docket No. 78-72, FCC 83-178, released May 31, 1983.

PUB 60101
Issued: December, 1982; Available: January 17, 1983"

DISCUSSION: The BOCs/CSO have proposed to add the following two references to this section:

PUB 62411
Issued: August, 1983; Available: August 23, 1983

PUB 62310
Issued: September, 1983; Available: September 16, 1983

We are concerned that even with these proposed additions there is still inadequate referencing of technical publications. The list must be expanded to include all other relevant publications currently listed in AT&T's Tariffs F.C.C. Nos. 259, 260, 263, 266, 268, 270, 271 and 273. Further, the list should include any references applicable to interconnection requirements for services not previously covered, such as HC1C-4.

This section must also conform to the conditions regarding these publications specified in the Bureau's Memorandum Opinion and Order regarding Transmittal No. 14268, released June 22, 1983 (Mimeo No. 4842) and its Memorandum Opinion and Order regarding Transmittal No. 14346. released September 8, 1983 (Mimeo No. 6295).

Further, the section should indicate that the status of publication 41451 is in question pending resolution of its applicability to Satellite Digital Service.

SUBJECT: Application of Tariff

ECA TARIFF REFERENCE: Section 1.3

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The regulations, rates and charges contained herein are in addition to the applicable regulations, rates and charges specified in other tariffs of the Telephone Company which are referenced herein."

DISCUSSION: Section 61.74 of our Rules, 47 C.F.R. § 61.74, generally prohibits reference in a tariff to other documents outside the tariff in order to ensure that a tariff is a self-contained document which fully apprises the public of all information relevant to the service offered. Thus, the general reference in Section 1.3 to other regulations, rates and charges in other tariffs is improper and the provision must be deleted.

SUBJECT: General Regulations—Undertaking of the Telephone Company—Scope

ECA TARIFF REFERENCE: Section 2.1.1(A)

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"Services provided to an IC under the provisions of this tariff may be connected to facilities used by the IC between certain locations and thereby constitute a portion of an end-to-end interstate telecommunications service furnished by the IC for its own use or for the use of End Users."

ISSUES: MCI contends that the tariff unreasonably omits from Section 2.1.1(A) foreign communications services. MCI also refers to Section 2.3.14, which omits foreign communications from IC jurisdictional report provisions, and Section 2.6, which defines "interstate customer" without reference to foreign communications.

DISCUSSION: This provision generally states that the telco's services may be connected to an IC's facilities. We believe that it is unnecessary and confusing to state such permissive uses in tariffs. Unlimited lawful use of the services provided under a tariff is assumed absent justified restrictions in the tariff. This provision is unnecessary and must be deleted.

Accordingly, MCI's complaint regarding the omission of "foreign communications" in this section is moot. MCI does, however, raise this same issue in regard to the definition of "Interstate Communications" in Section 2.6. *See infra,* that section.

SUBJECT: General Regulations — Undertaking of the Telephone Company — Scope/ Maintenance and Testing

ECA TARIFF REFERENCE: Sections 2.1.1 (C) and (D)

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"(C) The Telephone Company shall be responsible only for the installation, operation and maintenance of its services. The responsibility of the Telephone Company shall be limited to the provision of services under this tariff and to the maintenance and operation of such services in a proper manner.

(D) The Telephone Company will for maintenance purposes, test its services only to the extent necessary to detect and/or clear troubles and will not perform a complete technical parameter verification when not deemed necessary by the Telephone Company."

ISSUES: MCI contends that Section 2.1.1(D) is vague and would accord the telephone company unreasonable discretion. The tariff should, MCI urges, define "Complete technical parameter" and the standard to be used by the telephone company in determining when this verification is "necessary."

DISCUSSION: The second sentence of Section 2.1.1(C) provides that the telco is responsible for maintaining its services "in a proper manner." This language is meaningless and unnecessary. Thus, the sentence should be deleted and subsection (C) should be modified to read as follows: "The Telephone Company shall be responsible only for the installation, operation and maintenance of the services which it provides."

Section 2.1.1(D) appears to allow the telco extremely broad discretion to determine when maintenance testing may be required. Proposed ECA modifications would delete the discussion regarding the technical parameter verification, and merely provide that the telco will test its services only to detect and/or clear troubles. The BOCs/CSO state that this change is appropriate because the provision regarding the technical parameter verification is unnecessary. The proposed modified language may appear in the revised tariffs filed in response to this order.

SUBJECT: General Regulations—Undertaking of the Telephone Company—Limitations on IC's Ability to Assign and Transfer Facilities

ECA TARIFF REFERENCE: Section 2.1.2(A)

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"(A) The IC may not assign or transfer the use of services provided under this tariff; however, where there is no interruption of use or relocation of the services, such assignment or transfer may be made to:

(1) another IC, whether an individual, partnership, association or corporation, provided the assignee or transferee assumes all outstanding indebtedness for such services, and the unexpired portion of the minimum period and the termination liability applicable to such services, if any; or

(2) a court-appointed receiver, trustee or other person acting pursuant to law in bankruptcy, receivership, reorganization, insolvency, liquidation or other similar proceedings, provided the assignee or transferee assumes the unexpired portion of the minimum period and the termination liability applicable to such services, if any.

In all cases of assignment or transfer, the written acknowledgement of the Telephone Company is required prior to such assignment or transfer which acknowledgement shall be made within 15 days from the receipt of notification. All regulations and conditions contained in this tariff shall apply to such assignee or transferee.

The assignment or transfer of services does not relieve or discharge the assignor or transferor from remaining jointly or severally liable with the assignee or transferee for any obligations existing at the time of the assignment or transfer."

DISCUSSION: This provision's use of the term IC should be corrected to correspond with our clarifications of the definitions of "IC" and "customers", *see infra*, those discussions in Section 2.6. Accordingly, the term "IC" in this section must be changed to "customer."

SUBJECT: General Regulations—Undertaking of the Telephone Company—Limitations—Shortage of Facilities

ECA TARIFF REFERENCE: Section 2.1.2(C)

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"(C) Subject to compliance with the rules mentioned in (B) preceding, where a shortage of facilities or equipment exists at any time, either for temporary or protracted periods, the services offered herein will be provided to ICs on a first-come, first-served basis."

ISSUES: MCI contends that this provision is ambiguous because it uses vague terms, such as "shortage" and "first-come, first-served."

DISCUSSION: As MCI points out, the provision purports to resolve how limited services and facilities will be allocated, but fails to clearly identify what will constitute a "shortage" which will trigger the "first-come, first-served" rules. These terms will be significant during the period following divestiture where ICs may be competing for limited facilities or equipment. These terms must be defined clearly enough for customers to plan for, and respond to, such shortage problems. The definitions should clearly address both facilities and equipment shortfalls, and specify how the exchange carrier will determine how a rationing system will be fairly determined.

SUBJECT: General Regulations — Undertaking of the Telephone Company — Limitations on Liability

ECA TARIFF REFERENCE: Sections 2.1.3(B) and (C)

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"(B) No carrier furnishing a portion of a service shall be liable for any act or omission of any other carrier furnishing a portion of that service.

(C) The Telephone Company is not liable for damages associated with service or facilities which it does not furnish."

DISCUSSION: Subsection (B) purports to address carrier liability. We believe that since the term "carrier" includes both those customers of the telco who are carriers, and the telco itself, this provision to limit liability is unnecessarily broad. This section should address only the issue of liability in terms of the telco. Further, subsection (C) would shield the telco from liability for services or "facilities which it does not furnish." The provision's use of the term "furnish" is unclear in the context of facilities which the telco may lease from others to provide its services. Thus, we conclude that Section 2.1.3 (B) and (C) should be deleted and the following language should be substituted:

"The Telephone Company shall not be liable for any act or omission of any other carrier or customer providing a portion of a service, nor shall the Telephone Company for its own act or omission hold liable any other carrier or customer providing a portion of a service."

SUBJECT: General Regulations—Undertaking of the Telephone Company—Liability

ECA TARIFF REFERENCE: Sections 2.1.3(E) and (F)

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs, *cf.*, Southwestern Bell §§ 2.13(E) and (F).

TARIFF LANGUAGE:

"(E) The Telephone Company shall be indemnified, defended and held harmless by the End User against any claim, loss or damage arising from the use of services offered under this tariff, involving:

(1) Claims for libel, slander, invasion of privacy, or infringement of copyright arising from any communications;

(2) Claims for patent infringement arising from combining or using the service furnished by the Telephone Company in connection with facilities or equipment furnished by the IC or End User or;

(3) All other claims arising out of any act or omission of the End User in the course of using services provided pursuant to this tariff.

(F) The Telephone Company does not guarantee or make any warranty with respect to its services when used in an explosive atmosphere. The Telephone Company shall be indemnified, defended and held harmless by the IC or End User from any and all claims by any person relating to the services provided."

ISSUE: MCI contends that the provision is unreasonably vague in violation of Sections 61.55(f) and (g) of our Rules, 47 C.F.R. Sections 61.55(f) and (g), and could be interpreted as requiring an IC to indemnify the telco for acts or omissions of an end user over which the IC has no control. The BOCs/CSO have responded that the instant provision is similar to that

contained in the OCC Facilities Tariffs*, and that the exchange carrier's liability is "appropriately" limited, particularly where the IC or end user is in a better position to minimize any damage or liability.

DISCUSSION: Section 2.1.3(E) seeks to limit the telco's liability by requiring the "End User" to indemnify, defend and hold harmless the telco against certain specified claims. As a result of the clarified definition of "end user" which we are mandating in this action, *see infra,* Section 2.6, we believe that this provision does not suffer from the vagueness problems which MCI alleges, and clearly would not apply by its terms to ICs, such as MCI, when providing service to their customers. By contrast, however, the analogous Southwestern Bell provision (Section 2.1.3(E)) specifically adds ICs, requiring the "IC or End User" to indemnify, defend and hold harmless the telcos for the claims listed in (1) and (2) and adds to subsection (3) claims arising out of any act or omission of the IC. This language, we believe, does have the vagueness problems which MCI has raised.

We also believe this provision in both the ECA and Southwestern Bell tariffs, among other tariffs, fails to distinguish clearly the respective obligations of the IC or end user. In order to eliminate these vagueness problems in both Section 2.1.3(E) and (F) the tariffs must contain separate provisions that clearly delineate the separate obligations of the IC and end user, holding neither responsible for the acts or omissions of the other.

SUBJECT: General Regulations—Undertaking of the Telephone Company—Provision of Services to ICs

ECA TARIFF REFERENCE: Section 2.1.4

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The Telephone Company, to the extent that such services are or can be made available with reasonable effort, and after provision has been made for the Telephone Company's telephone exchange services, will provide to the IC upon reasonable notice services offered in other applicable sections of this tariff at rates and charges specified therein."

ISSUES: MCI contends that this section would create an unreasonable preference for local exchange service and exchange carriers over local access service and ICs.

DISCUSSION: At this time, we have no reason to believe that provisioning for the telephone exchange services will interfere with the exchange carriers' ability to provide adequate interstate access service nor have commenters specified any circumstances under which this provision would result in unreasonable discrimination against ICs. We are not persuaded, therefore, that this provision should be eliminated or revised.

SUBJECT: General Regulations—Undertaking of the Telephone Company—Installation and Termination of Services

ECA TARIFF REFERENCE: Section 2.1.5

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

* These tariffs were filed subsequent to settlement agreements reached under CC Docket No. 20099, *Facilities for Use by Other Common Carriers,* 52 FCC 2d 727 (1975).

TARIFF LANGUAGE:

"The services provided under this tariff (A) will include any entrance cable or drop wiring and wire or intrabuilding network cable to that point where provision is made for termination of the Telephone Company's outside distribution network facilities at a location of minimum penetration inside of the IC terminal location or End User premises and (B) will be installed by the Telephone Company to such point of termination. This point of termination is defined as the Point of Interface at the IC terminal location and the Network Interface at the End User premises. Wire, required to extend the location of the interface from one location to another location within a building in order to extend Access Service facilities to the IC's or End User's premises equipment, will be provided, at the IC's or End User's request, on a time sensitive charge basis. The labor rates for the installation of such wires are the same as those set forth in 13.2.6(C) following for Other Labor."

ISSUES: Western Union contends that this provision is unreasonably restrictive insofar as it limits interconnection between the telco and the IC solely to the IC's premises.

DISCUSSION: We are concerned that this provision is ambiguous and uses unnecessary and confusing terminology. The section provides for the installation of cable or wire to a "point of termination." The section then defines that point of termination as the "Point of Interface at the IC terminal location and the Network Interface at the End User premises." Although it is unclear what is meant by these various terms, this section appears to restrict interconnection to these locations, without any justification. Further, no justification has been provided for differentiating between IC's and end users in this context. Therefore, we are directing that reference to "IC terminal location" and "end user premises" be consolidated here and throughout the tariff into the single term "premises." Similarly, "Point of Interface" and "Network Interface" should be consolidated into the single term "Point of Termination." *See infra*, the definitions for these new terms, Section 2.6.

This section also indicates that the telco's facilities will terminate at "a location of minimum penetration" inside the customer's premises. Section 68.215 of our Rules and the outcome of CC Docket 81-216 may have some bearing on this matter. Therefore, the term "suitable location" should be used in this provision for the present.

Accordingly, Section 2.1.5 must be modified to read as follows:

"The services provided under this tariff (A) will include any entrance cable or drop wiring and wire or intrabuilding cable to that point where provision is made for termination of the Telephone Company's outside distribution network facilities at a suitable location inside a customer-designated premises and (B) will be installed by the Telephone Company to such Point of Termination. Wire required within a building to extend Access Service facilities will be provided, at the Customer's request, on a time sensitive charge basis. The labor rates for the installation of such wire are the same as those set forth in 13.2.6(C) following for Other Labor."

SUBJECT: General Regulations—Undertaking of the Telephone Company—Maintenance of Services

ECA TARIFF REFERENCE: Section 2.1.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The services provided under this tariff shall be maintained by the Telephone Company. The IC or others may not rearrange, move, disconnect, remove or attempt to repair any facilities provided by the Telephone Company except with the written consent of the

Telephone Company. The IC shall maintain all facilities provided by it. The Telephone Company shall not be responsible to End Users for end-to-end service of which the services provided under this tariff are part."

DISCUSSION: This provision states generally that only the telco may connect, disconnect, rearrange, etc., any telco provided facilities. This provision should be rewritten to recognize that customers must be able to connect to the interface. Thus, the second sentence should read "The IC or others may not rearrange, move, disconnect, remove or attempt to repair any facilities provided by the Telephone Company, other than by connection or disconnection to any interface means used, except with the written consent of the Telephone Company."

The last two sentences purport to assign maintenance responsibility to the IC for its own facilities, and limit the telco's responsibility for services it does not provide. Such limitation is already provided for in Section 2.1.3(B), which states that no carrier providing a portion of a service shall be liable for any act or omission of any other carrier providing a portion of that service. Thus, the last two sentences of Section 2.1.6 are unnecessary and must be deleted.

SUBJECT: General Regulations—Undertaking of the Telephone Company—Changes and Substitutions

ECA TARIFF REFERENCE: Section 2.1.7

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The Telephone Company may, where such action is reasonably required in the operation of its business, (A) substitute, change or rearrange any facilities used in providing service under this tariff, including but not limited to, (1) substitution of different metallic facilities, (2) substitution of carrier or derived facilities for metallic facilities used to provide other than metallic facilities and (3) substitution of metallic facilities for carrier or derived facilities used to provide other than metallic facilities, (B) change minimum protection criteria, (C) change operating or maintenance characteristics of facilities or (D) change operations or procedures of the Telephone Company. In case of any such substitution, change or rearrangement, the transmission parameters will be within the range as set forth in 6. and 7. following. The Telephone Company shall not be responsible if any such substitution, change or rearrangement renders any IC furnished services obsolete or requires modification or alternation thereof or otherwise affects their use or performance. If such substitution, change or rearrangement materially affects the operating characteristics of the facility, the IC will be given adequate notice in writing. Reasonable time will be allowed for any design and implementation required by the change in operating characteristics."

ISSUES: Commenters urge that language regarding notification to ICs in 2.1.7 is unreasonably vague. (AT&T, ACS). AT&T urges that notice, should be defined; ACS proposes one year's notice. The BOCs/CSO reply states that the provision is reasonable and a specific notice period is not practical because of the diverse nature of these types of changes.

DISCUSSION: This provision overlaps with existing provisions in Part 68 of our Rules for changes and substitutions of telco facilities and equipment which affect customer interconnection subject to Part 68. It is unnecessary and confusing to have these two separate sets of provisions. This provision should clarify that Section 2.1.7 complements existing regulations in Part 68.110(b) of our Rules. Accordingly, the following language must be inserted before the section: "Except as provided for equipment and systems subject to FCC Part 68 regulations at 47 C.F.R, § 68.110(b), ..."

Commenters are concerned that the language in this section is unreasonably vague for an IC's purposes, and some urge that specific notice periods should be established. We agree that for IC's the undefined provision of "adequate notice" does appear somewhat vague. We recognize that ICs must have sufficient time to be able to plan for telco changes which affect their operations; however, telcos must also be allowed to make reasonable changes on reasonable advance notice. We except that cooperative procedures will be developed to supplement this section, perhaps establishing definite notice periods for certain of the changes. Moreover, since the proposed section provides for "reasonable" notification, we intend to examine specific problems as they arise on a case by case basis until workable cooperative arrangements can be devised.

SUBJECT General Regulations—Discontinuance and Refusal of Services

ECA TARIFF REFERENCE: Sections 2.1.8(A) and (B)

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs, *cf.*, Southwestern Bell §§ 2.1.6(A) and (B).

TARIFF LANGUAGE:

2.1.8 Refusal and Discontinuance of Service

(Original)

(A) Unless the provisions of 2.2.2 (B) following apply, if the IC or End User fails to comply with the provisions of this tariff, including any payments to be made by it on the dates and times herein specified, the Telephone Company may, on ten (10) days written notice of noncompliance, refuse additional applications for service and/or refuse to complete any pending orders for service at any time thereafter. If the Telephone Company does not refuse additional applications for service on the date specified in the ten (10) days notice, and the IC's or End User's noncompliance continues, nothing contained herein shall preclude the Telephone Company's right to refuse additional applications for service without further notice.

(B) Unless the provisions of 2.2.2 (B) following apply, if the IC or End User fails to comply with the provisions of this tariff, including any payments to be made by it on the dates and time herein specified, the Telephone Company may, on a twenty (20) days written notice, discontinue the provision of the services involved at any time thereafter. In the case of such discontinuance, all applicable charges, including termination charges, shall become due. If the Telephone Company does not discontinue the provision of the services involved on the date specified in the twenty (20) day notice, and the IC's or End User's noncompliance continues, nothing contained herein shall preclude the Telephone Company's right to discontinue the provision of the services involved without further notice.

(CSO Proposed Modification)

(A) Unless the provisions of 2.2.2(B) or 2.5 following apply, if the IC or End User fails to comply with 2.1.6 preceding or 2.2.1, 2.2.3, 2.3.5, or 2.3.7 following or other significant provisions of this tariff, including, but not limited to, any payments to be made by it on the dates and times herein specified, any required information or written agreements necessary for the provision of service, and failure to comply with ordering or minimum quantity requirements, the Telephone Company may, on thirty (30) days written notice to the person designated by the IC to receive such notices of noncompliance, refuse additional applications for service and/or refuse to complete any pending orders for service at any time thereafter. If the Telephone Company does not refuse additional applications for service on the date specified in the thirty (30) day notice, and the IC's or End User's noncompliance continues,

nothing contained herein shall preclude the Telephone Company's right to refuse additional applications for service without further notice.

(B) Unless the provisions of 2.2.2(B) or 2.5 following apply, if the IC or End User fails to comply with 2.1.6 preceding or 2.2.1, 2.2.3, 2.3.5 or 2.3.7 following or other significant provisions of this tariff, including, but not limited to, any payments to be made by it on the dates and times herein specified, any required information or written agreements necessary for the provision of service, the Telephone Company may, on a thirty (30) days written notice, to the person designated by the IC to receive such notices, discontinue the provision of the services involved at any time thereafter. In the case of such discontinuance, all applicable charges, including termination charges, shall become due. If the Telephone Company does not discontinue the provision of the services involved on the date specified in the thirty (30) days notice, and the IC's or End User's noncompliance continues, nothing contained herein shall preclude the Telephone Company's right to discontinue the provision of the services involved without further notice.

ISSUES: MCI urges that these provisions for refusal and discontinuance are unreasonably broad, particularly given the potential for unintentional violation of one of the massive number of tariff provisions. Further, MCI contends that this section is unreasonably vague in that it could be interpreted as permitting refusal or discontinuance of an IC's service due to an end user's noncompliance, and vice versa.

DISCUSSION: Section 2.1.8(A) appears to allow the telco on ten days' written notice, to refuse additional (or pending) orders for service if the IC or end user fails to comply with any "significant" provision of the tariff. Further, if the telco does not so refuse, and the noncompliance continues, it may refuse additional applications without further notice. Similarly, Section 2.1.8(B) provides that upon 20 days' written notice, the telco may discontinue service to an IC or end user for any violation of the tariff.

As written these provisions could impose significant sanctions on ICs or end users for what might be quite insignificant violations of the tariff. We believe these provisions are so vague as to be unreasonable. The BOCs/CSO have proposed modifications to these sections which partially address our concerns, but further modifications are needed. The BOCs/CSO modifications make the following basic changes: they (1) add Section 2.5 provisions to the exemptions from this section; (2) list certain specific provisions which among others, will trigger refusal or discontinuance; and (3) provide for 30 days' written notice of noncompliance to a person designated by the IC, rather than 10 days for refusal, and 20 days for discontinuance, to an unspecified person. The BOCs/CSO suggest that the extended period provides reasonable time for ICs to convey their concerns to the telco, rendering unnecessary MCI's suggestion that a grievance process be established to resolve disputes.

We have some remaining concerns and comments regarding the proposed modifications. First, the modification merely cites some examples of what provisions are, among others, considered "significant." Thus, the modification, like the original language, fails to provide ICs adequate notice of when these provisions will be invoked. As MCI points out, comparable provisions of the ENFIA tariffs (BSOC Tariffs F.C.C. Nos. 8 and 9) provide for discontinuance only for violations of certain identified tariff provisions. We conclude that this provision for refusal and discontinuance must specifically identify each provision which is sufficiently significant to trigger this section. This list should consist only of major tariff provisions.

Second, as MCI has noted, the original provision was written in a manner that could be interpreted to permit discontinuance of an IC's service when the end user fails to comply with a provision, and discontinuance of an end user's service when an IC fails to comply with a

provision. Such results would be unreasonable. Sections 2.18(A) and (B) must be modified to clarify that ICs and end users are each responsible for their own violations.

Third, MCI has urged that notice in this section be provided by certified mail to a person designated by the IC. The BOCS/CSO have proposed in their reply that written notice will be delivered to a person designated by the IC; however, it believes certified mail is unnecessary. We disagree with this latter point and see no reason for failure to include this common business practice for providing verifiable notification. Therefore, the provision should include a requirement for certified mailing of all notification of refusal and/or discontinuance under this section.

Fourth, this provision refers in subsection (B) to certain "termination charges" which will become due if the telco discontinues service under this section. As discussed in Section 2.4.1(A), *infra*, we find this charge vague and unsupported. Accordingly, "termination charges" must be defined and supported, or eliminated from the tariff.

Finally, the reference to Section 2.5 in the proposal must be changed to correspond with the changes we have mandated in that section, *infra*.

The proposed modifications to Section 2.4.1(A) and (B) must be corrected according to the foregoing discussion.

SUBJECT: General Regulations—Quotation Charge

ECA TARIFF REFERENCE Section 2.1.9

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"Except as set forth in 10.7 following, a nonrecurring charge (USOC QPA) for the preparation of a quotation applies whenever an IC requests an estimate of rates and charges for any service for which the rates and charges are determined on an individual case basis prior to placing an order for service. The charge includes the costs associated with the development and preparation of the quotation. A bill for the quotation preparation will be rendered. The quotation is valid for 90 days and will identify all estimated costs associated with the provision of the facilities needed to satisfy the IC's service requirements. Within this 90 day period, if the IC orders the service as quoted and service is subsequently provided, the Quotation Charge will be credited to the IC's account. If the IC cancels the request for a quotation prior to its completion, the IC will be billed for the costs incurred, for quotation preparation, through the cancellation date."

ISSUES: AT&T contends that this provision must distinguish between "order of magnitude" quotes and firm quotes. Further, AT&T argues that a 90 day interval for order of magnitude quotes is unduly restrictive. *See also*, Section 10.7, *infra*.

DISCUSSION: AT&T has indicated in its comments that it has historically provided certain quotes (which it identifies as "order of magnitude" quotes) free of charge, while it has charged for "firm" quotes. AT&T suggests that this practice should be continued and that charges should only be imposed for firm quotes, and only where substantial effort is involved. In reply, the BOCs/CSO argue that any quote takes time and effort, and that AT&T's suggestion would open the door to potential discrimination.

This provision has significant vagueness and ambiguity problems. It purports to establish a quotation preparation charge, but fails either to define or to justify adequately such a charge. The application of a quotation charge to any particular customer would be subject to the unfettered discretion of the telco. For government requests, the telco would be free not to apply any quotation charge, and thus, would shift any costs to general revenue requirements. Similarly, where the telco does not apply separate charges for quotations and the customer declines to obtain the service, the telco would also be unable to recover directly any costs associated with preparing the quotations, *e.g.*, Pacific Telephone's tariff for the Summer Olympics and the Democratic National Convention. In these instances, such costs would also be shifted into the general revenue requirements. Moreover, in cases involving development of new offerings for one or more specific customers, this proposed tariff provision would allow telcos to include those costs in its general revenue requirement by averaging them under developmental expenses.

Accordingly, since these charges are both unclear and unsupported we conclude that the proposed provision must be deleted from the tariffs. The telcos may file a provision for quotation preparation charges in their 1985 access tariffs, but the filing should resolve the substantial concerns we have identified here.

SUBJECT: General Regulations—Undertaking of the Telephone Company—Limitation of Use of Metallic Facilities

ECA TARIFF REFERENCE: Section 2.1.10

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"Except for ground start, duplex (DX) and McCulloch-Loop (Alarm System) type signaling, metallic facilities shall not be used for ground return or split pair operation. Signals applied to the metallic facility shall be voice or sub-voice and shall conform to the limitations set forth in 2.5.10 following. . . ."

ISSUES: Commenters contend that limitations, on the use of metallic facilities are unreasonably restrictive. (AT&T, MCI). WU contends that this provision violates its contractual rights obtained as a result of a Memorandum of Understanding dated December 14, 1979, among AT&T, WU and various international record carriers (IRCs). In reply, the BOCs/CSO propose to delete the second sentence to remove the restriction to voice and sub-voice signals.

DISCUSSION: This section seeks to impose restrictions regarding the signals that may be transmitted and the electronics that may be used with metallic facilities. MCI has urged that the limitation of transmitting only voice and sub-voice signals is unduly restrictive and should be eliminated. In their proposed modifications filed December 22, 1983, the BOCs/CSO proposed to delete the voice/sub-voice limitation in response to MCI's concerns. Those changes may be filed in revised tariffs filed in response to this order.

AT&T's concern for this section, however, is broader. Like MCI, it argues that customers should be allowed to transmit any type of signal within the technical limitations set forth in § 2.5.10. AT&T further contends that the customers should be permitted to control the electronics that operate with the metallic facility, in the interest of encouraging technological advancement in this area. This section must conform to our longstanding policies prohibiting any unjustified tariff restrictions on customer use of facilities. (*See, Carterfone*, 13 FCC 2d 420, *recon.*, 14 FCC 2d 571 (1968).)

WU contends that this provision violates a Memorandum of Understanding among AT&T, WU and various other IRCs, regarding the electronics used which allows loop signaling on wire-pair facilities and allows continuation of ground return and split pair operation on inplace service until October 31, 1985. To the extent that this provision is inconsistent with existing contractual obligations, it is clearly unlawful, (*see, MCI Telecommunications Corp. v. F.C.C.*, 665 F.2d 1300 (D.C. Cir. 1981)) and must be deleted from the tariffs.

SUBJECT: General Regulations—Undertaking of the Telephone Company—Notification of Service-Affecting Activities

ECA TARIFF REFERENCES: Section 2.1.11

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The Telephone Company intends to provide the IC timely notification of service-affecting activities."

ISSUES: Commenters urge that language regarding notification to ICs in 2.1.11 is unreasonably vague. (ACS, AT&T). AT&T urges that notice should be defined; ACS proposes one year's notice. The BOCs/CSO reply states that the provision is reasonable and a specific notice period is not practical because of the diverse nature of these activities.

DISCUSSION: Section 2.1.11 appears to provide a general notification provision for all service-affecting activities. Section 2.1.7, however, already provides for certain notification requirements. The relationship between these two sections must be clarified. Further, vague language such as "*intends* to provide" must be clarified.

SUBJECT: General Regulations—Undertaking of the Telephone Company—Provision and Ownership of Telephone Numbers

ECA TARIFF REFERENCE: Section 2.1.13

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The IC and the End User have no property rights to telephone number assignments or any other call number designations associated with Access Services. The Telephone Company reserves the right to assign, designate or change such numbers, or the Telephone Company serving central office prefixes associated with such numbers, when reasonably necessary in the conduct of its business."

ISSUES: The commenters urge that the ICs will have made substantial investments in customer awareness of their telephone numbers, and that it would be unreasonable to allow the telephone company unilateral authority to make these changes. (MCI, WU).

DISCUSSION: We find this provision so broad and vague that it would accord the telco unrestricted discretion to change its customers' number assignments. Customers may have significant financial interests in the stability of these assignments. In particular, "access codes" represent the basic "business address" of ICs. We also find that the first sentence of this provision, which provides that customers have no "property rights" in these number assignments is gratuitous. For these reasons we find that the entire provision must be deleted. If the local telcos wish to file a provision reserving a reasonable right to change number assignments in their revised tariff filings, they should include a provision for

reasonable advance notice in writing to the customer, and that such notice will be accompanied by an explanation of the reasons for such changes.

SUBJECT: General Regulations—Use—Purpose

ECA TARIFF REFERENCE: Section 2.2.1(A)

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"(A) Services provided under this tariff shall be used by the IC for its own use or in furnishing its authorized interstate services to End Users and for operational purposes directly related to the furnishing of the IC's authorized services. Operational purposes include testing and maintenance of circuits, demonstration and experimental services and spare services. Telephone Exchange Services required by the IC for its administrative use are furnished under other applicable tariffs of the Telephone Company."

ISSUES: MCI contends that the use restrictions in Section 2.2.1(A) are unlawful. It further argues that the use of the term "authorized" creates an ambiguity in the tariff by duplicating the tariff's prohibitions against unlawful use in Section 2.2.3. TNI argues that the last sentence in this section is unreasonably vague. The BOCs/CSO reply contends that the standard cited by MCI applies to equipment, not services, that an IC cannot routinely introduce new services without advance warning or examination, and that the section is similar to that in the current OCC Facilities Tariffs.

DISCUSSION: This subsection seeks to define the customer's use of the services obtained under this tariff. The first apparent limitation is that the IC's interstate services must be "authorized." The second apparent limitation is that only use for operational purposes directly related to an interexchange carrier's services to end users falls under this tariff while "administrative uses" fall "under other applicable tariffs." We believe these two limitations are not only unclear but, more importantly, are improper. As MCI points out, the Commission has made clear its general policy that customers may use a common carrier's services or facilities as they choose as long as the use (1) is lawful, (2) will not harm the network and (3) is not otherwise publicly detrimental.

Contrary to the position of the BOCs/CSO reply, the same principle applies to restrictions on use of services as well as to connection of equipment. *See, e.g., Resale and Shared Use Decision*, 60 FCC 2d 261 (1976), *recon.*, 62 FCC 2d 588 (1977), *aff'd sub nom., AT&T v. FCC*, 572 F2d 17 (2d Cir. 1977), *cert. denied*, 439 U.S. 875 (1978). In the present case no public harm appears or is urged that would justify the proposed use restrictions. The existing language in the OCC Facilities Tariffs also predates our decisions promoting full competition in the MTS/WATS market and appears to reflect market divisions which are now obsolete and unlawful. Thus, the proposed limitations must be deleted from this provision. Further, the only provision remaining in this section after this correction (*i.e.*, the last sentence) is either self-evident (if intended to permit ICs to obtain exchange service) or incorrect (if intended to require that ICs may not use service obtained under the access tariff for administrative uses). For these reasons, we conclude that Section 2.2.1(A) should be deleted.

SUBJECT: General Regulations—Use—Purpose

ECA TARIFF REFERENCE: Section 2.2.1(B)

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

> "(B) Where facility conditions permit, the IC may use the entire transmission capability of a service provided under this tariff as a single channel or create additional communication channels within or below the voice frequency band, except that the IC may not create additional communication channels from video cable facilities or audio facilities other than diplexing associated audio signals on the video cable facility. The Telephone Company does not warrant that its facilities and services meet standards other than those set forth in this tariff."

ISSUES: Commenters contend that the limitation on creation of additional channels from video cable or audio facilities is unreasonable. (MCI, WU). MCI also asserts that the phrase "where facility conditions permit" is ambiguous in violation of section 61.55(f) of our Rules.

DISCUSSION: This section allows multiplexing within or below the voice frequency band, but prohibits multiplexing of video cable or audio facilities. As in Section 2.2.1(A), we believe the restrictions in this subsection are inconsistent with clearly articulated Commission policies on restricted use of facilities. As long as the IC's use of the facilities is lawful, does not harm the network or is not otherwise publicly detrimental (and such does not appear to be the case here) this restriction is unreasonable. Accordingly, the first sentence in Section 2.2.1(B) must be deleted. The second sentence, which clarifies that the telco does not warrant that its facilities and services meet standards other than those established in the tariff, appears unnecessary, but if it is to be included in the tariff should appear as a new subsection under Section 2.1, which provides generally for the telco's responsibilities.

SUBJECT: General Regulations—Use—Interference or Impairment

ECA TARIFF REFERENCE: Section 2.2.2(B)

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

> "(B) If such characteristics or methods of operation are not in accordance with (A) preceding, the Telephone Company will, where practicable, notify the IC or End User that temporary discontinuance of the use of a service may be required; however, where prior notice is not practicable, nothing contained herein shall be deemed to preclude the Telephone Company's right to temporarily discontinue forthwith the use of a service if such action is reasonable under the circumstances. In case of such temporary discontinuance, the IC or End User will be promptly notified and afforded the opportunity to correct the condition which gave rise to the temporary discontinuance. During such period of temporary discontinuance, credit allowance for service interruptions as set forth in 2.4.4 following is not applicable."

ISSUES: MCI contends that the provision is unreasonably vague.

DISCUSSION: This provision overlaps with existing provisions for handling harm to the telco network in Section 68.108 of our Rules. It is unnecessary and confusing to have two separate provisions for handling harm to the network from equipment subject to Part 68. This provision should clarify that Section 2.2.2(B) complements existing regulations in Part 68.108. Thus, Section 2.2.2(B) must begin "(B) Except as provided for equipment or systems subject to the FCC Part 68 rules in 47 C.F.R. § 68.108, ..."

SUBJECT: General Regulations—Obligations of the IC—Damages

ECA TARIFF REFERENCE: Section 2.3.1

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The IC shall reimburse the Telephone Company for damages to Telephone Company facilities utilized to provide services under this tariff caused by the negligence or willful act of the IC or an End User while using the services of the IC, or resulting from improper use of the Telephone Company facilities, or due to malfunction of any facilities or equipment provided by other than the Telephone Company. The Telephone Company will, upon reimbursement for damages, cooperate with the IC in prosecuting a claim against the person causing such damage and the IC shall be subrogated to the right of recovery by the Telephone Company for the damages to the extent of such payment."

ISSUES: MCI asserts that this provision is unreasonable in its application, in that it would, in certain instances, make the IC responsible for the acts of its end user customers.

DISCUSSION: This section would require the IC to reimburse the telco for damage to telco facilities caused by the negligence or willful act of the IC or end user. In the context of switched access service, in which the end user is a customer of both the IC and the telco, this provision appears to hold the IC liable for acts of persons over which it has no more control than the telco. The BOCs/CSO reply urges that whatever legal bond exists in these situations exists between the IC and its end user, and not between the telco and the IC's end users. The reply suggests that the IC could protect itself with similar provisions.

We are not persuaded that the IC will have any greater legal bond with its end user than the telco, at least in the case of switched access service. Indeed, the telephone company-end user bond may be stronger since end users ordinarily will have little choice but to do business with the local telco. Thus, we find it unreasonable to hold an IC liable for its end user's acts or omissions. Therefore, the references to IC reimbursement for negligent and willful actions of end users must be deleted from Section 2.3.1.

SUBJECT: General Regulations—Obligations of the IC—Ownership of Facilities and Theft

ECA TARIFF REFERENCE: Section 2.3.2

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"Facilities utilized by the Telephone Company to provide service under the provisions of this tariff shall remain the property of the Telephone Company. Such facilities shall be returned to the Telephone Company by the IC or End User, whenever requested, within a reasonable period following the request in as good condition as reasonable wear will permit.

The IC shall reimburse the Telephone Company for any loss through theft of facilities utilized to provide services under this tariff at the IC terminal location or End User premises."

ISSUES: MCI argues that the provision unreasonably requires the IC to be responsible for theft at the end users' premises.

DISCUSSION: This section provides generally that telco facilities shall remain telco property and must be returned upon request. The provision would also require the IC to reimburse the telco for any theft of such facilities either at the "IC terminal location" or "end user premises." The BOCs/CSO assert here, as in Section 2.3.1, *supra*, that the "legal bond" between an IC and its end users warrants this result. We disagree. It would appear, rather, that the telephone company, whose lines connect with these end user facilities, will ordinarily have an equally close or even greater relationship to the end user. The IC has no control over

these end user facilities; there is no reason why it should be responsible for their theft *. Thus, the last sentence of this provision must be stricken from the tariff.

SUBJECT: General Regulations—Obligations of the IC—Equipment Space and Power

ECA TARIFF REFERENCE: Section 2.3.3

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The IC shall furnish or arrange to have furnished to the Telephone Company, at no charge, equipment space and electrical power required by the Telephone Company to provide services under this tariff at the points of termination of such services. The selection of ac or dc power shall be mutually agreed to by the IC and the Telephone Company. The IC shall also make necessary arrangements in order that the Telephone Company will have access to such spaces at reasonable times for installing, testing, inspecting, repairing or removing Telephone Company services. Equipment space and power furnished or arranged to be furnished by the IC shall not be used in the provision of service to any other IC or End User."

ISSUES: Commenters contend that this provision unreasonably restricts provision, installation, repair, etc., of access service terminating equipment to the telco. (MCI, WU). MCI continues that this access "customers premises equipment" was de-tariffed under our *Computer II* decision. MCI further argues that prohibition against using the designated space and power in providing service to others is unreasonable.

DISCUSSION: This section requires ICs to provide space and power free of charge for telco equipment at the point of termination. It further requires the IC to make arrangements to allow the telco reasonable access to such space for installation, repair, etc. ICs are also prohibited from using this space or power in providing service to another IC or end user.

Commenters contend that this provision assumes that the telco will in each case place its equipment on the IC's premises. MCI argues that to the extent that this equipment is located on the customer's premises, the equipment is not part of a common carrier service under our *Computer II* decision* and may be provided by the IC, the telco or others on a non-tariffed basis. While our *Computer II* decision de-tariffed customer premises equipment, we do not believe that the provision is in conflict with that action. This provision is limited to equipment and space required by the telco to provide "services under this tariff." Since customer premises equipment is not provided under tariff as a result of our *Computer II* decision, we believe that the provision cannot be read to limit a customer's provision of customer premises equipment.

We are concerned, however, about the requirement in this provision that customers must make necessary arrangements for inspections by the telco. We believe that such broad provisions may be unreasonable and anticompetitive. Thus, the word "inspecting" should be deleted from the list in the third sentence of this section.

Finally, the last sentence of this section appears to be an unjustified restriction on a customer's provision of equipment space and power. This final sentence should, therefore, also be deleted.

SUBJECT: General Regulations—Obligations of the IC—Additional Facilities and Protective Apparatus

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* *See,* Amendment of Section 64.702 (Second Computer Inquiry) 77 FCC 2d 384 (1980) (Final Decision), *recon.*, 84 FCC 2d 50 (1980), *further recon.*, 88 FCC 2d 512 (1981), *aff'd sub nom.*, CCIA v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied,* U.S. (1983).

ECA TARIFF REFERENCE: Section 2.3.4

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The IC shall bear the cost, if any, of such additional facilities or protective apparatus which, according to accepted telecommunications industry standards, are required to be installed because of the particular use or hazardous location of the services provided under this tariff. Rates and/or charges, if applicable, will be developed on an individual case basis and filed in 12. following.

DISCUSSION: We find this provision vague and ambiguous, particularly in its use of the meaningless phrases "accepted telecommunications industry standards" and "particular use." Moreover, we believe that it is unnecessary to state that a customer must bear the costs of the facilities that the customer must furnish under the tariff. For these reasons, we find that this provision should be deleted.

SUBJECT: General Regulations—Obligations of the IC—Inspection of Facilities and Protective Apparatus

ECA TARIFF REFERENCE: Section 2.3.5

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The IC and End User shall allow the Telephone Company to inspect at reasonable times any facilities or equipment provided by other than the Telephone Company required in accordance with 2.3.4 preceding and 2.5 following which are associated with the services provided under this tariff to determine if such installation complies with such Telephone Company requirements."

ISSUES: RCA contends that this inspection provision is unreasonable.

DISCUSSION: This section would establish requirements that ICs and end users allow the telco to inspect non-telco facilities and protective apparatus required under the two specified tariff sections to assure proper installation. We believe that this inspection provision is clearly overbroad and unreasonable, particularly as applied to end users. Moreover, as RCA points out, such an inspection requirement could force ICs to disclose potentially competitively sensitive information to the telco. For these reasons, this provision must be deleted.

SUBJECT: General Regulations—Obligations of the IC—Design of IC Services

ECA TARIFF REFERENCE: Section 2.3.8

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"Subject to the provisions of 2.1.7 preceding, the IC shall be solely responsible, at its own expense, for the overall design of its services and for any redesigning or rearrangement of its services which may be required because of changes in facilities, operations or procedures of the Telephone Company, minimum protection criteria or operating or maintenance characteristics of the facilities."

DISCUSSION: This section holds the IC responsible for redesign costs necessitated by certain telco changes. In accordance with the clarified definitions of customers, ICs and end users, *see infra*, Section 2.6, this section must be modified to hold both ICs and end users responsible for their respective costs. There is no reasonable justification for restricting such costs solely to the ICs.

SUBJECT: General Regulations—Obligations of the IC—Contacts with IC Customers (End Users)

ECA TARIFF REFERENCE: Section 2.3.10

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The IC shall be responsible for all contacts and arrangements with End Users concerning the provision and maintenance of, and the billing and collecting of charges for, the IC's services to End Users, except as set forth in 4, 8, 9 and 13 following, for End User Access service, Billing Service, Directory Assistance Service and Presubscription, respectively."

DISCUSSION: We find this provision unreasonably broad and ambiguous. It is unclear what is meant by "all contacts and arrangements." We further conclude that the provision is unnecessary. Therefore, the provision must be deleted.

SUBJECT: General Regulations—Obligations of the IC—Claims and Demands for Damages

ECA TARIFF REFERENCE: Section 2.3.11(C)

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"(C) The IC shall defend, indemnify and save harmless the Telephone Company from and against any suits, claims, losses or damages, including punitive damages, attorney fees and court costs by the IC or third persons arising out of the Telephone Company provision of Billing Analysis Service or any other service under this tariff at the request of the IC, including, but not limited to claims for libel, slander, invasion of privacy, conversion and trespass."

ISSUES: MCI contends that this provision is unreasonable because the IC has no control over the telco's acts in providing billing analysis, and the telco should bear any liability for such acts.

DISCUSSION: The BOCs/CSO have responded in their comments that the Billing Analysis Service is an expensive venture due to potential litigation costs. They argue that Section 2.3.11(C) is necessary to assure that exchange service customers do not bear these costs.

We see no reason why the telco should not bear the costs of the services it provides, nor why it should be able to shift liability to the IC simply because that liability might be expensive. Liability should follow responsibility. The provision should be deleted.

SUBJECT: General Regulations—Obligations of the IC—Notification of Service-Affecting Activities

ECA TARIFF REFERENCE: Section 2.3.12

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The IC shall provide the Telephone Company timely notification of the following: planned or unplanned outages of IC facilities which will affect the Telephone Company's capability to provide adequate service for anticipated traffic volumes; facility failures within the IC network which will adversely impact upon the Telephone Company's capability to provide adequate service for anticipated traffic volumes; and, IC marketing activities designed to generate rapid or short-term increases in anticipated traffic volumes. This timely notification will enable the Telephone Company to administer its network as set forth in 6.5.1. following."

ISSUES: Commenters argue that notice of IC marketing activities is unreasonable and anticompetitive. (MCI, RCA). MCI also contends that notice of unplanned outages is impossible and, thus, unreasonable. The BOCs/CSO in their proposed modifications would delete the word "marketing."

DISCUSSION: This section would require the IC to provide "timely notification" of IC facility outages and failures and IC marketing activities designed to generate volume increases.

We are concerned that this provision is vague and overbroad. It applies vague standards, requiring notice when outages will "affect" or failure will "adversely impact" telco services. Under this language even the most minor change in a customer's usage pattern could be viewed as having an "effect" or "impact" on the network.

The provision would infringe on customers' operations without justification. No harm to the network has been shown to warrant these various notification requirements. We agree with MCI that notification of IC marketing activities appears particularly unreasonable. Since there is no attempt to quantify the types of marketing activities which would trigger notification, this provision could be viewed as requiring unnecessary advance disclosure of marketing activities on the part of ICs. As a practical matter we expect that carriers will work together to preserve the flow of service and, thus, will cooperate in providing the necessary notification without tariff language. Accordingly, we conclude that this provision should be deleted.

SUBJECT: General Regulations—Obligations of the IC—Jurisdictional Report Requirements

ECA TARIFF REFERENCE: Section 2.3.14(A) and (B)

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"(A) *Jurisdictional Reports*

(1) When the IC orders service for both interstate and intrastate use, the projected interstate percentage of use and intrastate percentage of use must be provided in whole numbers to the Telephone Company. These whole number percentages will be used by the Telephone Company to apportion the use and/or charges between interstate and intrastate until a revised report is received as set forth in (2) following.

(2) Effective on the first of January, April, July and October of each year the IC shall update the interstate and intrastate jurisdictional report. The IC shall forward to the Telephone Company, to be received no later than 15 days after the first of each month, a revised report showing the interstate and intrastate percentage of use for the past three months ending the last day of December, March, June and September, respectively, for each service arranged for interstate and intrastate use. The revised report will serve as the basis for the next three months billing and will be effective on the bill date for that service. No prorating or back billing will be done based on the report. If the IC does not supply the reports, the Telephone Company will assume the percentages to be the same as those

provided in the last quarterly report. For those cases in which a quarterly report has never been received from the IC, the Telephone Company will assume the percentages to be the same as those provided in the order for service as set forth in (1) preceding.

(B) *Maintenance of IC Records*

The IC shall maintain and retain for a minimum for one year, complete, detailed and accurate records, workpapers and backup documentation in form and substance to evidence the percentage data provided to the Telephone Company as set forth in (A) (1) and (2) preceding. All of the records, workpapers and backup documentation shall be made available during normal business hours, at the location named in the report, upon reasonable request by the Telephone Company in order to permit a review by the Telephone Company auditor or outside auditor under contract to the Telephone Company or an auditor of a federal or state regulatory commission. If the records, workpapers and backup documentation are not provided or are insufficient or not in accordance with the provisions of this paragraph, the percentages of interstate and intrastate service will be assumed by the Telephone Company to be the same as indicated in the last report received until the deficiencies are corrected and new reports, as required herein, are provided to the Telephone Company."

ISSUES: Commenters are concerned that Section 2.3.14(A) would impose unreasonable administrative burdens on ICs. (AT&T, SBS). Some contend that it will be impossible to comply with certain requirements and that they are, therefore, meaningless. (AT&T, WU). AT&T further suggests that the forecasting methodology in subsection (A) conflicts with the separations process, where usage is determined on a sampled basis. The BOCs/CSO have responded that the exchange carriers will examine the feasibility of sampling. MCI contends that this section unreasonably omits reference to "foreign communications."

Commenters assert that the unilateral auditing provision in Section 2.3.14(B) is unreasonable (MCI, LC, USTel, TSC/SI), and also anticompetitive because it would require ICs to disclose competitively sensitive information to the telcos (MCI, ASC).

DISCUSSION: This section requires each IC when it orders service to provide a projected estimate of its traffic split between the interstate and intrastate jurisdictions, to be used by the telco initially to apportion charges between jurisdictions. Subsequently, the IC must provide quarterly reports to the telco showing actual usage, which will, in turn, serve as a basis for the next quarter's billing.

Under our *Second Reconsideration Order* charges for OCC access under Feature Groups A and B were changed from a measured usage basis to a flat, per line basis. In light of this change to a flat rate we believe telcos may wish to consider alternatives to their Section 2.3.14 jurisdictional reporting of "usage." Moreover, we are troubled by certain aspects of this current proposal which may unduly burden ICs, most of whom will lack the technical ability to measure their usage. Some commenters suggest that such usage reporting would involve mere guesswork.

We are also particularly troubled by the intrusiveness of the accompanying provisions in Section 2.3.14(B), whereby the ICs would be required to maintain documentation of their jurisdictional reports for auditing by the telcos "upon reasonable request." For these reasons, we conclude that the proposed provisions in Section 2.3.14(A) and (B) should be deleted from the tariff and that the exchange carriers should develop new proposals for handling the allocation of interstate and intrastate use which are reasonable and not unduly intrusive.

Those proposals should recognize the technical limitations of usage measurement under Feature Groups A and B. We are concerned that usage reporting is not likely to be meaningful absent the reasonable ability to measure such usage. Further, those proposals should address how any access charges, state and federal, would be applied where lines are used for both interstate and intrastate services in order to assure no "double recovery" on those lines.

Finally, the carriers should consider alternatives to the present proposal suggested by certain commenters. AT&T suggests that absent actual usage data, the Commission should consider accepting a surrogate for actual usage, such as use of outgoing access minutes to determine the percentage of intrastate vs. interstate terminal access. SBS proposes that this reporting requirement should be waived until December 31, 1984, in order to provide OCCs sufficient time to develop the reporting capability. In fact, the BOCs/CSO have responded that the exchange carriers will examine the sampling approach.

SUBJECT: General Regulations—Obligations of the IC—Trouble Determinations

ECA TARIFF REFERENCE: Section 2.3.16

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"(A) The IC shall be responsible for receiving trouble reports from its end users and determining, by testing or other means, if the source of trouble is caused by the equipment or facilities provided by the IC, its end user, or by the Telephone Company.

(B) When more than one Telephone Company service is used to provide service to an IC, the IC is responsible for determining which service provided by the Telephone Company is causing the reported trouble.

(C) The IC shall be responsible for payment of Maintenance of Service Charges as set forth in 13.3.1 following when reporting trouble to the Telephone Company and the obligations in (A) and (B) are not met."

ISSUES: SBS contends that Section 2.3.16 unreasonably burdens the ICs with the costs of fault isolation activities.

DISCUSSION: Section 2.3.16 makes the IC responsible for receiving trouble reports from end users and determining, by testing or other means, if the trouble stems from equipment or facilities provided by the IC, end user or telco. When more than one telco service is involved in the end-to-end service the IC must determine which service is causing the problem. If the IC does not meet these obligations it is subject to the telco maintenance of service charges set out in Section 13.3.1.

As SBS urges, the establishment of a viable and reasonable end-to-end fault isolation and problem resolution system will be critically important in the post-divestiture multivendor setting. SBS suggests that cooperative testing, fault isolation and problem resolution by all service providers should be required by the access tariffs, and encouraged by the use of a government sponsored forum (such as the one established in the Docket 20099 Implementation Meetings) to include local exchange carriers, ICs and other interested parties.

SBS suggests that either each telco should be required to bear its own costs of end-to-end fault isolation activity, regardless of where the trouble is found, or the telephone company found to be at fault should pay the reasonable costs incurred by the ICs and other telcos in isolating the fault. SBS continues that where ATTCOM's embedded facilities provide a capability to isolate trouble on an end-to-end remote basis, the telcos must make the same capability available to other ICs.

The BOCs/CSO reply argues that the IC should be responsible for isolating a trouble into, or out of, its portion of the circuit. It argues that SBS provides no evidence for its implication that an exchange carrier would not "cooperate routinely" or that AT&T will receive preferential maintenance treatment. Further, it claims that Section 13.2.4 provides for testing and maintenance when more than one telephone company is involved. The BOCs/CSO argue that the charge merely reflects the cost of the work involved.

We have several concerns for this provision. First, we are concerned that it places unreasonable burdens on the IC to determine the source of all reported trouble. This is particularly troublesome since, as SBS alleges, the various well-established end-to-end fault isolation capabilities which AT&T has used pre-divestiture probably will continue to be available to AT&T Communications and the BOCs. The provision also has ambiguity problems because there may often be more than one IC involved in serving a single end user.

Our next concern regarding Section 2.3.16 arises from the proposed reimbursement scheme for services rendered by the various parties involved in responding to trouble reports. The provision as written requires the IC who calls upon the telco for fault isolation assistance to pay for the telephone company's costs if the trouble is not in telco service or facilities. If the problem is attributable to the telephone company, however, it will not pay the fault isolation costs of the IC or any other telco. Thus, this portion of the provision also appears unreasonably to shift responsibilities from the telco and to the ICs. We conclude that the ICs and telcos should develop cooperative procedures to receive, diagnose and repair trouble reports, and allocate reasonable costs.

To the extent possible, the procedures developed should be filed in the tariffs. Until such procedures can be developed, carriers should use existing arrangements for handling trouble reporting and response negotiated pursuant to CC Docket 20099. Section 2.3.16, however, for the reasons stated above, should be deleted.

SUBJECT: General Regulations—Payment Arrangements and Credit Allowances—Deposits

ECA TARIFF REFERENCE: Section 2.4.1(A)

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"(A) The Telephone Company may, in order to safeguard its interests, require an IC which has a proven history of late payments to the Telephone Company or does not have established credit with the Telephone Company except for an IC which is a successor of a company which has established credit with the Telephone Company and has no history of late payments to the Telephone Company, to make a deposit prior to or at any time after the provision of a service to the IC to be held by the Telephone Company as a guarantee of the payment of rates and charges. Such deposit may not exceed the actual or estimated rates and charges for the service for a two month period plus the amount of any termination charges attributable to the service. The fact that a deposit has been made in no way relieves the IC from complying with the Telephone Company's regulations as to advance payments as set forth in 5.4.3 following or the prompt payment of bills. At such time as the provision of the service to the IC is terminated, the amount of the deposit will be credited to the IC's account and any credit balance which may remain will be refunded. At the option of the Telephone Company, such a deposit may be refunded or credited to the IC's account when the IC has established credit or an acceptable record of payment at any time prior to the termination of the provision of the service to the IC. In case of a cash deposit, for the period the deposit is held by the Telephone Company, the IC will receive simple annual interest at the same percentage rate as that set forth for this purpose in the Telephone Company's Local o[n] (sic) General Exchange Service tariff. Should a deposit be credited to the IC's account, as indicated above, no interest will accrue on the deposit from the date such deposit is credited to the IC's account."

ISSUES: Commenters contend that the size of the deposit required is unreasonable and that this provision may be used in an anticompetitive manner against new ICs. (ACS, EMX). MCI urges that the deposit requirement must not unreasonably be extended to those with legitimate billing disputes. Commenters also assert that the provision for interest on deposits creates an unreasonable double standard in that it allows the telco to pay a lower rate on

deposits than the interest penalty it applies to late-payments by ICs (§ 2.4.1(B)(3)). (TSC/SI, US Tel). The BOCs/CSO have replied generally that requiring deposits is sound business practice and that the interest on deposits generally reflects rates paid at financial institutions. In response to MCI, the reply suggests that a deposit would properly be required of an IC which continually disputes bills which are usually resolved in the telco's favor.

DISCUSSION: Section 2.4.1(A) generally provides the telco with the authority to require a deposit from a carrier that either has a proven history of late payments to, or lacks established credit with, the telephone company and is not a successor of a company with such credit standing. Such deposit, which may be required prior to, or at any time after provision of service, may not exceed two months' charges plus "any termination charges" for the service.

The section provides that the deposit may be refunded or credited to the IC, at the telco's option when the IC establishes credit or an "acceptable record of payment." The deposit will receive simple annual interest at the rate set forth in the telco's Local or General Exchange Service tariff.*

We recognize that it is prudent for the telephone company to seek to avoid non-recoverable costs imposed by bad credit risks. The provisions in this section, however, have several flaws. First, the meaning of "termination charges," which will constitute a portion of the deposit, is unclear. It is impossible to determine from the access tariffs how these charges relate to other charges, *e.g.*, the Section 5.2.5(A) minimum period of service provision, and other charges required in Section 5, or the provisions for termination liabilities to recover special equipment costs. These vague charges could become extremely burdensome and must therefore, either be defined and supported or eliminated from the tariff.

Second, we are concerned about the potential anticompetitive effects of requiring a deposit from ICs which do not have "established credit with the Telephone Company." It appears that at the outset only ATTCOM will escape this deposit requirement since only it may have service history in all markets. While we recognize the need to assure reasonable customer credit ratings, we believe that it is unreasonably onerous to require that an IC establish credit with each telephone company. We believe that adequate bases for extending credit in most instances will arise from the ICs' dealings with other telephone companies or entities. Thus, we conclude that Section 2.4.1(A) must be amended to allow the telco to require deposits only from an "IC which has a proven history of late payments to the Telephone Company or does not have established credit except for an IC which is successor of a company which has established credit and has no history of late payments to the Telephone Company. . ."

Our third concern for Section 2.4.1(A) regards the interest to be provided on the ICs' deposits. As the commenters have noted, there is a double standard for simple interest paid by the telco on deposits in this section and the compounded interest penalty collected by the telco on late payments by ICs (Section 2.4.1(B)(3)(b)). Even with the reduced interest ceiling the BOCs/CSO have proposed in their reply comments, the differences between interest collected and interest paid would appear to range in the area of 10 to 19%. We find no justification for these differences. We conclude that fairness dictates an evenhanded approach to interest paid and collected by the telcos within the applicable state limitations. Thus, the differences between the interest on deposits in Section 2.4.1(A) and the interest penalty in Section 2.4.1(B) must be justified or eliminated.

Finally, we are concerned that this provision allows the telco unnecessarily broad discretion in determining when it will return or credit the deposit to a customer's account. Thus, we conclude that this provision should state that the telco will return or credit such a

* There is a typographical error in the next to the last sentence of § 2.4.1(A). The sentence should read ". . .the Telephone Company's Local or General Exchange Service tariff."

deposit to a customer's account after that customer has established a one-year prompt payment record.

SUBJECT: General Regulations—Payment Arrangements and Credit Allowances—Payment of Rates and Charges

ECA TARIFF REFERENCE: Section 2.4.1(B)(1)-(2)

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"(B) The Telephone Company shall bill on a current basis all charges incurred by and credits due to the IC under this tariff attributable to services established or discontinued during the preceding billing period. In addition, the Telephone Company shall bill in advance charges for all services to be provided during the ensuing billing period except for charges associated with service usage and for the Federal Government which will be billed in arrears. The bill day (i.e., the billing date of a bill for an End User or IC for Access Service under this tariff), the period of service each bill covers and the payment date will be as follows:

(1) For End User Service and Presubscription Service, the Telephone Company will establish a bill day each month for each end user account. The bill will cover End User Service and Presubscription Service charges for the ensuing billing period except for End User Service and Presubscription Service for the Federal Government which will be billed in arrears. Any known unbilled charges for prior periods and any known unbilled adjustments for prior periods for End User Service and Presubscription Service will be applied to this bill. Such bills are due when rendered.

(2) For Service other than End User Service and Presubscription Service, the Telephone Company will establish a bill day each month for each IC account. The bill will cover nonusage sensitive service charges for the ensuing billing period for which the bill is rendered, any known unbilled nonusage sensitive charges for prior periods and unbilled usage charges for the period after the last bill day thru the current bill day. Any known unbilled usage charges for prior periods and any known unbilled adjustments will be applied to this bill. Payment for such bills is due as set forth in (3) following. If payment is not received by the payment date, as set forth in (3) following in immediately available funds, a late payment penalty will apply as set forth in (3) following.

For bill days in January 1984, the bill will cover nonusage sensitive service charges for the ensuing billing period, the nonusage sensitive service charges for the period from January 1, 1984 thru the bill day, usage charges for the period from January 1, 1984 thru the bill day and any known adjustments for the calendar month of January 1984. Such bills are due as set forth in (3) following. If payment is not received on the payment date as set forth in (3) following in immediately available funds, a late payment penalty will apply as set forth in (3) following."

ISSUES: ARINC contends that the terms IC and end user are ambiguous in Section 2.4.1 as well as other sections throughout the tariff. The BOCs/CSO reply states that their definition of IC includes any entity ordering access service under these tariffs. The FEA argue that the provision is unjust and unreasonable because when the federal government deals with the telco through an IC, rather than directly, payment will be required in advance rather than arrears.

DISCUSSION: Sections 2.4.1(B)(1) and (2) set out certain payment arrangements for telco customers taking access service under this tariff. The provisions distinguish between End User and Presubscription Services and all other services. As ARINC points out, the use of the terms IC and end user in this section and throughout the tariff leads to significant

uncertainties as to how provisions apply to the various parties. In our discussion of the definitions of these terms, *infra*, we establish three distinct groups: "end user", "interexchange carriers" (ICs) and the generic group "customers". Section 2.4.1(B) must be amended, using our terminology to clarify that end users, as well as ICs, will be allowed directly to order and *pay* for access services from the telco.

This section provides that payment will be required of customers in advance of service, except for the federal government, which will be billed in arrears. The FEA contend that this provision is unreasonable because IC's which are attempting to meet service needs of the federal government should be able to obtain service on the same basis as the federal government. We are not persuaded by the FEA's argument. We find no legal or other basis to extend the billing advantages enjoyed by the federal government to other carriers. To the extent that billing the federal government in arrears is required by federal procurement or disbursement regulations or is established by law, it is not unreasonable to allow telcos to comply with such requirements. However, ICs providing service to the federal government are not entitled to the benefits of those laws or regulations providing for billing in arrears.

We also have concerns for this section's application of a late penalty if payment is not received "in immediately available funds." It is unclear from the tariff what is meant by this term, which appears several times in Section 2.4.1(B). The term must be defined or deleted.

Finally, referenced dates in this section must be corrected to correspond with the new effective dates of the tariff.

SUBJECT: General Regulations—Payment Arrangements and Credit Allowances—Payment Dates and Late Payment Penalties

ECA TARIFF REFERENCE: Section 2.4.1(B)(3)

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"(3)(a) All bills dated as set forth in (2) preceding for service, other than End User and Presubscription Service, provided to the IC by the Telephone Company are due 31 days (payment date) after the bill day or by the next bill date (i.e., same date in the following month as the bill date); whichever is the shortest interval, except as provided herein, and are payable in immediately available funds.

If such payment date would cause payment to be due on a Saturday, Sunday or Holiday (i.e., New Year's Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, the second Tuesday in November and a day when Washington's Birthday, Memorial Day or Columbus Day is legally observed), payment for such bills will be due from the IC as follows:

If such payment date falls on a Sunday or a Holiday which is observed on a Monday, the payment date shall be the first non-Holiday day following such Sunday or Holiday. If such payment falls on a Saturday or on a Holiday which is observed on Tuesday, Wednesday, Thursday or Friday, the payment date shall be the last non-Holiday day preceding such Saturday or Holiday.

(b) Further, if any portion of the payment is received by the Telephone Company after the payment date as set forth in (a) preceding, or if any portion of the payment is received by the Telephone Company in funds which are not immediately available to the Telephone Company, then a late payment penalty shall be due to the Telephone Company. The late payment penalty shall be the portion of the payment not received by the payment date times a late factor. The late factor shall be the lesser of:

(I) the highest interest rate (in decimal value) which may be levied by law for commercial transactions, compounded daily for the number of days from the payment date to and including the date that the IC actually makes the payment to the Telephone Company, or

(II) 0.000657 per day, compounded daily for the number of days from the payment date to and including the date that the IC actually makes the payment to the Telephone Company.

(c) In the event that a billing dispute concerning any charges billed to the IC by the Telephone Company is resolved in favor of the Telephone Company, any payments withheld pending settlement of the dispute shall be subject to the late payment penalty set forth in (b) preceding. If the billing dispute is resolved in favor of the IC, no late payment penalty will apply to the disputed amount."

ISSUES: Commenters contend that the late payment charge (1) is unreasonably high (SBS, MCI, LC); (2) should not be applied to amounts in dispute (MCI, RCA); (3) discriminatorily applies only when disputes are resolved in favor of the telephone company, with no equivalent interest provision where resolution favors the IC (MCI, TSC/SI, ISACOMM and LC); and (4) discriminates against ICs in favor of end users who are not assessed these charges (LC). USTEL and SBS also argue that the payment period is unreasonably short.

DISCUSSION: Section 2.4.1(B)(3) provides a payment schedule for services provided to ICs. It further provides for a penalty for late payments and its application in billing dispute situations.

The commenters have raised several concerns regarding this section. Several parties claim that the late payment penalty is unreasonably high. In their reply comments the BOCs/CSO have proposed to lower the interest penalty ceiling from approximately a 27% effective annual rate to what they claim to be approximately 24%.* We have already mandated in Section 2.4.1(A), *supra*, that the discrepancy between the interest proposed to be paid on deposits and the interest penalty in this section be either justified or eliminated.

Additionally, commenters object to the proposal to apply the late payment penalty to amounts in dispute which are ultimately awarded to the telco. They charge that the penalty unreasonably offers the telco incentive to delay resolution of billing disputes and ultimately resolve them in its own favor. Commenters urge that the section should include a provision for interest paid to an IC when contested payments are resolved in favor of the IC. In reply, the BOCs/CSO have proposed such an interest provision for billing disputes which are resolved in the IC's favor and require more than 10 working days to settle. We believe that this proposed modification adequately addresses this matter. The proposed change in Section 2.4.1(B)(3) should be included in the revised tariffs filed to comply with this order.

SBS also raises concerns that OCCs will be unable to verify telephone company billing during early post-divestiture period within the 31 days alloted by this provision. SBS suggests a nine month waiver of late payment penalties during this start-up period to allow OCCs to adjust to new billing arrangements. In light of the Commission's action in our *Second Reconsideration Order,* which replaced the access minutes usage charges with flat rate charges, which will require no verification, this issue is now moot.

Finally, as we directed in Section 2.4.1(B)(1)&(2), *supra,* this section should clarify the meaning of the phrase "immediately available funds."

SUBJECT: General Regulations—Payment Arrangements and Credit Allowances—Minimum Periods

* The ceiling proposed is "the portion of the payment not received by the payment date times a late factor." The BOCs/CSO reply would change this late factor from 0.000657 to 0.000590, compounded daily.

ECA TARIFF REFERENCE: Section 2.4.2

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The minimum periods for which services are provided and for which rates and charges are applicable are as set forth in 5., 8. and 9. following for the services involved.

The minimum period for which service is provided and for which rates and charges are applicable for a Specialized Service or Arrangement provided on an individual case basis as set forth in 12. following, is one month unless a different minimum period is established with the individual case filing.

When service is discontinued prior to the expiration of the minimum period, charges are applicable for the remaining portion of the minimum period, whether the service is used or not, and will be based on the rates in effect for the service at the time of discontinuance."

DISCUSSION: Minimum periods for specific services are set forth in other sections of the tariff. Unless a different period is specified in the individual case, Section 2.4.2 provides a one month minimum period for a specialized service or arrangement provided on an individual case basis. Section 2.4.2 also provides that if a service is discontinued before the expiration of the minimum period, charges (based on the rate in effect at the time of discontinuance) will continue for the remaining portion of the minimum period whether or not the service is used.

We find that it is reasonable that the telco take steps to mitigate any losses due to discontinuance, particularly where the minimum service period is greater than one month, and thereby reduce the minimum period charges. We have historically allowed the use of a minimum service period of one month. Thus, the charges for discontinuance in this section must be modified to provide that discontinuances of service with a one month minimum period, the monthly minimum period charges will apply; in instances where the minimum period is greater than one month, however, the charge will be the lesser of the telco's non-recoverable costs for the discontinued service or the minimum period charges. The section should also cross-reference the provisions which establish the minimum period charges.

SUBJECT: General Regulations—Payment Arrangements and Credit Allowances—Credit Allowance for Service Interruptions

ECA TARIFF REFERENCE: Section 2.4.4

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"(A) *General*

A service is interrupted when it becomes unusable to the IC or End User because of a failure of a facility component used to furnish service under this tariff. An interruption period starts when an inoperative service is reported to the Telephone Company by the IC or End User and ends when the service is operative.

(B) *When a Credit Allowance Applies*

In case of an interruption to any service, allowance for the period of interruption, if not due to the negligence of the IC or End User, shall be as follows:

(1) For services, other than those mentioned in (2) and (6) following, no credit shall be allowed for an interruption of less than 24 hours. The IC or End User shall be credited for an interruption of 24 hours or more at the rate of 1/30 of the monthly charge for the service for

each period of 24 hours or major fraction thereof that the interruption continues from the time of notice to the Telephone Company that an interruption has occurred.

* * * * *

(5) For certain Special Access services (Wideband Digital, WD1-4; Digital Data Access, DA1-4; and High Capacity, HC1), any period during which the error performance is below that specified for the service will be considered as an interruption.

* * * * *

(C) *When a Credit Allowance Does Not Apply*

No credit allowance will be made for:

* * * * *

(3) Interruptions of a service during any period in which the Telephone Company is not afforded access to the premises where the service is terminated.

(4) Interruptions of a service during any period when the IC or End User has released a service to the Telephone Company for maintenance purposes, to make rearrangements, or for the implementation of an order for a change in the service.

* * * * *

(7) Interruptions caused by the failure of other Telephone Company provided services which are connected by the IC at its terminal location or by the end user at its premises.

* * * * *

ISSUES: Commenters contend that an 24 hour minimum interruption for credit allowances is unreasonable. (ACS, EMX and RCA). WU, in line with its comments on Section 2.3.3, argues that Section 2.4.4(C)(3) should not apply where the IC uses its own personnel to repair facilities. The BOCs/CSO counter that existing ENFIA tariffs provide for a 24 hour minimum interruption and that exchange carriers must be able to protect themselves from ICs who would abuse the credit allowance during dormant service periods.

DISCUSSION: Section 2.4.4(B)(1) states that, with certain exceptions, no credit allowance shall be given for access service interruptions of less than 24 hours. No justification has been offered for this minimum. This time period has been the standard for credit allowances in BOC exchange service tariffs, however, we do not believe that it can be reasonably applied to customers of access service who may be paying significant monthly charges, and may lose substantial revenues from service interruptions. ACS, RCA and EMX contend that current business practice generally allows for credit allowances for service interruptions of 30 minutes or more. Thirty minutes is also the minimum credit allowance period in AT&T's private line Tariff F.C.C. No. 270. Thus, in the interest of providing reasonable compensation to access service customers for lost revenues during telco "down time" and to provide incentives for swift maintenance and changes by the telco, we conclude that the 30 minute interruption minimum is reasonable for these services. Finally, the interruption period should be calculated from when the telephone company becomes aware of the inoperative service, regardless of when it receives a specific customer report. Section 2.4.4(B)(1) must be amended to reflect this discussion.

In their reply comments the BOCs/CSO propose to modify credit allowance provisions related to special access services, by deleting "Digital Data Access, DA1-4" and "High Capacity, HC1" from Section 2.4.4(B)(5). No rationale was provided for the proposed deletion and no parties have been allowed opportunity to comment. Thus, these proposals should appear as a separate tariff filing, with the appropriate justification.

Section 2.4.4(C)(3) states that service interruption credits will be forfeited whenever customers do not allow telco personnel access to the customer's premises. In line with the modifications WU seeks in § 2.3.3 establishing the customer's option to install and repair end-to-end interconnection facilities, it also seeks an exception to this provision where the customer itself performs the repair. Since Section 2.3.3 cannot be read as restricting a customer's right to provide customer premises equipment, we see no reason to modify Section 2.4.4(C)3, *see, supra,* Section 2.3.3.

Section 2.4.4(C)(4) states that credit allowances will not apply to service interruptions when the IC or end user releases a service to the telco for maintenance, rearrangements or changes. We are concerned that this provision is vague and open-ended, and provides no incentives for swift completion of these activities. The section must be modified to clarify when this provision will be triggered and to set forth reasonable time periods for completion of these telco activities.

Section 2.4.4(C)(7) disallows credit allowances for service interruptions caused by other telephone company services. It is clearly unreasonable to impose on IC's the costs of lost service caused by failure of the telco's other services. Section 2.4.4(C)(7) must be deleted.

SUBJECT: General Regulations—Payment Arrangements and Credit Allowances—Services Included in Netting

ECA TARIFF REFERENCE: Section 2.4.5

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"Payment for services obtained by an IC under the provisions of this tariff, except for services set forth in 3. following, and ECA Tariff F.C.C. No. 3 for Special Construction, when Billing Processing Service and/or Private Line Billing Service is provided by the Telephone Company to the IC, will be included in the netting of accounts receivable as set forth in 8.2.3 following when the IC has been notified by the Telephone Company."

DISCUSSION: This provision addresses certain telco billing procedures which are set forth in Section 8.2.3 of the tariff. This provision appears to duplicate those provisions while adding certain exceptions. The provisions contained in Section 2.4.5 must be deleted from Section 2 and incorporated into Section 8.2.3.

SUBJECT: General Regulations—Payment Arrangements and Credit Allowances—Title or Ownership Rights

ECA TARIFF REFERENCE: Section 2.4.7(B)

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"(B) Title or ownership rights to Specialized Service or Arrangements designed by the Telephone Company to meet an IC's or End User's request remain with the Telephone Company except as specifically provided for by written agreement of all parties."

DISCUSSION: We are concerned that the exception included in this provision is vague and standardless. The exception accords the telco unfettered discretion to determine which customers will be granted title or ownership rights and which will not. As a tariff provision conditioned on an event outside the tariff, it is meaningless, and cannot be allowed. Accordingly, this provision must be deleted.

SUBJECT: General Regulations—Payment Arrangements and Credit Allowances—Ordering, Rating and Billing of Access Service When More Than One Telephone Company is Involved

ECA TARIFF REFERENCE: Section 2.4.8

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The Telephone Company will handle ordering, rating and billing of Access Services under this tariff where more than one Exchange Telephone Company is involved in the provision of Access Service as set forth in (A) or (B) following. The choice of either (A) or (B) shall be made by the Telephone Company and the Telephone Company will notify the IC which option will apply when the IC orders Access Service. The choice of (A) or (B) will be based on the interconnection arrangements between the two Exchange Telephone Companies involved.

(A) When an Access Service is ordered by an IC where one end of the Transport element (i.e., Special Transport, Local Transport or Directory Transport, as appropriate) is in one Exchange Telephone Company operating territory and the other end is in another Exchange Telephone Company operating territory, except for Access Services provided with the use of Hubs (multiplexing or bridging), the Exchange Telephone Company in whose territory the end user serving wire center is located will accept the order for the Access Service from the IC. That Exchange Telephone Company will then determine the charges involved, arrange to provide the Access Service ordered and bill the charges in accordance with its Access Service tariff.

When an Access Service provided with the use of a Hub (multiplexing or bridging) is ordered by an IC, the Exchange Telephone Company in whose territory the Hub is located will accept the order for the Access Service ordered and bill the charges in accordance with its Access Service tariff.

(B) When an Access Service is ordered by an IC where one end of the Transport element (i.e., Special Transport, Local Transport, or Directory Transport, as appropriate) is in one Exchange Telephone Company operating territory and the other end is in another Exchange Telephone Company operating territory, both Exchange Telephone Companies will accept the order for the Access Service from the IC. Each Exchange Telephone Company will provide its portion of the Transport element from the serving wire center in its operating territory to a border interconnection point with the other Exchange Telephone Company. Each Exchange Telephone Company will determine the charges involved for its portion of the Access Service ordered and will bill such charges in accordance with its Access Service tariff. Title page not withstanding, the mileage used to determine the Transport element will be the mileage measured from the serving wire center in the first Exchange Telephone Company operating territory to the serving wire center in the second Exchange Telephone Company operating territory. The rate for the transport element will be the rate in each exchange Telephone Company's tariff for the mile band for the mileage measured as set forth in the preceding sentence. Each Exchange Telephone Company's charge for the Transport element will be the product of the Exchange Telephone Company's mile band rate and the mileage measured for the two serving wire centers multiplied by the mileage from the Exchange Telephone Company's serving wire center to the border interconnection point and divided by the sum of the mileage from the first Telephone Company serving wire center to the border interconnection point and the mileage from the second Telephone Company serving wire center to the border interconnection point. All other appropriate charges in each Exchange Telephone Company's tariff are applicable."

ISSUES: MCI contends that Section 2.4.8 violates Section 203 of the Act because an IC cannot determine from the tariff which telco will accept its access charge order or what the charges for the service will be. MCI further argues that this provision is anticompetitive in violation of Section 201(b) of the Act because it eliminates the possibility of true price competition between exchange telephone companies. SBS raises concerns for the proliferation of bills and orders that will result from this provision. The BOCs/CSO reply that the provisions are reasonable. They respond to MCI by stating that the tariff specifies that the exchange carriers will advise the IC which option will apply and that no carrier will set policy for another carrier's end office. In response to SBS, the BOCs/CSO state that because different tariffs may apply to different end offices each end office should receive an order. Further, the BOCs/CSO claim that these procedures match the current procedures in ENFIA tariffs.

DISCUSSION: This provision states that whenever more than one telco is involved in the provision of access service, the ordering, rating, and billing will be handled in one of two ways to be determined by the telco based on the interconnection arrangements between the two telephone companies. The first option available to the telephone companies generally allows the telco in whose territory the end user serving wire center is located to accept the order, determine the charges, arrange to provide the services and perform billing. The second option allows both telcos to accept the order, provide their portion of the service, and bill under their respective tariffs. A formula is provided to determine each telco's proportionate charges for the transport element.

We agree with MCI that this section raises significant questions of reasonableness and lawfulness under the Act. ICs will be unable to determine from the tariff which telco will accept its order or what charges might apply; the telephone companies' ability to make such arrangements by contract outside of the tariff raises questions of discrimination. We are particularly concerned about the first option (§ 2.4.8(A)), which would appear to establish billings for services in two exchange company territories under a single telcos tariff. We conclude that this option (§ 2.4.8(A)) must be deleted.

The second option (§ 2.4.8(B)), with two minor modifications, is a better approach. First, the formula for calculating the charge for each transport element must be simplified, using examples as necessary to illustrate its application. Second, the phrase "title page notwithstanding" appears to create an exception regarding mileage measurement for purposes of this section. The phrase must be explained. SBS has raised concerns generally for the proliferation of orders and bills, and we recognize that Section 2.4.8(B) will add to these numbers, however, we believe that the alternatives, such as that proposed in Section 2.4.8(A), are unreasonable. For these reasons, we direct that Section 2.4.8 be amended to establish a single provision for ordering, rating and billing when more than one telco is involved in providing access service. That provision should be Section 2.4.8(B) with the modifications indicated.

SUBJECT: General Regulations—Connections

ECA TARIFF REFERENCE: Section 2.5 (generally)

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

Section 2.5 covers over 40 tariff pages and details specific requirements for connection of customer equipment and systems (*i.e.* terminal equipment, multiline terminating systems and communications systems) with access services furnished by the telco. It establishes various provisions for: responsibilities of the IC, end user, and the telco; connections of equipment and systems subject to registration under Part 68 of our Rules, 47 C.F.R. Part 68; connections of

equipment and systems not subject to Part 68; procedures for control of signal power; minimum protection criteria for direct electrical connections; recording of two-way conversations; and provisions for connection to certain special access services.

ISSUES: Commenters raise several objections to various parts of this section. MCI raises several broad issues regarding Section 2.5. First, MCI contends that Section 2.5 improperly attempts to apply the regulations in Part 68 of the rules to carrier-to-carrier connections by restating or paraphrasing certain of those rules. Second, MCI argues that the telcos are unilaterally attempting to impose on OCCs interconnection requirements, many of which are unlawful because the telco has not demonstrated any potential for harm to its network that would necessitate such requirements. Finally, MCI alleges that this section resurrects the concepts of service Categories I, II and III, which the Commission has previously declined to add to Part 68, creating unnecessary confusion and complexity. The BOCs/CSO, in reply, state that these concerns are not valid, and that nothing in the section is intended to alter the Part 68 rules.

Other commenters raised concerns for certain vague and ambiguous provisions within Section 2.5. (AT&T, regarding the confusion surrounding the term "IC"; and ACS, regarding § 2.5.3(D)). RCA has argued that Section 2.5.4(E)(2)(e) is unnecessary and anticompetitive. The BOCs/CSO reply proposed to add at Section 2.5.12(F) and Section 2.5.14, respectively, interim programs for connection of channel service unit-like devices to HC1 and DDA1-4 facilities.

DISCUSSION: This section appears to propose interconnection provisions for all equipment and systems and for all telco customers. We have two chief concerns for this proposal. First, we are concerned about problems engendered by this section's duplication of certain of our Part 68 rules. This section paraphrases and restates significant provisions of Part 68 and makes them applicable to all customers. Thus, if these provisions were allowed to become effective, persons subject to Part 68 would have differently worded and potentially conflicting interconnection terms and conditions under both Part 68 and the tariff. We believe such a result would be unreasonable.

In a recent proposed rulemaking regarding the establishment of carrier-to-carrier interconnection under the access charge plan,* we proposed that each of the access tariffs merely contain an "appropriate reference to Part 68."** We agree with MCI that cross-referencing the proper Part 68 rules in the tariffs will avoid the confusion of two sets of interconnection provisions and the administrative problems involved in resolving contradictory wording.

Our second general concern regards the application of the Section 2.5 interconnection provisions to carriers and other customers not subject to Part 68. MCI has objected that, at least for OCCs, these technical connection provisions have traditionally been negotiated by the various carriers and included either in carrier initiated tariffs or in carrier agreements, such as the agreement contained in the OCC Facilities Tariffs developed as a result of CC Docket No. 20099, *Facilities for Use by Other Common Carriers*, 52 FCC 2d 727 (1975). MCI claims that the instant provisions have not been the subject of negotiation and, moreover, have not been justified by any demonstrated harm to the network.

Whether physical connection provisions should continue to be negotiated as they have in the past is an issue we are considering in our current Phase III rulemaking proceeding in CC Docket No. 78-72. We agree with MCI, however, that all tariff restrictions on interconnection must be supported by demonstrated harm to the network. We find in this instance that no such support has been shown.

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* MTS and WATS Market Structure, Phase III, Notice of Proposed Rulemaking, CC Docket No. 78-72, FCC 83-178, released May 31, 1983.

** *Id.*, at para. 39.

In light of our ongoing rulemaking in CC Docket No. 78-72, which includes a proposal to establish a joint planning body to develop industry-wide technical standards for interconnection, we believe that new interconnection standards and conditions in the access tariffs should await resolution of the important issues contained in that rulemaking. Moreover, since the manner of physical interconnection was essentially unaffected by the divestiture, we see no immediate need to change the existing interconnection terms and conditions which are contained in various tariffs.

Accordingly, because we have concluded that the provisions of Section 2.5 constitute unjustified restrictions on interconnection, that section should be deleted and replaced by references in the tariff to the existing interconnection requirements or new interconnection requirements as discussed below:

(1) Section 2.5 should reference provisions in AT&T Tariff F.C.C. Nos. 259, 260, 263, 267, 270 (and 273, if applicable) establishing both general and service - specific technical connection requirements for the individual services provided under each of those tariffs. (For example, for Terrestrial Digital Circuits (TDCs) the tariff would reference AT&T Tariff F.C.C. No. 270 Section 2.8, for general provisions, and Section 5.2, for service specific requirements.) Such provisions must be referenced only to the extent necessary to replace the corresponding provisions of the proposed Section 2.5. We would expect, however, that the referenced provisions would include those regulations which delineate the services covered by the particular tariff, delineate the application of Part 68, and provide for interim programs, such as those proposed in AT&T Tariff F.C.C. No. 270 for digital services and in many tariffs for test equipment;

(2) Section 2.5 should also provide that AT&T and any customers who were served under the nineteen BOC Facilities for OCC Tariffs and AT&T Tariff F.C.C. Nos. 266 and 268 developed as result of CC Docket 20099, will continue to use the connection provisions contained in those tariffs and any implemented provisions which resulted from CC Docket 20099 interconnection meetings. These connection provisions and any connection provisions contained in the BSOC Tariff Nos. 3, 4, 8, 9 and 11 should be referenced in the access tariffs to the extent necessary to replace the corresponding provisions of the proposed Section 2.5; and

(3) Specific connection provisions may be developed and included in Section 2.5 to cover offerings not presently delineated in any of designated material. Such provisions for digital facilities should address the Interim Program for connection of customer provided CSUs and CSU-like devices and other connection provisions within the general confines of Tariff 270, Sections 2.8 and 5.2.

The applicable referenced material from the tariffs noted above, and any other relevant documents developed as a result of CC Docket No. 20099 interconnection meetings, must be maintained by the exchange carriers in the posting locations required by Section 61.72 of our Rules, pending the establishment of permanent interconnection provisions.

The referenced material in paragraphs 1-3, above, should constitute all existing interconnection requirements. We conclude that, in conjunction with Part 68 of our rules, they should continue to govern interconnection by reference in the access tariffs until the significant questions of standard-setting and interconnection planning are resolved in our CC Docket 78-72, Phase III proceeding. Accordingly, we waive the requirements of Section 61.74 of our Rules which generally prohibit reference in a tariff to documents outside the tariff to the extent necessary to comply with the requirements we have set forth.

SUBJECT: General Regulations—Definitions—"Acceptance (Cooperative) Tests"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The term "Acceptance (Cooperative) Tests" denotes those nonchargeable tests which are performed by the Telephone Company in cooperation with the IC at the IC's request at the time service is installed."

DISCUSSION: This definition is unduly vague. It is unclear whether all IC test requests at the time of installation will qualify or only certain tests. Since provisions elsewhere in the tariff clearly state which tests are non-chargeable at the time of service installation, and since the provisions do not appear to use the term "Acceptance (Cooperative) Tests," we conclude that this definition is unnecessary and must be deleted.

SUBJECT: General Regulations—Definitions—"Access Code"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The term 'Access Code' denotes a uniform four or seven digit code assigned by the Telephone Company to an individual IC. The four digit code has the form 10XX, and the seven digit code has the form 950-10XX."

ISSUES: MCI contends that this definition unreasonably restricts the availability of an adequate number of access codes. The BOCs/CSO reply that MCI's objection is not well defined.

DISCUSSION: MCI argues that this definition limits an OCC to a single code and that such limitation will unreasonably constrict the OCCs' future growth. We are also concerned that sufficient access codes be available to all access service customers. We recognize, however, that the provision of multiple access codes per carrier might consume the limited number of codes available under the established scheme. This would require adding digits to the codes which could, in turn, require a basic restructuring of the exchange telephone system at great cost to the telephone companies and, ultimately, the ratepayers. Moreover, the language of this definition does not by its terms limit the number of access codes which may be provided a customer.

One of the primary purposes of this tariff is to provide for equal interconnection. MCI makes no claims that AT&T or any other carrier will be able to obtain a greater number of access codes than MCI. While we make no decision on the issue of multiple codes, we are not persuaded of the need to modify this definition at this point.

SUBJECT: General Regulations—Definitions—"Access Minutes"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The term 'Access Minutes' denotes that usage of exchange facilities in interstate or foreign service for the purpose of calculating chargeable usage. On the originating end of an interstate or foreign call, usage is measured from the time the originating End User's Call is delivered by the Telephone Company to and acknowledged as received by the IC's facilities connected with the originating exchange. On the terminating end of an interstate or foreign call, usage is measured from the time the call is received by the End User in the terminating

exchange. Timing of usage at both originating and terminating end[s] (sic) of an interstate or foreign call shall terminate when the calling or called party disconnects, whichever event is recognized first in the originating and terminating end exchanges, as applicable. Those two times are measured by the receipt of a signal known as answer/disconnect supervision."

ISSUES: MCI contends that this definition discriminates against OCCs with ENFIA A/ Feature Group A line-side connections. It further argues that the definition fails to define the increments in which the access minutes will be charged. The BOCs/CSO counter that MCI is seeking to reargue issues already decided by the Commission.

DISCUSSION: This provision reflects the change in computation of usage from conversation minutes to access minutes, as directed by our *First Reconsideration Order*, at para. 74. With this change, we also ordered an adjustment to the calculated usage to compensate OCCs for inferior access to the originating exchange network. We addressed MCI's discrimination argument in the *Second Reconsideration Order*, and, thus, shall not address this question here.

MCI also argues the need to identify increments in which access minutes will be charged. MCI argues that increments should be as small as feasible and any rounding should occur after all the increments have been added. MCI's points are well taken and we conclude that the definition of access minutes must be modified accordingly to specify the billing increments (such as 6 seconds, 5 seconds, etc.) and that they shall be totalled before any rounding occurs.

We have concerns for the final sentence in this definition which provides that access minutes are measured by receipt of answer/disconnect supervision signals. First, unlike the rest of the definition, the last sentence does not correspond with the existing definition of "access minutes" provided in Part 69 of our Rules, 47 C.F.R. § 69.2(gg). Second, the last sentence is also misleading because only Feature Group C currently has both answer and disconnect signal recognition capability. Other methods must be used for service provided under Feature Groups A and B. For the foregoing reasons, we conclude that the final sentence of the definition must be deleted and that specific provisions for the measurement of access minutes for each feature group must be included in rate provisions for the applicable rate elements elsewhere in the tariff.

SUBJECT: General Regulations—Definitions—"Average Business Day"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The term 'Average Business Day' denotes 8:00AM to 11:00PM, Monday through Friday, excluding national holidays."

ISSUES: MCI contends that this definition is unreasonable because it covers fifteen hours, which is far longer than the normal business day, even allowing for differences in domestic time zones. The BOCs/CSO respond that MCI's objection fails to state how ICs will be adversely affected.

DISCUSSION: We agree with MCI that this definition establishes an unreasonable time span which does not appear to correspond with normal business hours. The definition should be justified or it must be modified to correspond with normal business hours, *e.g.*, 8:00 a.m. Eastern Standard Time to 6:00 p.m. Pacific Standard Time.

SUBJECT: General Regulations—Definitions—"Busy Hour Minutes of Capacity"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The term 'Busy Hour Minutes of Capacity' denotes the average of the highest time consistent hour of usage during the highest twenty consecutive business day period during a calendar year."

DISCUSSION: This definition is unclear. It must be modified to clarify the meanings of "highest time consistent hour of usage" and "highest twenty consecutive business day period." If there is a standard engineering definition of such peak loading, it should be employed here.

SUBJECT: General Regulations—Definitions—"Carrier or Common Carrier"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCE: Similar provisions in most other access tariffs, *cf.*, Southwestern Bell which should add a definition for "exchange" as discussed below).

TARIFF LANGAUGE:

"*Carrier or Common Carrier*The term 'Carrier or Common Carrier' denotes any individual partnership, associations (sic), joint-stock company, trust or corporation engaged for hire in interstate or foreign communications by wire or radio."

"*Common Carrier* See Carrier"

DISCUSSION: In reviewing the definitions for "Interstate Customer" (ICs) and "End Users" (*see*, those discussions, *infra)*, we determine that while the tariffs define IC to include apparently both carriers and end users they, in fact, employ the term in many instances throughout as a shorthand for Interexchange Carrier. (*See, e.g.*, §§ 2.3.10, 4.4 and 5.1.1). To eliminate this confusion we are directing changes in the relevant definitions. The definitions of Carrier and Common Carrier must be replaced by the following:

Interexchange Carrier (IC) or Interexchange Common Carrier The terms "Interexchange Carrier" (IC) or "Interexchange Common Carrier" denotes any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged for hire in interstate or foreign communication by wire or radio, between two or more exchanges.

SUBJECT: General Regulations—Definitions—"Channel Service Unit Equivalent"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: The BOCs/CSO reply proposed this addition to the ECA tariff.

TARIFF LANGUAGE:

"The Term 'Channel Service Unit Equivalent' denotes equipment which performs the functions of properly terminating a digital facility, regeneration (HC1) or amplification of signals (DDA1-4), recognition and correction of signal format errors (HC1) or signal shaping (DDA1-4), and remote loop-back."

DISCUSSION: The BOCs/CSO have proposed to add this definition to the ECA tariff to correspond with connection provisions it is proposing to add at Section 2.5.12(F) and Section 2.5.14, *supra*. (See discussion at §2.5.) This definition, however, does not comply with the

requirements imposed under CC Docket 81-216, * where we required that CSUs or CSU-like devices be unbundled from all digital circuits, services and facilities. This definition appears to limit CSUs to only two digital offerings rather than all digital offerings which would be required under CC Docket 81-216 and Part 68.2(f) of our Rules. Further, this definition would require that CSU equivalents include remote loop-back capability. In CC Docket 81-216 we did not find that CSUs must be able to perform remote loop-back functions. This definition must be revised to correspond with our decisions in CC Docket 81-216.

SUBJECT: General Regulations—Definitions—"Channelize"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The term 'Channelize' denotes the process of multiplexing-demultiplexing voice channels using analog or digital techniques."

DISCUSSION: This provision omits multiplexing of other non-voice channels without justification. We see no reason to differentiate or exclude any channels from the definition. The exclusion must be justified or the definitions must be modified to include all channels.

SUBJECT: General Regulations—Definitions—"Common Line"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The term 'Common Line' denotes a line, trunk, pay telephone line or other facility provided under the general and/or local exchange service tariffs of the Telephone Company, terminated on a central office switch and which may be used to make and receive exchange service calls, intrastate message service calls or interstate message calls no matter if the Customer causes the line, trunk or facility to be arranged to prohibit any type of calls to be made or received. A common line-residence is a line or trunk provided under the residence regulations of the general and/or local exchange service tariffs. A common line-business is a line provided under the business regulations of the general and/or local exchange service tariffs."

ISSUES: MCI contends that the definition of common line is erroneous and unlawful. The BOCs/CSO have replied that the definition is consistent with the Commission's use of the term.

DISCUSSION: In its comments on this definition MCI revisits several concerns regarding the basic framework of our Access Charge orders which it has raised previously. It argues generally that no part of the NTS costs of subscriber plant should be assigned to the interstate jurisdiction or, at the very least, all such costs so assigned should be recovered from AT&T, since among the ICs only AT&T was responsible for developing the separations

* Amendment of Part 68 of the Commission's Rules Concerning Connection of Telephone Equipment, System and Protective Apparatus to the Telephone Network, Third Notice of Proposed Rulemaking, CC Docket No. 81-216, FCC 83-268, released June 14, 1983, *stay denied*, Common Carrier Bureau Order, Mimeo No. 1503, released December 23, 1983.

process that resulted in this uneconomic cost assignment system. MCI contends that OCCs should pay ordinary business rates for their line-side connections to central offices. We see no need to reopen these basic issues which have been discussed and analyzed extensively as part of the access charge proceedings.

We are, however, concerned about this definition's apparent restrictions of use of the lines or facilities. Absent justification such restrictions cannot be allowed. Thus, the first sentence of this definition must be shortened to read: "The term 'Common Line' denotes a line, trunk, pay telephone line or other facility provided under the general and/or local exchange service tariffs of the Telephone Company, terminated on a central office switch."

SUBJECT: General Regulations—Definitions—"Effective 4-Wire"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The term 'Effective 4-Wire' denotes a condition which permits the simultaneous independent transmission of information in both directions over a channel. The method of implementing effective 4-wire transmission is at the discretion of the Telephone Company (physical, time domain, frequency-domain separation or echo cancellation techniques). Effective 4-wire channels may be terminated with a 2-wire interface at the End User premises or central office, but not at the IC point of interface. However, when terminated 2-wire, simultaneous independent transmission cannot be supported."

ISSUES: MCI contends that this definition would unreasonably prohibit 4-wire termination with a 2-wire interface at an IC's "point of interface."

DISCUSSION: This definition provides that the method of implementing effective 4-wire transmission is at the discretion of the telco. It allows effective 4-wire channels to be terminated with a 2-wire interface at end user premises or telco central offices, but not at an IC's point of termination. MCI complains that the restriction on the IC's point of termination is unreasonable because the exchange carriers have not demonstrated any potential harm to the network. We agree that such a restriction is not supported. The restriction against this type of termination at the IC's point of termination must be supported or deleted from this definition. Finally, the last sentence must be clarified. (*See also*, Section 2.1.5, *supra*, regarding modifications to the term "point of interface").

SUBJECT: General Regulations—Definitions—"End User"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCE: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The term 'End User' denotes any individual, partnership, association, corporation, governmental agency or any other entity which (A) obtains a common line or uses a pay telephone in the operating territory of the Telephone Company, or (B) subscribes to interstate service(s) provided by an IC or uses the services of the IC when the IC provides interstate service(s) for its own use."

DISCUSSION: The definition of end user and the delineation between this group and others, such as interexchange carriers (ICs), are critical to implementation of the Part 69 Access Charge rules, 47 C.F.R. Part 69. The access tariffs propose a definition of "end user" different

from that provided in Section 69.2(m) of our rules. We believe that the use of these two definitions could be misleading. Further, there is no reason to modify our Part 69 definition. Thus, the proposed definition of end user in the access tariffs must be replaced by the following Section 69.2(m) language as follows:

"End User" means any customer of an interstate or foreign telecommunications service that is not a carrier, except that a carrier shall be deemed to be an "end user" to the extent that such carrier uses a telecommunications service for administrative purposes, without making such service available to others, directly or indirectly.

SUBJECT: General Regulations—Definitions—"Facilities"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The term 'Facilities' denotes any cable, fiber optics, poles, conduit, microwave or carrier equipment, wire center distribution frames, central office switching equipment, computers (both hardware and software), business machines, etc., utilized to provide (1) the services offered under this tariff, or (2) the services provided by an IC for its own use or for an IC End User's use."

DISCUSSION: In conjunction with the clarification of definitions of IC, end user and customer in this section, the last clause of this definition must be modified to read "or (2) the services provided by a customer for its own use or for use by others." More fundamentally, it is unclear why the tariff requires a definition of the term "facilities," which has a generally accepted meaning, with the qualification "utilized to provide" service. This language is vague and conceivably could include trucks, office machines and other equipment that is incidentally used by telco personnel in the course of rendering service. The definition appears to serve no purpose in the tariff and could be a source of confusion. The need for the definition should be explained and justified.

SUBJECT: General Regulations—Definitions—"IC Terminal Location"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The term 'IC Terminal Location' denotes the point at which Access Service connects to the IC's interstate telecommunications service."

DISCUSSION: In accordance with the discussion in Section 2.1.5, *supra*, we are directing that this term be deleted as unnecessary. Any customer, whether IC or end user, may connect to access service at any authorized "premises," *see infra*, that definition, §2.6. We see no reason for a separate term for ICs.

SUBJECT: General Regulations—Definitions—"Interstate and Foreign Communications"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCE: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The term 'Interstate and Foreign Communications' denotes any communications subject to FCC oversight as provided under the Communications Act of 1934, as amended, and the F.C.C.'s Rules and Regulations."

ISSUES: MCI has objected generally that the use of the term "interstate communications" throughout the tariffs unreasonably excludes foreign communications.

DISCUSSION: In their reply comments, the BOCs/CSO have proposed to modify the above definition as follows:

"*Interstate Communications*

The term "Interstate Communications" denotes any communications, including foreign communications, subject to FCC oversight as provided under the Communications Act of 1934, as amended, and the FCC's Rules and Regulations."

While the proposed modification would sufficiently remedy the confusion which MCI points out regarding foreign communications, we are concerned about the rest of the definition. The Communications Act provides adequate definitions of both interstate communications and foreign communications. Additional definitions in the tariffs are unnecessary and can be misleading. The tariff definition must be modified to read:

"The term 'Interstate Communications' denotes both interstate and foreign communications."

SUBJECT: Application of Tariff and General Regulations—Definitions—"Interstate Customer"

ECA TARIFF REFERENCE: Section 1.1, Section 2.6

OTHER TARIFF REFERENCE: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"1.1 Application of Tariff

This tariff contains regulations, rates and charges applicable to the provision of Carrier Common Line, End User Access, Switched Access and Special Access Services, and other miscellaneous services, hereinafter referred to collectively as service(s), provided by the Issuing Carriers of this tariff, hereinafter referred to as the Telephone Company, to Interstate Customer(s), hereinafter referred to as IC(s)."

"2.6 Definitions

Interstate Customer(s)

The term 'Interstate Customer(s)' denotes any individual, partnership, association, corporation, or governmental agency or any other entity which subscribes to the services offered under this tariff to provide interstate telecommunications services for its own use or for the use of its customers (End Users)."

ISSUES: AT&T notes in its comments that the term "interstate customers" is broad enough to include "end users", yet the tariff appears to treat the two as separate classes of users of tariffed services. WU also contends that the definition is ambiguous regarding end users. MCI suggests that the definition of interstate customer violates Part 69 of our Rules (47 C.F.R. Part 69) because it refers solely to those providing interstate and not foreign communications.

DISCUSSION: As AT&T has pointed out, there are ambiguities both in the proposed definition of "interstate customers" and the use of that term throughout the tariff. The definition appears to include both carriers and end users who subscribe "for [their] own use."

In provisions throughout the tariff, however, the ECA refers to both "ICs" and end users as if they are distinct groups. (*See, e.g.*, §§2.1.1., 2.5.2, 7.1 and 9.2) These ambiguities are further compounded by the use of the shorthand "IC" (§1.1) for Interstate Customers, an acronym which has also been applied to interexchange carriers. Further, the tariff appears, in fact, to use the term IC in many instances throughout where it intends interexchange carrier and not Interstate Customer. (*See, e.g.* §§ 2.3.10, 4.4. and 5.1.1).

In addition to ambiguity problems, we are concerned about the use of the term "interstate" as applied to customers under this tariff. In the CC Docket No. 78-72 *First Reconsideration Order* at para. 90, the Commission used the term "customers" to refer to all those (whether carrier, reseller, enhanced service provider or end user, etc.) who subscribe to the services offered pursuant to the tariffs. As applied to carriers, use of the term "interstate" is unnecessary, because interstate service is the only service provided under the access tariffs. As applied to end users, the term "interstate" is misleading. All subscription to facilities available for interstate use is "interstate." Moreover, as MCI notes, the use of the word "interstate" appears to improperly exclude foreign communications service providers. For these reasons the term "Interstate Customer" must be stricken from Sections 1.1 and 2.6 and replaced by the following language:

1.1 This tariff contains regulations, rates and charges applicable to the provision of Carrier Common Line, End User Access, Switched Access and Special Access Services, and other miscellaneous services, hereinafter referred to collectively as service(s), provided by the Issuing Carriers of this tariff, hereinafter referred to as the Telephone Company, to Customer(s).

2.6 *Customer(s)* The term "Customer(s)" denotes any individual, partnership, association, joint-stock company, trust, corporation, or governmental entity or any other entity which subscribes to the services offered under this tariff, including both Interexchange Carriers (ICs) and End Users.

This revision eliminates the ambiguity and conforms to the general usage of the terms "IC" and "end user" in the tariffs. However, the propriety of using one term or the other in particular tariff sections must also be reviewed and in many cases revised to carry out the Access Charge plan. In general, we seek to eliminate so far as possible differences in services and rates based on whether the customer is a carrier or end user, *First Reconsideration Order*, para. 90. For example, end users should be able to obtain access services offered to ICs if they wish, in addition to services expressly reserved for end users. We have corrected some instances where usage of these terms in the tariff is improperly restrictive, but other instances undoubtedly exist. Carriers should review their tariffs to assure that usage of these terms does not in any case imply an unjustified restriction on customer choice.

SUBJECT: General Regulations—Definitions—"Access Code"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The term "Access Code" denotes a uniform four or seven digit code assigned by the Telephone Company to an individual IC. The four digit code has the form 10XX, and the seven digit code has the form 950-10XX."

ISSUES: MCI contends that this definition unreasonably restricts the availability of an adequate number of access codes. The BOCs/CSO reply that MCI's objection is not well defined.

DISCUSSION: MCI argues that this definition limits an OCC to a single code and that such limitation will unreasonably constrict the OCCs' future growth. We are also concerned that sufficient access codes be available to all access service customers. We recognize, however, that the provision of multiple access codes per carrier might consume the limited number of codes available under the established scheme. This would require adding digits to the codes which could, in turn, require a basic restructuring of the exchange telephone system at great cost to the telephone companies and, ultimately, the ratepayers. Moreover, the language of this definition does not by its terms limit the number of access codes which may be provided a customer.

One of the primary purposes of this tariff is to provide for equal interconnection. MCI makes no claims that AT&T or any other carrier will be able to obtain a greater number of access codes than MCI. While we make no decision on the issue of multiple codes, we are not persuaded of the need to modify this definition at this point.

SUBJECT: General Regulations—Definitions—"Access Minutes"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The term "Access Minutes" denotes that usage of exchange facilities in interstate or foreign service for the purpose of calculating chargeable usage. On the originating end of an interstate or foreign call, usage is measured from the time the originating End User's Call is delivered by the Telephone Company to and acknowledged as received by the IC's facilities connected with the originating exchange. On the terminating end of an interstate or foreign call, usage is measured from the time the call is received by the End User in the terminating exchange. Timing of usage at both originating and terminating end[s](sic) of an interstate or foreign call shall terminate when the calling or called party disconnects, whichever event is recognized first in the originating and terminating end exchanges, as applicable. Those two times are measured by the receipt of a signal known as answer/disconnect supervision."

ISSUES: MCI contends that this definition discriminates against OCCs with ENFIA A/ Feature Group A line-side connections. It further argues that the definition fails to define the increments in which the access minutes will be charged. The BOCs/CSO counter that MCI is seeking to reargue issues already decided by the Commission.

DISCUSSION: This provision reflects the change in computation of usage charges from conversation minutes to access minutes, as directed by our *First Reconsideration Order*, at para. 74. With this change, we also ordered an adjustment to the calculated usage to compensate OCCs for inferior access to the originating exchange network. We addressed MCI's discrimination argument in the *Second Reconsideration Order*, and, thus, shall not address this question here.

MCI also argues the need to identify increments in which access minutes will be charged. MCI argues that increments should be as small as feasible and any rounding should occur after all the increments have been added. MCI's points are well taken and we conclude that the definition of access minutes must be modified accordingly to specify the billing increments (such as 6 seconds, 5 seconds, etc.) and that they shall be totalled before any rounding occurs.

We have concerns for the final sentence in this definition which provides that access minutes are measured by receipt of answer/disconnect supervision signals. First, unlike the rest of the definition, the last sentence does not correspond with the existing definition of "access minutes" provided in Part 69 of our Rules, 47 C.F.R. § 69.2(gg). Second, the last

sentence is also misleading because only Feature Group C currently has both answer and disconnect signal recognition capability. Other methods must be used for service provided under Feature Groups A and B. For the foregoing reasons, we conclude that the final sentence of the definition must be deleted and that specific provisions for the measurement of access minutes for each feature group must be included in rate provisions for the applicable rate elements elsewhere in the tariff.

SUBJECT: General Regulations—Definitions—"Average Business Day"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The term "Average Business Day" denotes 8:00AM to 11:00PM, Monday through Friday, excluding national holidays."

ISSUES: MCI contends that this definition is unreasonable because it covers fifteen hours, which is far longer than the normal business day, even allowing for differences in domestic time zones. The BOCs/CSO respond that MCI's objection fails to state how ICs will be adversely affected.

DISCUSSION: We agree with MCI that this definition establishes an unreasonable time span which does not appear to correspond with normal business hours. The definition should be justified or it must be modified to correspond with normal business hours, *e.g.*, 8:00 a.m. Eastern Standard Time to 6:00 p.m. Pacific Standard Time.

SUBJECT: General Regulations—Definitions—"Busy Hour Minutes of Capacity"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The term "Busy Hour Minutes of Capacity" denotes the average of the highest time consistent hour of usage during the highest twenty consecutive business day period during a calendar year."

DISCUSSION: This definition is unclear. It must be modified to clarify the meanings of "highest time consistent hour of usage" and "highest twenty consecutive business day period." If there is a standard engineering definition of such peak loading, it should be employed here.

SUBJECT: General Regulations—Definitions—"Carrier or Common Carrier"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCE: Similar provisions in most other access tariffs, *cf.*, Southwestern Bell which should add a definition for "exchange" as discussed below).

TARIFF LANGAUGE:

*"Carrier or Common Carrier*The term "Carrier or Common Carrier" denotes any individual partnership, associations (sic), joint-stock company, trust or corporation engaged for hire in interstate or foreign communications by wire or radio."

"Common Carrier See Carrier"

DISCUSSION: In reviewing the definitions for "Interstate Customer" (ICs) and "End Users" (*see*, those discussions, *infra)*, we determine that while the tariffs define IC to include apparently both carriers and end users they, in fact, employ the term in many instances throughout as a shorthand for Interexchange Carrier. (*See*, *e.g.*, §§ 2.3.10, 4.4 and 5.1.1). To eliminate this confusion we are directing changes in the relevant definitions. The definitions of Carrier and Common Carrier must be replaced by the following:

Interexchange Carrier (IC) or Interexchange Common Carrier The terms "Interexchange Carrier" (IC) or "Interexchange Common Carrier" denotes any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged for hire in interstate or foreign communication by wire or radio, between two or more exchanges.

SUBJECT: General Regulations—Definitions—"Channel Service Unit Equivalent"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: The BOCs/CSO reply proposed this addition to the ECA tariff.

TARIFF LANGUAGE:

"The Term "Channel Service Unit Equivalent" denotes equipment which performs the functions of properly terminating a digital facility, regeneration (HCl) or amplification of signals (DDA1-4), recognition and correction of signal format errors (HCl) or signal shaping (DDA1-4), and remote loop-back."

DISCUSSION: The BOCs/CSO have proposed to add this definition to the ECA tariff to correspond with connection provisions it is proposing to add at Section 2.5.12(F) and Section 2.5.14, *supra*. (See discussion at § 2.5.) This definition, however, does not comply with the requirements imposed under CC Docket 81-216, * where we required that CSUs or CSU-like devices be unbundled from all digital circuits, services and facilities. This definition appears to limit CSUs to only two digital offerings rather than all digital offerings which would be required under CC Docket 81-216 and Part 68.2(f) of our Rules. Further, this definition would require that CSU equivalents include remote loop-back capability. In CC Docket 81-216 we did not find that CSUs must be able to perform remote loop-back functions. This definition must be revised to correspond with our decisions in CC Docket 81-216.

SUBJECT: General Regulations—Definitions—"Channelize"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

* Amendment of Part 68 of the Commission's Rules Concerning Connection of Telephone Equipment, Systems and Protective Apparatus to the Telephone Network, Third Notice of Proposed Rulemaking, CC Docket No. 81-216, FCC 83-268, released June 14, 1983, *stay denied*, Common Carrier Bureau Order, Mimeo No. 1503, released December 23, 1983.

"The term "Channelize" denotes the process of multiplexing-demultiplexing voice channels using analog or digital techniques."

DISCUSSION: This provision omits multiplexing of other non-voice channels without justification. We see no reason to differentiate or exclude any channels from the definition. The exclusion must be justified or the definitions must be modified to include all channels.

SUBJECT: General Regulations—Definitions—"Common Line"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The term "Common Line" denotes a line, trunk, pay telephone line or other facility provided under the general and/or local exchange service tariffs of the Telephone Company, terminated on a central office switch and which may be used to make and receive exchange service calls, intrastate message service calls or interstate message calls no matter if the Customer causes the line, trunk or facility to be arranged to prohibit any type of calls to be made or received. A common line-residence is a line or trunk provided under the residence regulations of the general and/or local exchange service tariffs. A common line-business is a line provided under the business regulations of the general and/or local exchange service tariffs."

ISSUES: MCI contends that the definition of common line is erroneous and unlawful. The BOCs/CSO have replied that the definition is consistent with the Commission's use of the term.

DISCUSSION: In its comments on this definition MCI revisits several concerns regarding the basic framework of our Access Charge orders which it has raised previously. It argues generally that no part of the NTS costs of subscriber plant should be assigned to the interstate jurisdiction or, at the very least, all such costs so assigned should be recovered from AT&T, since among the ICs only AT&T was responsible for developing the separations process that resulted in this uneconomic cost assignment system. MCI concludes that OCCs should pay ordinary business rates for their line-side connections to central offices. We see no need to reopen these basic issues which have been discussed and analyzed extensively as part of the access charge proceedings.

We are, however, concerned about this definition's apparent restrictions of use of the lines or facilities. Absent justification such restrictions cannot be allowed. Thus, the first sentence of this definition must be shortened to read: "The term "Common Line" denotes a line, trunk, pay telephone line or other facility provided under the general and/or local exchange service tariffs of the Telephone Company, terminated on a central office switch."

SUBJECT: General Regulations—Definitions—"Effective 4-Wire"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The term "Effective 4-Wire" denotes a condition which permits the simultaneous independent transmission of information in both directions over a channel. The method of implementing effective 4-wire transmission is at the discretion of the Telephone Company (physical, time domain, frequency-domain separation or echo cancellation techniques).

Effective 4-wire channels may be terminated with a 2-wire interface at the End User premises or central office, but not at the IC point of interface. However, when terminated 2-wire, simultaneous independent transmission cannot be supported."

ISSUES: MCI contends that this definition would unreasonably prohibit 4-wire termination with a 2-wire interface at an IC's "point of interface."

DISCUSSION: This definition provides that the method of implementing effective 4-wire transmission is at the discretion of the telco. It allows effective 4-wire channels to be terminated with a 2-wire interface at end user premises or telco central offices, but not at an IC's point of termination. MCI complains that the restriction on the IC's point of termination is unreasonable because the exchange carriers have not demonstrated any potential harm to the network. We agree that such a restriction is not supported. The restriction against this type of termination at the IC's point of termination must be supported or deleted from this definition. Finally, the last sentence must be clarified. (*See also*, Section 2.1.5, *supra*, regarding modifications to the term "point of interface").

SUBJECT: General Regulations—Definitions—"End User"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCE: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The term "End User" denotes any individual, partnership, association, corporation, governmental agency or any other entity which (A) obtains a common line or uses a pay telephone in the operating territory of the Telephone Company, or (B) subscribes to interstate service(s) provided by an IC or uses the services of the IC when the IC provides interstate service(s) for its own use."

DISCUSSION: The definition of end user and the delineation between this group and others, such as interexchange carriers (ICs), are critical to implementation of the Part 69 Access Charge rules, 47 C.F.R. Part 69. The access tariffs propose a definition of "end user" different from that provided in Section 69.2(m) of our rules. We believe that the use of these two definitions could be misleading. Further, there is no reason to modify our Part 69 definition. Thus, the proposed definition of end user in the access tariffs must be replaced by the following Section 69.2(m) language as follows:

"End User" means any customer of an interstate or foreign telecommunications service that is not a carrier, except that a carrier shall be deemed to be an "end user" to the extent that such carrier uses a telecommunications service for administrative purposes, without making such service available to others, directly or indirectly.

SUBJECT: General Regulations—Definitions—"Facilities"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The term "Facilities" denotes any cable, fiber optics, poles, conduit, microwave or carrier equipment, wire center distribution frames, central office switching equipment, computers (both hardware and software), business machines, etc., utilized to provide (1) the services

offered under this tariff, or (2) the services provided by an IC for its own use or for an IC End User's use."

DISCUSSION: In conjunction with the clarification of definitions of IC, end user and customer in this section, the last clause of this definition must be modified to read "or (2) the services provided by a customer for its own use or for use by others." More fundamentally, it is unclear why the tariff requires a definition of the term "facilities," which has a generally accepted meaning, with the qualification "utilized to provide" service. This language is vague and conceivably could include trucks, office machines and other equipment that is incidentally used by telco personnel in the course of rendering service. The definition appears to serve no purpose in the tariff and could be a source of confusion. The need for the definition should be explained and justified.

SUBJECT: General Regulations—Definitions—"IC Terminal Location"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The term "IC Terminal Location" denotes the point at which Access Service connects to the IC's interstate telecommunications service."

DISCUSSION: In accordance with the discussion in Section 2.1.5, *supra*, we are directing that this term be deleted as unnecessary. Any customer, whether IC or end user, may connect to access service at any authorized "premises," *see infra*, that definition, § 2.6. We see no reason for a separate term for ICs.

SUBJECT: General Regulations—Definitions—"Interstate and Foreign Communications"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The term "Interstate and Foreign Communications" denotes any communications subject to FCC oversight as provided under the Communications Act of 1934, as amended, and the F.C.C.'s Rules and Regulations."

ISSUES: MCI has objected generally that the use of the term "interstate communications" throughout the tariffs unreasonably excludes foreign communications.

DISCUSSION: In their reply comments, the BOCs/CSO have proposed to modify the above definition as follows:

"*Interstate Communications*

The term "Interstate Communications" denotes any communications, including foreign communications, subject to FCC oversight as provided under the Communications Act of 1934, as amended, and the FCC's Rules and Regulations."

While the proposed modification would sufficiently remedy the confusion which MCI points out regarding foreign communications, we are concerned about the rest of the definition. The Communications Act provides adequate definitions of both interstate communications and foreign communications. Additional definitions in the tariffs are unnecessary and can be misleading. The tariff definition must be modified to read:

"The term "Interstate Communications" denotes both interstate and foreign communications."

SUBJECT: Application of Tariff and General Regulations—Definitions—"Interstate Customer"

ECA TARIFF REFERENCE: Section 1.1, Section 2.6

OTHER TARIFF REFERENCE: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"1.1 Application of Tariff

This tariff contains regulations, rates and charges applicable to the provision of Carrier Common Line, End User Access, Switched Access and Special Access Services, and other miscellaneous services, hereinafter referred to collectively as service(s), provided by the Issuing Carriers of this tariff, hereinafter referred to as the Telephone Company, to Interstate Customer(s), hereinafter referred to as IC(s)."

"2.6 Definitions

Interstate Customer(s)

The term "Interstate Customer(s)" denotes any individual, partnership, association, corporation, or governmental agency or any other entity which subscribes to the services offered under this tariff to provide interstate telecommunications services for its own use or for the use of its customers (End Users)."

ISSUES: AT&T notes in its comments that the term "interstate customers" is broad enough to include "end users", yet the tariff appears to treat the two as separate classes of users of tariffed services. WU also contends that the definition is ambiguous regarding end users. MCI suggests that the definition of interstate customer violates Part 69 of our Rules (47 C.F.R. Part 69) because it refers solely to those providing interstate and not foreign communications.

DISCUSSION: As AT&T has pointed out, there are ambiguities both in the proposed definition of "interstate customers" and the use of that term throughout the tariff. The definition appears to include both carriers and end users who subscribe "for [their] own use." In provisions throughout the tariff, however, the ECA refers to both "ICs" and end users as if they are distinct groups. (*See, e.g.*, §§ 2.1.1, 2.5.2, 7.1 and 9.2) These ambiguities are further compounded by the use of the shorthand "IC" (§ 1.1) for Interstate Customers, an acronym which has also been applied to interexchange carriers. Further, the tariff appears, in fact, to use the term IC in many instances throughout where it intends interexchange carrier and not Interstate Customer. (*See, e.g.* §§ 2.3.10, 4.4. and 5.1.1).

In addition to ambiguity problems, we are concerned about the use of the term "interstate" as applied to customers under this tariff. In the CC Docket No. 78-72 *First Reconsideration Order* at para. 90, the Commission used the term "customers" to refer to all those (whether carrier, reseller, enhanced service provider or end user, etc.) who subscribe to the services offered pursuant to the tariffs. As applied to carriers, use of the term "interstate" is unnecessary, because interstate service is the only service provided under the access tariffs. As applied to end users, the term "interstate" is misleading. All subscription to facilities available for interstate use is "interstate." Moreover, as MCI notes, the use of the word "interstate" appears to improperly exclude foreign communications service providers. For these reasons the term "Interstate Customer" must be stricken from Sections 1.1 and 2.6 and replaced by the following language:

1.1 This tariff contains regulations, rates and charges applicable to the provision of Carrier Common Line, End User Access, Switched Access and Special Access Services, and other miscellaneous services, hereinafter referred to collectively as service(s), provided by the Issuing Carriers of this tariff, hereinafter referred to as the Telephone Company, to Customer(s).

2.6 *Customer(s)* The term "Customer(s)" denotes any individual, partnership, association, joint-stock company, trust, corporation, or governmental entity or any other entity which subscribes to the services offered under this tariff, including both Interexchange Carriers (ICs) and End Users.

This revision eliminates the ambiguity and conforms to the general usage of the terms "IC" and "end user" in the tariffs. However, the propriety of using one term or the other in particular tariff sections must also be reviewed and in many cases revised to carry out the Access Charge plan. In general, we seek to eliminate so far as possible differences in services and rates based on whether the customer is a carrier or end user, *First Reconsideration Order*, para. 90. For example, end users should be able to obtain access services offered to ICs if they wish, in addition to services expressly reserved for end users. We have corrected some instances where usage of these terms in the tariff is improperly restrictive, but other instances undoubtedly exist. Carriers should review their tariffs to assure that usage of these terms does not in any case imply an unjustified restriction on customer choice.

SUBJECT: General Regulations — Definitions — "Jointly Used Subscriber Plant"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The term "Jointly Used Subscriber Plant" denotes the local non-traffic sensitive Telephone Exchange Service facilities furnished in connection with Switched Exchange Access provided to an IC to complete an interstate call via an IC's intercity network to or from Telephone Exchange Service locations."

ISSUES: MCI contends that this definition is ambiguous and unlawful. The BOCs/CSO respond that it is consistent with the Commission's use of the term.

DISCUSSION: MCI contends that this definition undertakes to define the same facilities as the "Common Line" definition, *supra*, but is limited to IC subscriber lines and implies that it includes the costs of *all* local NTS exchange facilities over which interexchange calls can be originated or terminated. MCI argues that if such is the intent, this definition is improper for the same reason that MCI raised regarding the "common line" definition (*see supra*, that discussion, Section 2.6). We shall not revisit these complaints which we have already addressed as part of the access charge proceedings. We do conclude, however, that the relationship between a "common line" and "jointly used subscriber plant" must be clarified in these definitions so as to clearly disclose the differences, if any.

SUBJECT: General Regulations — Definitions — "Local Access and Transport Area"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs, *but cf.*, Southwestern Bell (which has no definition of "Exchange").

TARIFF LANGUAGE:

"The term "Local Access and Transport Area" denotes a geographic area established by the Telephone Company for the provision and administration of communications service. It encompasses designated exchanges, which are grouped to serve common social, economic and other purposes."

ISSUES: MCI argues that this definition is confusingly similar to the tariff's definition of "Exchange".

DISCUSSION: We have two concerns for this definition. First, we agree with MCI that it appears little different from the definition of an "exchange." The distinctions between these two concepts must be clarified. Second, the tariff incorrectly states that local access and transport areas are established by the telephone company. These areas were established pursuant to the MFJ. This definition should be corrected according to the foregoing discussion.

SUBJECT: General Regulations — Definitions — "Loop Around Test Line"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The term "Loop Around Test Line" denotes an arrangement in an end office which provides a means for making two-way transmission tests on a manual basis. This arrangement has two terminations, each reached by means of a separate seven-digit number."

DISCUSSION: This definition is unclear; for example, it cannot be determined whether network channel terminating equipment is included in the testing arrangement. This provision must be clarified to show what equipment is subject to the test arrangement.

SUBJECT: General Regulations — Definitions — "Network Interface"; "Point of Interface"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs, *but cf.* Southwestern Bell which consolidates the terms in its definition of "facility interface."

TARIFF LANGUAGE:

"Network Interface

The term "Network Interface" denotes the point of demarcation, on the End User's premises at which the Telephone Company's responsibility for the provision of Access Service end (sic)."

"Point of Interface

The term "Point of Interface" denotes the point of demarcation, at the IC's terminal location, between the Telephone Company provided and the IC procided services."

DISCUSSION: In accordance with the discussion in Section 2.3.3, *supra*, these two terms appear to provide differing treatment for IC's and end users without justification. We see no need for two separate and confusing terms. Thus, we are directing that these two terms be replaced by a single term — "Point of Termination" — which should be defined in Section 2.6 as follows: "The point of demarcation within a customer-designated premises at which the

Telephone Company's responsibility for the provision of Access Service ends." References within the tariffs to "Point of Interface" and "Network Interface" should be changed to correspond with the new terminology.

SUBJECT: General Regulations — Definitions — "Premises"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs, *cf.*, Southwestern Bell.

TARIFF LANGUAGE:

"The term "Premises" denotes a building or portion(s) of a building occupied by a single IC or End User either as place of business or residence. Adjacent buildings and the buildings on the same continuous property occupied by the IC or End User, not separated by a public thoroughfare, are also considered the IC or End User's premises."

DISCUSSION: "Premises" is a commonly used term which has historically been used to identify "a building or buildings on continuous property (except railroad right-of-way, etc.) not separated by a public highway." (*See, e.g.*, AT&T Tariff F.C.C. No. 260, at page 27). The new definition proposed here would unreasonably restrict a premises to a building occupied by a single IC or end user who uses it as place of business or residence. No support has been provided for such restrictions. This definition must be replaced by the traditional language provided in this discussion, above.

SUBJECT: General Regulations — Definitions — "Service Terminating Arrangement"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The term "Service Terminating Arrangement" denotes equipment furnished by the Telephone Company which is utilized for the termination of Telephone Company provided Access Service. Such "Service Terminating Arrangement" provides a clearly delineated interface which facilitates the design, isolation, and testing of the access Service where the service is connected with IC or End User provided communications systems."

DISCUSSION: This definition must be clarified to specify what equipment is encompassed by the arrangement and whether it includes channel service unit, channel service unit-like devices, and/or network channel terminating equipment in light of our decision in CC Docket No. 81-216. *See also*, discussion of Section 3.3.4, *infra*.

SUBJECT: General Regulations — Definitions — "Transmission Performance"

ECA TARIFF REFERENCE: Section 2.6

OTHER TARIFF REFERENCES: Similar provisions in most other access tariffs.

TARIFF LANGUAGE:

"The term "Transmission Performance" denotes the immediate action limits beyond which the Telephone Company will accept an IC's trouble report and take corrective action."

DISCUSSION: This definition unduly vague and ambiguous. It provides no guidance regarding what constitutes "Transmission Performance." If this section is designed to state certain telco responsibilities, it must be clarified to identify these responsibilities and should be included in the portion of the tariff which establishes the telco's responsibilities.

Section 3. Carrier Common Line Access Service

Under the Commission's access charge rules, common line charges are assessed in order to recover the separated interstate costs associated with individual subscriber lines, pay telephone equipment, and customer premises equipment not yet removed from the rate base.[1] Essentially, these costs are "pooled" (averaged) on a nationwide basis, and are then assigned to both interstate carriers (ICs) and end users, with the amount to be recovered from each group varying over the course of a transition period. At first, a relatively small percentage of these costs will be assigned to end users, and will be collected in the form of a flat monthly charge. *See infra* discussion of § 4. The balance of these costs will be recovered from ICs through assessment of carrier common line access charges.

Originally, it was envisioned that all ICs would pay a share of common line costs on a usage basis (i.e. a charge expressed in cents per minute of use). As the relative burden of common line costs shifts to end users, the per minute charge to carriers would be expected to decrease until, at the end of the transition period, only the costs of the pay telephone element and the Universal Service Fund would be recovered under the carrier common line element. Moreover, under the Commission's *First Reconsideration Order*, we expected that the charge for ICs receiving non-premium access would be discounted by 35% percent in order to compensate for the difference in access quality received by these carriers. During the transition, the discount level would also decrease, in order to reflect the greater availability of equal access arrangements.

The Access Charge plan required the ECA to calculate the premium and non-premium carrier common line charge, and also directed the ECA to collect these charges from ICs for distribution to exchange carriers. All exchange carriers wishing to participate in the distribution of carrier common line charge revenue were required to concur in the ECA tariff with respect to these charges.

The ECA has attempted to implement these rules within Section 3 of its tariff. As filed, the tariff imposes a premium charge of $.0461 per minute. At the discount level of 35%, the non premium charge would be $.03 per minute. In a number of respects, however, the manner in which common line costs will be recovered has been altered by the Commission's *Second Reconsideration*. Most significantly, the amount of common line

[1] In addition, costs attributable to the Universal Service Fund will be recovered through the common line access charge in future years.

costs assigned to ICs will be increased because the imposition of flat charges on residential and single line business subscribers has been delayed pending further study. Therefore, the costs that would have been recovered through these end user charges will continue to be assigned to the carrier common line element. This, in turn, may warrant an increase in the level of the carrier common line rate element. In addition, the per minute rate structure for carriers receiving non-premium access has been changed to a flat monthly rate per line, and the level of non-premium discount has been increased. Therefore, many of the rates and charges assessed on a usage sensitive basis will have to be modified as they apply to IC access charges.

We have determined that a number of specific provisions in this section of the tariff are not in accordance with the Commission's access charge rules. In particular, we are concerned with the treatment of resellers of MTS, WATS and the MTS/WATS-type services. Carrier Common Line charges apply to all ICs who provide MTS, WATS and MTS/WATS-type services in the first instance. Therefore, additional application of Carrier Common Line charges to resellers of these services presents a possibility of double recovery. *See infra* discussion of §§ 3.3, 3.7. Other troublesome provisions within Section 3 of the ECA tariff involve reporting requirements, *see infra* § 3.4; auditing and verification rights, *see id.;* payment provisions, *see infra* § 3.5; recourse adjustments for IC coin revenue, *see infra* § 3.6(C); and assumed average access minutes, *see infra* § 3.7(C).

SUBJECT: Carrier Common Line Access Service — Undertaking of the Telephone Company where the IC is solely reselling MTS/WATS or MTS-type services.

ECA TARIFF REFERENCE: Section 3.3(B). *See also* § 6.8.4.

OTHER TARIFF REFERENCES: Provision cross-referenced by all access tariffs.

TARIFF LANGUAGE:

"(B) Where the IC is solely reselling MTS/WATS or MTS-type services, the Telephone Company, when the IC orders line side switched access, will not provide Switched Access Service under this tariff but will provide switched access such as local business exchange service for such resale under the Telephone Company general and/or local exchange service tariffs for the locations involved. Carrier Common Line Access charge will not apply for such access."

ISSUES: This provision is ambiguous with respect to the switched access service to be received by ICs engaged in resale of MTS/WATS and MTS-type services. In addition, ALTEL suggests that the tariff should offer resellers of WATS the option of obtaining Dedicated Transport facilities at Dedicated transport rates plus the Special Access Charge.

DISCUSSION: This provision states that, where the IC is solely reselling MTS/WATS or MTS-like services,* the IC will not receive Switched Access Service under the telco's access service tariff, but will instead receive switched access "such as" local business exchange service for such resale. This reference is ambiguous; the Commission's rules require that resellers of these services must be permitted to obtain access service at generally applicable local business exchange service rates. The tariff should therefore specify that, in these cases, switched access service will be provided at the generally applicable local business exchange rates.**

In addition, the word "solely" should be removed to conform with the requirements of the *First Reconsideration Order*. The application of local business exchange rates does not depend on whether the reseller engages in other activities. Any provision in other parts of the tariff that is inconsistent with this view should be removed.

We are in agreement with ALTEL's suggestion that trunk side access be made available to resellers. The availability of higher quality access should not be limited to carriers who own their own facilities. On the other hand, resellers should not be required to pay the double contribution that would result if they were to pay both the WATS rate and the Carrier Common Line charge for trunk side access. Therefore, contrary to ALTEL's suggestion, a charge based on the Dedicated Transport element would not be correct. Instead, the rate for this service must include all Switched Access rate elements except Carrier Common Line charges.

SUBJECT: Application of Carrier Common Line Charges to Resellers of OCC WATS-Type Services

ECA TARIFF REFERENCE: Section 3.3(C)

OTHER TARIFF REFERENCES: Provision cross-referenced by all access tariffs

TARIFF LANGUAGE:

"(C) Where the IC is (1) reselling Private Line service of another IC to provide MTS/WATS-type service or reselling WATS-type services of an IC and (2) the Telephone Company provides a Special Access Service, other than Dedicated Access Line Service, for the resold service terminated at the IC terminal location, the Telephone Company will, when the IC offering the resale service orders any switched access, provide Special Access Service as set forth in 7.4.2(B) following and Switched Access Service as set forth in 6. following. Carrier Common Line Access rates and charges as set forth in 3.8 following apply in accordance with the regulations as set forth in 3.7(G) following."

ISSUES: Several commenters contend that the application of Carrier Common Line Charges to resellers of OCC WATS-type services is unlawful (ACS, ECSA, GTES, LC, MCI, SBS, TSC/SI, TNI, USTEL, WU)

DISCUSSION: Section 69.5 of the Commission's Access Charge Rules specifies that carrier's carrier charges, including carrier common line charges, shall be assessed on all IC's using Telco facilities for the provision of interstate or foreign telecommunications services, "except that carrier common line [and other traffic sensitive elements] . . . shall not be assessed upon an interexchange carrier to the extent that it resells services for which these charges have already been assessed (e.g., MTS, WATS *and the MTS/WATS-type services of other common carriers*) . . . ." 47 C.F.R. § 69.5 (emphasis added).

* The provision should also include WATS-type services. *See infra*, discussion of § 3.3(C).

** The term "local business exchange rate" is discussed below in connection with § 6.8.4.

The inclusion of WATS-type service resale in Section 3.3(C) would have the effect of applying carrier's carrier charges to these services, and thus appears to be in direct conflict with Section 69.5 of the Commission's Rules. Accordingly, Section 3.3 of the tariff must be modified so as to exempt resale of OCC WATS-type services from carrier common line charges, at least to the extent that the resold service has already been assessed such charges.

The Reply comments from several exchange carriers (BOCs/CSO) quote excerpts from our *First Reconsideration Order* that allegedly mandate application of carrier's carrier charges to OCC-WATS resale. Careful reading of those excerpts indicates that we referred only to the application of carrier's carrier charges to the original providers of WATS-type service, or resellers of private lines used to form MTS/WTS equivalents. *See, e.g., First Reconsideration Order* at paras. 83, 85 n.63. In these cases, carrier's carrier charges would remain unassessed if not applied to the reseller. This situation is entirely different from resale of WATS-type services, where the OCC providing the underlying service for resale has already paid carrier's carrier charges for access.

With the deletion of WATS-type services from this provision, it appears that the remainder of the provision would be unnecessary. Therefore, unless there are other reasons for retaining Section 3.3(C), the provision should be deleted.

SUBJECT: Application of Carrier Common Line Charges to Partial Facilities-based ICs reselling MTS and MTS type services.

ECA TARIFF REFERENCE: Section 3.3(D)

OTHER TARIFF REFERENCES: Provision cross-referenced by all access tariffs.

TARIFF LANGUAGE:

"(D) When the IC plans to use Switched Access Service (line side and/or trunk side) provided as set forth in 6.7.3 following in association with the resale of an IC service that is provided through the use of Dedicated Access Line Service provided under this tariff (i.e., resale of WATS), the Carrier Common Line Access rates and charges as set forth in 3.8 following apply in accordance with the regulations as set forth in 3.7(D) following."

ISSUES: The section provides for application of a complex allocation formula for resale of WATS in association with Switched Access Service. The purpose of this allocation is apparently to provide credit for Carrier Common Line Charges payable through metered WATS usage. No credit is given for resale of MTS in combination with Switched Access Service. This may result in application of Carrier Common Line charges to resold MTS and MTS-type service minutes, despite the fact that resellers of these services have already paid Carrier Common Line charges as a component of their MTS usage charges. (USTEL).

DISCUSSION: Section 69.105 of the Commission's Access Charge Rules states that Carrier Common Line charges shall not be assessed upon ICs to the extent that they resell MTS, WATS, or the MTS/WATS-type services of other common carriers. 47 C.F.R. § 69.105. The tariff apparently attempts to accomplish this by exempting pure MTS/WATS and MTS-type resellers from carrier common line charges, *see supra* discussion of § 3.3(A), and by referencing a complex allocation formula set forth in Section 3.7(D) for resellers of WATS who also use Switched Access service "in association with" the resold WATS. *See infra* discussion of § 3.7(D). No provision deals directly with resold MTS or MTS-type services, when those services are resold in combination with Switched Access Service. Because we are not aware of any resale activity involving MTS, we will not require that an allocation system be devised at this time. Should the need for specific formulas develop, however, we expect that telcos will devise a practicable formula and would revise their tariffs accordingly. Finally, in order to avoid potential confusion, the last sentence of Section 3.3 should be revised to indicate

that Carrier Common Line Access charges are *calculated* in accordance with the regulations as set forth in Section 3.7(D).

SUBJECT: Carrier Common Line Service — Obligation of the IC to report intrastate, WATS resale and exchange usage data.

ECA TARIFF REFERENCE: Section 3.4 (C), (D), (F), (G); *see also* § 6.7.3.

OTHER TARIFF REFERENCES: Section 3.4 cross-referenced by all access tariffs; provisions identical to Section 6.7.3 found in essentially all access tariffs.

TARIFF LANGUAGE:

These provisions require ICs to report the number of access minutes used in providing intrastate service, the number of lines with greater than 2500 minutes of WATS usage resold "in association with" switched access service, and the number of access minutes used in providing "service which is defined by the appropriate Regulatory Commission to be an exchange service." Where an IC reports these types of use, the Telco will apply credits according to various cross-referenced regulations found in other sections of the tariff. Section 3.4(C) provides that, unless this data is supplied by the IC, all Switched Access Service provided under the tariff ordered by the IC will be subject to Carrier Common Line Access Charges.

ISSUES: Commenters contend that the reporting requirements contained in this section are unreasonably intrusive. (LC, MCI) In addition, the application of carrier common line charges to ICs failing to supply data may be in violation of the access charge rules.

DISCUSSION: The reporting requirements imposed by these provisions are intended to allow the telco to assess charges on ICs in circumstances where the telco cannot readily determine the nature of particular calls or particular lines used by the IC, and therefore, cannot determine the correct charges to be applied.

We have already discussed issues raised with respect to intrastate jurisdictional reports in our discussion of Section 2.3.14, *supra*. Our disposition of those issues will therefore apply to Section 3.4(D). The same problems appear to occur with respect to reporting requirements for IC intraexchange usage. Accordingly, our disposition of Section 2.3.14 will apply to Section 3.4(G) as well.

With respect to WATS usage data, however, it appears that a more limited form of reporting requirement should be imposed on ICs who obtain access under flat, rather than usage based access charges. Here, the telco would merely need to obtain the number of WATS minutes used, in order to determine the number of lines in a multiline hunt group to be accorded local business line rate treatment. *See infra* discussion of § 3.7(D). In cases where the telco provides billing and collection services for the provider of WATS, it would appear that this information would be available to the telco internally, and no reports from the IC would be necessary. With respect to other circumstances, however, the tariff may only provide that the IC is to supply documentation of WATS usage. No "records, workpapers or backup documentation" would be necessary.

SUBJECT: Carrier Common Line Service — Authorization of the telco or carrier common line billing entity to inspect and audit IC records.

ECA TARIFF REFERENCE: Section 3.4(H)

OTHER TARIFF REFERENCES: Provision cross-referenced by all access tariffs

TARIFF LANGUAGE:

"(H) When the IC notifies the billing entity that Switched Access Service is to be used as set forth in (D), (F) and (G) preceding and 6.7.3 following, the notification automatically authorizes the billing entity the right [sic] to audit the IC terminal locations to verify the use of facilities as the IC has reported in (D), (F) or (G) preceding or 6.7.3 following and all of the records, workpapers and backup documentation for each report as set forth in (D), (F) or (G) preceding or 6.7.3 following and contact and review the records of other entities involved to verify the data the IC reports is accurate. All of the records, workpapers and backup documentation for each report furnished to the billing entity as set forth in (D), (F) or (G) preceding or 6.7.3 following shall be available for one year from the date of the report and shall be made available during normal business hours at an IC location in the involved LATA upon reasonable request by the billing entity in order to permit a review by the billing entity auditor or outside auditor under contract to the billing entity. If the records, workpapers and backup documentation are not provided or are insufficient or not in accordance with the provision of this paragraph and (D), (F) and (G) preceding and 6.7.3 following, the adjustments as set forth in 3.7(D), 3.7(E) and 3.7(F) following shall not apply until the deficiencies are corrected and new reports as set forth in (D), (F) and (G) preceding and 6.7.3 following are delivered to the billing entity."

ISSUES: MCI contends that the authority granted under this section is unnecessarily broad and vague, and that the telco or billing entity has too much discretion in determining when reports are sufficient.

DISCUSSION: The auditing and inspection rights set forth in this provision are apparently intended to allow the telco or its agent to verify intrastate, intraexchange and combined access usage WATS data reported by the IC. *See Supra* discussion of § 3.4(C), (D), (F), (G). We agree that the authority purportedly granted by this provision is unnecessarily broad, and could lead to substantial abuse by the telco or the carrier common line billing entity. In particular, there appears to be no justification whatsoever for any grant of authority to audit or inspect IC premises. Moreover, the specification that reports, workpapers and backup documentation be kept available at IC business locations for production upon request is clearly unreasonable.

In addition, the authority to contact third parties under this provision must be greatly curtailed. So far as we can determine, such authority would only be necessary where a dispute arises as to the actual number of minutes of WATS resold in combined access arrangements provided under Section 6.7.3. Here, the only verification authority needed by the telco or its agent would be to contact the provider of WATS for certification that the amount of WATS usage in a given month is as reported by the IC. Therefore, this provision should be revised to state that the telco or the carrier common line billing agent may request a certified copy of the IC's WATS usage billing from either the IC or the provider of the WATS service. The provision should state that requests for these bills will relate back no more than 12 months prior to the current billing period. No other third party contacts are to be authorized by the tariff.

SUBJECT: Payment arrangements for Carrier Common Line Charges

ECA TARIFF REFERENCE: Section 3.5

OTHER TARIFF REFERENCES: Provision cross-referenced by all access tariffs

TARIFF LANGUAGE:

This provision sets forth various payment terms and arrangements for Carrier Common Line Charges.

ISSUES: MCI suggests that the payment arrangements contained in this section are vague and ambiguous.

DISCUSSION: Except for the fact that Carrier Common Line Charges are to be collected by the ECA, the payment arrangements set forth in Section 3.5 are identical to those set forth in Section 2.4.1. Accordingly, our disposition of the issues raised in connection with Section 2.4.1 shall apply to Section 3.5 in the same manner.

SUBJECT: Recourse adjustments for coin station shortages

ECA TARIFF REFERENCE: Section 3.6(D), (E)

OTHER TARIFF REFERENCES: Provision cross-referenced by all access tariffs

TARIFF LANGUAGE:

"(D) For each coin record day, the Telephone Company will subtract from the Total IC Coin Revenue an amount for coin station shortages. Coin station shortages are amounts resulting from unauthorized calling at coin pay telephone stations, use of unauthorized coins (i.e., foreign coins, slugs and improper use of U.S. pennies), unauthorized removal of coin from coins pay telephone stations and coin refunds beyond the Telephone Company's control. Such amount for coin station shortages will be developed by the Telephone Company by multiplying the Total IC Coin Revenue for each coin record day by a shortage factor. Such amount will be determined by the Telephone Company through an annual special study."

ISSUES: As filed, this provision is vague and gives no standards for the amount of coin station shortages to be assigned to ICs. (AT&T, MCI) The BOCs/CSO have proposed, however, to modify the last sentence of this provision to specify that the "shortage factor" will be determined by dividing the yearly total coin shortage amount by the yearly total coin revenue amount (i.e., total coin revenue equals the coin revenue due under exchange tariffs, state toll tariffs, and interstate toll tariffs).

The BOCs/CSO have further proposed to modify the section by the addition of new Section 3.6(E):

"(E) *Audit Provisions*

Upon reasonable written notice by the IC to the Telephone Company, the IC shall have the right through its authorized representative to examine and audit, during normal business hours and at reasonable intervals as determined by the Telephone Company, all such records and accounts as may under recognized accounting practices contain information bearing upon the determination of coin revenues for which amounts may be payable to the IC. Adjustment shall be made by the proper party to compensate for any errors or omissions disclosed by such examination or audit. Neither such right to examine and audit nor the right to receive such adjustment shall be affected by any statement to the contrary, appearing on checks or otherwise, unless such statement expressly waiving such right appears in a letter signed by the authorized representative of the party having such right and delivered to the other party.

All information received or reviewed by the IC or its authorized representative is to be considered confidential and is not to be distributed, provided or disclosed in any form to anyone not involved in the audit, nor is such information to be used for any other purpose."

DISCUSSION: The principal concern with the original wording of this provision was that the telco appeared to be left with unfettered discretion in determining the amount of the shortage factor used in deducting losses from IC coin revenue. To some extent, the proposed revisions

restrict this discretion by setting the shortage factor for IC deduction on a proportional basis to that of other services. The underlying figures for this factor, however, remain to be determined by an unspecified "special study."

In general, tariff charges that depend on extraneous materials are not acceptable under the Commission's rules. *See* 47 C.F.R. § 61.74. On the other hand, the special study used under revised Section 3.6 to determine total coin shortages and coin revenue amounts appears to be substantially similar to other studies commonly conducted by telephone companies (*e.g.* separations study). In addition, the auditing powers that the BOCs/CSO have offered to ICs under new Section 3.6(E) appear to be substantial enough to insure that the data used in special studies to determine shortage factors will be accurate. If modified as proposed, this provision appears not unreasonable and will be allowed to take effect.

SUBJECT: Carrier Common Line Service — Assumed average access minutes

ECA TARIFF REFERENCE: Section 3.7(C)

OTHER TARIFF REFERENCES: Provision cross-referenced by all access tariffs

TARIFF LANGUAGE:

This provision sets forth assumed averaged access minutes that apply when Carrier Common Line Access is provided in association with Feature Groups A, B and E end office switching in exchange carrier end offices that are not equipped for measurement of actual access minutes. When neither originating nor terminating minutes can be measured, the assumed averaged access minutes are set at 4076 originating and terminating minutes of use. In cases where either originating or terminating minutes can be measured, but not both, a smaller number of access minutes is assumed. These assumed average access minutes are to apply except in cases where a different amount of assumed average access minutes is specified under Section 6.7.8.

ISSUES: Commenters contend that the use of assumed average access minutes unfairly gives the telco the power to set minimum orders (USTEL); and that the ECA should justify the choice of 4076 originating and terminating minutes as an assumed figure, since the ENFIA average use estimate was considerably higher (AT&T). In addition, the use of assumed average access minutes to calculate Carrier Common Line charges places the burden of measurement on ICs, and may represent a hardship if improperly applied to end users of FX services.

DISCUSSION: In light of the Commission's decision on *Second Reconsideration* to apply a flat per-line exchange access charge to OCCs, it would appear that questions associated with application of assumed access minutes to ICs using Feature Group A and B Switched Access Services need not be addressed at this time. The prospective application of carrier common line charges to FX customers based on 4076 assumed minutes, however, would appear to represent a substantial hardship to some FX users. We believe that a more reasonable approach in these circumstances would be to use a fully justified assumed figure that more accurately approximates FX usage. Alternatively, an interstate rate equivalent to the generally applicable local business exchange rate may be used.

SUBJECT: Carrier Common Line Service — Limitation of Access Minute Credit for resold WATS services

ECA TARIFF REFERENCE: Section 3.7(D); *see also* §§ 3.2(E), 6.7.3

OTHER TARIFF REFERENCES: Provision cross-referenced by all access tariffs

TARIFF LANGUAGE:

"(D) When the IC orders Switched Service Access (line side and/or trunk side) as set forth in 6.7.3 following and reports the data as set forth 3.4(F) preceding and in 6.7.3 following, the IC monthly Transitional Charge access minutes will be adjusted as follows:

(1) For the first month both the Switched Access Service and the resold Dedicated Access Line Service provided under this tariff are in service in the same state in the same LATA and provided by the same Telephone Company, the Carrier Common Line Access originating access minutes for the IC LATA account or End Office account involved, whichever type of account is used by the billing entity, will be adjusted as follows. After the billing entity verifies that the number of Dedicated Access Line Services in service as reported by the IC is accurate, the Carrier Common Line Access originating access minutes developed for the IC account involved will be reduced by an amount of minutes equal to the number of resold Dedicated Access Line Services reported as set forth in 3.4(F) preceding for trunk side Switched Access Service and 6.7.3 following for line side Switched Access Service times 2500. The adjustment will be made to the involved IC account no later than either the next bill date, or the one subsequent to that, depending on when the report is received."

ISSUES: The provision limits the maximum credit for resold WATS service to 2500 minutes per line, and by requiring a minimum of 2500 minutes usage per line, also limits the number of lines reported for credit. Commenters contend that there is no reason to so limit the maximum or minimum credit for resold WATS. (ICA, MCI, SBS, USTEL)

DISCUSSION: Section 69.5 of the Access Charge Rules states that most carrier's carrier charges (including Carrier Common Line charges) shall not be payable by an IC "to the extent that it resells service for which the charges have already been assessed (e.g. MTS, WATS, and the MTS/WATS type service of other common carriers)." 47 C.F.R. § 69.5. Inasmuch as Section 3.7(D) of the ECA tariff requires WATS resellers to use at least 2500 minutes of WATS service before reporting for credit, and moreover, limits the maximum amount of that credit to 2500 minutes per line, the provision is contrary to our Rules and must be revised. In cases where carrier common line charges are assessed on a usage basis, there appears to be no reason for limiting the minimum or maximum number of access minute credits available for WATS resale.

Under the Commission's *Second Reconsideration* decision, charges for OCC access under Feature Groups A and B will be assessed on a flat, per line basis. In these cases, where an IC obtains Switched Access Service on a flat rate basis and commingles that access with WATS access in a multiline hunt group arrangement,* it would appear that some allocation formula would be necessary to determine what rates apply to the lines within the hunt group. The tariff must make clear, however, that this billing arrangement applies only in determining the proper allocation of per line charges with respect to commingled combined access arrangements. *See infra* discussion of § 6.7.3.

The system developed in the ECA tariff allocates line charges according to the number of WATS lines with at least 2500 minutes of WATS usage. That is, for each "qualifying" WATS line (i.e. a WATS access line with at least 2500 minutes of use), one line in the multiline hunt group will receive local business rate treatment. To this extent, the ECA plan would incorporate arrangements developed in BSOC Tariff F.C.C. No. 11. Because BSOC 11 has proven to be a workable billing arrangement under prior tariff environments, the allocation system used there may be duplicated here. It must be quite clear, however, that this is merely

* A multiline hunt group is a grouping of lines that can be sequentially accessed in the incoming direction when the assigned telephone number of the hunt group is dialed. *See* AT&T Co., Mimeo No. 613, released May 4, 1982.

a billing arrangement used in determining the proper line charge to be applied to combined access arrangements provided as set forth in Section 6.7.3. It is not an independent statement of rates. Moreover, where local exchange service is measured, these provisions should state that the average usage per local exchange line will be used for billing purposes.

SUBJECT: Adjustments to Carrier Common Line Usage for Non Premium Access

ECA TARIFF REFERENCE: § 3.7(G)(2)

OTHER TARIFF REFERENCES: Provision cross-referenced by all access tariffs

TARIFF LANGUAGE:

"(2) The access minutes for a Non Premium Access Carrier will be multiplied by the Transitional Charge as set forth in 3.8 following and

0.65 for access minutes in 1984,
0.77 for access minutes in 1985,
0.88 for access minutes from January 1, 1986 thru August 31, 1986

to determine the charges."

ISSUES: The discount for non-premium access in this provision applies only to non-premium access *carriers*. AT&T, the only carrier receiving premium access at this time, suggests that it should receive an access minute discount for line-side terminations (e.g. FX access) which it claims are identical with access provided to non-premium access carriers. MCI claims that the discount amounts are insufficient to reflect the relative values of premium/non premium access.

DISCUSSION: Issues relating to the amount of the non-premium discount and non-premium access received by AT&T have been addressed in the *Second Reconsideration*. This section should be adjusted accordingly.

In order to avoid potential confusion, discount percentages for the years 1985 and 1986 should not be included in the current tariff.

Section 4. End User Access Service

End User Access Service is closely related to Carrier Common Line Access Service, which is provided under Section 3 of the ECA tariff. As discussed above in connection with that section, the *Access Charge Order* contemplated that interstate costs associated with non-traffic sensitive exchange plant jurisdiction would be recovered by a combination of carrier's carrier charges and end user charges. At present, almost all of these costs are assigned to ICs. As a result, end users pay about 15 cents per minute, as part of long distance rates, to defray these costs. Under the access charge plan, however, these costs are to be gradually assigned directly to end users, who will pay an end user charge under Section 4 of the exchange carrier's access service tariffs. Eventually, we expect that more of the NTS costs allocated to the interstate jurisdiction (with the exception of the pay telephone element and costs associated with the Universal Service Fund) will be recovered from end users directly through the End User Common Line element, although we intend to monitor the

effects of these charges and, if necessary to maintaining a proper balance of our policy goals, amend this approach.

Unlike the carrier common line charge, end user charges are to be assessed upon a flat rate (i.e. non-usage sensitive) basis. This approach more accurately reflects the non-usage sensitive character of these costs. Under the *Access Charge Order* and *First Reconsideration Order*, end user charges in 1984 would have applied to all residential and business lines, in amounts ranging from $2.00 for residential users to $6.00 for business users per month. Under the *Second Reconsideration Order*, however, imposition of end user access charges on residential and single line business subscribers will be delayed pending further study. Multiline business subscribers will still be subject to the charge. We are requiring the ECA and Telcos filing access tariffs to implement this decision as indicated below.

In addition to the changes made necessary by the *Second Reconsideration*, there appear to be several additional problems within Section 4 of the ECA Tariff. In these cases, we have suggested alternative tariff language to avoid problems of vagueness and incorrect applications of End User Common Line charges.

SUBJECT: End User Access Service — General Description

ECA TARIFF REFERENCE: Section 4.1

OTHER TARIFF REFERENCES: Essentially identical provisions in all access tariffs

TARIFF LANGUAGE:

"End User Access provides for the use of an End User Common Line (EUCL) by an End User to make and receive interstate calls."

DISCUSSION: The definition set forth in Section 4.1 is at variance with the Commission's rules. Section 69.104(a) of the Commission's Rules and Regulations states that End User Common Line Charges are to be assessed upon end users that subscribe to local exchange telephone service. 47 C.F.R. § 69.104(a). The end user's use of the common line to make and receive interstate calls is irrelevant. Accordingly, the phrase "to make and receive interstate calls" should be deleted from this Section of the tariff.

SUBJECT: End User Access Service — Undertaking of the Telephone Company

ECA TARIFF REFERENCE: Section 4.3(B)

OTHER TARIFF REFERENCE: Essentially identical provisions in all access tariffs.

TARIFF LANGUAGE:

"(B) The Telephone Company will be responsible for contacts and arrangements with end users for EUCL charges".

DISCUSSION: This provision appears to be redundant with Section 4.6(A), which provides for the billing of end users by the telco. Thus, this provision implies that some contacts and arrangements other than billing of end users will be within the responsibility of the telco.

These additional responsibilities, if they exist, are not explained in the tariff. Because there is substantial doubt as to the meaning and applicability of this provision, it should be explained or deleted.

SUBJECT: End User Access Service — Obligations of the End User and the IC

ECA TARIFF REFERENCE: Section 4.4(A)

OTHER TARIFF REFERENCES: Essentially identical provisions in all access tariffs

TARIFF LANGUAGE:

"(A) The End User, when it orders local telephone exchange service, authorizes the Telephone Company to provide End User Access except for local telephone exchange service where a waiver of the End User Access charge has been granted by the F.C.C."

DISCUSSION: Section 61.55(f) of the Commission's Rules and Regulations requires tariffs filed with this Commission to contain "such explanatory statements in clear and explicit terms regarding the rates and regulations contained in the tariff as may be necessary to remove all doubt as to their proper application." 47 C.F.R. § 61.55(f). This tariff provision, as currently worded, appears confusing and does not meet the standard of clarity imposed by Section 61.55(f). Moreover, in light of the Commission's *Second Reconsideration* decision to delay imposition of residential and single line business end user charges, the reference to waivers of End User Access Charges should be deleted. Accordingly, Section 4.4(A) should be revised to read as follows:

"Each End User of Local Exchange Service will be charged an End User Access Charge."

SUBJECT: End User Access Service — Obligations of the End User and IC

ECA TARIFF REFERENCE: Section 4.4(B)

OTHER TARIFF REFERENCES: Essentially identical provisions in all access tariffs. *But see* The Pacific Tel. & Tel. Co. Tariff F.C.C. No. 128

TARIFF LANGUAGE:

"(B) The End User shall be responsible for all contacts, arrangements and charges with the IC or other entity concerning the service or arrangements accessed or terminated by the [End User Common Line]"

DISCUSSION: There appears to be no reason for this provision to appear in this tariff. Certainly, the telco would not be responsible for arrangements between ICs and end users under normal circumstances. Moreover, this provisions appears to contradict other provisions of some access tariffs. For example, where the telco offers billing and collection services on behalf of ICs, this service would appear to involve contacts between the telco and end users on behalf of ICs. Because this provision is unnecessary and misleading it should be deleted from the tariff.

The access service tariff of at least one telco (Pacific Tel. & Tel.) adds to this provision an exemption for public or semi-public telephone users, but not semi-public telephone subscribers. This exception is no less ambiguous than the main text of the provision, and should be deleted as well.

SUBJECT: End User Common Line Charges—Rate Regulations for Centrex-CO

ECA TARIFF REFERENCE: Section 4.6(C)

OTHER TARIFF REFERENCE: Essentially identical provisions in all access tariffs.

TARIFF LANGUAGE:

"(C) For business Centrex and Centrex-like service lines or trunks installed or on order prior to July 28, 1983 and Centrex Dormitory (Residence) Service, the EUCL Residential-Individual Line or trunk rate as set forth in 4.7 following applies."

DISCUSSION: In the *First Reconsideration*, we concluded that "embedded" Centrex-CO service lines should pay monthly per line end user charges equal to charges assessed residential end users. *First Reconsideration* at para. 48. The *Second Reconsideration* maintained the lower charge for embedded Centrex-CO lines, but set a schedule for phasing-up the charge independent of whatever action is taken with respect to residential and single line business end user charges. Accordingly, this provision should be revised to account for those changes in Centrex-CO charges.

In addition, Section 4.6(C) presents problems of ambiguity in that it refers to "business Centrex" and "Centrex-like service lines or trunks" without providing definitions for those terms. This may cause uncertainties as to the application of Centrex charges. For example, under the present wording, Centrex charges may be improperly applied to Centrex-CO, which does not make the same use of local lines.

As we understand the problem, there are several state-tariffed Centrex systems that have been marketed under such names as ESSX, Centron and Centraflex as well as Centrex-CO. Apparently, the reference to "Centrex-like services" in the ECA tariff is intended to accommodate these various local service offerings. Nevertheless, the ECA tariff should make clear what systems are to be accorded Centrex rate. Also, the provision should be clarified with respect to Centrex Dormitory (Residence) Service. Because this term is undefined in the tariff, it is impossible to determine whether this service would be limited to residential services within the meaning of the Commission's access charge rules. *See* 47 C.F.R. § 69.203(d).

SUBJECT: End User Common Line Charges

ECA TARIFF REFERENCE: Section 4.7

OTHER TARIFF REFERENCES: Essentially identical provisions in all access tariffs.

TARIFF LANGUAGE:

(A) End User Common Line (EUCL) - Residence

	USOC	*Rates Per Month 1-1-84 Thru 12-31-84*
- Individual line or trunk, each	9ZR	$2.00
- Two-party, each party	9ZR	1.21
- Four-party, each party	9ZR	0.61

(A) End User Common Line (EUCL) - Residence

	USOC	Rates Per Month 1-1-84 Thru 12-31-84
- Eight-party, each party	9ZR	0.53
- Ten-party, each party	9ZR	0.51
- Semi-public line, each	9ZR	2.00

(B) End User Common Line (EUCL) - Business

	USOC	Rates Per Month 1-1-84 Thru 12-31-84
- Individual line or trunk, each	9ZR	$6.00
- Two-party, each party	9ZR	3.64
- Four-party, each party	9ZR	1.83
- Eight-party, each party	9ZR	1.59
- Ten-party, each party	9ZR	1.54
- Semi-public line, each	9ZR	6.00

DISCUSSION: In view of the Commission's decision on *Second Reconsideration*, charges for residence End User Common Lines should be deleted. In addition, the tariff should specify that the Business EUCL charges apply on a per-line basis only to multi-line business subscribers.

Section 5. Ordering Options for Switched and Special Access Service

Section 5 of the ECA access tariff contains the regulations and nonrecurring charges related to ordering either Switched or Special Access Service. The *Access Charge Orders* gave only general guidance on these provisions. In the *First Reconsideration Order* we stated that we would scrutinize closely nonrecurring charges for planning, developing and installing facilities used by ICs. We have done just that in reviewing this section to assure that its provisions are just and reasonable, not unreasonably discriminatory in favor of existing ICs and in compliance with Parts 61 and 69 of the Commission's Rules. Of particular concern to us was whether the individual proposed charges were adequately supported by the cost data filed under Section 61.38 of the Rules.

This section proposes two ordering mechanisms: an Access Order and a Planned Facilities Order (PFO). The Access Order may be used by the customer to order Switched or Special Access facilities from available inventory, or to make changes to existing services. The customer uses a PFO, on the other hand, to order facilities that are not in inventory. This means that the facilities are constructed to order for the customer and made available at a future date. Once an Access Order or PFO is accepted by the telco, it can be modified or cancelled before the facility is placed in service, subject to certain restrictions and charges. The charges and regulations contained in Section 5 apply to such modifications and cancellations. For example, a "Service Date Change Charge" applies when the customer desires to change the service date which was specified in the

Access Order, while an "Expedited Order Charge" is imposed when the changed date is prior to the original service date. A "Design Change Charge" applies to any modification of the Access Order that requires engineering review. In addition to modifying an Access Order, a customer may partially or entirely cancel an order at any time prior to the date service is provided, but cancellation charges are imposed. Finally, Section 5 establishes minimum periods for which Switched and Special Access Service facilities are provided.

We received numerous comments about the proposed Section 5 provisions. The commenters complained generally that the ordering provisions were excessively restrictive and burdensome, especially when applied to new carriers trying to enter the interexchange market. For example, the proposed six month minimum service period for ordering Access Service was said to unduly restrict a carrier's ability to respond to changes in the interexchange market. The commenters further complained that the proposed charges related to modifying or cancelling an Access Order were excessive and not cost-justified. Many of the criticisms expressed by the commenters related to the PFO process. They criticized the ECA proposal that Planned Facilities be ordered from 24 to 36 months in advance, and that minimum monthly service charges be applied to such facilities for 24 months after they became available. The commenters further complained about the ECA proposal to require 12 months of service charges as an advance payment for ordered Planned Facilities.

In addition to the problems raised by the commenters, we have our own concerns about the PFO process. As noted above, this process is used by a telco customer to order facilities that are not in inventory. The services and facilities ordered through this process, however, are no different from those provided through the regular ordering process. This conclusion is supported by several references in the ECA tariff to the conversion of Planned Facilities to regular facilities provided pursuant to an Access Order, and vice versa (See, *e.g.* §§ 5.4.11 and 5.5.7). Thus, the only distinction between Planned Facilities and regular facilities is that in some instances the telco may have the requested facilities in inventory, while in others it may not.

No explanation is given in the ECA tariff or support materials of how the telco will decide what facilities are provided from inventory and what facilities must be planned and constructed. For example, while facilities used to provide local exchange service could be used to provide Access Service, the tariff does not indicate when facilities might be moved from another service classification to the Access Service classification to fill an Access Order. Thus, the telco would be in a position to require any of its customers to obtain Access Service under the PFO process, which is similar to special construction, even if the facilities were already planned

or available in inventory but designated for another service classification. This could result in different customers paying different charges for the same service. It also vests broad discretion in the telco to decide which rates it will charge by how it plans its inventory. For example, for non-inventory PFOs it would receive substantial advance payments not charged for inventory Access Orders.

The PFO process also gives the telco an opportunity to shift to its customers virtually all the burden of planning and investing in facilities, which is a basic common carrier responsibility. While the telco is not expected to accommodate "extraordinary" requests for facilities, it is expected to meet demands that are "reasonable." This expectation, in fact, is embodied in the requirement of Section 201(a) of the Communications Act that a carrier furnish service upon reasonable request. In the normal course, a telco has an inventory of facilities, as well as facilities held for future use and facilities under construction. Moreover, as noted above, facilities in inventory which are generally fungible can be transferred from one service to another. When inventories appear low in relation to demand forecasts made by the telco, the company will plan additional facilities to meet future demand. The PFO process, however, would enable the telco to alter this course and charge its customers for generally available common carrier service as though the customer ordered facilities requiring special construction.[1] It would be essentially the telco's choice as to which customers pay charges associated with inventory Access Orders and which pay special construction charges associated with non-inventory PFOs. Potentially, a small IC, for example, needing only a few circuits could be required to order under the PFO procedures, while a large carrier or non-carrier ordering hundreds of circuits could obtain its facilities from inventory. It cannot be said, therefore, that the Planned Facilities rates and regulations would in any way be related to the actual costs or additional business risks incurred by the telco. They would simply enable it to establish substantial and perhaps insurmountable barriers to entry into the interexchange market and to engage in unjust discrimination.

In sum, then, the PFO process could allow a telco to avoid its responsibilities as a common carrier and to engage in unreasonable discrimination among customers. Cooperation between telcos and ICs in facilities planning will be necessary. Telcos may reasonably require non-discriminatory ordering charges and, when needed to protect themselves against the exceptional financial risks of large or unique service requests, advance payments and termination charges. However, the PFO provisions

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[1] Under the PFO provisions, the customer has the same obligations that it has when ordering special construction – the customer has to pay any unrecovered costs if the telephone company is unable to reuse the Planned Facilities.

proposed in this tariff are one-sided, arbitrary and over-broad in their application. Therefore, we are rejecting all proposed tariff provisions which relate to the PFO process as unreasonable and potentially discriminatory.

In the *Second Reconsideration Order*, we decided to prescribe a transitional flat per line charge for ICs other than AT&T for access to a telco switch, in lieu of the usage based charges prescribed previously. Because of this change, these ICs will order lines rather than circuit capacity. Thus, certain of the ordering procedures for Switched and Special Access Service must be made consistent with this decision. For example, the proposed tariff provides that access facilities be ordered on the basis of busy hour minutes of capacity (BHMC) to particular end offices. (See § 5.2.) We are requiring the telcos to provide Feature Group A (FGA) and B lines to ICs other than AT&T on the basis of circuit quantities. In the *Second Reconsideration Order*, we also allowed AT&T to obtain FGA for the provision of FX service at the same per line charges as other ICs. Accordingly, references to BHMC in these and any other Section 5 provisions should be modified. (See discussion of nonrecurring charges in Order, *supra*.)

SUBJECT: Ordering Conditions

ECA TARIFF REFERENCE: Section 5.1.1

TARIFF LANGUAGE !fo(in part):

"The IC shall supply all the necessary information to provide service, e.g., IC name and terminal location, end user name and location, facility interface, etc."

ISSUES: MCI requests that Section 5.1.1 be modified to make clear that only Special Access customers' names will be supplied by the IC.

DISCUSSION: The wording of the above provision gives the telco discretion to require that an IC provide information about its customers that is not necessary to place access facilities in service. This is the only reason why the telco should need information about an IC's customers. Requiring information which is not needed for planning and implementing facilities is unreasonable and could intrude on the privacy of those customers. This entire provision should either be reworded to make clear that the IC is only required to provide information necessary to get access facilities in place (*e.g.*, circuit and location information) or be deleted.

SUBJECT: Special Construction

ECA TARIFF REFERENCE: Section 5.1.3

TARIFF LANGUAGE:

Special Construction is not an ordering option, but may be applied to either an Access Order or a Planned Facilities Order to accommodate an IC request. When special construction is required, the IC will be so notified. If the IC agrees to the special construction, a firm order

will be established. If the IC does not want the service or facilities after being notified that special construction is required, the order will be withdrawn and no charges will apply.

The regulations, rates and charges for special construction are set forth in EXCHANGE CARRIER ASSOCIATION TARIFF F.C.C. NO. 3 and are in addition to the regulations, rates and charges specified in this section."

DISCUSSION: Under this provision, the customer is only notified that special construction is required. It is not given an estimate of the special construction charges or informed as to why special construction is required. Such an estimate of the charges is necessary before the customer can make an informed decision on whether or not to order facilities requiring special construction. Further, the tariff statement that special construction "may be applied" gives the telco too much discretion. The language of this provision should therefore be rewritten to: (1) remove this discretion; and (2) provide that the telco will give the customer an estimate of special construction charges and justification for why special construction is needed.

SUBJECT: Access Order

ECA TARIFF REFERENCE: Section 5.2 (Issue A)

TARIFF LANGUAGE (in part):

"The Telephone Company shall determine whether special construction charges apply and will so notify the IC prior to establishing a firm order."

DISCUSSION: This provision repeats information contained in Section 5.1.3, discussed ***supra*** at page 5-5. It should therefore be eliminated as duplicative of another tariff provision.

SUBJECT: Access Orders

ECA TARIFF REFERENCE: Section 5.2 (Issue B)

TARIFF LANGUAGE (paraphrased):

Section 5.2 provides, in part, that when placing an order for Access Service, the IC must specify the number of busy hour minutes of capacity (BHMC) from the IC terminal location to each end office by Feature Group and by type of BHMC.

ISSUES: The commenters complain that the BHMC ordering requirement deviates from the current ENFIA ordering procedure whereby ICs order circuit quantities which are capable of carrying different amounts of traffic, rather than circuit capacity. (LC, USTEL, EMX, ASC, ICA, TSC/SI, SBS, ISACOMM, MCI, WU, RCA and Allnet.) The proposed requirement is said to favor AT&T, which can easily and accurately predict its BHMC to particular end offices.

The BOCs/CSO state in their reply that the commenters' objections are based on a misinterpretation of the tariff. They claim that for FGA line-side connections, the IC is only required to order to one end office in the LATA to obtain access to the entire LATA.

DISCUSSION: While we have concerns about the competitive implications of the BHMC forecasting requirement, we need not address those concerns at this time. In view of the Commission's decision on reconsideration to prescribe for ICs other than AT&T a flat per line charge for access, rather than a usage based charge, the proposed BHMC ordering requirement is no longer practical. If these ICs are charged for access on a per line basis, ordering of access facilities should be on a per line basis as well. Therefore, this tariff should be amended to allow ICs other than AT&T to order FGA and FGB Switched Access Service in circuit quantities, as they presently order ENFIA. Since AT&T now orders local access facilities by specifying circuit capacity, rather than circuit quantity, the ECA may retain the BHMC ordering requirement for AT&T in ordering FGC connections. We will hold in

abeyance the BHMC ordering requirement issue as it relates to ICs other than AT&T pending equal access being made available. We note in this regard that, as discussed in Section 2, *supra*, the methodology used to determine BHMC must be clearly expressed.

SUBJECT: Access Order

ECA TARIFF REFERENCE: Section 5.2 (Issue C)

TARIFF LANGUAGE (in part):

"For all Special Access Services, except Dedicated Access Line Service, the IC must specify the IC terminal location and end user premises or Hub, the type of service (e.g. Narrowband 1, Voice Grade 3, High Capacity 1, etc.) and the facility interface combination."

DISCUSSION: The wording of this provision, like the wording of Section 5.1.1, discussed *supra* at page 5-4, gives the telco discretion to require that an IC provide information about its customers that is not necessary to place access facilities in service. Information required by the telco should be limited to the minimum information necessary to place access facilities in service. Requiring this broader information is therefore unreasonable. This provision should either be reworded to make clear that an IC is only required to provide information necessary to get access facilities in place, or be deleted. If it is rewritten, the ECA must also clarify that the IC need only specify the type of service being ordered under the tariff, rather than the type of service it is providing to its own customers. The telco would have no need for this latter information. Finally, the reference in this provision and other provisions in this section to Dedicated Access Line Service should be deleted in accordance with the *Second Reconsideration Order*.

SUBJECT: Access Order Service Date Intervals—Standard Interval

ECA TARIFF REFERENCE: Section 5.2.1(A)

TARIFF LANGUAGE (in part):

"The Telephone Company shall publish, and make available to all ICs, a schedule of Standard Intervals applicable for Switched and Special Access Service."

ISSUES: Several commenters complain that the tariff does not include the schedule mentioned above, and that this oversight is critical. (Allnet, EMX, ICA, USTEL and ASC.)

DISCUSSION: Omission of the schedule of standard ordering intervals gives telcos considerable discretion to determine when they will or will not provide service to their customers. Such discretion could be exercised in a manner to: (1) favor established carriers which already have facilities over potential entrants into the interexchange market; or (2) if facilities are scarce, to allocate them unfairly among existing customers. Moreover, omission of this schedule results in the telcos' customers being given inadequate advance notice of the length of time necessary to order particular facilities.

For these reasons, we are requiring that the ECA publish in this tariff a schedule indicating the length of time necessary to order access facilities. All types of access facilities offered under the access tariff should be included in this schedule. In addition, the schedule should include justification for the length of time required to provide all of these facilities. Because of the length of time required to compile such a schedule, the ECA need not include it until the 1985 tariff filing.

SUBJECT: Access Order Service Date Intervals — Negotiated Interval

ECA TARIFF REFERENCE: Section 5.2.1(B)

TARIFF LANGUAGE (in part):

"(B) The Telephone Company will negotiate a service date interval with the IC when:

(1) There is no Standard Interval for the service and the Short Notice Interval is not applicable, or

(2) The IC requests a service date beyond the applicable Standard Interval service date.

The Telephone Company will offer a service date based on the type and quality of services the IC has requested. The Negotiated Interval may not exceed by more than 30 days the Standard Interval service date, or, when there is no Standard Interval, the Telephone Company offered service date.

When the Negotiated Interval is shorter than that which the Telephone Company originally offered, additional charges, including but not limited to special construction charges and charges set forth in 13 following for Additional Engineering and Additional Labor may also apply.

All part-time Television and Program Audio services are provided with a Negotiated Interval. Each service is subject to a *service inquiry*. The service inquiry process determines the feasibility of the desired service date."

ISSUES: Several commenters complain that the 30 day ordering limit is unreasonable and unjustified. (LC, MCI and USTEL.) ENFIA orders are now said to be accepted by the BOCs based on a 24 day standard ordering interval, but additional advance ordering is allowed, which gives the ICs up to a total ordering period of 6 months. MCI, Allnet and USTEL further complain that this provision is vague and ambiguous.

DISCUSSION: In their reply, the BOCs/CSO agreed to modify this proposed provision to allow an IC to place an Access Order six months in advance of service. We will allow this modification to be made. No reasonable basis exists for prohibiting orders for future service that extend more than 30 days from the Standard Interval date. Such orders should in fact simplify both planning and meeting Access Order dates. Telcos may protect themselves against ICs that continually change service dates by imposing a reasonable, nondiscriminatory, cost-based Service Date Change Charge.

Other changes to this provision are necessary. The next-to-last paragraph in this provision relates to situations that are covered by the Expedited Order Charge, discussed *infra* at page 5-17. This language should be moved to Section 5.2.2(D), where this charge is established.

In the last paragraph, we question why part-time Television and Program Audio services are not provided with the Standard Interval. On its face, the different treatment of these services is discriminatory and should either be justified or eliminated. The term "service inquiry" used in this provision should also be defined.

SUBJECT: Access Order Service Date Intervals—Short Notice Interval

ECA TARIFF REFERENCE: Section 5.2.1(C)

TARIFF LANGUAGE:

"(C) *Short Notice Interval*

(1) The following types of Access Service will be available to an IC on a Short Notice Interval:

(a) Access Service required for short term Regional, National and International Special Events, including sports and entertainment, news coverage and conventions, or

(b) Access Service required for the Government for Command and Control Communications and National Security and Emergency Preparedness.

(2) Access Service required for the Government will be provided on the date requested, or as soon thereafter as possible, when the emergency falls into one of the following categories:

(a) State of crisis declared by the National Command (includes commitments made to the "National Plan Authorities for Emergencies and Major Disasters"), or

(b) Efforts to protect endangered U.S. personnel or property both in the U.S. and abroad (includes space vehicle recovery and protection efforts), or

(c) Communications requirements resulting from hostile action or a major disaster or civil disturbance, or

(d) The Director (Cabinet Level) of a Federal Department, Commander of a Unified/Specified Command, or Head of a Military Department has certified that a communications requirement is so critical to the protection of life and property or to the National Defense that it must be processed immediately, or

(e) Political unrest in foreign countries which affects the National Interest, or

(f) Presidential Service.

(3) For Short Notice Interval Access Orders, the nonrecurring charge is two times the appropriate nonrecurring charges for the service provided as set forth in other sections of this tariff."

ISSUES: The commenters say that no explanation is given as to why only certain customers are subject to the Short Notice Interval for ordering access facilities. (HTN, the Networks and FEA.) They also complain that the doubling of nonrecurring charges for facilities ordered under the Short Notice Interval is unjustified and unreasonable because not related to cost-recovery.

DISCUSSION: This provision contains numerous problems. For example, on its face (C)(1)(a) is vague and ambiguous. There is no definition of "short term" as it applies to the types of access uses referenced here (*e.g.*, sports, news, and entertainment events and conventions). Furthermore, requiring that access facilities for these events be ordered under the Short Notice Interval is confusing. While Access Service for such events would only be necessary on a "short term" basis, the need for the service would probably be known far in advance, rather than on "short notice" as the section title implies. In addition to the ambiguity of this provision, there is no justification for requiring that the access uses referenced here be ordered under the Short Notice Interval, rather than under the Standard or Negotiated Intervals. Because the nonrecurring charges for Short Notice Interval Access Orders are greater than those applied to Standard and Negotiated Interval Orders (double the applicable nonrecurring charges for the service), this discriminatory treatment must be justified. Accordingly, this provision should be rewritten so that it clearly indicates the types of Access Service uses to be ordered under the Short Notice Interval, and accompanied by justification for requiring that these uses be subject to short notice ordering. Otherwise, the provision must be deleted.

Subsection (C)(2), in defining the term "emergency," duplicates Section 10.2 of the tariff, which establishes what constitutes a Government emergency. That section should simply be referenced here to define Government emergency. Also, this revised provision, like (C)(1)(a), must be accompanied by justification for requiring that Government emergency uses for Access Service be subject to short notice ordering.

Finally, there is no basis given in the tariff or its support materials for determining the nonrecurring charges for Short Notice Interval Access Orders, or for doubling those charges. This information should be provided before we can determine the reasonableness of these

nonrecurring charges, as well as the reasonableness of doubling those charges for service provided under the Short Notice Interval.

SUBJECT: Access Order Modifications—Service Date Change Charge

ECA TARIFF REFERENCE: Section 5.2.2(A)

TARIFF LANGUAGE (paraphrased):

With the agreement of the telco, Access Order service dates may be changed, but the new service date may not exceed the original service date by more than 30 calendar days. If the requested service date is more than 30 calendar days after the original service date, the order is considered cancelled by the telco and reissued with appropriate cancellation charges applied. A Service Date Change Charge of $26.21 will apply, on a per order, per occurrence basis, for each service date changed.

ISSUES: The commenters argue that this provision is unreasonable and that there is no cost support for the $26.21 charge. (Allnet, SBS, the Networks, EMX, ASC, ICA, GTES, ISACOMM and USTEL.) The BOCs/CSO say in their reply that order modification charges recover costs that occur immediately, rather than over time. They claim that when a service date is changed, the change is made immediately. The Service Date Change Charge is therefore incurred on the date of the customer's request and is never included with the calculations for short notice, expedited orders or total or partial Cancellation Charges.

DISCUSSION: There is no specific information in the tariff or its support materials to explain how this charge was derived. Nor does the BOCs/CSO reply support it or address the commenters' concerns. The basis for the $26.21 charge must be provided so that we may determine the reasonableness of this provision. Otherwise, the Service Date Change Charge must be eliminated. (See discussion of this $26.21 charge in Order, *supra.*) Specifically, since all charges must reflect costs, we need to know what work activity is associated with the Service Date Change Charge and how much it costs the telco to perform that activity. In addition, the wording of this provision gives the telco too much discretion to decide when an Access Order service date may be changed. Therefore, it should be amended to set forth guidelines as to when such permission will or will not be granted.

SUBJECT: Access Order Modifications—Design Change Charge.

ECA TARIFF REFERENCE: Section 5.2.2(C)

TARIFF LANGUAGE (paraphrased):

The customer may request a design change to the access service ordered. A design change is any change to an Access Order which requires "engineering review." The Design Change Charge will apply to all Special Access Service channels or Switched Access Service BHMC. If the change involves the addition or deletion of optional features for which nonrecurring charges are stated, the Design Change Charge is equal to one-half the nonrecurring charge for each feature being added or deleted. When there is no nonrecurring charge associated with the change being made, the Design Change Charge is equal to one-half of the nonrecurring charges for the Access Service ordered. The Design Change Charge is applied on a per order, per occurrence basis.

ISSUES: Several commenters say that this charge lacks cost-justification and is unreasonable. (Allnet, ICA, SBS, ISACOMM and the Networks.) The BOCs/CSO reply that, like the Service Date Change Charge, the Design Change Charge recovers costs that occur immediately, rather than over time. This charge supposedly recovers only "the cost of the redesign and does not include the cost of any subsequent redesign activity." Thus, they say

that Design Change Charges are incurred on the date of the customer's request and are never included with the calculations for short notice, expedited orders or cancellation charges.

DISCUSSION: We have a number of problems with this provision. First, it is unclear how this Design Change Charge, which is supposedly assessed for "engineering review" of a design change, is distinguished from Additional Engineering Charges assessed under Section 13.1 for "engineering or engineering consultation." From the language of the tariff, two separate charges could be applied to the same work activity. The term "engineering review" should therefore be defined in this provision so that it is clearly distinguished from the activities charged for under Section 13.1.

We are also concerned about the Design Change Charge itself. Unlike the Service Date Change Charge, the instant charge is not a flat charge, but rather is based on the nonrecurring charges either associated with the change being made or with the Access Service ordered. As such, it assumes that a correlation exists between the nonrecurring charge for an optional feature or a service and the costs incurred by a design change to that feature or service. However, the nonrecurring charges under the access tariffs appear to be generally intended to recover all or part of the costs associated with the installation and removal of facilities, rather than the costs associated with "engineering review." Therefore, it is unclear why the Design Change Charge is based on these nonrecurring charges. Since all charges must reflect costs, the ECA should explain what work activity is associated with the Design Change Charge and how much it costs a telco to perform that activity. It would appear that certain work activities here would be the same as those associated with service date changes, discussed *supra*, and other services throughout this tariff that involve one-time or nonrecurring charges. To the extent that this is the case, charges should be made consistent with one another. If the ECA cannot supply these explanations, the Design Change Charge should be eliminated.

SUBJECT: Access Order Modifications—Expedited Order Charge

ECA TARIFF REFERENCE: Section 5.2.2(D)

TARIFF LANGUAGE:

"(D) When placing an Access Order, an IC may request a service date that is prior to the standard interval service date. An IC may also request an earlier service date on a pending standard or negotiated interval Access Order. If the Telephone Company agrees to provide service on the requested date, an Expedited Order Charge will apply.

To calculate the Expedited Order Charge, the total of all the nonrecurring charges associated with the order is divided by the number of days in the service date interval. The charge is then applied on a per day (i.e., calendar day) of improvement basis, per order.

When the request for expediting occurs subsequent to the issuance of the Access Order, a Service Date Change Charge as set forth in (A) preceding also applies.

When expediting causes the Telephone Company to incur extraordinary costs that are not recovered by the Expedited Order Charge, the IC will be billed, on an individual case basis, an amount equal to the costs incurred in lieu of an Expedited Order Charge."

ISSUES: Several commenters complain that this charge is not cost-justified and is unreasonable. (Allnet, ICA, SBS and the Networks.) MCI states that the language in the last paragraph of this provision should be modified to require the telco to advise the customer before it incurs extraordinary costs, in order to give the customer an opportunity to decide whether the telco should proceed further. In their reply, the BOCs/CSO state that when a service interval is shortened through an expedited request, service activities necessary to meet the shortened interval normally generate higher costs that should be charged to the

customer causing them. Thus, they claim that the Expedited Order Charge is "appropriate" and applies "in accordance with the costs that are incurred."

DISCUSSION: The Expedited Order Charge, like the Design Change Charge, is based on nonrecurring charges. Notwithstanding the BOCs/CSO explanation of this charge it is unclear how, in cases where a telco agrees to provide service on an earlier date, any additional costs (other than the cost of possibly changing the service date on the Access Order) are incurred. Nor is it clear how these costs are directly related to the number of days the order is to be expedited or to the nonrecurring charges associated with the service ordered. The Expedited Order Charge should therefore be accompanied by sufficient support material for us to determine whether it is cost-justified, or be eliminated. Specifically, the ECA must explain in detail what work activity is associated with expediting an Access Order and what the costs for that activity are. (See discussion of Section 5.2.2(C) at page 5-16, *supra*.) It should also explain how the Expedited Order Charge differs from special construction charges, referenced in Section 5.1.3, or additional labor charges, referenced in Section 13.2, that could be applied in situations where expediting is necessary.

The ECA should also delete the last paragraph of this provision. As we interpret that paragraph, the telco would have discretion to apply different Expedited Order Charges to different customers. We cannot allow such discretionary rate application to occur. Because this provision proposes a uniform, averaged rate for expediting Access Orders, the telcos must apply this averaged rate equally to all customers within this rate classification. They cannot apply one averaged rate to some customers and another rate, derived on an individual case basis, to other customers that cause them to incur "extraordinary costs." (Using this line of reasoning, in fact, the telcos would have to apply a rate lower than the averaged rate to those customers whose requests for expediting caused them to incur lower than average costs.) Although the carrier has the right to recover extraordinary costs (*i.e.*, costs which are not contemplated in the course of providing common carrier service), it cannot do so by charging a rate for a service which differs from the generally applicable rate in the tariff. Clearly, all tariff schedules involve a degree of averaging so that actual costs for individual services rendered will be higher or lower than the average costs used to develop the rate. One mechanism to recover extraordinary costs is through special construction, which is provided for elsewhere in this tariff and in ECA Tariff F.C.C. No. 3. To the extent that the telcos' customers who require expedition of Access Orders are different, they may establish different rate classifications for those customers. However, where a single rate classification is employed, all customers subject to that classification must be treated equally and the tariff rate must be paid by all.

SUBJECT: Access Order Modifications—Other Modification Charge

ECA TARIFF REFERENCE: Section 5.2.2(E)

TARIFF LANGUAGE (paraphrased):

Access Order modifications other than those discussed previously may be requested by the customer. If the modification can be made by the telco, an "Other Modification Charge" of $26.21 will apply on a per order, per occurrence basis. Some of the types of modifications for which this charge will apply are a change of billing address, telephone number, or Hunt Group Arrangement.

DISCUSSION: Like the charges previously discussed, the Other Modification Charge has not been supported by any cost data. (See discussion of the $26.21 charge in Order, *supra*.) Our primary concern, however, is that the activities cited as examples of "other modifications" covered by this charge are typically part of a telco's normal overhead associated with administering a service. We see no reason why the telcos should deviate from this practice in

providing Access Service and establish a separate charge for such administrative activities. Moreover, because the list contained in this provision is merely illustrative the telcos could impose an "Other Modification Charge" on virtually any administrative activity, no matter how minor. Since these activities are not set forth in the tariff, the customer would be unaware of incurring charges for them. For these reasons, we conclude that the "Other Modification Charge" is unreasonable and should be eliminated from this tariff.

SUBJECT: Cancellation of an Access Order

ECA TARIFF REFERENCE: Section 5.2.3(B)

TARIFF LANGUAGE:

"(B) Access Order costs are considered to have started when the Telephone Company incurs any cost in connection therewith or in preparation thereof which would not otherwise have been incurred. These costs include but are not limited to preliminary engineering, orders to suppliers and other similar items of cost. For purposes of determining Cancellation Charges, the costs are considered to have started on the order date (i.e., the day the Telephone Company gives a firm order confirmation to the IC)."

DISCUSSION: This provision establishes dates for when Access Order costs are considered to begin. In light of our discussion of proposed Section 5.2.3(C), *infra* at page 5-21, this provision is unnecessary and should be deleted from the tariff.

SUBJECT: Cancellation of an Access Order; Partial Cancellation Charge

ECA TARIFF REFERENCE: Sections 5.2.3(C) and 5.2.2(B)

TARIFF LANGUAGE:

Section 5.2.3(C): "When an IC cancels an Access Order for the installation of service, a Cancellation Charge will apply on a per order basis. The Cancellation Charge is calculated by multiplying the total of the nonrecurring charges associated with all items on the Access Order by the number of calendar days elapsed since the order date and dividing that figure by the number of days in the service interval (i.e., the number of days between the order date and the service date). The resulting amount is the Cancellation Charge. When determining the charge for a partial cancellation as set forth in 5.2.2(B) preceding, only those nonrecurring charges associated with the portion of the order being cancelled are used in computing the charge."

Section 5.2.2(B): "Any decrease in the number of ordered Special Access Service channels or Switched Access Service busy hour minutes of capacity will be treated as a partial cancellation.

An IC may cancel any number of Special Access Services. For Switched Access Service busy hour minutes of capacity, the amount cancelled cannot cause the order to drop below the minimum requirements as set forth in 5.1.1 preceding and 5.5 following. When the capacity cancelled brings the ordered capacity below these minimum requirements, the entire order will be cancelled.

A Cancellation Charge will apply on a per order, per occurrence basis for the quantity cancelled. The applicable Cancellation Charge is computed as set forth in 5.2.3 following."

ISSUES: A number of commenters challenge the lawfulness of the proposed Cancellation and Partial Cancellation Charges associated with Access Orders. (ICA, SBS, MCI, Allnet, WU, DJ, LC, ISACOMM, EMX, ASC and HTN.) They argue that these charges are substantial and wholly unrelated to the costs incurred by the telco when Access Orders are cancelled. According to the commenters, the costs of processing orders should not increase or decrease

in proportion to the quantity of service ordered by a customer until the service is actually installed. Thus, they question the cost-justification for a Cancellation Charge that is proportional to the installation interval and size of each order when the ordered facilities are provided from inventory. Moreover, say commenters, such charges will severely limit an IC's ability to compete and operate efficiently by responding to changes in technology and in the marketplace.

In their reply, the BOCs/CSO explain that Cancellation Charges are designed to recover costs incurred by the telco prior to the cancellation date. They say that as soon as a customer requests service, the telco begins to incur costs associated with administrative processing or, for Switched Access Services, certain initial or network design activities. Cancellation Charges are said to be "appropriately calculated" from the firm order date and to "reasonably reflect" the costs incurred by the telco.

DISCUSSION: Because of the controversy surrounding these provisions, their apparent lack of cost-justification and the short amount of time available to get this tariff in place, we have determined that the provisions related to cancelling applications for ENFIA (BSOC Tariff F.C.C. No. 8) should apply on an interim basis to cancellation and partial cancellation of Access Orders. In refiling this tariff to be effective on April 3, the ECA should substitute the following language for Section 5.2.3(C):

"(A) Installation of Switched or Special Access Service facilities is considered to have started when the Telephone Company incurs any cost in connection therewith or in preparation thereof which would not otherwise have been incurred.

(B) Where the customer cancels an Access Order prior to the start of installation of access facilities, no charges shall apply.

(C) Where installation of access facilities has been started prior to the cancellation, the charges specified in (1) or (2) following, *whichever is lower*, shall apply.

(1) A charge equal to the costs incurred in such installation, less estimated net salvage. Such charge is determined as detailed in (D) following.

(2) The charge for the minimum period of Switched or Special Access Service ordered by the customer.

(D) Charges applicable as specified in (C)(1) preceding include the nonrecoverable cost of equipment and material ordered, provided or used, plus the nonrecoverable cost of installation and removal including the costs of engineering, labor, supervision, transportation, rights-of-way and other associated costs."

The ECA may amend this provision at a later date and apply different Access Order cancellation charge procedures, so long as those procedures are justified. Moreover, the ECA should provide support for its policy in Section 5.2.2(B) that a decrease in ordered Access Service capacity is treated as a partial cancellation. On its face, this policy appears unreasonable. Therefore, it should be justified or eliminated from this tariff.

SUBJECT: Cancellation of an Access Order

ECA TARIFF REFERENCE: Section 5.2.3(E)

TARIFF LANGUAGE (new):

"(E) If the telephone company misses a service date by more than 30 days due to circumstances over which it has direct control (excluding, e.g., acts of God, governmental requirements, work stoppages and civil commotions), the IC may cancel the Access Order without incurring cancellation charges.

DISCUSSION: Because this proposed modification would be advantageous to the telcos' customers, it is unlikely that any parties would protest it. Therefore, we will allow this modification to be made in this filing.

SUBJECT: Selection of Planned Facilities for Access Orders

ECA TARIFF REFERENCE: Section 5.2.4(A)

TARIFF LANGUAGE:

"(A) When there are facilities in the activated state for its use under a Planned Facilities Order, or analog or digital high capacity services to a Hub in the Access Service state, an IC may request a specific channel or transmission path be used to provide the Switched or Special Access Service requested in an Access Order. The Telephone Company will make a reasonable effort to accommodate the IC request. If the Telephone Company determines that the request cannot be met with reasonable effort, and another facility is activated for the IC's use, the Telephone Company will specify the use of that facility and notify the IC accordingly."

ISSUES: AT&T states that for high capacity facilities, it is crucial that an IC have assignment control at the voice grade circuit level. According to AT&T, this is especially critical in digital central offices where it is necessary to establish paths of connectivity from the intercity network to the local serving area network through a common Digital Access and Cross Connect System frame (DACS). Lack of such control is said to impact the planning process, the provisioning process and the investment utilization level of the DACS equipment. Thus, argues AT&T, if the IC orders a high capacity facility, assignment control of the circuits within that facility should be the right of the IC.

DISCUSSION: While we are sympathetic to AT&T's concern about this provision, we conclude that cooperation among the telcos and ICs can resolve this matter. Accordingly, we do not find this provision to be unreasonable. However, the final sentence in this provision should be deleted because it implies a limitation on the IC's use of facilities which has not been justified by the telcos.

SUBJECT: Minimum Period (for Access Service)

ECA TARIFF REFERENCE: Section 5.2.5(A)

TARIFF LANGUAGE:

"(A) Except as set forth in (B), (C) and (D) following, the minimum period for which [Switched and Special] Access Service is provided and for which charges are applicable, is six months. For the application of minimum period charges for Switched Access Service Feature Groups B, C, D, and E, it is assumed that the last identical capacity placed in service is the first one discontinued."

ISSUES: The commenters contend that a six month minimum period is longer than currently required, unjustified, unreasonable and discriminatory. They say that a one month minimum should be used instead. (AT&T, LC, MCI, DJ, Allnet, the Networks, USTEL, ICA, EMX, ISACOMM and WU.) Some commenters also urge that the "last-in, first-out" provision is unreasonable. In their reply, the BOCs/CSO say that the commenters' request for a one month minimum period ignores the "fundamental instability of the telecommunications industry." Access facilities will not necessarily be reusable, they say, and shorter service intervals are likely to result in unnecessary "churn" and stranded investment. The BOCs/CSO do, however, agree to specify that a new six month minimum period will not be imposed

when a customer replaces FGA with FGD, to the extent that such replacement is in equivalent quantities.

DISCUSSION: We have a number of concerns about this provision. First, no justification is given for requiring a six month minimum provision and payment period for Switched and Special Access Service when the minimum period for which ENFIA are provided and for which charges are applicable is one month. (See BSOC Tariff F.C.C. No. 8.) Second, Section 5.2.5(A) creates the potential for double recovery by the telcos. For example, where a customer orders Switched Access Service and then terminates the service after three months, the customer would still be liable for three more months of minimum monthly charges. In the meantime, the telco could provide those terminated facilities to a second customer and assess that customer minimum monthly charges as well. Neither the tariff nor its support material explains how this result would be avoided, nor do they account for the additional revenue that would be generated by charging two customers for the same facilities.

The assignment of minimum period liabilities on a "last-in, first-out" basis is also unreasonable. It would have the effect of extending the six month minimum period indefinitely, because facilities in service for years would be subject to termination liabilities if canceled within six months of any new order. This would tend to impose added charges on emerging carriers who are likely to make frequent changes in their facilities. However, since FGC facilities will be provided on a BHMC basis, not as identifiable facilities, "last-in, first-out" may be the most practical method for tracking early termination of FGC installed capacity.

To prevent double recovery by the telcos, and in the absence of any showing that longer minimum periods are necessary to adequately recover costs, the minimum period for Special and Switched Access may be no longer than one month. "Last-in, first-out" may be used for FGC, but only in connection with the one month minimum payment period.

SUBJECT: Shared Use Facilities

ECA TARIFF REFERENCE: Section 5.2.7

TARIFF LANGUAGE:

"Shared Use (i.e., Switched and Special Access Services provided over the same analog or digital high capacity facilities) is allowable only for existing services and to fill out existing systems. Only Switched Access Service busy hour minutes of capacity may be added to fill out existing systems. When Switched or Special Access Services provided over a shared use facility are disconnected, only Switched Access Service busy hour minutes of capacity can be ordered by the IC to backfill the system."

ISSUES: Several commenters argue that this provision is unduly restrictive. (AT&T, Allnet and ICA.) They say that an IC may want to aggregate traffic for both Switched and Special Access Services and send that combined traffic over high capacity facilities from the IC's point of presence to a local telco's facility Hub location.

DISCUSSION: We agree that the above provision is unduly restrictive. There is no facilities-based reason why Switched Access circuits cannot be used to provide Special Access service, or vice-versa. In fact, since the telcos will continue to allow shared use of such facilities for existing services, there is no apparent rationale for denying shared use to their other customers. The telcos, through accurate accounting, should be able to keep track of the respective services using the same facilities. Moreover, this provision has competitive implications in that it allows sharing for existing services but not for new services. Thus, emerging ICs would not have the same flexibility as existing carriers. For these reasons, we conclude this provision is unreasonable and should be eliminated.

SUBJECT: Switched Access Service Minimum Capacity Requirements

ECA TARIFF REFERENCE: Section 5.5.4, 5.5.6

TARIFF LANGUAGE:

Section 5.5.4: "When an IC requests *high frequency* analog or digital Interface Groups, the IC is required to order at a minimum, sufficient capacity to utilize 70% of the channels."

Section 5.5.6 sets out a table which gives the total capacity and minimum order requirements for various "high frequency" interface groups.

ISSUES: Allnet and EMX complain that the 70% fill factor is not adequately justified.

DISCUSSION: Use of the 70% fill factor has not been, and must be, justified by the ECA. In addition, this provision uses the term "high frequency" facilities, which is not defined elsewhere in the tariff. Because of the ambiguity of this provision and the lack of support for the capacity requirement, it should either be deleted or justified and revised to correct these problems.

SUBJECT: Switched Access Service Minimum Capacity Requirements

ECA TARIFF REFERENCE: Section 5.5.5

TARIFF LANGUAGE:

"For the purpose of administering the minimum capacity provisions, Access Orders for Access Connection Interface Groups for Different Feature Groups may be grouped together if the facilities provided for all the connections are the same and terminate in the same facilities terminal in the same end office."

DISCUSSION: The BOCs/CSO proposed the following modification of Section 5.5.5.

"For the purposes of administering the minimum capacity provisions, Access Orders for Access Connection Interface Groups for Different Feature Groups may be grouped together if the facilities provided for all the connections are the same and terminate in the same facilities terminal in the same *Telephone Company access tandem or end office.*"

This modification would give the customer greater flexibility in meeting the telcos' minimum capacity requirements. Accordingly, we will allow this modification to be made.

SUBJECT: Record Modification and Charges

ECA TARIFF REFERENCE: Section 5.6

TARIFF LANGUAGE: (paraphrased):

This provision allows for certain record modifications to be made (e.g. billing name or address) and cross-references other provisions to determine the amount of the applicable charges.

ISSUES: SBS says that in light of the enormous number of changes that will be occurring to Access Service records, the tariffs must accommodate the numerous errors and disputes that will arise.

DISCUSSION: We have the same concerns about Record Modification Charges that we have about Other Modification Charges. The activities associated with this charge are typically part of a telco's normal overhead in administering a service. For the reasons discussed *supra* at page 5-19, this provision should be eliminated.

Section 6. Switched Access Service

Switched Access Service provides for the use of telco facilities to establish connections between ICs and their customers. It will typically be used by ICs at the originating and terminating ends of MTS, WATS, and the MTS/WATS-type interexchange services.[1]

The Commission's Rules contemplate that access charges will be collected from either ICs or end users. *See* 47 C.F.R. § 69.5. Carriers' carrier charges (i.e. charges payable by ICs to telcos) were to encompass nine elements: Limited Pay Telephone, Carrier Common Line, Line Termination, Local Switching, Intercept, Information, Common Transport, Dedicated Transport, and Special Access. 47 C.F.R. § 69.4(b).

Under the ECA Tariff seven of these elements are imposed on ICs who order Switched Access Service. The ECA divides these elements into three rate categories, as follows: Carrier Common Line (provided under Section 3 of the ECA Tariff); End Office (including the line termination, local switching, intercept and information elements); and Local Transport (which combines the Common Transport and Dedicated Transport elements). A fourth rate category not specifically mandated by our Rules is also imposed on ICs under the ECA tariff structure. This additional category, Access Connections, is essentially an installation charge. *See supra* discussion of nonrecurring charges in main text.

As filed, the ECA tariff rate structure for Switched Access Service consists of traffic sensitive recurring and nonrecurring charges. For example, the tariff requires ICs to order Access Connections, Local Transport, and End Office functions according to the IC's projected need for Busy Hour Minutes of Capacity. For each BHMC, a non-recurring charge of $10.00 applies. *See infra* discussion of § 6.8.1. ICs are also required to pay for Switched Access according to the number of access minutes actually used.[2] In addition to these charges, several monthly rates, minimum charges, service rearrangement charges and individual case basis (ICB) charges apply to ICs ordering certain types of features under Switched Access Service.

A number of commenters have argued that the basic structure of Switched Access Service operates to create discriminatory preferences for AT&T as against other ICs who must order Switched Access under different "Feature Groups".[3] These claims primarily relate to the ECA's

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[1] Use of the term "IC" should be clarified so as to conform with our discussion of Section 2.6, *supra*.

[2] In the case of Local Transport, charges are also calculated according to distance.

[3] As filed, the ECA tariff offers Switched Access Service in five Feature Group arrangements differentiated by the type of access connection provided (line side or trunk side) and by the access calling pattern (i.e. the number and sequence of digits that must be dialed to access the IC's services). For example, under Feature Group A (FGA), ICs

proposed rate structure (e.g. imposition of charges for "optional" features not needed by AT&T, charges for changes and upgrading of service, etc.). It has also been suggested that the arrangement of services under the various Feature Groups is discriminatory with respect to access quality (i.e. technical performance guarantees).

Many provisions within Section 6 appear to grant too much discretion to the telco in matters critical to the IC's provision of services. For example, technical performance standards, availability of optional features, and applicability of certain rates and charges may vary between Feature Groups depending on routing and other factors that are to be determined solely at the discretion of the telco. Moreover, some options and features are made available only with the "agreement" of the telco. The tariff, however, contains few standards that govern the exercise of the telco's discretion in these important matters.

In addition, there are many provisions within Section 6 that appear to impose unreasonable burdens upon ICs. For example, the tariff contains provisions that require ICs to submit extensive reports on traffic, provisions that make use of assumed access minutes, minimum ordering requirements and other minimum charges that may pose financial problems for all ICs, particularly smaller carriers. In these cases, we have required the ECA to provide more complete justification for the charges assessed, or, where appropriate, we have required that the language of the tariff be clarified.

Many of the issues raised by commenters with respect to Switched Access Service would appear to have been resolved by the Commission's *Second Reconsideration* decision. For example, until equal access becomes available, Feature Groups A and B access service provided to ICs other than AT&T (i.e. OCCs) will be ordered, and charges assessed, on a per line basis rather than on a traffic sensitive basis. Thus, to the extent that claims of discrimination have been based on the application of traffic

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would obtain line side access to the telco's facilities. The IC's customers may then connect to the IC by dialing a seven digit exchange telephone number. Feature Group B provides the IC with trunk side access connections, and is accessible through a uniform 950-10XX access code.

Feature Group C is limited to ICs that are traditional providers of MTS and WATS (i.e. AT&T). From a technical standpoint, FGC access is essentially identical to access arrangements currently provided to AT&T. In obtaining FGC access, however, AT&T would be subject to a number of tariffed charges, rates and regulations similar to those applied to ICs ordering under other Feature Groups.

Feature Group D is intended to replace Feature Group C, as equal access is made available to ICs. It consists of trunk side access, characterized by a uniform 10XX access code.

Finally, Feature Group E is a service offered to Radio Common Carriers. Under the *Second Reconsideration*, however, this offering will be deleted from access service tariffs.

sensitive rate structures to Feature Groups A and B, these concerns should be alleviated for the immediate future. We shall continue to investigate these issues, however, insofar as they apply to equal access service made available in the future.

SUBJECT: Switched Access Service—General

ECA TARIFF REFERENCE: Section 6.1

TARIFF LANGUAGE:

"Switched Access Service provides a two-point electrical communications path between the IC terminal location and telephone exchange service locations. Each path is capable of the transmission of voice and associated telephone signals within the frequency bandwidth of approximately 300 to 3000 Hz.

Switched Access Service provides for the use of common terminating, switching and trunking facilities, and jointly used subscriber plant of the Telephone Company's public switched network by ICs for their use in furnishing their services. Directory listings are not included with Switched Access. These are provided from the Telephone Company's local and/or general exchange service tariff.

Switched Access Service is provided in various Feature Group arrangements which are differentiated by the type of connection (i.e., line side connection and trunk side connection) and the access calling pattern (e.g., 950-10XX calling in a LATA, 10XX calling in a LATA, etc.).

Switched Access Service provides for the ability to make and receive calls to and from telephone exchange service locations in the LATA associated with the specific Feature Group provided.

At the option of the IC, Switched Access Service may be provided for both interstate and intrastate communications. When the IC orders such mixed access, it is responsible for providing the reports in 2.3.14 preceding to the Telephone Company.

When the IC plans to use Switched Access Service in connection with the resale of services of another IC, such Switched Access Service will be provided subject to the rate regulations set forth in 6.7.3 following. Such Switched Access Service will be provided as set forth in the following paragraphs of this section. The IC shall order the features and options it desires in accordance with the provisions of this section."

DISCUSSION: This section provides only a fragmentary description of Switched Access Service, and as such, does little to explain or clarify the extremely complex tariff structure that follows. It makes little sense, for example, to state that each signal path has a frequency bandwidth of approximately 300 to 3000 Hz, when specific provisions within Section 6 elaborate considerably on the technical characteristics of Switched Access Service. The same problem occurs with respect to references to whether Directory listings are included, references to mixed interstate and intrastate usage, and references to resale of services of another IC. These uses of Switched Access Service are covered within the main provisions of Section 6, and to partially repeat regulations here is to invite confusion and possible conflict in applicable rules.

This section should be revised so as to eliminate fragmentary repetitions or paraphrases of rules and regulations found within Section 6. Instead, the provision should explain, in a general fashion, the Switched Access Service offering. This introduction should discuss the manner in which ICs and customers may obtain Switched Access, and the types of charges that are to apply for each type of access. The provision should, in each case, provide

references to the actual sections that would apply for each type of access described.*

SUBJECT: Switched Access Service—Dedicated Access Line Service

ECA TARIFF REFERENCE: Section 6.1.2, *See also* §§ 3.2(E); 3.3(C), (D); 3.4(F); 3.7(D); 6.1.3; 6.1.3(C)(2); 6.3.1.(T)-(X); 6.7.3; 6.8.3

TARIFF LANGUAGE:

"Dedicated Access Line Service is a type of Special Access Service that is provided only for use with Feature Group C and D Switched Access Service. Dedicated Access Line Service connects an end user premises with a WATS or WATS type serving office. This service is described in 7.2.1(F) following."

DISCUSSION: Treatment of closed end WATS access has been extensively discussed in the *Second Reconsideration Order.* This provision, as well as others that refer to Dedicated Access Line Service, should be revised or deleted in accordance with that *Order.*

SUBJECT: Switched Access Service—Rate Categories—Access Connections

ECA TARIFF REFERENCE: Section 6.1.3(A). *See also* §§ 6.1.3(A)(12), 6.1.3(C).

TARIFF LANGUAGE:

"(A) The Access Connections rate category provides for the busy hour minutes of capacity and interface arrangements established for the IC. Such Access Connections are provided at rates and charges as set forth in 6.8.1 following.

* * * * *

Access Connections are provided in ten separate Interface Groups. Each Interface group provides a specified facility interface (e.g., two-wire, four-wire, DS1, etc.) . . . Provision of the Interface Groups and any optional features may require placement of Telephone Company equipment on the IC's premises."

DISCUSSION: This provision is unnecessarily vague with respect to the possible placement of equipment on IC premises, and should include some indication of what conditions would require such placement, and the general type of equipment that would be involved. *See supra* discussion of § 2.1.5. In addition, the reference to busy hour minutes of capacity for access connection must be revised to comply with the discussion of nonrecurring charges in the main text of this *Order. See supra* main text.

* For example, the last two paragraphs of Section 6.1 are at least somewhat helpful in describing two types of access offered and the responsibilities involved with each. Both paragraphs are incomplete, however, in that neither one fully references the rates and regulations that would be applicable to each type of access. *Cf.* § 3.3 (provision explaining substantially all applications of Carrier Common Line charges). Moreover, the paragraph dealing with "the ability to make and receive calls to and from telephone exchange service locations in the LATA associated with the specific Feature Group provided" is entirely insufficient. Even after careful study of the tariff, we are unable to say with complete certainty what charges will apply for this most basic of Switched Access Service offerings. The explanation in Section 6.1 should be expanded to include cross-references to all rates and regulations that would apply when Switched Access Service is used in this manner. In particular, the charges and credits, if any, for intrastate toll usage within a LATA should be explained fully. *See infra* discussion of § 6.7.11.

SUBJECT: Switched Access Service—Access Connection—Interface Group Nonchargeable Optional Features—Supervisory Signaling

ECA TARIFF REFERENCE: Section 6.1.3(A)(12)(a)

TARIFF LANGUAGE!fo:

The provision sets forth signaling arrangements available for various interface groups. These arrangements are said to be available at the option of the IC, but only "with the agreement of the Telephone Company."

DISCUSSION: This feature is described as a nonchargeable "option." However, from the text of this provision it appears that the Supervisory Signaling feature is available only within the discretion of the telco. The circumstance under which this option will be unavailable must be specified in the tariff.

SUBJECT: Switched Access Service—Rate Categories—Local Transport—Choice of Routing

ECA TARIFF REFERENCE: Section 6.1.3(B); *See also* §§ 6.5.2; 6.5.5

TARIFF LANGUAGE:

"The Telephone Company will determine whether the Switched Access Service is to be routed directly to an end office switch or through an access tandem switch unless the IC orders the provision of other than Telephone Company Selected Traffic Routing optional feature."

ISSUES: Commenters contend that this provision is discriminatory because the choice of local transport routing determines the transmission performance offered to ICs. *See* §§ 6.2.1(C), 6.2.2(C), 6.2.3(C), 6.2.4(C), and 6.2.5(C). Selection of routing also governs the availability of certain features. *See, e.g.*, §§ 6.3.1(F) (Automatic Number Identification), 6.3.2(A) (Rotary Dial Station Signaling), 6.3.2(B) (Operator Trunk). ICs who obtain direct trunk routing initially will therefore obtain the higher quality transmission performance contingent on such routing. Other ICs wishing to obtain routing with higher performance or with greater option availabilities must order the "Provision of Other Than Telephone Company Selected Traffic Routing" under § 6.1.3(B)(1)(a). This option results in charges to the IC, to be determined on an individual case basis. *See* § 6.8.2(B). MCI argues that, because the rates for local transport are based on airline mileage and because ICs must pay a minimum monthly usage charge under Section 6.7.4, this problem may be solved by requiring the telco to provide direct routing at no extra charge wherever the IC requests such routing.

DISCUSSION: We agree that the application of additional ICB nonrecurring and recurring charges for the "optional" features set forth in Section 6.1.3 would result in unjust discrimination between ICs. For example, under Section 6.1.3(B)(1), where one IC is provided with direct routing, other ICs not initially provided with direct routing must pay additional charges to obtain identical facilities. The ECA provides no justification for this disparate treatment and without such justification, these charges should be deleted. We are unwilling, however, to adopt MCI's proposal that ICs should be able to obtain particular routing or other optional features on demand. Instead, the tariff should provide that the telco will work cooperatively with ICs to develop routing and other local transport arrangements. *See infra* discussion of § 6.5.2.

SUBJECT: Switched Access Service—Local Transport

ECA TARIFF REFERENCE: Section 6.1.3(B). *See also* § 6.1.3(C)

TARIFF LANGUAGE:

"(B) Local Transport is provided at the rates and charges as set forth in 6.8.2(A) following. Rates are applied on an access minutes basis. When Feature Groups A or E terminate in Telephone Company end offices that are not equipped for measurement capabilities, a Telephone Company assumed average number of access minutes will be billed to the IC in lieu of actual usage. These rates will be billed in terms of the total number of access minutes (i.e., originating and terminating). For terminating Feature Group B Switched Access Service where no measurement capabilities exist in the Telephone Company designated electronic Access Tandem switch, a Telephone Company assumed average number of access minutes will be billed to the IC in lieu of actual usage."

DISCUSSION: In light of the Commission's decision on *Second Reconsideration* to apply a flat per-line charge to OCCs, it would appear that questions associated with application of assumed access minutes to ICs using FGA or FGB Switched Access Services need not be addressed at this time. Accordingly, these provisions are unnecessary and should be deleted.

SUBJECT: Switched Access Service—Design Layout Report

ECA TARIFF REFERENCE: Section 6.1.5

TARIFF LANGUAGE:

"The Telephone Company will provide to the IC the makeup of the facilities and services provided to the first point of switching. This information will be provided in the form of a Design Layout Report. The Design Layout Report will be provided to the IC at no charge."

DISCUSSION: This provision requires the telco to provide information on the makeup of facilities and services provided to the IC. It is not clear, however, whether these reports will be reissued or updated as the facilities and services provided to the IC change. The tariff should provide that the Design Layout Report will be reissued or updated whenever facilities provided to the IC are materially changed.

SUBJECT: Switched Access Service—Acceptance Testing

ECA TARIFF REFERENCE: Section 6.1.6

TARIFF LANGUAGE:

"At no additional charge, the Telephone Company will, at the IC's request, cooperatively test, at the time of installation, [various technical] parameters .... If acceptance tests are not started within 30 minutes after the scheduled appointment time for such tests, as negotiated between the Telephone Company and the IC, additional charges will apply, as set forth in 13.2.6(B) following."

DISCUSSION: The ECA has provided no justification for the assessment of this charge on ICs. It is not at all clear, for example, what costs (if any) the telco incurs as a result of IC failure to begin acceptance testing. If, for example, the telco engineering personnel assigned to conduct acceptance tests are not required to visit IC premises during the tests, it appears unlikely that delays of any duration would result in specifically attributable costs to the telco. Presumably, if the IC fails to begin testing within 30 minutes, engineering personnel could engage in other activities. Assessment of stand-by engineering charges in these circumstances would be clearly unreasonable.

Assuming that there are, in fact, some specific costs that result when an IC misses an acceptance testing appointment, it may be reasonable to assess a fixed charge based solely on these costs. As filed, however, the provision is ambiguous with respect to both the time that

additional timed charges would begin to apply and the time that additional charges would cease to accrue. For example, if more than 30 minutes of cooperative preparation is necessary before actual acceptance testing begins, the provision would appear to apply charges because testing has not "started." On the other hand, in cases where the IC is unable to begin tests for a day or even a weekend, a literal application of the provision would result in charges totalling hundreds of dollars or more, as there is no limitation on the amount of stand-by time chargeable to the IC after the initial 30 minutes has passed.

Responding to objections by commenters, the BOCs/CSO have proposed to modify this provision by the addition of language that would absolve the IC of liability for the charge if the delay is caused by the telco. Assuming that this charge can be justified at all, any provision submitted to replace Section 6.1.6 should incorporate this proposed revision.

SUBJECT: Switched Access Service—Feature Group A

ECA TARIFF REFERENCE: Section 6.2.1

TARIFF LANGUAGE:

The provision describes access service provided to ICs under Feature Group A.

ISSUES: Feature Group A consists of essentially the same facilities that are provided to local business subscribers under telco general and/or local exchange tariffs. MCI contends that, because these facilities are identical, the rates payable under access tariffs for FGA should be equivalent to those paid by local business subscribers.

DISCUSSION: This argument was considered—and rejected—by the Commission during the course of the access charge proceeding. *See Second Reconsideration Order*. It will not be reconsidered here.

SUBJECT: Switched Access Service—Feature Group A—Assignment of Seven Digit Telephone Number

ECA TARIFF REFERENCE: Section 6.2.1(A)(4)

TARIFF LANGUAGE:

"(A)(4) A seven digit local telephone number assigned by the Telephone Company is provided for access to FGA switching in the originating direction. The seven digit local telephone number will be associated with the selected end office switch and is of the form NXX-XXXX."

ISSUES: The ECA has proposed to modify this section by adding the following language:

"If the IC requests a specific seven digit telephone number that is not currently assigned, and the Telephone Company can, with reasonable effort, comply with that request, the requested number will be assigned to the IC."

DISCUSSION: The proposed addition appears not unreasonable. We will therefore allow this modification to be made.

SUBJECT: Switched Access Service—Description of Feature Groups A, B, C, D and E

ECA TARIFF REFERENCE: Sections 6.2.1(A)(7), 6.2.2(A)(5), 6.2.3(A)(5); 6.2.4(A)(4); 6.2.5(A)(4)

TARIFF LANGUAGE:

These provisions set forth the types of calls that can be made when Feature Groups A, B, C, D and E are used in the terminating direction. Each provides that, for calls to services of other IC's, "additional charges may apply."

DISCUSSION: The provisions are ambiguous and vague because the circumstances under which additional charges may apply, as well as the amounts of these charges, are unspecified. The provisions should explain the applicability of these charges; alternatively, the provisions should be edited so as to delete references to unexplained additional charges.

SUBJECT: Switched Access Service—Feature Group D—Use of Access Codes

ECA TARIFF REFERENCE: Section 6.2.4(A)(6)

TARIFF LANGUAGE:

"The access code for FGD switching is a uniform access code of the form 10XX. A single access code will be the assigned number of all FGD access provided to the IC by the Telephone Company. No access code is required for calls to an IC over FGD Switched Access Service if the customer's telephone exchange service is arranged for presubscription to that IC, as set forth in 13. following. For a limited period of time, no access code is required for calls to a provider of MTS and WATS, when such calls are placed from a Telephone Company public or semipublic telephone."

DISCUSSION: It is unclear why it would be necessary to maintain access code-free calling for MTS and WATS providers under Feature Group D when those calls are placed from telco public or semi-public telephones. The supporting materials filed with the ECA tariff contain no justification for this practice. Clearly, the continuation of access code-free dialing to providers of MTS and WATS, even in the limited circumstances of public and semi-public telephone dialing, constitutes a preference with some competitive consequences. The provision should be justified or deleted.

Assuming that such justification is possible, it would remain for the ECA to clarify the meaning of a "limited period of time." Some indication must be given in the tariff that would enable the Commission to determine whether the time period required to end this preference is reasonable.

SUBJECT: Switched Access Service—Feature Group E

ECA TARIFF REFERENCE: Section 6.2.5

TARIFF LANGUAGE:

The provision describes in detail the Feature Group E offering to Radio Common Carriers (RCCs).

ISSUES: Many RCCs contend that switched access charges should not apply to their operations because the RCC's network is more closely analogous to that of the exchange carrier, and is not an IC operation. (BC, MCC, MCCA, MCIA, Telocator).

DISCUSSION: The applicability of access charges to RCCs was extensively considered in the Commission's *Second Reconsideration* decision. There, it was determined that RCCs should not be treated as interexchange carriers under the access charge rules. Accordingly, provisions relating to the Feature Group E offering should be deleted.

SUBJECT: Switched Access Service—Common Switching Optional Features—International Carrier Option

ECA TARIFF REFERENCE: Section 6.3.1(R)

TARIFF LANGUAGE:

"This option allows for Feature Group D end offices or access tandem switches equipped for International Direct Distance Dialing to be arranged to forward the international calls of one or more international carriers to the IC. This arrangement requires provision of written verification to the Telephone Company that the IC is authorized to forward such calls. This option is only provided at Telephone Company end offices or access tandems equipped for International Direct Distance Dialing. It is available with Feature Group D."

DISCUSSION: This provision apparently requires ICs to submit written verification of their authority to handle international calls for other ICs. It is impossible, however, to determine from the language of the provision whether this is the case, or whether some other authorization is at issue. Moreover, it is not clear why the telco should require such authorization. The tariff should explain the situations in which authorization is necessary. In addition, the ECA should justify the need for evidence of such authority.

SUBJECT: Switched Access Service—Common Switching and Transport Nonchargeable Optional Features—Features Associated with Dedicated Access Line Service

ECA TARIFF REFERENCE: Section 6.3.1 (T) - (X)

TARIFF LANGUAGE:

These provisions describe options available with Dedicated Access Line Service (DALS), including Band Advance Arrangment, End Office Customer Line Service Screening, Hunt Group Arrangment, Uniform Call Distribution Arrangement and Nonhunting Number Arrangement.

DISCUSSION: In light of the *First Reconsideration Order's* elimination of the Dedicated Access Line category, the references to DALS should be deleted. *See supra* discussion of § 6.1.2.

SUBJECT: Switched Access Service—Transmission Performance Capabilities

ECA TARIFF REFERENCE: Section 6.4

TARIFF LANGUAGE:

"Each Switched Access Service transmission path is provided with a standard transmission performance. There are three different standard performances (Types A, B and C). The standard for a particular transmission path is dependent on the Interface Group and whether the service is directly routed or via an access tandem. The available transmission performances are set forth in 6.4.1 following. Data Transmission Parameters are also provided with each Switched Access Service transmission path. The Telephone Company will, upon receipt of a trouble report from the IC, conduct tests, either independently or cooperatively with the IC as appropriate, and take any necessary action to insure that the parameters set forth in 6.4.2(A) or 6.4.2(B) following are met. The testing will be charged for at the rates set forth in 13.3.5(C)(1)(e) following for Nonscheduled Testing.

The Telephone Company will maintain existing transmission performance on service configuration installed prior to January 1, 1984. All service configurations installed after January 1, 1984 will conform to the transmission performance standards contained in this tariff, except as follows. Where local facility conditions cannot support the transmission performance standards contained in this tariff, transmission standards that can be supported will be uniformly applied to all ICs."

ISSUES: Commenters contend that the provision is vague and potentially discriminatory. Because the telco may undertake testing "independently," it appears to have almost unlimited discretion in imposing charges on ICs who file trouble reports. Also, the tariff does not specify whether the charges will apply if the circuit fails testing. Moreover, the grandfathering of transmission performance for service configurations installed prior to January 1, 1984 may discriminate in favor of established ICs. Finally, the provision is vague with respect to the conditions that will allow lower transmission standards than those set forth in the tariff. (AT&T, ITT, LC, MCI).

DISCUSSION: This provision sets forth a large number of technical performance standards. To a great extent, these provisions have no counterpart in prior tariff arrangements, and it is therefore difficult to determine whether these standards are reasonable, or even the extent to which these standards differ from previously applied technical parameters. While the BOCs/ CSO claim that, in most cases, the standards set forth in Section 6.4 are essentially equal to or more stringent than the parameters developed in connection with Docket 20099, *Facilities for Other Common Carriers*, 52 FCC 2d 752 (1975), it remains unclear whether this is in fact the case, or whether the tariff adequately implements those standards.

The complexity of the technical issues presented by this provision and similar technical performance standards contained in the tariff makes detailed review within this *Order* impossible. We intend, however, to carefully examine the level of technical performance provided to ICs under the access tariffs, and, as the need arises, to institute special proceedings to examine questions related to access quality. Several aspects of Section 6.4, however, are in need of immediate explanation and justification or revision. In particular, the ECA has failed to justify the need to provide "grandfathered" transmission performance standards to those carriers with access arrangements in place prior to January 1, 1984. This provision should be explained and justified or deleted. Moreover, the circumstances under which the telco will conduct testing "independently" should be explained and justified, particularly in cases where this independent testing results in charges to ICs. The ECA should also explain and justify or delete the numerous exceptions set forth within Section 6.4 that relate to "local facility conditions" or "facility network conditions." This language effectively renders tariffed performance standards meaningless, because it appears that the standards are to apply only in some cases. Within the context of a tariff, these unlimited exceptions are far too vague and ambiguous, and should be limited or removed entirely. Also, the provision should make clear that charges are not to be applied in cases where the circuit fails testing.

Finally, the provision should cross reference standard engineering manuals used by telcos to determine maintenance and acceptance limits for technical performance levels.

SUBJECT: Switched Access Service—Obligations of the Telephone Company—Network Management

ECA TARIFF REFERENCE: Section 6.5.1

TARIFF LANGUAGE:

"The Telephone Company will administer its network to insure the provision of acceptable service levels to all telecommunications users of the Telephone Company's network services. The Telephone Company maintains the right to apply protective controls on any traffic that it carriers over its network, including an IC's Switched Access Service, in order to prevent unsatisfactory performance to other users."

DISCUSSION: The provision is vague and ambiguous, and gives the telco too much discretion. While it does not appear unreasonable for the exchange carrier to reserve the right

to manage its network, this provision appears overly broad and vague. The terms "acceptable service levels," "protective controls" and "unsatisfactory performance" should be defined. Also, the tariff should make clear that, in cases where the telco applies protective controls in a manner that reduces the quantity of service provided to an IC, outage credits will be applied to the ICs account.

SUBJECT: Switched Access Service—Obligations of the Telephone Company—Design and Traffic Routing of Switched Access Service

ECA TARIFF REFERENCE: Section 6.5.2. *See also* §§ 6.1.3(B), 6.5.5

TARIFF LANGUAGE:

"The Telephone Company shall design and determine the routing of Switched Access Service, including the selection of the first point of switching and the selection of facilities from the interface to any switching point and to the end offices where busy hour minutes of capacity are ordered unless the IC orders the optional feature Provision of Other than Telephone Company Selected Traffic Routing. The Telephone Company shall also decide if capacity is to be provided by originating only, terminating only, or two way trunk groups unless the IC orders the optional feature IC Specification of Feature Group Directionality. Finally, the Telephone Company will decide whether trunk side access will be provided through the use of two-wire or four wire trunk terminating equipment. However, for Feature Group B the IC may order the optional feature IC Specification of Local Transport Termination. Selection of facilities and equipment and traffic routing of the service are based on standard engineering methods, available facilities and equipment and the Telephone Company traffic routing plans."

DISCUSSION: Under various provisions in Section 6 of the ECA tariff, the transmission performance level guaranteed to ICs, the availability of certain options, and the application of additional charges is dependent on the choice of routing made by the telco. For example, ICs initially provided with direct trunk routing will obtain higher quality transmission performance under Section 6.2.3(C), and will be able to obtain various options available only to carriers obtaining direct trunking. *See, e.g.*, §§ 6.3.1(F) (Automatic Number Identification) 6.3.2(A) (Rotary Dial Station Signaling), 6.3.2(B) (Operator Trunk). ICs that are not provided such routing options may request direct trunk routing under Section 6.1.3(B)(1)(a), but under the tariff as proposed, this would involve an additional charge. We have already found that the application of additional charges under Section 6.1.3(B) is unjustified. *See supra* discussion of § 6.1.3(B). It remains, however, to decide on a method whereby ICs may obtain desired routing without imposing unwarranted burdens on the telco. We believe that the authority reserved to telcos under Section 6.5.1, as limited by the imposition of standard engineering performance limits, *see supra* discussion of § 6.4, should be sufficient to resolve most disputes that arise between ICs and telcos as regards selection of routing and first points of switching. To reinforce this, however, the provision should include a statement to the effect that the telco will work cooperatively with ICs in providing requested design and traffic routing of Switched Access Service.

SUBJECT: Switched Access Service— Obligations of the Telephone Company—Provision of Service Performance Data.

ECA TARIFF REFERENCE: Section 6.5.3

TARIFF LANGUAGE:

"With the agreement of the Telephone Company, service performance data for an IC's Switched Access Service may be made available to the IC, based on previously arranged intervals and format. These data may include, but are not limited to, IC equipment blockage, failure results and transmission performance. If the data are to be provided through a mechanized exchange of data, the cost of such exchange will be determined on an individual case basis and must be borne by the IC. Provision of the data in paper format will be at no charge."

DISCUSSION: The provision should be clarified with respect to the availability of service performance data. Clearly, if the IC receives testing services under this and other sections of the tariff, it should receive some record of test results and other performance data - there should be no need of telephone company "agreement" in order to receive service performance data. In addition, the tariff should specify what data will be provided with these reports.

Moreover, it is unclear what would constitute a "mechanized exchange" of data. The ECA should explain this reference, or specify that, if data are to be provided *in other than paper format,* the cost of such exchange will be determined on an individual case basis.

SUBJECT: Switched Access Service—Obligations of the Telephone Company—Trunk Group Measurement Reports

ECA TARIFF REFERENCE: Section 6.5.4

TARIFF LANGUAGE:

"With the agreement of the Telephone Company, trunk group data in the form of usage in CCS, peg count and overflow, where technologically feasible, will be made available to the IC based on previously agreed to intervals."

DISCUSSION: The tariff makes available trunk group measurement reports, but only at the agreement of the telco and where technologically feasible. It is unclear what circumstances would be required to obtain this agreement, or where this data would not be technologically feasible to supply. The provision should be clarified with respect to the availability of this service performance data. In particular, the phrase "with the agreement of the Telephone Company" should be deleted. The tariff may specify, however, that the data is to be obtainable by ICs, subject to availability.

SUBJECT: Switched Access Service — Obligations of the Telephone Company — Design Blocking Probability

ECA TARIFF REFERENCE: Section 6.5.7

TARIFF LANGUAGE:

The provision sets forth the performance standards that the exchange carrier will meet with respect to blocking probability. The provision "grandfathers" existing configurations, and notes that where the design standard cannot be met due to local facility conditions, some other standard will be maintained on a uniform basis to all ICs.

ISSUES: Commenters suggest that the provision is vague and has the potential to allow discrimination between carriers. In particular, the "grandfathering" of performance standards for existing service configurations is said to create unjustified preferences for existing carriers as against new carriers. Also, the tariff does not specify what local facility conditions will require the abandonment of the tariff standards, or how those lower standards will be determined. The provision appears to overlap Section 6.5.5 (Determination of number of Transmission Paths). Arguably, this overlap makes one or the other provision redundant.

Finally, AT&T suggests that the provision specifies design blocking objectives in an inflexible manner. AT&T claims that ICs should be allowed to choose blocking objectives from a range of blocking rates, depending on demand.

DISCUSSION: This provision should be explained and justified by the ECA. It is unclear why blocking standards should be "grandfathered" for ICs with access arrangements in effect prior to January 1, 1984. Language to the effect that standards will be maintained, except where local facility conditions do not permit such maintenance, should be explained or deleted. *See supra* discussion of § 6.4. Finally, while it appears that AT&T's suggestion relating to "flexible" design blocking probability may have positive economic benefits, we will not require that carriers implement such a system at this time. Aside from problems of complexity, we are not certain that telcos can arrange their networks at this time in such a manner as to provide ICs with varying design blocking probabilities.

SUBJECT: Switched Access Service — Obligations of the IC — Report Requirements

ECA TARIFF REFERENCE: Section 6.6.1

TARIFF LANGUAGE:

"ICs are responsible for providing the following reports to the Telephone Company, when applicable.

(A) *Jurisdictional Reports* When an IC orders Switched Access Service for both interstate and intrastate use, the IC is responsible for providing reports as set forth in 2.3.14 preceding . . . .

(B) *LATA Default Percent Interstate Use (PIU) Report*

When an IC orders Switched Access to any end office in a LATA, it must provide a projected percentage of interstate use that will serve as a default PIU for the entire LATA. This figure will be used to apportion charges for usage measured at end offices to which the IC has not ordered capacity."

DISCUSSION: Because we have modified the Jurisdictional Report requirement, *see supra* discussion of § 2.3.14, these provisions should be revised to conform with our discussion of that Section.

SUBJECT: Switched Access Service for Resale of Other IC Services

ECA TARIFF REFERENCE: Section 6.7.3

TARIFF LANGUAGE:

The provision sets forth the procedures that apply when the IC is planning to use switched access "in association with" the resale of WATS. Numerous reporting requirements are imposed on ICs under this provision. For example, the IC must report the number of resold WATS lines with 2500 or more originating access minutes; the IC terminal location where closed end WATS lines are terminated; and where both line side and trunk side Switched Access Service are used in combined access arrangements, the number of resold WATS lines to be associated with each. Where this "split" is not reported, the tariff states that the telco will assume that all resold WATS lines in the combined access arrangement are to be associated with line side switched access connections.

The IC must submit these reports within 15 days of the billing date shown on the WATS service bill in order to receive proration treatment in the current billing cycle. If no reports are received during the monthly period after the initial period, proration will not apply. These

reports are to be submitted monthly, unless the telco notifies that IC that it has "sufficient information to substantiate the rate treatment set forth in (D) following."

The "rate treatment" available to ICs submitting these reports is as follows:

(1) For line side Switched Access Service (i.e., FGA) in a combined access arrangement, the LATA access minutes used to determine Local Transport, Local Switching (LS1), Line Termination and Intercept charges will be reduced by 2500 access minutes for each resold WATS line reported by the IC as having at least 2500 originating minutes collected. However, the total number of access minute credits shall not reduce the access minute billing to less than zero.

(2) For each resold WATS line used to reduce the line side switched access minutes, a local business line rate will apply. However, the number of local business line rates applied in a LATA shall not exceed the number of Switched Access Services provided to the IC (for this purpose, a Switched Access Service equals the total number of busy hour minutes of capacity divided by 30).

Finally, Subsection (E) of Section 6.7.3 sets forth substantial report verification and auditing rights granted to the exchange carrier upon the ICs notification that Switched Access Service is to be used in a combined access arrangement.

ISSUES: Commenters contend that this provision imposes unreasonable reporting requirements upon ICs, and results in the unlawful application of Local Transport, Local Switching, Line Termination and Intercept charges upon resold WATS usage. (MCI, ICA, ITT, SBS).

DISCUSSION: According to the ECA, Section 6.7.3 and related provisions (*e.g.* §§ 3.3(C), 3.4(C), 3.7(D)) are intended to apply a proration formula similar to the billing arrangement formerly used by carriers who supplied combined access arrangements under ENFIA. *See* Bell System Operating Companies Tariff F.C.C. No. 11. A "combined access" arrangement was provided where an IC obtained both ENFIA access and WATS access, and commingled those services in an integrated multiline (regular) huntline group arrangement. Each type of access would normally pay a different rate per access line, but when these services were commingled, there was no ready way for the telco to assign the correct charges to individual lines. Therefore, under the BSOC 11 arrangement, telcos used a proration formula to allocate line charges. *See AT&T Co.*, Mimeo No. 613, released Nov. 4, 1982.

Section 6.7.3 of the ECA tariff differs markedly from the billing arrangement set forth in BSOC 11. For example, the provision is not restricted to situations where ICs resell WATS in commingled multiline hunt group arrangements. Instead, the terms of Section 6.7.3 merely refer to ICs that use Switched Access Service "in association with" the resale of WATS. The provision is ambiguous in this respect, and should be revised to indicate that the billing arrangement implemented by these provisions is to apply only to access arrangements involving multiline hunt groups.

The provision also incorrectly applies switched access charges to resold WATS usage. The Commission's access rules clearly state that these charges shall not be payable by an IC "to the extent that it resells service for which these charges have already been assessed (e.g., MTS, WATS, and the MTS/WATS type services of other common carriers)." 47 C.F.R. Section 69.5. By limiting the amount of credit for resold WATS minutes to 2500 minutes per line, the tariff would apply switched access charges to WATS minutes in excess of this figure. The BOCs/CSO state that this limitation is made necessary by the usage sensitive access charge structure, where the number of lines provided to ICs is based on the IC's order for busy hour minutes of capacity. In light of the Commission's *Second Reconsideration* decision, which requires OCCs to order switched access on a per line basis rather than on the basis of use, this argument loses whatever force it may have had. In these cases, a formula should be devised

so that one business line rate will be charged for each qualifying WATS line provided. *See supra* discussion of § 3.7(D). Where local exchange service is measured, the average usage per local exchange line should be used for billing local exchange service used with WATS.

In cases where Switched Access charges are assessed on a usage basis, there appears to be no reason to restrict the maximum amount of credit available for resold WATS to 2500 minutes per line. If allowed to take effect, this restriction would result in double assessment of Switched Access charges on WATS minutes used in excess of the maximum credit allowance. Accordingly, this restriction should be deleted. *See supra* discussion of § 3.7(D).

Finally, Section 6.7.3 contains reporting requirements that are essentially identical with provisions set forth in Section 3 of the tariff. *See, e.g.,* discussion of § 3.4. Our disposition of issues raised with respect to that provision apply here. *See supra* discussion of § 3.4(H).

SUBJECT: Switched Access Service — Minimum Monthly Usage Charge

ECA TARIFF REFERENCE: Sections 6.7.4; 6.7.5

TARIFF LANGUAGE:

These provisions set forth minimum charges that apply to Switched Access Service. For those rate elements that are billed a flat monthly rate, the minimum monthly charge is simply the monthly rate assessed (*e.g.* rates for Local Transport Optional Features set forth in Section 6.8.2(B)). For the Local Transport element, however, ICs are required to pay at least the minimum monthly usage charges set out in Section 6.7.5. These charges are assessed per busy hour minute of capacity ordered, and the amount of the minimum charge varies according to the mileage band. In cases where assumed average access minutes are used to assess Switched Access Service charges, the IC will be billed based on minutes assumed, not the minimum monthly usage charge.

ISSUES: Commenters contend that the charges for minimum monthly usage are unreasonable given the traffic sensitive nature of local transport facilities. Moreover, the level of those charges is said to be unsupported. (MCI, LC) In reply, the BOCs/CSO claim that charges assessed for minimum usage are the only viable way to protect both telcos and ICs under the usage sensitive switched access rate structure. Without minimum charges ICs may order capacity, but would pay only for usage after initial nonrecurring charges for the order are assessed. Thus, conceivably, one IC could prevent other ICs from obtaining switched access at no financial risk to itself simply by obtaining the telco's entire inventory of capacity.

DISCUSSION: To some extent, the concerns raised by commenters with respect to minimum monthly usage charges would appear to be resolved as a result of the Commission's decision, on *Second Reconsideration* to apply a flat per line charge of OCC access under Feature Groups A and B. Because these facilities will not be ordered on the basis of busy hour minutes of capacity, the charges assessed under this provision will not apply.

IC obtaining Feature Group D access, however, would be subject to minimum monthly charges under Section 6.7.4 and 6.7.5. While we are not certain that the problem purportedly addressed by minimum monthly charges (i.e. IC overordering of capacity) is a realistic concern, we are not prepared to dismiss the underlying premise of the charge at this time. Moreover, because the scope of the provision is now limited to Feature Group D access, we expect that future proceedings may adequately address the issues raised by commenters.

SUBJECT: Switched Access Service — Change of Feature Group Type

ECA TARIFF REFERENCE: Section 6.7.6

TARIFF LANGUAGE:

"Changes from one type of Feature Group to another will be treated as a discontinuance of one type of service and a start of another. Nonrecurring charges will apply, with one exception. When an IC upgrades a Feature Group B, C or E service to a Feature Group D service of the same capacity in the same end office, the nonrecurring charges will not apply. If, however, additional Local Transport optional features are added to the service at the time the conversion takes place, the nonrecurring charges for the added features will apply."

ISSUES: Commenters contend that the provision is discriminatory because it applies a charge for conversion from Feature Group A to Feature Group D, but not for other feature groups. Thus, AT&T would escape paying conversion charges, while most other ICs would be required to pay. It has also been suggested that the provision is discriminatory because, under the provision as written, minimum period charges run from the time of conversion, and no credit or proration applies for minimum charges already paid under the IC's original service order. (ASC, ITT, LC, MCI, TSC/SI, USTEL)

DISCUSSION: The ECA has proposed to modify this section as follows:

"Changes from one type of Feature Group to another will be treated as a discontinuance of one type of service and a start of another. Nonrecurring charges will apply, with one exception. When an IC upgrades a Feature Group *A*, B, C or E service to a Feature Group D service of the same capacity in the same end office, the nonrecurring charges will not apply. If, however, additional Local Transport optional features are added to the service at the time the conversion takes place, the nonrecurring charges for the added features will apply. *When an IC upgrades a Feature Group A, B, C, or E to Feature Group D, minimum period obligations will not change, i.e., the time elapsed in the existing minimum period obligations will be credited to the minimum period obligations for Feature Group D. For all other changes from one type of Feature Group to another, new minimum period obligations will be established.*

The proposed modification appears to meet the objections of the commenters, inasmuch as conversions from Feature Group A will be exempted from nonrecurring charges to the same extent that conversions from Feature Groups B and C are exempted from those charges. Moreover, the modification proposed by the ECA would result in a "credit" for minimum period charges for Feature Group upgrades. The provision should therefore be allowed to take effect as modified.

SUBJECT: Switched Access Service — Moves

ECA TARIFF REFERENCE: Section 6.7.7

TARIFF LANGUAGE:

As originally filed, the provision described the charges applied when there is a change in the physical location of either the point of interface at the IC terminal location or the IC terminal location itself. For moves within the same building, a charge equal to the busy hour minute of capacity nonrecurring charge for the capacity affected would be applied. In these cases, there would be no change in the minimum period obligations of the IC. For moves to a different building, the exchange carrier would apply charges as if the IC had discontinued one service and started a new service. In this case, all nonrecurring charges associated with a new service would apply; there would be new minimum period obligations established, and the IC would remain responsible for satisfying all outstanding minimum period charges for the discontinued service.

ISSUES: Commenters contend that charges for moves should be limited to actual labor costs (LC), and that no new minimum period obligations should apply. (ASC, ITT, LC, MCI, TSC/SI, USTEL)

DISCUSSION: The ECA has proposed to modify this section as follows:

"6.7.7 *Moves*

A move involves a change in the physical location of one of the following:

—The point of interface at the IC terminal location

—The IC terminal location

The charges for the move and the associated minimum period obligations are dependent on whether the move is to a new location within the same *wire center area or to a different wire center area. Further, when the move is within the same wire center area, the level of charging will be dependent on whether the move is to a new location within the same building or to a different building.*

(A) *Moves to a Different Wire Center Area*

When an IC terminal location is moved to a different wire center area, the move will be treated as a disconnect and a start. Full nonrecurring charges will apply and a new minimum period will be established. The IC will also remain responsible for fulfilling all outstanding minimum period obligations associated with the disconnected service.

(B) *Moves Within the Same Wire Center Area*

When an IC terminal location is moved to a new location within the same building or to a different building in the same wire center area, the existing minimum period obligations will continue in effect. The level of charging will be as follows:

(1) Moves Within the Same Building

The IC will be billed an amount equal to one half the busy hour minutes of capacity nonrecurring charge for the capacity affected.

(2) Moves to a Different Building

The IC will be billed an amount equal to the full busy hour minutes of capacity nonrecurring charge for the capacity affected."

In general, the proposed revision does not appear to create an unreasonable structure for treating various types of moves. Because the charges assessed under this provision are expressed in terms of busy hour minutes of capacity, however, this provision should be further revised to comply with this *Order. See supra* main text discussion of Nonrecurring Charges. In addition, the terms "point of interface" and "IC terminal location" should be revised in accordance with our discussion of Section 2.6, *supra.*

SUBJECT: Switched Access Service — Measuring Access Minutes

ECA TARIFF REFERENCE: Section 6.7.8

"IC traffic to end office switches will be measured (i.e., recorded or assumed) by the Telephone Company at end office switches or access tandem switches. Originating and terminating calls will be measured (i.e., recorded or assumed) by the Telephone Company to determine the access minutes. Access minutes on a terminating call start when the called telephone exchange service location answers and end when the access tandem switch or end office switch receives a disconnect signal. Access minutes on an originating call start when the IC terminal location acknowledges the call and end when the access tandem switch or end office switch receives a disconnect signal."

The assumed average access minutes are as set forth in 3.7(C) except as set forth following."

ISSUES: The provision is said to be ambiguous with respect to the term "measured." In addition, it appears vague because it fails to cross reference alternate assumed average access minute provisions.

DISCUSSION: In light of the Commission's decision on *Second Reconsideration* to assess charges for OCC access charges on a per line rather than per minute basis, it is not necessary to address questions associated with the use of assumed average access minutes at this time. *See supra* discussion of § 3.7(C).

SUBJECT: Switched Access Service — Message Unit Credit

ECA TARIFF REFERENCE: Section 6.7.11

TARIFF LANGUAGE:

"Calls from end users to the seven digit local telephone numbers associated with Feature Groups A or E Switched Access Service are subject to Telephone Company local and/or general exchange service tariff charges, as well as any other applicable charges for IC services. The monthly bills rendered to ICs for their Feature Groups A and E Switched Access Service will include a credit to reflect any message unit charges collected form their customers under the Telephone Company's local and/or general exchange service tariffs. No Message Unit credit is given on the access minutes that have been prorated as set forth in 6.7.3 preceding.

DISCUSSION: In light of the Commission's decision on *Second Reconsideraton,* the last sentence of Section 6.7.11 should be revised to state that no message unit credit will be given *"when local business exchange rates apply* as set forth in 6.7.3 proceeding." *See supra* discussion of § 6.7.3. In addition, while this provision applies a credit for message unit charges assessed upon end users, it does not make clear whether credits will be applied for intrastate toll charges. While the BOCs/CSO have assured us that, for example, an "IC could order Feature Group A capacity to a single end office and gain access to an entire LATA," *BOCs/CSO reply comments* at I-16, it is not clear whether this access would incur toll charges for long distance intrastate calling, or whether credits would apply. This aspect of the tariff should be clarified here. In addition, when these provisions are revised to account for changes mandated by the *Second Reconsideration,* a supplemental narrative statement should be provided to explain, generally, the charges applicable to originating and terminating Feature Group A access.

SUBJECT: Switched Access Service — Mileage Measurement — Exceptions for Feature Groups A and E

ECA TARIFF REFERENCE: Section 6.7.13(A) and (D)

TARIFF LANGUAGE:

Section 6.7.13 provides that the mileage to be used to determine the monthly rate for Local Transport is calculated as the airline distance between the end office switch where the call carried by Local Transport originates or terminates and the IC serving wire center. Section 6.7.13(A) sets forth an exception to this general rule as follows:

"(A) Mileage for access minutes in the originating direction over Feature Groups A and E Switched Access Service will be calculated on airline basis, using the V&H coordinates method, between the end office switch where the Feature Groups A and E End Office

switching dial tone is provided and the IC serving wire center for the Switched Access Service provided."

Section 6.7.13(D) sets forth an additional exception to the general rule that mileage will be calculated from the IC serving wire center to the originating or terminating end office switch:

"(D) When Feature Group A, B or E Switched Access Service terminates in end offices not equipped with measurement capabilities, mileage will be calculated from the IC serving wire center to the entry switch."

ISSUES: Lexitel contends that these exceptions, taken together, are ambiguous and create uncertainty with regard to the application of toll charges to Feature Group A originating and terminating usage. Because an IC's network configuration may depend on the applicability of such charges, this ambiguity must be clarified.

DISCUSSION: In light of the Commission's *Second Reconsideration* decision applying flat per line charges to OCC access under Feature Groups A and B, the problem of ambiguity referred to by Lexitel need not be addressed at this time.

SUBJECT: Switched Access Service — Mileage Measurement — Exception for non-AT&T IC terminal located within five miles of an AT&T Class 4 office.

ECA TARIFF REFERENCE: Section 6.7.13(B)

TARIFF LANGUAGE:

Under Section 6.7.13, the mileage to be used to determine the monthly rate for Local Transport is calculated on the airline distance between the end office switch where the call carried by Local Transport originates or terminates and the IC serving wire center. Section 6.7.13(B) sets forth an exception to this general rule as follows:

"(B) When a non AT&T IC terminal location is within five miles of an AT&T Class 4 office, the Local Transport mileage for a call which is carried over a Switched Access Service, originating or terminating through an end office switch, shall be the distance as would be determined from that end office switch to the serving wire center for that AT&T Class 4 office, unless the IC specifies that for an entire LATA, it wants all measurements determined from its serving wire center. This designation (i.e., which serving wire center to use in calculating mileage) may be changed only once in any 12 month period and when it is changed, the IC will be billed for the change as set forth in 5.6 preceding."

ISSUES: ITT contends that there is no reason to limit the ICs election to use its own mileage, rather that AT&T's, to a LATA-wide basis. Moreover, there appears to be no reason why the IC is restricted to one election per 12 month period.

DISCUSSION: Our review of the supporting materials filed with the ECA tariff indicates no justification for the LATA-wide election or 12 month minimum period restrictions in this section. These limitations should be explained and justified or deleted.

SUBJECT: Switched Access Service — Mileage Measurement — Exception for ICs that select Alternate Traffic Routing Optional Feature

ECA TARIFF REFERENCE: Section 6.7.13(C)

TARIFF LANGUAGE:

Under Section 6.7.13, the mileage to be used to determine the monthly rate for Local Transport is calculated on the airline distance between the end office switch where the call

carried by Local Transport originates or terminates and the IC serving wire center. Section 6.7.13(C) sets forth an exception to this general rule as follows:

"(C) When the Alternate Traffic Routing optional Feature is provided with Feature Groups B, C, and D, the Local Transport access minutes mileage for all calls shall be the mileage to the most distant IC serving wire center from the end office switch where the arrangement is provided. If Feature Group B alternate routed traffic has the shorter of the two routes within five miles of an AT&T Class 4 office, then the shorter route will apply for measuring mileage if the IC has opted for the five mile rule in (B) above."

Section 6.7.13(E) sets forth a further exception to this general rule as follows:

"(E) When Feature Group A, B or E Switched Access Service terminates in end offices not equipped with measurement capabilities, mileage will be calculated from the IC serving wire center to the entry switch."

ISSUES: AT&T claims that, in situations where end offices are "dual homed" on AT&T class 4 offices, these two exceptions taken together will allow the telco to avoid charging for Local Transport based on actual distance between the IC's serving wire center and end offices, where one end office is not equipped for measurement.

DISCUSSION: The EA has proposed to modify both Sections 6.7.13(C) and (E) as follows:

"(C) When the Alternate Traffic Routing optional Feature is provided with Feature Groups B, C, and D, the Local transport access minutes *will be apportioned between the two trunk groups used to provide this feature. Such apportionment will be made using standard Telephone Company traffic engineering methodology and will be based on the last trunk CCS desired for the high usage group, as described in 6.3.1(O) preceding, and the total busy hour minutes of capacity ordered to the end office, when the feature is provided at an end office switch, or to the subtending end offices when the feature is provided at an access tandem switch. This apportionment will serve as the basis for Local Transport mileage calculation.* If feature Group B alternate routed traffic has the shorter of the two routes within five miles of an AT&T class 4 office, then the shorter route will apply for measuring mileage if the IC has opted for the five mile rule in (B) above.

(E) When terminating feature group C Switched Access Service is provided from Multiple IC terminal locations to an end office not equipped with measurement capabilities, *the total Local Transport access minutes for that end office will be apportioned among the trunk groups accessing the end office on the basis of the individual busy hour minutes of capacity ordered for each of those trunk groups. This apportionment will serve as the basis for Local Transport mileage calculation.*"

The provision remains unclear with respect to the definition of a "subtending" end office. If this term is defined, however, we will allow the proposed revisions to be made since they appear to meet the objection of the commenter.

SUBJECT: Switched Access Service — Rates and Charges — Interface Group Service

ECA TARIFF REFERENCE: Section 6.8.1(A)

TARIFF LANGUAGE:

The provision imposes a nonrecurring charge of $10.00 per busy hour minute of capacity ordered.

ISSUES: Commenters argue that the nonrecurring charge for Access Connection Interface Groups is not cost justified; that the charge disproportionately affects ICs other than AT&T because it applies only to new capacity ordered and because only AT&T can accurately predict usage to individual end offices; and that the tariff structure improperly "bundles"

nonchargeable options. (ACS, ITT, LC, MCI, SBS, TSC/SI). Reply comments filed by the BOCs/CSO, however, state that IC orders for BHMC impose new installation costs upon the telco, and that the assessment of charges based on units of capacity are the most economically efficient way of recovering these costs. The nonrecurring charges are also said to promote efficiency in that they discourage ICs from overordering capacity.

DISCUSSION: Nonrecurring charges have been addressed within the main text of this *Order*. This provision should be revised accordingly.

SUBJECT: Switched Access Service — Rates and Charges — Access Connections — Interface Group Nonchargeable Optional Features — IC Specified Entry Switch Receive Level

ECA TARIFF REFERENCE: Section 6.8.1(B)(2)

TARIFF LANGUAGE:

Section 6.8.1(B) sets forth ordering codes for Access Connection Interface Group nonchargeable optional features. With respect to the "IC Specified Entry Switch Receive Level," Section 6.8.1(B)(2) provides that the IC may specify the receive transmission level at the first point of switching "within a range acceptable to the Telephone Company."

DISCUSSION: This feature is described as a nonchargeable "option." From the text of Section 6.8.1(B)(2), however, it appears that the Entry Switch Receive Level feature is optional only within the discretion of the telco. While it does not appear unreasonable for the exchange carrier to limit the availability of this option to certain ranges, the parameters of the acceptable range should be specified in the tariff.

SUBJECT: Switched Access Service — Rates and Charges — Local Transport

ECA TARIFF REFERENCE: Section 6.8.2(A)

TARIFF LANGUAGE:

The provision sets forth the mileage bands and charges per access minute for the local transport function as follows:

"Call Miles	*Rates Per Access Minute*
0 to 1	$0.0044
over 1 to 8	0.0101
over 8 to 16	0.0117
over 16 to 25	0.0126
over 25 to 50	0.0203
over 50 to 100	0.0285
over 100	0.0453"

Issues: Commenters contend that the mileage bands and rates provided in this section are unsupported, and that the selection of mileage bands discriminates against ICs that typically locate offices within shorter distances than 8 miles. (ACS, ITT)

Discussion: Issues raised with respect to the charging system for Local Transport mileage per access minute have been discussed in the Commission's *Second Reconsideration*. With respect to access obtained under Feature Groups A and B, it would appear that the concerns raised by commenters need not be addressed at this time. However, we remain concerned that

the mileage band structure developed by the ECA unfairly disadvantages ICs obtaining access under Feature Group D. For example, the large disparity between rates per access minute for calls shorter then one mile as against the charge for calls between one and eight miles, remains unjustified. The selection of mileage bands proposed by the ECA should be fully explained and justified.

SUBJECT: Switched Access Service — Rates and Charges — Line Terminations

ECA TARIFF REFERENCE: Section 6.8.3(B)

TARIFF LANGUAGE:

"(B) Line Terminations

(1) Common Line and $0.0085
dedicated Access Lines service terminations"

ISSUES: SBS claims that the line termination charge is unfairly set at the premium level for all ICs, and suggests that a less "discriminatory" method of calculating these charges would be to use a Toll Weighting Factor to discount line termination rates for OCC access (similar to the approach used under ENFIA) to reflect non-premium access differentials in this rate element.

DISCUSSION: In light of the Commission's decision on *Second Reconsideration* to apply a per line charge for OCC access under Feature Groups A and B, SBS's suggestion with respect to Line Termination charges is moot, inasmuch as the premium/nonpremium discount now applied to all elements of OCC access.

SUBJECT: Switched Access Service — Rates and Charges — Local Business Line Rates for Resold Services

ECA TARIFF REFERENCE: Section 6.8.4

TARIFF LANGUAGE:

"The local business line rates that apply for arrangements provided as set forth in 6.7.3 preceding are the same as the local business exchange service rates as set forth in the general and/or local exchange service tariffs of the Telephone Company applicable to the exchange involved and type of equipment at the IC terminal location. The local business line rate also includes any End User Access Service charges authorized by the F.C.C. and/or state regulatory commissions."

DISCUSSION: In order to avoid confusion, this provision should be revised as follows:

"The local business line rates that apply for arrangements provided as set forth in 6.7.3 preceding are the same as the local business exchange rates generally applicable to local business customers, as set forth in the general and/or local exchange service tariffs of the Telephone Company."

Section 7. Special Access Service

Special Access includes a variety of services and facilities associated primarily with local area private lines. All exchange access arrangements that do not use local end office switching, as well as the facilities dedicated solely to an IC's use, are included in Special Access. Services and facilities are grouped under Special Access "to ensure that tariffed access charges of all exchange carriers encompass services and facilities

that the divested BOCs will be offering pursuant to tariffed access charges"[1] as mandated by the MFJ. Special Access involves the most basic of transmission capabilities — a transmission path between two or more points within the same LATA — as well as supplemental features and functions to improve the quality and utility of the transmission between these points.

The Commission stated in the *Access Charge Order* that although Special Access is described as an element for cost allocation purposes, the category "in fact encompasses a number of elements which must be priced separately."[2] For example, facilities for both video program transmission and voice-grade lines are included in the Special Access element. Because the cost characteristics of such services may be significantly different, the same charges could not justly be assessed to users of these distinct services. Nonetheless, the Commission declined to establish subelements of Special Access or to provide guidelines for apportioning the Special Access revenue requirements among the rate elements:

> This proceeding was not designed to develop criteria for designating such subelements or for apportioning costs among appropriate subelements and the record in this docket does not contain much information that would be useful for those purposes.[3]

The Commission further stated that the "the absence of detailed rules for the computation of Special Access subelements does not relieve exchange carriers from any of their statutory duties."[4] The carriers' choices of subelements and supporting cost data are the subject of close scrutiny to ensure their compliance with the requirements of the Communications Act.[5]

The ECA tariff proposes four Special Access subelements or rate categories: Access Connection, Special Transport, Features and Functions, and Special Access Line.[6]

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1 *Access Charge Order* at para. 246; *see also First Reconsideration Order* at para. 150. As the Commission stated in the *Third Report and Order*, "[i]f the MFJ did not exist, we would probably exclude these facilities from the access charge scheme and classify them as 'interexchange' for this purpose." *Third Report and Order* at para. 246.

2 *Access Charge Order* at para. 248.

3 *Third Report and Order* at para. 249; *See also First Reconsideration at* para. 150. Petitions by Ad Hoc and Western Union to reconsider that decision and to provide guidelines for defining and pricing Special Access subelements were denied in the *First Reconsideration order* at para. 150.

4 *First Reconsideration Order* at para. 151.

5 *Id.*

6 Section 7.1.1 sets forth the four categories and provides that "[u]nless specifically stated otherwise, each of the rate categories will apply for each Special Access Service provided to an IC." The diagram in the text above appears in the ECA Tariff at 263.

The Access Connection subelement provides a channel between the IC terminal location and the wire center serving the IC terminal location.[7] Proposed charges for this subelement consist of recurring flat monthly or daily rates determined by the type of facility ordered.[8]

As proposed, Special Transport provides the transmission facilities between (1) an IC terminal location serving wire center and the end user serving wire center, (2) an IC terminal location serving wire center and a Hub, (3) a Hub and an end user serving wire center, or (4) an end user serving wire center and a WATS or WATS type serving office "(for Dedicated Access Line Service only)".[9] The Special Transport rate category is distance sensitive and varies by type of facility. For each type of facility two component recurring charges are proposed: a fixed monthly rate for each "mileage band" grouping and a per mile charge that varies according to the airline distance involved.[10]

The third rate category proposed, Features and Functions, provides facility interface combinations (including signaling), Hub functions (i.e., bridging and multiplexing) and other options to improve the quality or utility of a service to meet specific communications requirements. There is also a separate charge for Voice Grade Performance which is included in this rate category. The Voice Grade Performance charge proposed applies to all Voice Grade Services (VG1-VG13) ordered by the IC.[11] Proposed charges for the Features and Functions rate element vary according to the facility or service ordered and include monthly per service termination rates plus non-recurring "First Service" and "Additional Service" per service termination charges.[12]

The fourth proposed subelement, Special Access Line (SAL), provides a channel between the wire center serving the end user premises and the end user premises.[13] Charges for SAL vary by type of facility ordered and include recurring monthly or daily rates plus, for some facilities, non-recurring "First" and "Additional" charges.[14]

In addition to these rates and charges, the *First Reconsideration Order* established a monthly Special Access Surcharge "to address the problems raised by interconnection by users of the closed ends of certain private lines and WATS lines."[15] The Special Access Surcharge of $25 per line termination was intended to compensate the telephone company for

[7] Section 7.1.1.(A).
[8] Section 7.5.1.
[9] Section 7.1.1.(B).
[10] Section 7.5.2.
[11] Section 7.1.1(C).
[12] Section 7.5.3.
[13] Section 7.1.1(D).
[14] Section 7.5.4.
[15] *First Reconsideration* at para. 151.

use of the local exchange network by Special Access Services that are classified as within interstate jurisdiction. Because not all Special Access Services can use the local exchange network, certain uses of Special Access Service were exempt from the surcharge. Five specific exempted terminations were listed in the Rules.[16]

In the *Second Reconsideration Order* the Commission modified the categories of service exempted from the Special Access Surcharge. Private line customers which certify to their exchange carriers that their private lines do not terminate in a PBX or other device that can interconnect the private line with local exchange service subscriber lines will be exempt from the surcharge. The Access Charge rules have been modified in this regard, and the access tariffs must be amended to reflect this modification.[17] All references to the application of the Special Access Surcharge should be set forth in a single section and should conform to the language set forth in the *Second Reconsideration Order*.

Many parties filed comments about the proposed Special Access provisions of the ECA tariff. The proposed rates and charges for Special Access subelements prompted the most controversy, with commenters challenging the size of the proposed increases, the disparity of rates among telephone companies and the rate structure.

Because the rate structure proposed for Special Access is radically different from the rate structure under which those services are presently provided, it is difficult to compare proposed rates with present rates or to assess the overall impact of those rate changes on the market. It appears, however, that for at least some customers rate increases will be enormous — up to several hundred or even several thousand percent. Commenters allege, for example, that installation charges under the Special Access provisions will increase from the present $78.05 in AT&T Tariff F.C.C. No. 260 to $530.47 under the ECA tariff. In some circumstances those charges could go as high as $1600 per installation. It also appears that for some carriers rates will decrease drastically. For example, the present charge for interconnecting a CCSA machine to a Centrex CO located in adjacent AT&T and exchange carrier offices is $41.25. Under the proposed ECA tariff, this charge would be $3.67. In addition, all non-recurring Special Access charges are placed on the installation at the end user premises, with no installation charge for an Access Connection to an IC premises. Drastic increases in the non-recurring charges could thwart the efforts of OCCs to expand and diversify their services. Large start-up costs in the form of high non-recurring charges would impose a significant barrier to entry or expansion and thus must be closely scrutinized.

[16] Section 69.115(a), (c) and (e) of the Commission's Rules, 47 C.F.R. § 69.115(a), (c) and (e).

[17] Section 7.4.2(B) of ECA Tariff F.C.C. No. 1.

Furthermore, under the ECA proposal there would be wide disparities in rates charged different customers for similar services. For example, a connection between an exchange carrier Centrex CO and an AT&T CCSA machine located in the same serving wire center area would be provided as an Access Connection at a monthly rate of $3.67 for a two wire connection, with no installation charge. In a similar situation, however, a customer owning and wishing to interconnect two PBX systems at two different premises within the same wire center area would be charged for a Special Access Line from the first PBX location to a wire center, an Access Connection to an IC,[18] and another Special Access Line to the second PBX location. The total charge in this latter example would be approximately twenty times the first, even though the services received in the two examples are the same, *i.e.*, connections assumed to be the same length.

In addition, there are tremendous variations among local exchange carriers and the ECA tariff in charges for Special Access elements. For example, comments point out that C&P Telephone of Virginia would charge $1243.51 for installation of a typical voice grade Special Access circuit; the ECA charge would be $647.93 for this installation; Illinois Bell would charge $338.68; and Pacific Telephone would charge $983.00.[19]

These variations are a strong indication that the rates are not cost based. Although we support any carrier efforts to recover legitimate service costs through a reasonable mix of non-recurring and recurring charges, we find the proposed ECA charges for Special Access do not withstand close scrutiny and we, therefore, reject them. The studies submitted by the carriers fail to justify the great increases over existing charges, the substantial variations in charges for similar services to different customers or the substantial variations in charges among the telephone companies. There has been no demonstration that any of these rates or rate variations are reasonable. Commenters urge that if the rates are demonstrated to be reasonable, due to the size of the increases in many cases and the drastic impact these increases could be expected to have on the market, they should be phased in gradually to reduce the shock to the market. We need not address this proposal at this time since it has not yet been determined that the rates are reasonable.

Many of the rate discrepancies described above appear to result from the proposed pricing structure which selectively disaggregates certain cost elements. As we discuss below, this structure results in unjustified discrimination among customers, confusion and ambiguity in rate calcula-

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[18] Although the tariff is unclear, we assume that this connection is required since an end user must connect to an IC service in order to obtain Special Access.

[19] All of these rates represent enormous increases over the present rates of $143 for installation of an outward WATS access line. AT&T Tariff F.C.C. No. 259 (WATS), at 4-8.

tions, and a lack of comparability with existing rates. As a general matter, the rate structure proposed eschews the nature of the products, dedicated telecommunications paths between customer-designated points, and prices instead on the basis of production functions or internal provisioning elements, *i.e.*, facility routing and physical plant layout. Normally, products offered in a market are priced in such a way that the production functions and associated costs are averaged over all units produced (average or marginal cost per unit). Thus, production functions and materials (such as the cost of tin in a can of fruit) are not typically priced separately; not only are they not-of individual concern to consumers, but such pricing mechanisms would be so complex as to be impractical.

If we were to permit the proposed pricing, all significant cost elements associated with the production functions incident to a given product would have to be shown, and not simply a few select ones as proposed in the Special Access structure. Without such a showing, it would be possible for a carrier to select production functions (e.g., channel density in large customer networks, topography variation for microwave relay systems, and physical routing if one or more of the physical function points coincides with a customer's actual service location) which would selectively favor customers with given service attributes.

The proposed structure appears to simulate physical routing. An end user ordering a private line channel between two different points must order a channel to the telephone company wire center (a Special Access Line). If the point to which the end user wishes to interconnect is served by a different wire center, another channel interconnecting the wire centers must be ordered (Special Transport). To connect to the second point, a channel from the serving wire center to the IC location must also be ordered (Access Connection). In contrast, if both points are served by the same wire center, no Special Transport line is necessary but only a Special Access Line and an Access Connection are required. This pricing structure appears to disaggregate and price separately actual service components. In fact, however, the rate structure proposed does not unbundle service components in a manner reasonably related to customer requirements for specific service elements. Nor does it disaggregate all of the price components of any service—only a few are selected. Moreover, it is too narrowly tailored to interexchange carriers in violation of our *First Reconsideration Order* which contemplates that Special Access will be usable by both ICs and end users. We are, therefore, requiring that the structure be revised.

It is a requirement of this Commission's rules that tariffs contain such explanatory statements in clear and explicit terms regarding rates and regulations as may be necessary to remove all doubt as to their proper application. 47 C.F.R. § 61.55 (f). The Special Access Services offering is

fundamentally deficient in this regard, for it does not indicate with the requisite clarity that end users may obtain service under its terms. This problem stems from the fact that no provision is made for providing service to any users except those designated by the term "Interstate Customer." That term is defined in Section 2.6 in a confusing manner which lends itself to conflicting interpretations, as has been noted. See discussion of ECA Tariff Section 2.6, above. Hence, the term "Interstate Customer" might be construed to mean any customer taking service under the tariff, or it might be construed as referring only to carrier customers. If the latter construction were accepted, then it would follow that non-carrier customers would be unable to obtain direct jurisdictionally interstate private line service between two points within a LATA under the proposed tariff.[20] Although the tariff provides for connections between end user premises, such service would have to be ordered by an IC and interconnected with an IC's interstate facilities.[21]

The proposed structure would accord particularly favorable rate treatment to customers who chose to lease telco equipment at the telco wire center rather than employing their own equipment at their own premises. The charge to connect an end user premises at the wire center (as in the case of CENTREX) with an IC premises would be $3.67 per month for two-wire voice service. To connect an end user PBX at the end user premises with an IC in the same serving wire center, the monthly charge would be approximately $38. The proposed structure would also favorably treat ICs who have numerous operating centers and a large customer base. Such an IC would be more likely to have an operating center in the same wire center serving area as the IC's customer. In such cases, no Special Transport is required to connect the customer to the IC's

[20] A customer, for example, may have switching machines used for interstate private line service located on one or more premises within a local area. A local access line connecting to one of these switches, or a trunk interconnecting two or more such switches, are examples of jurisdictionally interstate private line service even though the entire private line channel might be contained within a local area. In the *First Reconsideration Order*, we noted that there are probably over a million local private line channels which are jurisdictionally interstate.

[21] Although the tariff is ambiguous, it does not appear to permit an end user to interconnect two of its own premises through the use of two Special Access Lines. Section 7.4.5(C) provides that an end user premises can be connected to another end user premises but specifies that an IC would be billed for the service. The provision further states that the end user premises at which connection to interstate service is effected is treated as an IC premises for billing purposes. This, however, is ambiguous as it appears to limit the availability of end user to end user connections to situations where the channel is (1) connected to an IC's interstate service and (2) connected at only one end rather than two, as may be the case with a PBX tie trunk to interstate service. Interconnection of two end user premises without IC intervention is not specifically dealt with in the tariff.

operating center. Finally, the proposed structure gives unjustifiably preferential treatment to ICs vis a vis end users. A connection between an end user premises and a serving wire center would be $34.28 per month whereas such a connection to an IC premises would be $3.67 per month, even where the IC and end user premises are equidistant from the serving wire center. Thus, under the proposed rate structure, the very classification of a customer as an IC or end user has major rate impact.

In establishing the proposed pricing elements for Special Access, the ECA has unbundled selected *cost* elements (or production functions) which are not generally separately useful to customers, rather than *rate* elements (service functions), which might be separately useful. Under the proposed tariff, for example, all customers for Special Access services must take (and pay for) connection to a wire center, regardless of whether they actually need it. This proposed pricing structure, which does not comport with standard pricing conventions or with prior practices in pricing of communications services, has not been justified. With minor exceptions, interstate private line services have always been priced on a straight-line basis between customer designated points regardless of physical routing.[22] Similarly, the pricing of public or common access message services such as MTS and Telex service is based on messages or message units between customer-designated points. The physical routing of the message does not affect the definition of a unit of service rather, it is reflected in the average or marginal cost of providing a unit of service, just as the other costs of production are.

The structure proposed for Special Access is no more than a representational model of only one aspect of cost, *i.e.*, physical routing of channels. Many other cost functions are not disaggregated and thus are presumed to simply follow routing. They are, therefore, loaded more heavily on what are made to appear more complex physical routes such as those entailing Special Transport. Some of these costs, for example, billing or marketing costs, do not necessarily vary with complexity or length of haul. The disparate rate impact of the proposed structure compared with existing rate structures is due, in large part, to this selective disaggregation of cost elements. The pricing structure itself dictates the amount of cost which will be assigned to particular segments of the market, making it appear that all costs, including overhead follow a selective disaggregation of routing elements.

No justification has been provided for singling out physical routing as the principal, if not sole, cost variable governing the development of the Special Access rate structure. By ignoring other cost factors and failing to take into account the manner in which these costs are incurred, an undue

[22] In the MFJ, "telecommunications" is defined as "transmission, between or among points specified by the user, of information of the user's choosing..." MFJ, § IV O.

rate emphasis is placed on physical routing and deleterious effects on customers requiring complex configurations under of the rate structure result. A heavy burden of justification is required for a rate structure which, through selective disaggregation of cost elements, so magnifies the importance of one traditionally unrecognized cost element and so dramatically affects a customer's bill.[23]

Moreover, routing between customer and telephone company offices may be far different from that depicted in the model.[24] Routing on any network varies depending on traffic status and many other network considerations. The end user or IC is not necessarily connected to the nearest wire center but may be connected to distant points depending on load and other facility conditions. Also, where a customer would be served by microwave relay instead of underground cable or metallic facilities, the microwave relay stations, which are often located for propagation reasons, may bear little or no correlation in routing to the location of a wire center or central office. Such a customer could be routed, therefore, in a totally different manner from another customer in the same area and served by a different transmission technology. Of more importance in this regard, however, is the fact that where any technology, particularly microwave, is used to serve private line customers, there would not necessarily be any need to transit a wire center or central office at all. Only in cases where the customer has equipment, such as a switch, located at the telco would such a connection be needed. Even in the case of underground cable, customer points could be directly interconnected in many cases. The connection to the central office in the case of private line service principally serves to facilitate maintenance. The customer has neither control over nor necessary interest in how a common carrier decides to route traffic in order to provide a point-to-point private line service. The customer is concerned only to the extent that routing or other engineering factors affect service attributes, e.g., quality or capacity. The point here is that although the rate structure purports to replicate the actual physical routing of private line channels, this may often not be the case. A customer would be charged on the basis of the model configuration even though his service and the costs associated with it bore little or no relation to the applicable rates. To say that this rate structure employs representative routing or reflects the usual configuration is inadequate to refute our criticism; such reasoning contradicts the claim that the rate

[23] *See* American Telephone and Telegraph Company (Multi-Schedule Private Line Rates), 74 FCC 2d 1 (1979), *recon. denied*, 85 FCC 2d 549 (1981).

[24] For instance, a customer location does not necessarily connect to the nearest serving wire center but may, depending on network conditions, connect to a more distant office. Further, the Special Transport segment of the service may traverse a number of offices between the IC serving wire center and the end user.

structure accomplishes an unbundling to comport more closely with actual costs.

One reason for the ECA's choice of rate structure may have been a misunderstanding of what we mean by "unbundling". In recent years, the Commission has attempted to achieve a degree of standardization in service pricing to facilitate regulatory surveillance and to reduce reliance on detailed service cost data. One aspect of this standardization has involved unbundling, or separating out, of rate or pricing elements so that similar or identical rate elements can be compared with one another from service to service. The level of detail to which rates should be unbundled is determined by customer needs. That is, to the extent a useful service element is severable from the overall service it must be unbundled so that the customer does not have to order unneeded service in order to obtain the useful service element.[25]

Under present and historical tariffs, intracity channels generally appear as a single rate element connecting customer-selected communications stations. This single rate element represents a private line which can be used to interconnect any two premises, carrier or non-carrier, without regard to user identity. In contrast, the proposed Special Access pricing structure would "unbundle" this single element into as many as three separate elements which are not generally independently useful to customers and which do not facilitate comparisons between services. This structure would generally disfavor customers who have their own equipment located at their own premises. Customers using terminal equipment functions, *e.g.*, packet switching provided at telephone company premises, would receive inordinate rate advantages over customers choosing to use their own terminal equipment. This charge differential results primarily from the proposed pricing structure and does not necessarily reflect differences in service costs.

A single rate element, representing a point to point private line, would serve all customer service requirements in an even handed manner. Under this pricing structure, a customer requiring, for example, a communications path between two of its own premises would not have to order an unwanted communications path to a wire center and perhaps another path to a second wire center. These latter private lines are simply service the

[25] The policy guidelines related to rate structure unbundling were first enunciated in American Telephone and Telegraph Company (Notice of Inquiry and Proposed Rulemaking in Docket 79-246), 74 FCC 2d 226 (1979), and later reflected in American Telephone and Telegraph Company (Picturephone Meeting Service), 84 FCC 2d 322 (1981); American Telephone and Telegraph Company (Maintenance of Service Charge Investigation), 82 FCC 2d 370 (1980); American Telephone and Telegraph Company (Bell Packet Switching Service), 91 FCC 2d 1 (1982); and American Telephone and Telegraph Company (International Video Teleconferencing Service), Mimeo No. 433 (released October 27, 1983).

customer does not need. Under the Commission's interpretation of unbundling, the carrier would offer transmission elements in a form which reflects actual service requirements.

If the telephone companies wish to demonstrate that it is, in fact, more costly to interconnect customer premises directly, they can do so under a structure which reflects the unit of service offered, i.e., a communications path between points designated by the customer. If it can then be shown it is reasonable to subclassify this service category into channels connecting other points, e.g., common carrier premises, a rate level difference could be shown. We advise companies who may wish to do this, however, that they must first demonstrate that it is reasonable to allow services to be classified in this manner and if so, *all* service costs, not just a few selected ones, must be shown for each classification.

For the above reasons, we find the proposed pricing structure for Special Access an unreasonable practice under Section 201(b) of the Communications Act, 47 U.S.C. § 201(b). Until the carriers file justified rate structures, we will require that Special Access be structured under the tariff as a single channel, either distance sensitive between customer-designated points or flat rated. See, for example, the local rate center channel rate element under AT&T Tariff F.C.C. No. 270 (Terrestrial Digital Circuits), which is priced on a flat monthly basis regardless of length, and Washington Metropolitan Area Channels under Series 2000 and 3000 in AT&T Tariff F.C.C. No. 260, which are charged for on the basis of airline mileage between customer-designated points.

The rate structures we have defined above apply to intraexchange channels. Since a LATA may include a number of different exchanges or exchange areas, an additional schedule for interexchange channels may be required. In such cases, the rate structures should be similar to existing rate structures for interstate interexchange channels. These consist of an interexchange channel rate element for the channel (or channels) interconnecting the rate centers of the exchanges involved, and a rate for a local distribution channels to connect the terminal of the interexchange rate element with the customer-designated station(s) within the exchange. This latter rate element has been and continues to be insensitive to physical location within an area. If desired, this local distribution rate element can be priced on the basis of distance from the interexchange channel termination to the customer-designated location.

A further pricing structure matter concerns the manner in which intracity or intra-LATA area channels used for voice, data, telegraph and other purposes would be segmented under the proposed tariff. The basic transmission channels for these various services are all the same. As we have stated previously, generic transmission channels must be provided

under single integrated rate schedules.[26] Permitting the same channel to be priced differently according to its use would result in damaging price discrimination. To preclude such discrimination, we are requiring that all wire pair facilities must be priced under a single channel rate schedule regardless of whether they are used for voice, data, facsimile or another purpose. Electrical modifications and special interface features can be offered separately, but customers must be allowed to obtain these basic transmission channels for any compatible purposes under generally applicable rates.

Finally, an additional question arises concerning the continued need and usefulness of copycat tariffs for private line services which customers will be able to obtain under the revised Special Access tariff provisions. We intend to seek comment on this issue in the context of Phase II of this proceeding.

Other specific issues relating to Special Access are discussed in the following sections dealing with specific tariff sections.

SUBJECT: Special Access Service—Rate Categories

ECA TARIFF REFERENCE: § 7.1.1

TARIFF LANGUAGE: "7.1.1 *Rate Categories*

There are four basic rate categories which apply to Special Access Service:

—Access Connection

—Special Transport

—Features and Functions

—Special Access Line

Unless specifically stated otherwise, each of the rate categories will apply for each Special Access Service provided to an IC.

(A) *Access Connection*

This rate category provides a channel between the IC terminal location and the wire center serving the IC terminal location. This rate category varies by type of facility.

(B) *Special Transport*

This rate category provides the actual physical transmission facilities between (1) an IC terminal location serving wire center and the end user serving wire center, (2) an IC terminal location serving wire center and a Hub, (3) a Hub and an end user serving wire center, or (4) an end user serving wire center and a WATS or WATS type serving office (for Dedicated Access Line Service only). The facilities may be either analog or digital. This rate category is distance sensitive and varies by type of facility.

(C) *Features and Functions*

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[26] *See* American Telephone and Telegraph Company (Group/Supergroup Order), 92 FCC 2d 1217 (1983), *recon. denied*, FCC 83-550 (released December 12, 1983); ITT World Communications Inc., Mimeo No. 476 (released October 28, 1983); American Telephone and Telegraph Company (Service to R.R. Donnelley and Sons Company), 89 FCC 2d 1116 (1982); and American Telephone and Telegraph Company (Notice of Inquiry and Proposed Rulemaking in CC Docket No. 79-246), 74 FCC 2d 226 (1979).

This rate category provides available facility interface combinations (including signaling), Hub functions (i.e., bridging and multiplexing and optional features or functions that improve the quality or utility of a service to meet specific communications requirements. In addition, there is a separate charge for Voice Grade Performance which is also included in this rate category. The Voice Grade Performance charge applies for all Voice Grade Services (i.e., VG1-13) ordered by the IC.

(D) *Special Access Line*

This rate category provides a channel between the wire center serving the end user premises and the end user premises. This rate category varies by type of facility."

ISSUES: A number of commenters oppose the rate categories and rate structure proposed. (e.g., GTES, WU, SBS, AHTUC, HTN, Group W, ITT, DJ).

DISCUSSION: As discussed above, we find that the proposed rate structure fails to unbundle service elements which are useful to a customer. Although the structure proposed purports to unbundle four service components, customers are almost always required to take all four components. The service and rate elements must be restructured as discussed above.

The references in this provision and other provisions throughout the tariff to Dedicated Access Line Service should be eliminated in accordance with the *Second Reconsideration Order. See also* Discussion in Section 6.

SUBJECT: Special Access Service—Service Configurations, Multipoint Service

ECA TARIFF REFERENCE: § 7.1.4(B) (Issue I)

TARIFF LANGUAGE: (in part):

"The Telephone Company will designate serving wire centers where bridging (by service type) is available. These serving wire centers are referred to as Hubs."

ISSUES: The telephone company is given discretion regarding the designation of serving wire centers and yet no standards for exercise of that discretion are specified. None of the tariffs filed have designated serving wire centers. (WU).

DISCUSSION: This provision and similar ones in the tariff fail to specify where wire centers are located. This problem will be eliminated by the restructuring of point-to-point and multipoint channels which we are directing herein. *See also* Discussion in Section 7.2.1(B) (Issue I).

SUBJECT: Special Access Service—Service Configurations, Multipoint Service

ECA TARIFF REFERENCE: § 7.1.4(B) (Issue II)

TARIFF LANGUAGE:

"The rates to be applied at the IC terminal location are those for the facility interface combination with the highest rates at the initial installation of service."

DISCUSSION: The BOCs and CSO have proposed a "correction" to this section which would amend it to read "... highest monthly rate at the initial installation of services". We allow this minor technical clarification.

SUBJECT: Special Access Service—Alternate Use

ECA TARIFF REFERENCE: § 7.1.5

TARIFF LANGUAGE: (in part):

"The Telephone Company will review each request for alternate use on an individual case basis. If it agrees to allow the alternate use, the arrangement required to transfer the service from one operation to the other (i.e., the transfer relay and control leads) will be rated and provided on an individual case basis and filed in Section 12., Specialized Service or Arrangements."

ISSUES: As MCI and WU point out, this provision gives the telephone company broad discretion to "review" and determine whether to "allow" alternate use.

DISCUSSION: This provision gives the telco broad discretion to limit or deny a customer's choice of how a service is to be used. Such restrictions on alternate use create the potential for discrimination and should be eliminated. This provision should either be amended to state that customers may use a service as they choose, within specific technical protection parameters, or deleted.

SUBJECT: Special Access Service—Design Layout Report

ECA TARIFF REFERENCE: § 7.1.7; *See also* § 6.1.5

OTHER TARIFF REFERENCES: GTE Access Tariff

TARIFF LANGUAGE:

"7.1.7 *Design Layout Report*

The Telephone Company will provide to the IC the make-up of the facilities and services provided under this tariff as Special Access to aid the IC in designing its overall service. This information will be provided in the form of a Design Layout Report. The Design Layout Report will be provided to the IC at no charge."

DISCUSSION: This provision should specify when the telco will provide Design Layout Reports. *See* Discussion of Section 6.1.5.

As WU notes, the GTE Access tariff has no provision for design layout reports. The tariff should be amended to set forth that design layout reports will be provided at specified times.

SUBJECT: Special Access Service—Acceptance Testing

ECA TARIFF REFERENCE: § 7.1.8 (Issue I); *See also* § 6.1.6

OTHER TARIFF REFERENCES: GTE Access Tariff

TARIFF LANGUAGE: (in part):

"7.1.8 *Acceptance Testing*

At no additional charge, the Telephone Company will, at the IC's request, cooperatively test, at the time of installation, the following parameters:

For Voice Grade (VG) Services 1, 2, 3, 6, 7, 8, 9, 10, 11 and 12: loss, 3-tone slope, dc continuity and operational signaling. When the Access Connection provides a four-wire voice transmission interface and the network interface provides two-wire voice transmission, (i.e., there is a four-wire to two-wire conversion in Special Transport), balance (equal level echo path loss) may also be tested. Additionally, C-notched noise tests will be provided on VG6, 7, 8, 9, 10, 11 and 12.

All other Access Services will be tested to the performances parameters specified for the individual services."

ISSUES: Commenters contend that this testing provision is unjust and unreasonable. (WU, ISACOMM, RCA).

WU notes that the GTE access tariff sets forth no free acceptance testing.

DISCUSSION: As we have required above, the voice grade transmission channels are to be restructured and provided as a single transmission offering. This provision should be amended accordingly. *See* Discussion in Section 7.1.2(B); *See also* Discussion in Section 6.1.6.

The BOCs and CSO propose a "correction" in the first quoted paragraph to include VG 4 and 5 in the first line and VG 5 in the last line of the paragraph. These amendments are inconsistent with the restructuring of the voice grade channel that we require herein. *See* Discussion in Section 7.1.2(B).

The GTE access tariff should be amended to include a provision for acceptance testing consistent with our direction herein for the ECA access tariff.

SUBJECT: Special Access Service—Acceptance Testing

ECA TARIFF REFERENCE: § 7.1.8 (Issue II); *See also* § 6.1.6.

TARIFF LANGUAGE: (in part):

"If acceptance tests are not started within 30 minutes after the scheduled appointment time for such tests, as negotiated between the Telephone Company and the IC, additional charges will apply, as set forth in 13.2.6(B) following."

ISSUES: As AT&T points out, this provision is ambiguous and could be read to make the IC liable even if the telephone company is responsible for the delay.

DISCUSSION: The BOCs and the CSO propose to amend the last sentence to read:

"... additional charges will apply, as set forth in 13.2.6(B) following unless the delay is caused by the Telephone Company."

The proposed revision is necessary to clarify that the IC will not be penalized if the telco causes the delay. However, justification for the 30 minute period should also be given or a period of time which can be justified should be selected. *See* Discussion in Section 6.1.6 regarding acceptance testing.

SUBJECT: Special Access Service—Ordering Options and Conditions

ECA TARIFF REFERENCE: § 7.1.9; *See also* § 5

TARIFF LANGUAGE:

"7.1.9 *Ordering Options and Conditions*

There are two ordering options available to an IC in the provision of Special Access Service. These are:

—Access Order

—Planned Facilities Order

These options are set forth in detail in 5. preceding, as are the conditions under which the options may be elected. Cancellation charges associated with these options are also included in 5. preceding."

ISSUES: Several commenters contend that the ordering options set forth for Special Access services are unjust, unreasonable and anticompetitive. (*e.g.*, WU, RCA, DJ).

DISCUSSION: *See* Discussion in Section 5.

SUBJECT: Special Access Service—Jurisdictional Report Requirements

ECA TARIFF REFERENCE: § 7.1.10; *See also* §§ 2.3.14, 2.3.15

TARIFF LANGUAGE:

"7.1.10 *Jurisdictional Report Requirements*

When an IC orders Special Access Service for both interstate and intrastate use, the IC is responsible for providing reports as set forth in 2.3.14 preceding. Charges will be apportioned in accordance with these reports. The method to be used for determining the interstate charges is set forth in 2.3.15 preceding."

ISSUES: WU contends that Special Access users should not be required to provide reports on usage because access rates are not usage based. WU asserts that its telex network does not allow it to determine how much traffic moves on an inter- or intra-state basis from any particular terminal.

DISCUSSION: Because Special Access is priced on a monthly rather than usage basis, it is unclear what purpose this reporting requirement serves. This provision should be eliminated. *See also* Discussion in Sections 2.3.14, 2.3.15.

SUBJECT: Special Access Service—Technical Service Descriptions for Special Access

ECA TARIFF REFERENCE: § 7.2 (Issue I); *See also* §§ 6.4, 7.2.1(B) (Issue I)

OTHER TARIFF REFERENCES: South Central Bell

TARIFF LANGUAGE: (in part):

"7.2 *Technical Service Descriptions for Special Access Service*

Special Access Service may be either analog or digital. Analog services are differentiated by spectrum and bandwidth. Digital services are differentiated by bit rate.

There are six major categories of analog service and three digital services. These are:

—Analog: Narrowband
Voice Grade
Program Audio
Video
Wideband
Dedicated Access Line Service

—Digital: Wideband
Digital Data
High Capacity

Each of these, except Dedicated Access Line Service, are further broken down into a number of subcategories."

ISSUES: Several commenters express concern that the provisions of Section 7.2 fail to adequately describe transmission standards for the services offered (AT&T, GTES, ITTCOM, LC, MCI, RCA, SBS, USTEL and WU). USTEL and others contend that the tariff presents only "Immediate Action" technical limits, not expected or normal levels of performance.

WU notes that South Central Bell does not provide any references to technical documents.

The BOCs/CSO reply that the proposed transmission standards are essentially equal to, or are greater than, those provided in docket No. 20099. In their reply they also state that

maintenance and acceptance limits are being developed and will later be provided in Technical Reference publications.

DISCUSSION: A number of the issues raised by the commenters are discussed elsewhere. For a discussion of the issue of the adequacy of the performance standards, see Sections 6.4 and 7.2.1(B). For a discussion of the manner in which the channels are listed in this section and associated service features described, see Section 7.2.1(B) (Issue I).

One remaining issue is the way in which the tariff proposes to denominate the major channel categories e.g., Digital Data and High Capacity. If we permit channels to be defined by use, the same channel could be priced under two or more separate service classifications, which would be unreasonably discriminatory. We do not at this time prescribe what these generic channel types shall be, but rather require the carriers to propose channel classifications and nomenclature consistent with our discussion here and in the other sections.

The reference to Dedicated Access Service must be eliminated. *See* Discussion in Sections 7.1.1, 6.1.2.

SUBJECT: Special Access Service—Technical Service Descriptions for Special Access Service

ECA TARIFF REFERENCE: § 7.2 (Issue II); *See also* § 6.4.

TARIFF LANGUAGE: (in part):

"The Telephone Company will maintain transmission performance on service configurations installed prior to January 1, 1984. All service configurations installed after January 1, 1984 will conform to the transmission performance standards contained in this tariff, except as follows. Where local facility conditions cannot support the transmission performance standards contained in this tariff, transmission standards that can be supported will be uniformly applied to all ICs."

ISSUES: The commenters argue that it is unreasonable that transmission performance will be maintained on facilities existing before the effective date of the tariff, but that the proposed technical specifications for new installations will be maintained only where local facility conditions support them. The commenters contend that the "grandfathering" of engineering standards for facilities in place could unlawfully discriminate in favor of AT&T. Further, the provision is vague with respect to the conditions that will allow lower transmission standards than those set forth. (*e.g.*, USTEL, RCA, WU).

DISCUSSION: *See* Discussion of similar provision in Section 6.4.

SUBJECT: Special Access Service—Technical Service Descriptions for Special Access Service—Narrowband and Voice Grade Services

ECA TARIFF REFERENCE: § 7.2.1(A),(B)

OTHER TARIFF REFERENCES: GTE Access Tariff

TARIFF LANGUAGE:

These provisions set forth the technical descriptions of Narrowband and Voice Grade Services.

DISCUSSION: The services are offered only between an IC terminal location and an end user premises. The services should not be so limited unless a reasonable justification for the limitation is provided.

As WU points out, the GTE access tariff does not have parameters for voice grade special access services and thus provides no guarantee of performance quality. The tariff must be

amended to include technical standards for voice grade Special Access service, consistent with the restructuring of voice grade Special Access service required herein.

SUBJECT: Special Access Service—Technical Service Description—Voice Grade Analog Services

ECA TARIFF REFERENCE: § 7.2.1(B) (Issue I)

TARIFF LANGUAGE:

"There are 13 types of Voice Grade Service, each having a different transmission performance. The transmission performances determine the applications that the various types of Voice Grade Service can be used for."

ISSUES: Transmission services are bundled and thus ICs are unable to simply take a transmission path and add selected features to it.

DISCUSSION: Customers are presented with a choice of bundled services, but the components of the bundled services overlap and the bundles are limited to certain uses. For example, VG2 is essentially the same as VG1, except that the IC has the ability to connect to a Centrex CO and has a few extra features with VG2. Similarly, VG13 creates a separate service category for "physically intraLATA services that are jurisdictionally classified as interstate", yet all of the tariff service offerings meet this description. The tariff does not follow a "building block" rate structure, which minimizes the potential for discrimination, but instead bundles service elements.

The service components should be unbundled so that a customer can build the service it needs. Specifically, the separate subclassifications of voice grade services, VG1 through VG13 must be eliminated and a single voice grade channel, or building block, must be offered in the tariff. This revision will eliminate the unnecessary complexity and duplication created by thirteen voice grade subcategories and thirteen sets of voice grade technical parameters. This revision will also reduce the potential for discrimination created by segmenting the market into thirteen service classifications. To the extent that a customer wants additional features, the customer should be able to order them separately; this illustrates what the Commission means by unbundling.

The proposed tariff restricts a customer's use of services in three ways. First, the voice grade categories are stated to be useful only for specified purposes. Second, the features and functions options are linked to particular channels. Third, alternate uses of a channel are permitted only with the consent of the telco. Unreasonably limiting a customer's use of a service, other than to protect the network, violates the policy enunciated in *Carterfone*.* We therefore require the telcos to eliminate the tariff restrictions on the use of services.

SUBJECT: Special Access Service—Technical Service Descriptions for Special Access Service—Voice Grade Transmission Parameters

ECA TARIFF REFERENCE: § 7.2.1(B) (Issue II)

TARIFF LANGUAGE:

This provision sets forth technical service descriptions for voice grade services.

ISSUES: The commenters contend that the technical descriptions do not include many necessary transmission parameters and that the standards which are in the tariff are set below existing criteria. (SBS, AT&T, WU). The commenters argue that necessary transmis-

* Carterfone, 13 FCC 2d 420 *recon.*, 14 FCC 2d 571 (1968).

sion parameters affecting voice grade Special Access service are omitted from the tariffs or are inadequate as proposed. They contend without such parameters, for example, an IC could not design multipoint circuits using the BOC provided bridging function. AT&T contends that the technical descriptions do not provide necessary parameters for multipoint services, adding substantially to an IC's cost of providing service to its interstate customers.

DISCUSSION: As the commenters have noted, the voice grade transmission parameters proposed contain no standards for phase hits, gain hits or dropouts as part of the data conditioning option. Phase hits occur when the FDM carrier is not in phase or there is switching to alternate transmission facilities. Existing phase modulation modems are sensitive to phase hits and cannot work adequately without a proper threshold. Bell System Technical Reference 41004 states that the standard for phase hits on data lines is no more than 8 hits that are 20 degrees or more in 15 minutes. The commenters maintain that because that standard applies to end-to-end service, even fewer hits should be permitted to apply for end links. Similarly, the standard for gain hits in Bell System Technical Reference 41004 is for no more than 8 gain hits more than 3 decibels from the receive signal in 15 minutes, and the standard for dropouts (signal decreases greater than 12 decibels lasting longer than 4 milliseconds) is no more than 1 in 30 minutes. The commenters maintain that failure to meet these standards causes deterioration of bit error rates on 9600 baud modems which use phase and amplitude modulation.

We are concerned about the issues raised by the commenters yet we find it would be inequitable to seek to impose standards on the exchange carriers which they cannot reasonably be expected to meet at this time. We conclude that many of the concerns of the commenters may be ameliorated by the development of carrier-initiated standards for carrier groups, *e.g.*, different standards for large and for small telcos. We therefore encourage the carriers to establish such standards, perhaps by carrier group.

Until such standards can be developed, we will require certain interim alternative standards which are more stringent than those now proposed in the tariff. These higher interim alternative standards are to be met wherever facility conditions permit. At the telco's discretion, the higher alternative standards may be set forth in the channel conditioning tariff section, Section 7.5.3(D), or in Section 7.2.1(B). References to readily available technical publications may be made upon grant of a special permission waiver.

The tariff should be amended to set forth interim alternative technical standards for phase hit, gain hits, and dropouts, to be met where facility conditions permit. The alternative interim standard should be that which is currently specified in Bell System Technical Reference 41004. This technical reference should be added to page 19 of the ECA access tariff. Other specific interim alternative standards are discussed *infra*.

SUBJECT: Special Access Service—Technical Service Description—Transmission Performance—C Message Noise

ECA TARIFF REFERENCE: §§ 7.2.1(B)(1)(d), 7.2.1(B)(2)(d), etc. *See also* § 6.4

OTHER TARIFF REFERENCE: Rochester Telephone § 7.2.1(B), Central Telephone of Ohio § 5.2.1(B)

TARIFF LANGUAGE:

These provisions set forth C-Message noise parameters.

e.g., § 7.2.1(B)(1)(d) provides, in part:

"—:*C-Message Noise*

The C-Message Noise shall be less than:

Channel Mileage (mi)	*Limit (d BrnCO)**	
	Type V1	*Type V2*
0-50	32	38
51-100	33	39
101-200	35	41
201-400	37	43
401-1000	39	45

* Where facility network conditions will support the parameters, Type V1 will be provided. Where the Type V1 parameters cannot be supported, Type V2 will be provided."

ISSUES: WU and RCA contend that these provisions create unacceptable uncertainty on the part of customers which need to know the noise performance specifications in order to engineer quality end-to-end service. The commenters also contend that the parameters set forth in the tariff are deficient and represent a degradation of service. The commenters further contend that the mileage bands are too large. (WU, SBS, ITTCOM). MCI asserts that different rates should be provided for the two different levels of performance.

WU notes that Rochester Telephone's tariff limits the C-message noise parameter for VG1, 2 and 3 facilities where the channel contains a loop section.

WU also states that the C-message noise parameters in the proposed tariff of Central Telephone of Ohio are even lower than those proposed in the ECA tariff.

DISCUSSION: As the commenters note, there are three kinds of noise with which a Special Access service designer is concerned: C-message noise, C-notched noise, and impulse noise. The parameters provided in this tariff for the first of these three types, C-message noise, are inferior to documented Bell System expectations for the same facilities. The tariff also provides for two levels of noise performance, one for VG1 and another for VG2 and leaves to the telco the decision as to which parameters are applicable. The commenters argue that the proposed parameters represent a significant degradation of the current standards for each end link.

As discussed above, specifying performance standards by exchange carrier groups will alleviate many of the commenters' concerns about the standards. Until standards are established for carrier groups, we require that the telcos offer at least one interim alternative group of standards more stringent than either V1 or V2. *See* Discussion in Section 7.2.1(B) (Issue II).

Further, while we would not object to quality-specific pricing, we are unpersuaded by MCI's argument that we should require such pricing. Differences in quality do not necessarily mean a difference in the cost of providing the service. *See also* the Discussion in Section 6.4 of a similar provision.

SUBJECT: Special Access Service—Technical Service Descriptions, Voice Grade Services—C-Notch Noise

ECA TARIFF REFERENCE: §§ 7.2.1(B)(1)(d), 7.2.1(B)(2)(d), 7.2.1(B)(3)(d), and 7.2.1(B)(4)(d)

TARIFF LANGUAGE:

These provisions set forth the transmission performance standards for VG1, VG2, VG3 and VG4.

ISSUES: WU points out that there are no parameters for C-notch noise for VG1, VG2, VG3, and VG4.

DISCUSSION: The thirteen voice grade channels and the voice grade technical parameters are to be restructured. *See* Discussion in Section 7.2.1(B) (Issue I). C-notch noise parameters should be specified for the restructured voice grade channel.

SUBJECT: Special Access Service—Technical Service Descriptions—Echo Return Loss

ECA TARIFF REFERENCE: §§ 7.2.1(B)(1)(d), 7.2.1(B)(2)(d), etc.

OTHER TARIFF REFERENCE: Bell of Pennsylvania § 7.2.1(B) Rochester Telephone § 7.2.1(B) Central Telephone of Ohio § 5.2.1(B)

TARIFF LANGUAGE:

These provisions set forth the standards for echo control on Special Access voice grade services.

ISSUES: The commenters contend that the parameters for echo control are deficient. (WU, SBS, AT&T).

WU states that the access tariff of Bell of Pennsylvania does not offer improved echo return loss for any voice grade offerings.

WU also states that Rochester Telephone has proposed no improved return loss parameter for VG2.

DISCUSSION: The commenters contend that the ECA tariff does not provide true Echo Return Loss (ERL) values but instead gives an Echo Level Echo Path Loss parameter that provides a derived, as opposed to measured, ERL. They argue that measured ERL parameter is much more useful than the derived parameter and should be provided in the tariff. They argue further that the specifications set forth in the tariff reflect reductions in echo control standards which could result in inadequate service. They maintain that the standards should be set at a level which is at least as stringent as those currently offered to the non-AT&T carriers under OCCEI-5.

As discussed above, we are concerned that it may be unreasonable at this time to require each exchange carrier to meet the standards sought by the commenters. Therefore, until standards can be set on a carrier by carrier or carrier group basis, we will require that the higher standard be specified in the tariff as an interim alternative standard, subject to facility conditions, as discussed in Section 7.2.1(B) (Issue II). The ERL standard specified in the tariff must be the same for all ICs, non-AT&T and AT&T alike.

We are also requiring that the voice grade offerings be restructured as a single transmission offering, as discussed above. Thus, WU's concern regarding Rochester Telephone's voice grade parameters need not be addressed.

SUBJECT: Special Access Service—Technical Service Descriptions, Voice Grade Services—Transmission Performance—Attenuation Distortion

ECA TARIFF REFERENCE: § 7.2.1(B)(1)(d), 7.2.1(B)(2)(d), 7.2.1.(B)(7)(d)

OTHER TARIFF REFERENCE: Rochester Telephone § 7.2.1(B)

TARIFF LANGUAGE:

These provisions set forth the specifications for attenuation distortion.

ISSUES: The commenters contend that the proposed standards are inadequate. (WU, SBS).

WU also notes that the proposed attenuation distortion standards of Rochester Telephone are even lower than the proposed ECA standards.

DISCUSSION: The commenters argue that maintenance limits are needed for attenuation distortion and should be placed in the ECA and other tariffs. They also maintain that specifications for attenuation distortion must be provided for SF signaling.

This provision should be amended to provide an alternative distortion standard, as discussed in Section 7.2.1(B) (Issue II).

Rochester Telephone's tariff should also set forth an alternative attenuation distortion standard.

SUBJECT: Special Access Service—Technical Service Descriptions, Transmission Performance—Impulse Noise

ECA TARIFF REFERENCE: §§ 7.2.1(B)(5)(d),6(d), 7(d), etc.

OTHER TARIFF REFERENCES: Rochester Telephone § 7.2.1(B)

TARIFF LANGUAGE:

These provisions set forth the impulse noise parameters.

ISSUES: The commenters contend that these standards are deficient. (SBS, WU).

Rochester Telephone's tariff sets forth no impulse noise parameter for VG5. (WU).

DISCUSSION: Impulse noise is a short duration, high amplitude noise generally contributed by a switching device. The commenters argue that the impulse noise standards proposed for voice grade services are below current parameters and should be revised to equal or exceed existing standards under Docket 20099. They also contend that acceptance and maintenance limits for impulse noise must be provided in the tariff.

We direct the telcos to amend their tariffs to offer the higher standard proposed by the commenters as an interim alternative standard, as discussed in Section 7.2.1(B) (Issue II).

SUBJECT: Special Access Service—Sealing Current on Special Access Channel VG6

ECA TARIFF REFERENCE: § 7.2.1(B)(6)(C)

TARIFF LANGUAGE:

This provision sets forth the optional features for VG6 Special Access service.

ISSUES: AT&T argues that an option should be provided in the tariff to specify sealing current on VG6.

DISCUSSION: AT&T contends that this provision could cause increased maintenance problems because dry voiceband data channels (with no DC current) are prone to failures that typically cannot be found when test voltage is applied to the circuit.

The thirteen voice grade channels and the voice grade technical parameters are to be restructured. *See* Discussion in 7.2.1(B) (Issue I). A sealing current interim alternative standard should be provided in the tariff in accordance with the Discussion in Section 7.2.1(B) (Issue II).

SUBJECT: Special Access Service—Technical Service Descriptions, Technical Parameters—Envelope Delay Distortion

ECA TARIFF REFERENCE: §§ 7.2.1(B)(6)(d), (7)(d), (8)(d), etc.

TARIFF LANGUAGE:

These provisions set forth the technical parameters for Envelope Delay Distortion.

ISSUES: AT&T and SBS argue that these standards are too low.

DISCUSSION: The commenters define envelope delay distortion (EDD) as the derivative with respect to the frequency of the phase characteristics of the channel. Measuring the derivative is impractical, so it is approximated by a difference measurement in microseconds. The commenters contend that the proposed standard could yield poor data transmission quality.

In their reply, the BOCs and the CSO contend that a customer wanting tighter control of EDD on access services VG5 through VG10 may request C conditioning.

An alternative EDD standard should be offered equal to the values originally proposed in Technical Specification #5 (a technical description of BOC access service offerings circulated by the Central Services Organization via the Interexchange Compatibility Forum). This higher standard should be provided in accordance with our Discussion in Section 7.2.1(B) (Issue II).

SUBJECT: Special Access Service—Technical Service Description—Phase Jitter, Voice Grade 7 (VG7) Special Access Service

ECA TARIFF REFERENCE: § 7.2.1(B)(7)(d)

TARIFF LANGUAGE:

"*Phase Jitter*

The phase jitter over 20-300 Hz shall not exceed 5 degrees peak-to-peak and over 4-300 Hz shall not exceed 10 degrees peak-to-peak."

ISSUES: SBS contends that the phase jitter standard for VG7 is lower than the current standard in OCCEI-5.

DISCUSSION: Phase jitter is a measure of variation (jittering) of a transmitted signal about an ideal point. Phase jitter disturbs the zero crossing of a signal and impairs data transmission. The OCCEI-5 presently provides objectives for phase jitter of 5 degrees peak-to-peak for a distance up to a 200 mile range without limitation as to frequency bands.

The tariff should provide an alternative higher standard with limits no less stringent than those provided in OCCEI-5, as discussed in Section 7.2.1(B) (Issue II).

SUBJECT: Special Access Service—Technical Service Description - Program Audio Services

ECA TARIFF REFERENCE: § 7.2.1(C)

TARIFF LANGUAGE:

These provisions set forth the technical parameters for program audio services.

ISSUES: The commenters contend that the proposed technical parameters are too low and are unacceptable. (WU, AT&T).

DISCUSSION: A number of standards which were included in the Docket 20099 parameters are not contained in the proposed specifications. Furthermore, as AT&T notes, the specifications in Section 7.2.1(C)(4) are not stringent enough to be used on access for program audio overseas circuits.

The following revisions should be set forth as higher alternate standards, as discussed in Section 7.2.1(B) (Issue II). The omitted parameters, including short-term gain stability, crosstalk, distortion (harmonic and/or total), and group delay (for AP4) and short term loss, should be set forth in the tariff. Amplitude tracking, phase tracking and distortion tracking should also be specified where AP4 channels are ordered for stereo service. Additionally, the proposed signal-to-idle noise parameter is much lower than that required in Docket 20099 and

should be amended. Premium Grade Program Audio 5 and 15 kHz offerings with more stringent parameters should also be made available under Sections 7.2.1(C)(2) and 7.2.1(C)(4).

SUBJECT: Special Access Service—Technical Service Descriptions—Program Audio Services

ECA TARIFF REFERENCE: § 7.2.1(C)(1)(a)

TARIFF LANGUAGE:

"(1) *Program Audio 1 (AP1) Special Access Service*

(a) *Description*

Special Access Service AP1 provides a channel with a nominal bandwidth from 200 to 3500 Hz for the transmission of a complex signal voltage, such as speech or music, between an IC terminal location and an end user premises. Only one-way transmission is provided."

ISSUES: The service is available only between an IC terminal location and an end user premises.

DISCUSSION: No justification for the limitation of this service has been provided and the limitation should be deleted.

SUBJECT: Special Access Service—Technical Service Description—Video Services

ECA TARIFF REFERENCE: § 7.2.1(D)

TARIFF LANGUAGE:

This provision sets forth the technical service description for video services.

ISSUES: The proposed specifications are missing many parameters necessary for the provision of television service. (WU).

DISCUSSION: The parameters contained in the national standards for television facilities promulgated by the Electronic Industries Association (RS-250-B, Sept. 1976), as discussed in section 7.2.1(B) (Issue II), should be set forth as higher alternate standards for: insertion gain, long time distortion, field time distortion, line time distortion, short time distortion, chrominance/luminance gain inequality, chrominance/luminance delay inequality, luminance nonlinearity, differential gain, differential phase, signal/loss frequency noise, amplitude versus frequency response, chrominance/luminance intermodulation, chrominance nonlinear gain, chrominance nonlinear phase, dynamic gain (picture signal), dynamic gain (sync. signal), transient sync. signal non-linearity, and video/audio delay difference. The telcos may seek special permission to cross-reference available technical references to establish these alternate standards.

SUBJECT: Special Access Service—Technical Service Description—Video Services

ECA TARIFF REFERENCE: § 7.2.1(D)(1)(a)

TARIFF LANGUAGE:

"(1) *Television 1 (TV1) Special Access Service*

(a) *Description*

Special Access Service TV1 provides a channel with one-way transmission capability for a standard 525 line/60 field monochrome, or National Television Systems Committee color, video signal and one or two associated 15 kHz audio signal(s) between an IC terminal location and an end user premises."

DISCUSSION: The limitation of the service to use between an IC terminal location and an end user premises has not been justified and should be eliminated. Customers should be permitted to use the service in any manner which is not publicly detrimental or harmful to the network. *See also* Discussion in Sections 7.1.5 and 7.2.1(B) (Issue I). In lieu of the proposed limitation, the tariff should specify that 15 kHz audio channels are available between customer-designated premises.

SUBJECT: Special Access Service—Technical Service Description—Wideband Analog Services

ECA TARIFF REFERENCE: § 7.2.1(E)

TARIFF LANGUAGE:

Section 7.2.1(E) sets forth the technical service description for wideband analog special access services.

ISSUES: WU contends that the parameters proposed are inadequate.

DISCUSSION: WU maintains that the parameters proposed in Section 7.2.1(E) fail to ensure adequate performance of wideband analog Special Access services. The parameters, including pilot level variation, gain/frequency, background noise, impulse noise, and amplitude stability, set forth in the Technical Specifications are not provided in the tariff. This provision should be revised in accordance with our Discussion in Sections 7.2.1(B) (Issue II) and 7.2.1 (D).

SUBJECT: Special Access Service—Technical Service Description—Wideband Analog Services

ECA TARIFF REFERENCE: § 7.2.1.(E)(1)(a)

TARIFF LANGUAGE:

"(E) *Wideband Analog Services*

(1) *Wideband Analog 1 (WA1) Special Access Service*

(a) *Description*

Special Access Service WA1 provides a high capacity channel with a bandwidth from 60 kHz to 108 kHz for the transmission of a wideband signal between an IC terminal location and an end user's premises, between an IC terminal location and a Telephone Company designed Hub where multiplexing is offered."

ISSUES: This provision limits the use of Special Access Service WA1.

DISCUSSION: The restriction on the use of this service should be eliminated and customers should be permitted to use the service for any purpose which is not publicly detrimental or harmful to the network. This provision should also be amended to set forth that the channel is available for use between customer designated points. *See also* Discussion in Sections 7.1.5, 7.2.1(B) (Issue I) and 7.2.1(D)(1)(a).

SUBJECT: Special Access Service—Technical Service Description—Dedicated Access Line Service

ECA TARIFF REFERENCE: § 7.2.1(F)(1). *See also* § 6.1.2.

TARIFF LANGUAGE:(in part):

"(F) *Dedicated Access Line Service (DALS)*

(1) *Description*

Special Access Dedicated Access Service provides a channel for voice frequency transmission capability. The service provides a connection between an end user premises (which for purposes of this tariff includes Centrex CO switches) and a Telephone Company switching office capable of performing the necessary screening functions for 800 Service, WATS or similar services."

ISSUES: The commenters contend that this provision is unlawfully discriminatory because the only carrier that will have DALS available to it is AT&T. (LC, WU, Allnet, MCI).

DISCUSSION: Pursuant to our *Second Reconsideration Order,* WATS now falls within Switched Access. This provision and all other references in the tariff to DALS must be amended accordingly. *See* Discussion in Section 6 generally, and Section 6.1.2.

SUBJECT: Special Access Service—Technical Service Descriptions—Digital Services

ECA TARIFF REFERENCE: § 7.2.2

TARIFF LANGUAGE:

These provisions set forth the technical descriptions for the Digital Access Services: Wideband, Digital Data and High Capacity Services.

ISSUES: The provisions limit the service offerings to particular uses, *e.g.* 7.2.2(A)(1)(a), 7.2.2(A)(2)(a), 7.2.2(A)(3)(a), 7.2.2(A)(4)(a), limit use.

DISCUSSION: Limitations on the use of services are unnecessarily restrictive and should be eliminated from the tariff. Customers should be permitted to use the services ordered in any manner which is not harmful to the network and to order a basic transmission "building block" and add whatever features they wish. The tariff restructuring outlined in Section 7.2.1(B) (Issue I) will serve to reduce the unnecessary bundling of services and the limitations of service use. *See also* Discussion in Section 7.1.5.

SUBJECT: Special Access Service—Technical Description—Wideband Digital

ECA TARIFF REFERENCE: § 7.2.2(A)(4)(c)

TARIFF LANGUAGE:

"(c) *Transmission Performance*

—Error-Free Seconds

While in service, the monthly average of the error-free seconds will be equal to or greater than 98.75%."

ISSUES: The performance standard incorporated in this provision is lower than that currently offered for Dataphone Digital Service. (WU).

DISCUSSION: Wideband Digital 4 service is intended to permit access to DDS service but the proposed error-free performance specification of 98.75% is lower than the DDS end-to-end objective of 99.5% stated in Bell System Technical Reference PUB 41021, Section 1.3.1. Nonetheless, the fact that the proposed "standard" is lower than the current "objective" does not necessarily represent a degradation of service. Although we expect to examine the issues

of standards for this and other services, we do not conclude at this time that the proposed standard is unreasonable.

SUBJECT: Special Access Service—Technical Service Description—Digital Services—Available Facility Interface Combinations

ECA TARIFF REFERENCE: §§ 7.2.2(A)(4)(d), 7.2.2(B)(4)(e)

TARIFF LANGUAGE:

7.2.2 (A) (4) (d)	*Available Facility Interface Combinations*	
	" *IC*	*End User*
	4WB5-64	6DU5-56
	4D05	6DU5-56"
7.2.2 (B) (4) (e)	" *IC*	*End User*
	4DS9-15*	6DU5-56
	6DU5-56	6DU5-56"

ISSUES: AT&T contends that these provisions fail to include the necessary interface for AT&T to provide 56 kbps Dataphone Digital Off-Net Extension Service.

DISCUSSION: Section 7.2.2(A)(4)(d), which deals with the Analog part of Off-Net Extension (WD4) for Special Access Service, refers to a 4D05 (DSX-0) interface. In order to connect this to the DDS portion of the service, the DA4 must also have a 4DO5 (DSX-0) interface. Absent modification of the tariff, ATTCOM will not be able to offer 56 kbps, Dataphone Digital Off-Net Extension Service. An appropriate interface option should be added to the tariff or its omission justified.

SUBJECT: Special Access Service,—Digital Data Access Services

ECA TARIFF REFERENCE: § 7.2.2(B)

TARIFF LANGUAGE:

This provision sets forth the technical service description for Digital Data Access Services.

ISSUES: (1) WU contends that the technical parameters are inadequate because they fail to provide information about voltage.

(2) IDCMA states that the tariff does not specifically provide that users can directly connect Channel Service Unit equivalent equipment to digital services and does not contain an interim direct connection program for Network Channel Terminating Equipment.

DISCUSSION: (1)Section 7.2.2(B) should specify voltages which are compatible with DDS.

(2) In the *CSU Connection Order, Petitions Seeking Amendment of Part 68 of the Commission's Rules Concerning Connection of Telephone Equipment, Systems and Protective Apparatus to the Telephone Network,* FCC 83-268, released June 14, 1983, we determined that Channel Service Units (CSUs), CSU-type devices and other Network Channel Terminating Equipment (NCTE) are customer premises equipment (CPE) and therefore subject to competition. The Commission found that the direct connection of CSU-type equipment by users would be privately beneficial without causing public harm, applying the principles of *Hush-A-Phone, Carterfone,* and *Computer II.*

Nonetheless, the access tariff as filed does not explicitly provide that users can directly connect CSU equivalent equipment to digital services or establish an interim interconnection program.

In its reply to comments on the access tariffs, the BOCs/CSO propose to add the following sentence to Section 7.2.2(B): "The IC is responsible for providing a Channel Service Unit Equivalent at the end user premises." This proposed amendment is inadequate. The tariff should be amended to specifically provide that all customers, not just ICs, may connect CSU-type equipment and other NCTE. The provision should also be amended to set forth an interim interconnection program.

SUBJECT: Special Access Service—Technical Service Description—Digital Data Access Services

ECA TARIFF REFERENCE: § 7.2.2(B)(1)(a), similar provisions in §§ 7.2.2(B)(2)(a), 7.2.2(B)(3)(a)

TARIFF LANGUAGE:(in part):

"(1) *Digital Data Access 1 (DA1) Special Access Service*

(a) *Description*

Special Access Service DA1 provides a channel for duplex four-wire transmission capability of serial synchronous data at the 2.4 kbps rate between an IC terminal location and an end user premises. The service is synchronous with timing provided through the Telephone Company's facilities to the end user on the received bit stream.

DA1 is available only between the IC terminal location and locations designated by the Telephone Company which are served by digital facilities. All other locations are connectible to the Telephone Company designated digital Hub only through an analog off-network extension which is provided as a Voice Grade Service as set forth in 7.2.1(B) preceding."

DISCUSSION: The availability of this service is limited to telco designated digital Hubs. No limitation on the telco's discretion in designating Hubs is specified. The tariff should be amended to state clearly by rate center, NNX code, or both, where the service is to be provided.

SUBJECT: Special Access Service—Technical Service Description—Standards for Error Free Seconds

ECA TARIFF REFERENCE: §§ 7.2.2(B)(1)(d), 7.2.2(B)(2)(d), 7.2.2(B)(3)(d), 7.2.2(B)(4)(d), and 7.2.2(C)(1)(d)
See also § 7.2.2(A)(4)(c)

TARIFF LANGUAGE:

These provisions set forth the error-free seconds transmission performance parameters.

ISSUES: WU contends that the error-free performance standard for High Capacity 1 (HC1) Special Access Service in Section 7.2.2(C)(1)(d), 98.875%, is lower than the 99.875% specified for DDS.

In their reply, the BOCs and CSO propose to eliminate the error-free seconds parameter in the above-referenced sections.

DISCUSSION: The proposed amendment of these sections to eliminate the error-free seconds standard has not been sufficiently justified. The standard as originally proposed should remain or be modified to be more stringent. With regard to WU's argument, *see* Discussion in Section 7.2.2(A)(4)(c).

SUBJECT: Special Access Service—Technical Service Description—Digital Data Access Services—Facility Interfaces

ECA TARIFF REFERENCE: §§ 7.2.2(B)(1)(e), 7.2.2(B)(2)(e) - (B)(4)(e)

TARIFF LANGUAGE:

These provisions set forth the available facility interfaces for digital access.

ISSUES: AT&T alleges that the tariff fails to provide for DATAPORT interface.

DISCUSSION: There are currently several LATAs in which access arrangements are provided through DATAPORT connections which require a single circuit interface. The tariff fails to provide for this type of interface and thereby precludes the continued use of these arrangements. The exchange carriers should address whether a single circuit interface (DS-OA) for digital access should be provided at an interexchange carrier's location to permit an interexchange carrier to connect a single digital circuit (2.4, 4.8, 9.6 and 56 kbps) directly to its customer's premises.

SUBJECT: Special Access Service—Technical Service Descriptions—Digital Data Access Services

ECA TARIFF REFERENCE: § 7.2.2(A)(4)(a), § 7.2.2(B)(4)(a)

TARIFF LANGUAGE:

7.2.2(A)(4) *Wideband Digital 4 (WD4) Special Access Service*

"(a) *Description*

Special Access Service WD4 provides for the transmission of 56 kbps synchronous serial data between an IC terminal location and an end user premises. No voiceband coordinating channel is included with this service."

7.2.2(B)(4) *Digital Data Access 4(DA4) Special Access Service*

"(a) *Description* Special Access Service DA4 provides a channel for duplex four-wire transmission capability of serial synchronous data at the 56 kbps rate between an IC terminal location and an end user premises. The service is synchronous with timing provided through the Telephone Company's facilities to the end user on the received bit stream.

DA4 is available only between the IC terminal location and locations designated by the Telephone Company which are served by digital facilities. All other locations are connectible to the Telephone Company designated digital Hub only through an analog off-network extension which is provided as a Wideband Digital Service as set forth in 7.2.2(A) preceding."

ISSUES: Sections 7.2.2(A)(4)(a) and (B)(4)(a) appear to provide the same functional service.

The telco's discretion to designate facilities is not limited by this provision and no facilities are designated in the tariff.

DISCUSSION: The tariff should not set forth two distinct service offerings for the same basic service but rather should unbundle the basic transmission service from the rest of the offering. By unbundling the basic transmission service customers would be able to "build" a service which meets their individual needs. One of the provisions should be eliminated unless an explanation of the differences in service is provided; a condition on use is not a difference in service for this purpose.

As discussed in Sections 7.1.5 and 7.2.1(B) (Issue I), the manner in which a customer uses a service must not be limited by tariff except to the extent necessary to protect the network. The limitation on use must be eliminated from these sections and similar limitations on use are to be eliminated throughout the tariff, *e.g.*, Sections 7.2.2(B)(1), (2), (3), (4).

SUBJECT: Special Access Service—Technical Service Description—Digital Services—Facility Hub Arrangements

ECA TARIFF REFERENCE: § 7.2.2(B)(1), (B)(2)(a), (B)(3)(a), (B)(4)(a), § 7.2.2 (C)(1)(a), § 7.4.7

TARIFF LANGUAGE:

"7.2.2(B)(1)(a) *Description*

DA1 is available only between the IC terminal location and locations designated by the Telephone Company which are served by digital facilities. All other locations are connectible to the Telephone Company designated digital Hub only through an analog off-network extension which is provided as a Voice Grade Service as set forth in 7.2.1(B) preceding."*

"7.2.2(C)(1)(a) *Description*

Special Access Service HC1 provides a channel for the transmission of normal 1.544 Mbps isochronous serial data between an IC terminal location and an end user premises, between IC terminal locations or between an IC terminal location and a Telephone Company designated Hub where multiplexing is offered." [The IC is responsible for providing a Channel Service Unit Equivalent at the end user premises.]**

"7.4.7 *Facility Hubs*

An IC has the option of ordering high capacity analog or digital facilities (i.e., Group, Supergroup, Mastergroup, DSI, DSIC, DS2, or DS4) to a facility Hub for channelizing to individual services requiring lower capacity facilities (e.g., Voice, Program Audio, etc.)."

ISSUES: AT&T contends that it is unclear under these provisions how an IC can complete DDS access arrangements through the Hub to the customer and alleges that this may present a conflict with the MFJ.

The telco is given discretion to designate digital Hub facilities and no facilities are specified in the tariff.

Use of the service is limited by the tariff.

DISCUSSION: Section 7.2.2(B) provides that Digital Access (DA) 1 through 4 (digital access at 2.4, 4.8, 9.6 and 56 kbps rates, respectively) are only available "between the IC terminal location and the locations designated by the Telephone Company." However, the plan of reorganization, as approved by the court, specifies that the interface at Digital Data System Facility Hubs between AT&T and the divested BOCs for AT&T's DATAPHONE Digital Service (DDS) will be at the DS1 level (1.544 Mbps). Thus, where AT&T must obtain access for its customer for DDS via a Facility Hub, it must do so using 1.544 Mbps facilities under Section 7.2.2(C)(1)(a) and 7.4.7 between its IC terminal and the telephone company Facility Hub. The IC would then use DA 1 through 4 between the Facility Hub and the wire center served by digital facilities. However, because Section 7.2.2(B) does not make DA 1 through 4 available between a Facility Hub and customer locations served by digital facilities, it is unclear how AT&T will obtain DDS access arrangements to complete the connection to its customer.

The tariff should be revised to eliminate the limitations on DA 1 and DA 4. The limitations on use, as discussed above must be eliminated throughout the tariff, except as necessary to protect the network. *See* Discussion in Sections 7.1.5, 7.2.1(B) (Issue I).

Further, the tariff should state that 1.544 Mbps channels are available between customer-designated premises.

SUBJECT: Special Access Service—Rate Regulations—Surcharge for Special Access Service

* The limitation of use "between the IC terminal location and locations designated by the Telephone Company" is also set forth for DA2, 3, and 4, in Sections 7.2.2(B)(2), (3), and (4) respectively.

** The CSO and BOCs propose to add the bracketed language to Section 7.2.2(C)(1)(a). *See* Discussion in Section 7.2.2(B) regarding this proposed language.

ECA TARIFF REFERENCE: § 7.4.2(A)

TARIFF LANGUAGE:

"7.4.2 *Surcharge for Special Access Service*

(A) *General*

In addition to the rates and charges described in 7.4.1 preceding, there is a monthly surcharge of $25.00 that applies to two-point sub-voice grade, voice grade and equivalent voice grade Special Access Services (e.g., the surcharge for a group level service would be $300.00 or 12 x $25.00). For multipoint services, the $25.00 surcharge applies for each end user location on the service. This surcharge is to compensate the Telephone Company for use of the local exchange network by Special Access Services that are classified as interstate jurisdiction."

ISSUES: It is unclear under this provision how the surcharge is to be applied. Bunker-Ramo and API contend that the tariff should clearly state that the surcharge does not apply to private networks which technically cannot access the local exchange network. UTC contends that the tariff should specifically state how the surcharge will be applied to existing services.

DISCUSSION: This provision must be amended to comply with our *Second Reconsideration Order.* The tariff must specify that the surcharge does not apply to customers which certify to the telco that their private lines do not terminate in a PBX or a device with equivalent interconnection capabilities.

SUBJECT: Special Access Service—Exceptions to the Application of the Special Access Surcharge

ECA TARIFF REFERENCE: § 7.4.2(B)

TARIFF LANGUAGE:

This provision sets forth exemptions from the special access surcharge including television and program audio transmission and telex lines.

ISSUES: Commenters argue that newswire services should be exempted from the Special Surcharge just as radio and television transmission and telex are exempted. (AP and CNS, SATNET, UPI and DJ). AFSA contends that the surcharge should not be applied to terminations of a private line in a data terminal, such as those used by AFSA members. API maintains that high speed data should be exempted and UTC contends that the surcharge is inapplicable to dedicated data channels and terminations used for automatic ring down, control, metering and protective relay. Bunker-Ramo suggests that the surcharge should not apply to private lines connected to "devices" incapable of accessing the local exchange network. UTC contends that the general exemption of Section 7.4.2(B)(3), ("any termination of a service that by nature of its operating characteristics could not make use of common lines"), should be replaced with a list of services and/or applications which meet this criteria. Telocator also argues that its RCC transmitter lines should exempted from the Special Access Surcharge.

DISCUSSION: See Discussion in Section 7.4.2(A).

SUBJECT: Special Access Service—Special Access Surcharge—Reporting Requirements

ECA TARIFF REFERENCE: § 7.4.2.(C)

TARIFF LANGUAGE:

"(C) *Self Reporting*

In order for the Telephone Company to determine the application of the surcharge with respect to specific services, the IC must report the intended use of all services when placing orders for Special Access Service. In addition, when ordering high capacity analog or digital services, the IC must also report the use for each voice equivalent channel of the high capacity service. When any service or channel of a service is reported to be used in any manner described in (B) preceding, the surcharge will not apply. If the intended use is not reported, the Telephone Company will automatically bill the appropriate surcharge on each Special Access Service installed.

The Telephone Company reserves the right to audit the use of the service at any time. If the service is found to be used for a type of operation other than that reported by the IC, and a surcharge would apply for that type of operation, the Telephone company will notify the IC and will begin to apply the surcharge."

ISSUES: Bunker-Ramo contends that the tariff should not place the burden of determining whether the surcharge applies on the exchange carrier.

UTC alleges that the reporting requirement is too vague and may be unreasonably burdensome.

DISCUSSION: This provision must be revised to conform with the customer certification set forth in the *Second Reconsideration Order.* Thus, the provision should be amended to allow an exemption from the surcharge where the customer certifies to the telco that its private lines do not terminate in a PBX or a device with equivalent interconnection capabilities. The tariff must provide that the certification is made by the "customer" rather than the "IC". The verification and auditing procedures proposed in this section should be narrowed and clarified to preclude any unnecessary intrusion of customer privacy.

SUBJECT: Special Access Service—Surcharge for Special Access Service—Crediting the Surcharge

ECA TARIFF REFERENCE: § 7.4.2(D)

TARIFF LANGUAGE:

7.4.2(D) *Crediting the Surcharge*

"If, at any time after the installation of a service which is subject to the surcharge, the IC reports that the service is being used in association with a Switched Access Service that is subject to Carrier Common Line Charges, the Telephone Company will credit the IC for the surcharge. The credit will will be effective on the date that the Special Access Service became associated with the Switched Access Service."

ISSUES: UTC suggests that provision should be added to cover situations in which services are modified after installation and fall within a category of use exempted from the surcharge.

DISCUSSION: UTC proposes that the following paragraph replace Section 7.4.2(D):

If, at any time after the installation of a service which is subject to the surcharge, the IC reports that the service is being used consistent[ly] with Section 7.4.2(B), the Telephone Company will credit the IC for the surcharge. The credit will be effective on the date that the special access service was reconfigured to meet 7.4.2(B).

This language adequately fills a gap in the tariff and should be added to the credit provision. However, we find that the provision must also require the customer to certify that the service is eligible for an exemption, in accordance with the *Second Reconsideration Order.* The credit will become effective upon customer certification.

SUBJECT: Special Access Service—Minimum Periods

ECA TARIFF REFERENCE: § 7.4.3

TARIFF LANGUAGE:

"7.4.3 *Minimum Periods*

Special Access Service is provided for a specified minimum period. The minimum period and the applicable charges for that period are dependent on the interval (i.e., standard, negotiated, or short notice) under which service is provided. An exception to the minimum period exists for part-time and occasional Video and Program Audio services which may be ordered and paid for on a daily basis. Minimum periods and minimum period charges are described in detail in 5. preceding."

DISCUSSION: *See* Discussion in Section 5.

SUBJECT: Special Access Service—Moves

ECA TARIFF REFERENCE: § 7.4.4. *See also* § 5.2.5(A)

TARIFF LANGUAGE:

The provision sets forth the non-recurring charges that apply to moves within the same building (one half the non-recurring installation charges) and to another building (treated as a discontinuance and start of business). A new minimum service period is established upon a move to a different building.*

ISSUES: LC and Allnet contend that initiating a new minimum period is not justified.

DISCUSSION: We conclude that our requirement of a one-month, rather than six-month, minimum service period should substantially ameliorate the concerns of the commenters. *See* Discussion in Section 5.

SUBJECT: Special Access Service—Rate Application Exception Rules, Intrabuilding Access Services

ECA TARIFF REFERENCE: § 7.4.5(A)

TARIFF LANGUAGE:

"(A) *Intrabuilding Access Services*

Intrabuildding cable facilities, provided by the Telephone Company to connect two IC terminal locations or an IC terminal location and an end user premises in the same public building, will be rated as an Access Connection and an appropriate facility interface combination. The Special Transport and Special Access Line rate elements will not apply to this type of service, nor will the Special Access Service Surcharge set forth in 7.4.2 preceding apply."

* In their reply comments, the BOCs/CSO proposed a modification of this provision which allows a move within the same wire center serving area of the IC's Point of Presence or the end user's premises to occur without extension of the obligation period. This modification reduces the negative effect of this provision. The application of nonrecruiting charges associated with a move of the end user with a wire center serving area would also be modified under the proposed revision to reduce the charge to one-half the total nonrecurring rate.

ISSUES: This provision proposes to exempt intrabuilding cable facilities from the Special Access Surcharge. Further, WU challenges the rate applied to intrabuilding connections. Also, the term "public" building is not defined in the tariff.

DISCUSSION: We have a number of concerns about this provision. The application of, and exemptions to, the Special Access Surcharge should be set forth in a single tariff section rather than provided in a piecemeal fashion. The Special Access Surcharge applications and exemptions must also be modified to conform to our *Second Reconsideration Order.*

Further, as discussed in Section 2.1.5, the tariff should not make references to "IC terminal locations" but rather to an "end user" or "customer" premises.

The term "public" building is unclear. According to our understanding of this provision, Intrabuilding Access Services include connections between exchange carrier offices and offices of co-located customers, *e.g.*, a connection between a Centrex CO and an AT&T CCSA machine. If this interpretation is correct, the Special Access Surcharge should be applied. WU seems to read this provision to apply when two customer terminals are located at the same premises. In any event, our directions to clarify this provision and to restructure the Special Access rates, as discussed above, should ameliorate WU's concern.

SUBJECT: Special Access Service—Rate Application Exception Rules, IC Terminal to IC Terminal Location and End User to End User

ECA TARIFF REFERENCE: § 7.4.5(B),(C)

TARIFF LANGUAGE:

"(B) *IC Terminal Location to IC Terminal Location*

When two IC terminal locations are connected together via Special Access Service, the IC will be billed as though the service were connecting an IC terminal location and an end user premises, i.e., Access Connection, Special Transport, Features and Functions (facility interface combination) and Special Access Line. One of the IC terminal locations will be treated as an end user premises.

(C) *End User to End User*

When two end user premises are connected together via Voice Grade 13 (VG13) Special Access Service, the IC will be billed as though the service were connecting an IC terminal location and an end user premises, i.e., Access Connection, Special Transport, Features and Functions, (facility interface combination) and Special Access Line. The end user premises at which the service connects to interstate service will be treated as an IC terminal location. No Special Access Service Surcharge will apply for this service."

ISSUES: It is unclear whether an end user charge applies to "IC terminal locations." WU and GTES contend that the higher Special Access Line rate should not be applied to an element that is in fact an Access Connection.

DISCUSSION: These provisions serve as an example of why the Special Access rate structure must be revised. Pursuant to this proposed section, a different rate applies according to whether the customer is called an IC or an end user. If the customer is designated as an end user instead of an IC, the rate imposed is nearly ten times as high. No justification is provided for charging different rates according to use, *e.g.*, according to whether the service is used to interconnect an IC, nor can we envision any justification for this rate disparity. It is unclear how two ICs interconnected with one another would be charged under this proposed rate structure, because the provision does not specify which IC would be considered the end user.

The proposed rate scheme, which varies charges according to use, is not cost-based. The rate restructuring which we have outlined above should help to alleviate the concerns of the commentors.

Furthermore, the term "treated as an end user premises" should be clarified to be consistent with our continuation of the non-applicability of Part 68 to carrier-to-carrier interconnection. The term "IC terminal location," should also be eliminated from the tariff. *See* Discussion in Section 2.1.5.

SUBJECT: Special Access Service—Rate Application Exception Rules—Dedicated Access Line Services

ECA TARIFF REFERENCE: § 7.4.5(D). *See also* § § 6.1.2, 7.1.1.

TARIFF LANGUAGE:

This provision sets forth the treatment accorded WATS access lines and extensions.

ISSUES: A number of commenters ask why the Dedicated Access Line Service is treated differently and why the surcharge is not applied to extension lines. (LC, WU, Allnet, MCI).

DISCUSSION: This provision must be eliminated from Special Access in accordance with the treatment of WATS in the *Second Reconsideration Order.*

SUBJECT: Special Access Service—Share Use Analog and Digital High Capacity Services

ECA TARIFF REFERENCE: § 7.4.8. *See also* § 5.2.7

TARIFF LANGUAGE:

"7.4.8 *Shared Use Analog and Digital High Capacity Services*

Shared use occurs when Special Access Service and Switched Access Service are provided over the same high capacity facilities through a common high capacity interface. This sharing arrangement is available only for existing services. The Special Access Service portion of the shared facilities will be billed at individual service rates (i.e., Voice Grade, Program Audio or Digital Data Access). No multiplexing charge will apply. See also 5.2.7 preceding."

ISSUE: No multiplexing charge will apply to shared use of Special Access and Switched Access high capacity services. (WU).

DISCUSSION: Section 7.4.8 describes the shared use of Special and Switched Access high-capacity services, and states that no multiplexing charge will apply to this shared use. Under this provision, Shared Use Analog and Digital High Capacity Services are made available only to current users.

The limitation of this offering to existing services and the proposal to provide multiplexing without charge have not been justified and appear unreasonable. This provision should be justified or eliminated.

SUBJECT: Special Access Service—Rates and Charges

ECA TARIFF REFERENCE: § 7.5

OTHER TARIFF REFERENCES:

e.g., Section 7.5 of Bell of Pennsylvania Tariff F.C.C. No. 41, South Central Bell Telephone Company Tariff F.C.C. No. 4, New York Telephone Tariff F.C.C. No. 41, New Jersey Bell Tariff F.C.C. No. 38, Pacific Telephone and Telegraph Tariff F.C.C. No. 128, Southern Bell

Tariff F.C.C. No. 61, Illinois Bell Tariff F.C.C. No. 43, Southwestern Bell Tariff F.C.C. No. 68, C&P Telephone Tariff F.C.C. No. 3 and Pacific Northwest Bell Tariff F.C.C. No. 8.

TARIFF LANGUAGE:

This provision sets forth the rates and charges for four Special Access Components—Access Connection, Special Transport, Features and Functions, and Special Access Line.

ISSUES: A number of commentors contend that the monthly rates proposed for Special Access represent dramatic increases and are not cost justified. (*e.g.*, ANPA, Bunker-Ramo, SBS, WU, USTEL, RCA, EMX, FEA, HTN, ARINC, Allnet, Group W, the networks, DJ, ITT, AP and CNS, SATNET, OCLC, AFSA, INTV, TNI, and LC). Commentors also contend that the rate increases are unlawfully discriminatory, (SBS, WU, USTEL, RCA, HTN, Allnet, Group W, ITT, TNI, AP and CNS) and vary significantly among the exchange carriers. (SBS, WU, USTEL, RCA, EMX, HTN, Allnet, GTES, GSA, Group W, the Networks, INTV, ITT, AP and CNS, and LC). Commentors also question the allocation of the access service revenue requirement and costs between Switched and Special Access, (*e.g.*, GTES, WU, SBS). Further, several commentors challenge the proposed Special Access rate structure as a whole. (*e.g.*, AHTUC, HTN, the Networks, ITT, DJ, Group W, WU and GTES).

LAT argues that the exchange access tariffs it has analyzed, those of New York Telephone, Illinois Bell, and Pacific Telephone and Telegraph, generally set forth fair rates and charges.

DISCUSSION: As discussed more fully above, a number of factors demonstrate that the proposed Special Access rate structure is unreasonable. To begin with, many of the rates proposed for Special Access are dramatically higher than existing rates for the same services. In the case of facilities for telex, program distribution and private voice and data networks, for instance, the exchange carriers have discarded existing service categories, rates and technical standards and proposed to replace them with monthly recurring charges that are typically 2 to 20 times higher than present rates, installation charges ranging from $500 to $2,000 per line, complex combinations of technical features and functions, and three-year waiting periods for the installation of new facilities. *See also* Discussion in Section 5. The significant rate increases for recurring and nonrecurring charges have not been cost justified.

Section 8. Billing and Collection

The billing and collection rate element was included in our access charge plan to accommodate an apparent MFJ requirement that if a BOC offers billing and collection services to even one IC, the charge for this service must be in the BOC's access tariff. Because only common carrier services can be tariffed, however, we required in the *Access Charge Order* that an exchange carrier offering a billing and collection service to one IC must offer the same to all ICs. *See* 47 C.F.R. § 69.114(c).

In the *First Reconsideration Order*, we noted that such services would include "activities associated with the collection and recording of billing information needed to calculate the billed amount, the processing of such billing information into customer invoice form, mailing of bills to customers including any preparatory work, collection of monies from billed customers, and the disbursement of monies collected from the billed customers." FCC 83-356, released August 22, 1983, at para. 146 n. 106. The ECA tariff offers these various billing and collection functions under five major optional categories of service: Recording, Message Billing,

Private Line Billing, Billing Analysis and Billing Information. Recording Service is the entering on magnetic tape or other acceptable medium of the details of IC messages originating through Switched Access Service. The assembling and editing function then identifies the message details for a particular IC, aggregates the details to create individual messages and verifies that the data required for rating (applying the IC's rate to individual messages) is present. Message Billing Service consists of two functions. The first, message processing, the the transformation of recorded IC call detail into rated messages. The second, bill processing, consists of the preparing and mailing of bills, payments, collecting overdue accounts, accepting end user deposits, and, if requested, the handling of customer inquiries concerning billed charges. Private Line Billing Service is essentially the same as Message Billing Service except that it is limited to IC private line services for which the exchange carrier is providing Special Access Service and to IC charges which do not involve usage based rate elements. Billing Analysis Service provides the IC with a means to protect against billing evasion activities by end users. Finally, Billing Information Service makes available to an IC certain information from the exchange carriers' records which is not considered proprietary and which is related to end user services provided by the IC.

While no rate of return constraint has been imposed on the billing and collection rate element, our access charge rules do require that charges for these services be both reasonable and nondiscriminatory. 47 C.F.R. § 69.114(b). Applying this reasonableness standard in practice, however, has proven to be most difficult since there are no existing billing and collection rates on file by which to judge those filed in the instant proceeding. The fact that billing and collection has traditionally been performed either by the carrier itself or by contract also accounts for the limited availability of unit cost and demand data and, consequently, the high number of rate elements for which exchange carriers seek to charge on an individual case basis. Determining rates on a to-be-negotiated basis, however, is tantamount to having no tariff on file.

The difficulties that we have encountered in reviewing this section, primarily as a result of the lack of historical data, has given us cause to reconsider the propriety of including billing and collection in the accesss tariffs. Indeed, it seems anomalous to label billing and collection as an access service given the way the rules define an "access service," *i.e.*, "services and facilities provided for the origination or termination of any interstate or foreign telecommunication." 47 C.F.R. § 69.2(a). The only billing and collection function which seems directly ancillary to a communications service is recording. The facilities involved in recording are clearly germane to the telephone company. To the extent that recording is performed in the normal course of network operations, there

would be a wasteful duplication of facilities were it to be done by some other entity. Once recorded IC call detail is made available, the other billing and collection functions can just as easily be performed by the IC itself or a commercial billing and collection agency. As we recognized in the *First Reconsideration Order*, billing and collection performed for third parties is not inherently part of a local exchange company's "bottleneck facilities" inasmuch as an IC which considers a local telephone company's charges for billing and collection services to be too high can construct and rely upon its own billing facilities. *See* para. 148. In fact, ICs other than AT&T do not rely upon local telephone companies to do their billing and collection. They have either set up their own systems or contracted with commercial billing agencies to do it for them. Hence, it would appear that billing and collection has the potential to become, if it is not already, a competitive service. To the extent that competition does develop, the marketplace will be able to supplant tariff regulation by responding to unreasonable rates and practices.

Given this set of circumstances, we have decided to institute a proceeding to examine the possibility of detariffing billing and collection. Pending action in this proceeding, we will permit most sections of the access tariffs dealing with billing and collection to go into effect as filed without our making a determination as to their lawfulness. Those provisions relating to recording service, however, will have to be revised in accordance with this order. In addition, the ramifications of allowing the telco to terminate local exchange service for nonpayment of long distance charges makes it incumbent upon us to give that section our immediate attention as well. To the extent that commenters have raised issues with respect to other billing provisions, consideration of those issues in greater detail will be deferred until we determine whether billing and collection should be detariffed.

SUBJECT: Recording Service

ECA TARIFF REFERENCE: Section 8.1

OTHER TARIFF REFERENCES:

Several other access tariffs contain essentially similar provisions.

TARIFF LANGUAGE:

"The Telephone Company will provide Recording Service in its operating territory. The minimum territory for which the Telephone Company will provide recording service is all the appropriately equipped offices in a state operating territory for which the IC has ordered Feature Group C and D Switched Access Service."

ISSUES: AT&T contends that defining minimum territory in terms of a state is too restrictive.

DISCUSSION: AT&T (and others) may want to arrange for recording service on an end office-by-end office basis since there is a direct relation between the feasibility of the company performing its own recording and the deployment of equal access capabilities in individual telco end offices. ICs should not be inhibited from providing their own billing and collection services if that would be more efficient. According to the BOCs/CSO reply comments, however, recording on an end office basis is not feasible at the present time because many exchange carriers are not equipped to do such. To the extent this becomes practicable in the future the tariff should be so revised. Carriers should therefore note in their 1985 tariff filings any progress that has been made toward making recording available at additional end offices.

It is also not clear from the language in this section what happens if a LATA or an exchange crosses state boundaries. This should be clarified.

SUBJECT: Recording Service—Undertaking of the Telephone Company

ECA TARIFF REFERENCE: Section 8.1.2(A)

OTHER TARIFF REFERENCES: Several other access tariffs contain essentially similar provisions.

TARIFF LANGUAGE:

"(A) The Telephone Company will record all IC messages over Feature Groups C and D Switched Access Service that are available to Telephone Company provided recording equipment or operators . . . . The recording equipment will be provided at locations selected by the Telephone Company. Assembly and editing will be performed on all IC messages recorded during the billing period established by the Telephone Company. Except as set forth in 8.1.2(F) and 8.1.3 following, recorded message detail from previous billing periods will not be recovered and made available to the IC."

ISSUES: AT&T contends that limiting the provision of recording service to Feature Groups C and D effectively precludes the provision of Foreign Exchange (FX) service.

DISCUSSION: AT&T asserts that billing for FX service will not be possible if message recording service is not available for Feature Group A (FGA) because there will be no customer-specific records for out-going FX calls. According to the BOCs/CSO reply comments, exchange carrier end user billing systems cannot presently recognize FGA billable messages and cannot, therefore, rate such messages for end user billing. The BOCs and CSO have agreed, however, to have exchange carriers review their systems to determine how the recordings can be identified and, if feasible, make recording service available for FGA.

To allow AT&T to bill customers for FX service, this section should, therefore, be revised so as to offer recording for FGA upon the request of an IC. Where an exchange carrier does have the ability to measure FX service on the basis of actual usage per line, billing should be done accordingly. Where such measurement capability is not available, an estimate of actual usage should be used, or if such a surrogate cannot be developed expeditiously, the local business line rate will be applied, pending the implementation of more precise measurement.

This section also places restrictions on the recovery of previously recorded message detail. Reference is made to Section 8.1.2(F) which states that "the telephone company will make every reasonable effort to recover" such detail and that requests therefore must be made within 30 days from the date the details were initially made available to the IC. Unless previously recorded message detail is readily available, billing disputes will be most difficult

to resolve. The tariff should therefore be revised so as to provide for a more exact standard for keeping message detail and an explanation should be given for the 30 day limitation.

Finally, it should be clarified whether the telco will record both intrastate and interstate messages under this tariff.

SUBJECT: Recording Service Undertaking of the Telephone Company: Sorting; Billing Information Service — Undertaking of the Telephone Company

ECA TARIFF REFERENCE: Sections 8.1.2(C) and 8.4.2(J). *See also* Section 8.2.1(B)(1)(j) (rated IC message detail).

OTHER TARIFF REFERENCES: Several other access tariffs contain essentially similar provisions.

TARIFF LANGUAGE:

"8.1.2(C) The recorded IC message detail provided to the IC will not be sorted to furnish detail by specific end users, groups of end users, by office or by location."

"8.4.2(J) Upon request from an authorized supervisor of the IC who furnishes the account code assigned by the Telephone Company, the Telephone Company will provide name and town information from its CNA [Centralized Numbering and Addressing] bureau. The CNA name and town data, but not street address, will be provided only when the IC needs the information to authorize a call, to bill a call, or to handle an emergency situation. The information will be provided on a request by request basis by voice telecommunications. Name, town and state will be provided for a telephone number. A request includes the handling of one call and providing the data for one telephone number.

The Telephone Company will specify the location where requests are to be received and the format in which the request is to be made."

ISSUES: MCI contends that the telco's failure to provide sorting service is unreasonable since such information is readily available in the data recorded by the telco and would involve simple programming at a small cost. MCI also argues that denying the IC access to the street address of its customers under Section 8.4.2(J) would seriously impede the ability of an IC to perform its own billing when Feature Group D becomes available* and would, in effect, coerce ICs into using the telco's billing services.

DISCUSSION: The BOCs/CSO reply comments respond that sorting is not always as simple as MCI suggests. For example, because only 10-digit calling party and 10-digit called party information is present in the records the specific end user is not identified. The BOCs and CSO state that customer name and address information, sorted or otherwise, is available only by subscribing to Bill Processing Service. They also note that ICs have several alternatives at their disposal such as directory listings indexed by telephone number, wire center information, or simply dialing the number obtained through ANI and asking the customer for the desired information. These methods, however, would clearly be burdensome and would not yield data which is as accurate and up-to-date as that which the telco can provide. Furthermore, tying the provision of necessary billing data to the subscription to Bill Processing Service would inhibit the development of billing and collection as a competitive service by effectively foreclosing ICs from performing their own billing or having a

* With Feature Group D, and IC will be able to identify a calling customer's originating number through Automatic Number Identification (ANI) but will not know the customer's name and address.

commercial billing firm do it for them. To the extent that the type of information desired by MCI is available under Bill Processing Service, it would be difficult for the telco to argue that it does not have the ability to offer the same information under Recording Service. Since CNA information includes the address, as well as name and town, additional costs are seemingly not incurred if the address information is made available as part of access to the CNA files. Hence, the tariff should be revised so that the provision of sorting as well as customer name and address information is deleted from Bill Processing Service and made available to ICs under Recording Service. The telco may make such offer contingent on the IC furnishing it with such additional information needed to perform these services.

SUBJECT: Recording Service — Liability of the Telephone Company

ECA TARIFF REFERENCE: Section 8.1.3

OTHER TARIFF REFERENCES: Several other access tariffs contain essentially similar provisions.

TARIFF LANGUAGE:

This section provides that absent willful misconduct the telco's liability for damages for its failure to provide message detail to an IC is limited "to the granting of a corresponding credit adjustment based on an estimate of the last message volume to the IC amounts due to account for the unbillable revenue."

ISSUES: MCI contends that it is unclear whether the telco will estimate IC message volume and provide a credit only for related access charges or also for lost revenue. If only the former, MCI asserts that such a limitation is unreasonable.

DISCUSSION: The BOCs/CSO reply comments clarify that the exchange carrier will credit to the IC's account the lost message revenue that could have been billed to an end user. The provision, therefore, does not appear to be unreasonable.

SUBJECT: Recording Service — Payment Arrangements and Audit Provision: Minimum Period and Monthly Charge

ECA TARIFF REFERENCES: Section 8.1.5(B)

OTHER TARIFF REFERENCES: Several other access tariffs contain essentially similar provisions. *But cf.* GTE Tariff, Section 8.1.2.(B)(3).

TARIFF LANGUAGE:

The minimum period for which Recording Service is provided in the ECA Tariff is one month for each state in which the service is ordered whereas the GTE tariff provides for a minimum service period of one year.

DISCUSSION: We find that a minimum service period of one year is an unreasonable length of time and should be shortened to one month.

SUBJECT: Recording Service — Payment Arrangements and Audit Provision: Special Orders

ECA TARIFF REFERENCE: Section 8.1.5(D)

OTHER TARIFF REFERENCES: Several other access tariffs contain essentially similar provisions.

TARIFF LANGUAGE:

"When an IC requests changes to a pending Special Order for Recording Services, the pending Special Order will be cancelled and the requested changes will be undertaken if they can be accommodated by the Telephone Company under a new Special Order. All cancellation charges as set forth in (C) preceding will apply for the cancelled Special Order."

DISCUSSION: According to this provision the only way to change a special order is to cancel it and request a new special order. The IC, however, is forced to incur cancellation charges in that event. We find that this provision is unreasonably broad and that the carriers should clarify whether it is limited to material changes which cannot be implemented by a change to the existing order. If it is not, then further justification for this policy of not allowing modifications to existing special orders should be offered.

SUBJECT: Bill Processing Service: Denial of Local Exchange Service

ECA TARIFF REFERENCE: Section 8.2.1(A)(2); *See also* Section 8.2.1(D)(5)

OTHER TARIFF REFERENCES: Several other access tariffs contain essentially similar provisions.

TARIFF LANGUAGE:

"Treatment of accounts is the forwarding of notices of delinquent or unpaid end user accounts, posting of credits and adjustments, and when necessary as determined by the Telephone Company, denial of the IC's services and/or local telephone exchange services to an end user. Where local telephone exchange service access is denied, access to IC service will also be denied."

ISSUES: The commenters contend that telcos should not be allowed to discontinue an end user's local exchange service for nonpayment of interexchange service bills. (ACS, OCCO, NYPSC). The degree of discretion afforded the telco in this section has also been called into question.

DISCUSSION: Prior to divestiture, the threat of local disconnection may have been sensible because the end user contracted for both local and long distance service from essentially the same source (at least in Bell System territory). Nonpayment of either service constituted cause for disconnection of the other because the end user breached the contractual duty to pay for service rendered, whether long distance or local. This same relationship no longer exists in the post-divestiture era. Since the service provided by an IC is now unrelated to a customer's local service, we question whether it is reasonable to allow denial of local service for failure to pay IC service charges. The telco's relationship to the customer with respect to the service provided by the IC is that of billing agent or purchaser of receivables. A serious question of fairness to customers is raised where a subscriber's local telephone service is placed in jeopardy by a telco in its capacity as collection agent or holder of IC receivables.

Nevertheless, we are cognizant of the fact that there may be practical problems with prohibiting local termination of service, at least insofar as AT&T is concerned. AT&T presently stands in a different posture than the OCCs with respect to the line between the telco and the subscriber's home. Because OCCs presently have only a line side connection to the local end office, they are able to deny long distance service to a customer simply by refusing to recognize his access code. AT&T, on the other hand, may not have the ability to do this in all cases. Whether AT&T's long distance service can practicably be terminated without also shutting off local service may presently depend on the type of switching equipment in use at the particular end office or on other factors. Consequently, we will require the BOCs/CSO to submit technical justification for this provision by showing what operational restraints, if

any, would prevent telcos from separately terminating local and interstate service for AT&T under each of the feature group interconnection arrangements.

Section 8.2.1(A)(2) is also problematical in that it appears to give the telco too much discretion to determine when interexchange service should be denied for nonpayment. It is not the telco's customers who would be disconnected but rather the customers of the telco's customer, the IC. Therefore, the IC should be the one to determine when to stop providing service to one of its customers. It is ultimately responsible for bearing the burden of uncollectibles, not the telco. If the IC chooses to carry a customer who has been delinquent in his payments that should be its own business decision, subject to the requirements of the Act. The telephone company should not be allowed to control the IC's operations.

Section 9. Directory Assistance Service

Directory Assistance (DA) Service would allow ICs to offer their customers the ability to make long distance information calls directly to the telco's local directory assistance bureaus. Prior to divestiture, DA Service was not offered under tariff. The BOCs provided directory information to their own local exchange and intrastate long distance customers and to AT&T's long distance interstate MTS/WATS and private line customers, including customers who used an OCC's MTS or WATS-type service to place their calls. The costs of providing directory assistance service were shared among the BOCs, the independents and AT&T through separations and settlements procedures. The costs of interstate directory assistance were bundled into the rates for long distance calls, and such calls appeared to be "free". Small charges, however, are directly assessed for local information calls in some state and local tariffs. This state practice of not assessing direct charges for long distance directory assistance calls worked to the advantage of heavy users of directory assistance such as credit bureaus, collection agencies, marketing firms and telephone sales companies. These users paid the same rates for MTS/WATS long distance calls as customers who made no use of directory assitance service.

Under the terms of MFJ, the BOCs are required to provide the ICs with exchange access services on an unbundled, tariffed, non-discriminatory basis that allows the BOCs to recover the necessary costs of providing these services. Because DA service is provided via access to local exchange networks, it must be offered under a separate interstate tariff. Section 69.108 of our access rules specifies that telcos must assess a charge upon all interexchange carriers that request access to directory assistance boards through interexchange directory assistance trunks.

The rate structure proposed for Directory Assistance Service consists of three rate elements: (1) a per call charge for Directory Assistance Service which covers the operator service portion of the call, (2) a flat charge for Directory Access Service based on busy hour minutes of capacity ordered by the IC calculated in the same way as charges for other Switched Access Services set out in Section 6.8.1 of the ECA tariff,

and (3) a per call charge for Directory Transport which is a disaggregated, distance-sensitive rate. This rate element covers the haul from the IC's terminal connection in the telco's service area to the DA Service center.[1] Unlike other exchange access services, the network configuration for the provision of interstate DA Service involves routing the IC customer's DA Service call from an IC's terminal location to the fixed location of the DA office in the numbering plan area (NPA).

The ECA proposes a 49 cent per call charge for the operator service portion of a DA Service call. Many of the BOCs propose the same rate; however, a number of BOCs propose individual rates generally falling in the 30 to 70 cent range.[2] Although these are rates assessed on ICs, such costs would presumably be passed through to the end users who make the directory assistance calls. For example, AT&T estimates that the BOCs' charges for the operator assistance portion of the DA Service call average 64 cents. AT&T includes 64 cents as a rate element in its proposed 75 cent charge for each DA Service call made by its MTS and WATS customers.

Compared to the operator assistance rate element, the distance-sensitive transport rates proposed for interstate DA Service calls amount to a very small percentage of the total charge per call. The ECA's propose rates of .002 cents for the 0-1 mileage band and .02 cents per call for transport exceeding 100 miles. These charges are representative of the transport rates proposed by most of the BOCs.

The ECA proposes payment arrangements for DA Service that require ICs to order service for a minimum period of one year. Similar order periods are proposed for other exchange access services, however, they are considerably shorter than one year. ICs would also be required to provide six months advance notice before cancelling DA Service. Finally, the ECA would impose per call charges whether the IC's customer receives an incorrect telephone number or no number.

The comments and our review of the proposed interstate DA Service tariff raise a number of concerns. First, the justification and support material submitted for Section 9 is wholly insufficient to permit us to

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[1] In contrast to the ECA's usage sensitive rate structure for Directory Assistance Service, the independent telcos have in all cases proposed a flat monthly charge for Directory Assistance Service, as provided in our rules. We presume from their rates that they anticipate providing DA Service to only one IC, most likely AT&T. We point out that the MFJ does not require the independents to provide other ICs with the same service that they provide AT&T, as the BOCs are required to do.

[2] Although some BOCs such as Mountain States, New England Bell, and Southern Bell propose the same operator service rate for the various states comprising their service areas, others propose rates that vary by jurisdiction. For example, C&P Telephone proposes the lowest rate of 22 cents per call for the District of Columbia, and the highest rate per call of 93 cents for West Virginia. Northwestern Bell proposes a charge of 36 cents for each DA Service call made in Iowa and 60 cents a call in South Dakota.

reach a determination on the reasonableness of the tariff provisions and charges. Although we recognize that this is the first time directory assistance has been offered under an interstate tariff, and that it differs from other exchange access services, the telcos nevertheless bear the burden of adequately justifying proposed tariff rates and regulations. Second, we are concerned that the difference in current rates for local DA Service and the proposed rates for interstate DA Service may result in unreasonable discrimination against many small or infrequent users of interstate DA Service. MTS/WATS and MTS/WATS-type subscribers, who will in all likelihood pick up the DA Service charges passed through by the ICs, as AT&T proposes, will pay the interstate DA Service rates. Interstate private line subscribers, however, with direct connections to local exchanges may be able to avoid the interstate rates for DA Service and pay the local rates. Private line arrangements offering DA Service at lower local rates would be the most economical for the largest users of interstate DA Service. The costs of providing the interstate service, however, would be recouped from MTS/WATS or MTS/WATS-type customers who infrequently use interstate DA Service. As a result of the wide disparity in the local and interstate rates, certain customers would pay a much higher charge than others to obtain the same long distance directory information. We find, therefore, that the application of the proposed interstate DA Service rate structure would be unreasonably discriminatory.

In view of these concerns, we turn to the ECA's proposed 49 cent charge for the operator assistance portion of a DA Service call. The support material does not specify a cost methodology for determining this figure. There is no information about the allocation of operator costs between intrastate and interstate categories. Furthermore, there is no explanation of why certain BOCs rates vary from the ECA rate, and vary widely among the BOCs. Without this type of basic information we are unable to determine whether the operator assistance rates, which represent the bulk of the charge per call for DA Service, are reasonable. Accordingly, until these cost and discrimination concerns are addressed and resolved, and the telcos are able to submit suitable interstate DA Service tariffs, we are prescribing an interim rate for the operator assistance portion of interstate DA service calls. We find that there is not enough time before the scheduled effective date of April 3 1984 for the telcos to provide all necessary justification, and for us to conduct a thorough analysis. Therefore, we are requiring the telcos to revise their interstate DA Service tariffs to set a rate for the operator service portion of the charge per call that does not exceed 25 cents. "The 25 cent rate level will remain in place for one year from the effective date. We will, however, consider waivers of this requirement if telcos are able to provide

adequate justification of a different rate." Should telcos propose charges higher than 25 cents, they must address our concerns about rate discrimination.

We recognize that one of our primary goals is the implementation of cost-based rate making and that the most reasonable practice would be for the telcos to propose rate levels for interstate DA service that reflect the full cost of providing directory information to interstate customers. In view of these policies, we find that an interim 25 cent cap on operator assistance rates to be a rate level which we think is near or in the direction of costs. We also think that this level will not result in incentives to avoid the charge that would as great as those that could be expected under the proposed rates.

Last, we find that the proposed one year minimum service periods and the six-month advance notice period prior to cancellation of service to be unsupported and unreasonably long.

SUBJECT: Directory Assistance Service/Location of the DA Service Centers

ECA TARIFF REFERENCE: Section 9.2(D)

OTHER TARIFF REFERENCES: Similar provision in other access tariffs.

TARIFF LANGUAGE:

"(D) The Telephone Company will specify the DA location which provides the DA Service for each numbering plan area code (NPA)."

DISCUSSION: This provision does not comply with Section 61.55(h) of our rules which specifies that tariffs must contain a "list of cities, towns, and localities to and from which message rates apply". Because the telcos propose to determine rates based upon the mileage between the IC's terminal location and the DA location, these locations must be set out in the tariff. Without a list of DA locations in the tariff, there is no way to determine service locations or applicable transport rates.

SUBJECT: Directory Assistance Service/ Separate Trunk Group Requirement

ECA TARIFF REFERENCE: Sections 9.2(E)(1) and 9.3(D)

OTHER TARIFF REFERENCES: Similar provisions in other access tariffs.

TARIFF LANGUAGE:

"(1) When required by the Telephone Company, a separate trunk group will be provided for DA Service for each NPA.

(D) When requested by the Telephone Company, the IC shall order a separate trunk group for DA Service for each NPA."

DISCUSSION: Orders for separate trunk groups for the provision of DA Service may have significant rate implications for the ICs. Therefore, the tariff must clearly state under what conditions these charges would apply, or this provision must be eliminated.

SUBJECT: Directory Assistance Service/ Minimum Service Orders and Cancellation Notice Periods.

ECA TARIFF REFERENCE: Section 9.3(B)

OTHER TARIFF REFERENCES: Similar provision in other access tariffs.

TARIFF LANGUAGE:

"(B) When DA Service is initially ordered, the IC shall order the service for at least one year. Thereafter, additional service may be ordered for a minimum of one year. Not later than six months prior to the end of the one-year period, the IC shall notify the Telephone Company if the service is to be discontinued at the end of the one year period. If no notice is received from the IC, the Telephone Company will automatically extend the service for another year and all appropriate charges as set forth in 9.6 following for another year will apply."

ISSUES: ALLNET questions the reasonableness of a one year minimum service period. It points out that the minimum service period proposed for Special Access Services in the ECA tariff is six months, and that minimum service periods in current tariffs do not exceed one month. Similarly, AT&T contends that a six month service discontinuance notice period is unreasonably long and states that three months is sufficient.

DISCUSSION: We find that the support material does not provide adequate justification for these minimum periods. Generally, common carrier services should be made readily available with the least possible restrictions to the largest number of potential customers. Long service terms and notice periods do not foster this goal, and may pose substantial entry barriers to new or small entrants. Furthermore, as ALLNET suggests, we see no reason for a wide variance in minimum service periods among similar service offerings. We also agree with AT&T that a six month notice period to discontinue service is unreasonably long. A six month notice period may also have the effect of increasing the minimum service period to 18 months instead of one year. Where a small customer is involved, service discontinuance would be expected to have little or no disruptive effect on a carrier's service offering. If, however, a customer's use of a service could reach a level that represents a significant percentage of overall service, then termination liability provisions, as discussed in 9.4(A) preceding, may prove a reasonable measure to protect the carrier's financial interests. Therefore, we are requiring the carriers to revise these sections to stipulate a minimum service period of not more than six months and a discontinuance notice period not exceeding three months for Directory Assistance Service.

SUBJECT: Directory Assistance Service/Two Number Limit Per DA Service Call To Be Specified In IC's Tariffs

ECA TARIFF REFERENCE: Section 9.3(F)

OTHER TARIFF REFERENCES: Similar provision in other access tariffs.

TARIFF LANGUAGE:

"(F) The IC shall notify its end users through its tariff or other appropriate means that DA operators will respond to only two (2) telephone number requests per call and will not transfer, forward or redial the call to another location for any purpose other than the provision of DA Service."

DISCUSSION: The carriers must revise this provision to state that Directory Assistance Service operators will respond to only two requests for telephone numbers per call. There is

no obligation on the part of interexchange carriers to enforce the terms of another carrier's tariff. Furthermore, we note that it may be more efficient in terms of network usage if the telcos proposed to simply charge more per call for directory assistance requests that exceed two requests. The telcos should address this concern.

SUBJECT: Directory Assistance Service/ Minimum Monthly Charge When Service Is Discontinued

ECA TARIFF REFERENCE: Section 9.4(A)

OTHER TARIFF REFERENCES: Essentially identical provision in all other (BOC) access tariffs.

TARIFF LANGUAGE:

"(A) . . .

If DA Service is discontinued prior to the end of each one year period, the minimum monthly charge applies for each remaining month and fraction of month in the one year period."

DISCUSSION: It is not clear how the minimum monthly charge is calculated. Moreover, there is no material in the tariff submissions explaining why these charges represent a reasonable way of recovering costs incurred to provide service subsequently discontinued, or to replace customers who have discontinued the service. A customer who uses a high volume of service, for example, may be shown to place an extraordinary burden on the resources of one telco should this customer prematurely discontinue service. It is difficult to understand, however, why a small customer who would normally place only a few directory assistance calls would pose any greater problem vis a vis planning or reuse of service than local end users of equivalent size. For this reason, termination liability provisions have traditionally applied in cases where a common carrier undertakes to expend monies, or undertakes extraordinary capital expenditures on behalf of a small number of customers. Here, no showing has been made that a generally applicable termination liability would be reasonable. Accordingly, we will require that this provision be deleted until such times as the carriers are able to develop and justify a charge of the type proposed.

SUBJECT: Directory Assistance Service/ Credit Allowances for Service interruptions

ECA TARIFF REFERENCE: Section 9.4(H)(1)

OTHER TARIFF REFERENCES: Similar provision in other access tariffs.

TARIFF LANGUAGE:

"(1) When the DA location of DA operator equipment or terminals are out of service due to a Telephone Company equipment failure and an IC DA call has been answered or forwarded to a DA operator, a credit allowance for a call answered or forwarded to the DA operator equal to the rate for a Directory Assistance Service Call as set forth in 9.6 following plus the rate for a Directory Transport call will be applied to to the IC's charges. The rate for a Directory Transport call will be the average of the Directory Transport rates per call as set forth in 9.6 following."

ISSUES: AT&T contends that this tariff provision should also include a credit allowance for the switched access portion of a DA Service call that is not completed due to equipment failure on the part of the exchange carrier.

DISCUSSION: Credit allowance provisions generally provide full credit for all rate elements when service is interrupted by equipment failure of the underlying carrier. The tariff material does not explain why credit allowances would be recorded for all rate elements except the Switched Access portion of the call. Unless the carriers are able to provide adequate justification for denial of credit for the switched access portion of a DA Service call, this section must be revised to specify that credit allowances for all rate elements will be given when there is an equipment failure on the part of the carriers.

SUBJECT: Directory Assistance Service/ Operator Rate Per Call

ECA TARIFF REFERENCE: Section 9.6(A)

OTHER TARIFF REFERENCE: Similar provision in other access tariffs, however, the operator rate per call varies among local carriers.

TARIFF LANGUAGE:

	Rates
"(A) Directory Assistance Service Call, each	$0.4963"

ISSUES: The comments (ALLNET, CCTU) contend that the 49 cents for the operator service portion of the DA Service call is unreasonably high. They state that the carriers cannot justify this rate level, and that it is double the average 25 cent charge now assessed local users for the same directory assistance service.

DISCUSSION: As the comments point out, the support material filed with the access tariffs fails to adequately explain and justify the operator service charge per call. Although we have been furnished with voluminous 1984 budget projections, this information provides no way of determining how the operator service charge per call was developed. The individual tariffs filed by the BOCs also reflect a wide variance in operator service charges for certain local exchanges in the same region, and there is no accompanying material to explain or justify these differences in charges. We are concerned that the significant difference which exists between the generally lower level of local DA Service rates and interstate DA rates would result in users inefficiently bypassing interstate charges through arbitrage or private line facilities. Through "leaky" PBX facilities, users would be able to make interstate calls and access local DA Service at the local exchange rate. Accordingly, we find that the rates proposed by the telcos for the operator assistance protion of a DA Service call are unjustified and potentially discriminatory. Therefore, we will prescribe an interim rate for the operator assistance rate element of a DA Service call charge that does not exceed 25 cents.

"This rate level will remain in effect for one year. We will consider waivers of this requirement to the extent that telcos are able to justify a different rate." As stated above, we are taking this prescriptive action because the telcos have failed to provide a reasonable cost methodology for the proposed interstate DA Service operator assistance rates. Nevertheless, a rate structure must be in place by April 3, 1984, and there is not enough time to develop adequate cost support or restructure the rates. Interim rates will suffice until the telcos are able to do so. In our view, the 25 cent cap represents a rate level that is closer to the costs of providing DA Service, and at the same time will not cause massive avoidance of the charge by private line users, leaving the small customers to bear the brunt of the costs.

SUBJECT: Directory Assistance Service/ ICB Rates

ECA TARIFF REFERENCE: Section 9.6(B)

OTHER TARIFF REFERENCE: Similar provision in other access tariffs.

TARIFF LANGUAGE:

"Option:	*Monthly Rates*	*Nonrecurring Charges*
Provision of other than Telephone Company Selected Traffic Routing		
- Direct Trunking in Lieu of Tandem Trunking Per Directory Access Service Transmission Path	ICB rates and charges apply	
- Tandem Trunking in lieu of Direct Trunking Per Directory Access Service Transmission Path	ICB rates and charges apply	

ISSUE: Telesphere objects to the ICB rate structure for DA Service transmission options because ICB rates may be applied in a discriminatory fashion.

DISCUSSION: We generally view ICB rates unfavorably because it is difficult to determine whether such rates are non-discriminatory. Furthermore, this offering is vague and appears discretionary on the part of the carrier. Accordingly, the carriers should provide more description of the service options available under this provision, and devise specific rates for these transmission options. We recognize, however that the carriers have a limited period of time to respond to this direction, therefore, we will consider a schedule of general rates.

Section 10. Special Federal Government Access

Section 10 sets forth regulations applicable to access services provided to an IC serving the Federal Government or provided by the local telco to the Federal Government directly. Careful examination of this section reveals that certain of its provisions overlap with provisions elsewhere in the tariff. Thus, to avoid any unnecessary or unreasonable fragmentation of access service offerings, we conclude that this section should only include services and regulations that are unique to Federal Government access services and that are not included elsewhere in the tariff. Furthermore, and consistent with this approach, the Federal Government should not be charged different rates for the same services provided elsewhere under the tariff. Moreover, we reject a blanket provision in Section 10.6 which states that Federal procurement and other related acquisition Regulations will be followed when providing access services to the Federal Government. To allow for such a broad and general exception would, in effect, allow those various regulations to contravene or supersede the tariff itself and would violate Section 61.55(f) of the Rules. We note, however, that certain practices have developed and become accepted over the years between the Federal Government and its providers of communications services. We see no reason to disturb such

practices if they are not unreasonably discriminatory. Therefore, we shall allow specific exceptions applicable to Federal Government access services to be listed separately and individually in Section 10 and they will be evaluated on a case-by-case basis. Specific provisions proposed in this filing are discussed below.

SUBJECT: Special Government Access Services - General

ECA TARIFF REFERENCE: § 10.1

OTHER TARIFF REFERENCES: E.g., GTE Cos. § 11.1, Central Cos. § 12.1, and BOC tariffs.

TARIFF LANGUAGE:

"10.1 *General*

This section covers Special Access Services that are provided to an IC* for use only by agencies or branches of the Federal Government and other users authorized by the Federal Government.... [These services] are required to assure continuity of Government in emergency and crisis situations and to provide for national security.

* * * * *

*The Federal Government may be an IC for the provision of interstate telecommunications services for itself or for others."

DISCUSSION: Because we have corrected the ambiguous use of the term "IC," it is necessary to correct the terms of this provision to conform. The term "IC" should be removed from this section and the entire section should be re-written to conform with our discussion of the term "Customer" (see discussion of "Interstate Customer" in § 2.6, *supra*). This should eliminate the need for the footnote to this section.

SUBJECT: Special Federal Government Access Service - Intervals to Provide Service

ECA TARIFF REFERENCE: §§ 10.3 and 5.2.1 (C)

OTHER TARIFF REFERENCES: E.g., GTE Cos. § 11.3, Central Cos. § 12.3, and BOC tariffs.

TARIFF LANGUAGE:

"10.3 *Intervals to Provide Service*

Government requirements for short notice and short duration services do not fit the two categories of normal ordering options, (1) Access Order and (2) Planned Facilities Order. Orders for such services may be placed under the Short Notice provisions set forth in 5.2.1(C) preceding."

ISSUES: FEA contends that the provision will lead to unreasonable and unjustified higher costs for short-term service needs because the government would have to choose between paying for a minimum of 6 months of service for a normal Access Order (per § 5.2.5) or twice the non-recurring charge (per § 5.2.1 (C)(3)) for short-term service orders, which have a 30 day minimum period.

DISCUSSION: See discussion under § 5.2.1(C), *supra*.

SUBJECT: Special Federal Government Access: Federal Government Regulations

ECA TARIFF REFERENCE: § 10.6

OTHER TARIFF REFERENCES: E.g., GTE Cos. § 11.6, Central Cos. § 12.6, and BOC tariffs.

TARIFF LANGUAGE:

"10.6 *Federal Government Regulations*

Government Procurement Regulations, Defense Acquisition Regulations, Federal Procurement Regulations, Basic Agreements, Federal Agency Directives, as well as Presidential Directives will be followed when providing service to the Federal Government as an IC.

In accordance with Federal Government Regulations, all services provided to the Federal Government as an IC will be billed in arrears."

ISSUES: FEA argues that ICs attempting to meet requests for service should be able to receive service from the telco on the same basis as a telco serving the U.S. directly. Thus, it contends, an IC providing service to the U.S. should also be billed in arrears by the telco for access service.

DISCUSSION: As noted above, the first sentence of this section concerning the general applicability of Federal Government Regulations, etc., to access services must be deleted. Furthermore, the language "an an IC" no longer appears necessary. See our discussion under § 10.1, *supra*. In addition, we agree with FEA's argument that other carriers, such as AT&T, which obtain services from the access tariffs, should not be permitted to flow through the advance payment required of them to the Federal Government. To the extent that billing the Federal Government in arrears is required by Federal procurement or disbursement regulations or is established by law, it is not unreasonable to allow telcos to comply with such requirements. However, ICs providing service to the Federal Government are not entitled to the benefits of those laws or regulations providing for billing the Federal Government in arrears. See our discussion of § 2.4.1(B)(1)-(2), *supra*. This provision should be changed to reflect all of the above concerns.

SUBJECT: Special Federal Government Access Services - Quotation Preparation Charges.

ECA TARIFF REFERENCE: § 10.7

OTHER TARIFF REFERENCES: E.g., GTE Cos. § 11.7, Central Cos. § 12.7, and BOC tariffs.

TARIFF LANGUAGE:

"10.7 *Quotation Charges*

In order to comply with Federal regulations, quotation preparation charges will not apply when submitting unsolicited quotes or when submitting quotes in response to a general Request For Proposal or Invitation to Bid from agencies or branches of the Federal Government as an IC. However, a charge for quotation, as set forth in 2.1.9 preceding, will apply in all other cases."

ISSUE: EMS and ASC contend that this provision discriminates against other carriers and in favor of a local telco responding to a U.S. Government Request for Proposal. FEA, on the other hand, argues that if such charges are incurred by ICs, they will be passed on to the U.S. and subvert Federal Procurement Regulations and afford an anti-competitive advantage to local carriers. In reply, the BOCs/CSO argues that an IC is not likely to pass on the charge because the quotation charge is credited to the account when service is ordered. If either an IC or a local telco loses a proposed bid, a quote charge becomes a cost of doing business. The BOCs/CSO further argues that the local carrier should not have to absorb the costs associated with multiple quotations to ICs involved with the same U.S. proposal.

DISCUSSION: As discussed in Section 2.1.9, *supra*, the quotation preparation charge should be deleted. Thus, further discussion here is not necessary.

SUBJECT: Special Federal Government access - Service Offerings to the Federal Government

ECA TARIFF REFERENCE: § 10.8

OTHER TARIFF REFERENCES: *E.g.*, GTE Cos. § 11.8, Central Cos. § 12.8, and BOC tariffs

TARIFF LANGUAGE:

This section provides descriptions of special services available to an IC only for agencies/ branches of the U.S. Government, other authorized users, and state emergency operations centers. Provides for ICB rates and charges and move charges.

DISCUSSION: This provision should include only those services unique to the Federal Government and not appearing elsewhere in the tariff. Furthermore, rates for services provided to the Federal Government should be consistent with the rates found in the rest of the tariff. Therefore, this section should be revised to reflect these instructions.

Section 11. Special Facilities Routing of Access Services, and Section 12. Specialized Service or Arrangements

Special Facilities Routing under Section 11 is provided over routes and facilities elected by the telco according to requirements specified by the customer. Services provided included Switched Access Service, Special Access Service, or Special Federal Government Access Service under one or more of the following conditions: (1) where two or more services must be provided over not more than two different physical routes; (2) where a service must be provided on a route which avoids specified geographical locations; or (3) where certain voice-grade services are provided on Cable-Only Facilities to meet the particular needs of a customer.

Under Section 12, specialized intra-LATA service or arrangements not offered under other tariff sections may be provided on an individual case basis (ICB) at the request of a customer. ICB rates and charges for services under Sections 11 and 12 are discussed below.

SUBJECT: Special Facilities Routing of Access Services; Specialized Service or Arrangements.

ECA TARIFF REFERENCE: §§ 11.2, 12.2

OTHER TARIFF REFERENCES: *E.g.*, GTE Cos. §§ 7 and 9, Central Cos. § 7 and 11, and BOC tariffs.

TARIFF LANGUAGE:

These sections provide when these services may be offered and set rates and charges on an individual case basis (ICB).

ISSUES: GTES claims that implementation of tariffs containing ICB rates violates Section 203 of the Act.

DISCUSSION: The reply of the BOCs/CSO argues that ICB rates are legal because no service with ICB rates is provided until "dollars and cents rates" are filed with the Commission and become effective under Part 61 of the Rules, and that limited demand for certain facilities does not always allow for development of general rates. *See Reply* at I-131. In this case, however, the provisions under these sections are, in effect, for additional engineering and administrative costs associated elsewhere in the tariff. Therefore, charges can be developed for such services and should be filed in the tariff. However, as discussed in the Introduction to Appendix B, we are not generally requiring such charges to be listed in this filing.

Section 13. Additional Engineering, Additional Labor and Miscellaneous Services

This Section contains regulations and charges for additional engineering and labor requested by a customer, such as, for example, overtime installation and repair, and maintenance of service where trouble is reported by a customer, as explained in further detail below. In addition, Section 13 sets forth regulations and charges for several important miscellaneous services: presubscription, standard jacks provided in accordance with the Registration Program of Part 68 of the Rules, testing services for Switched Access and Special Access Services, access service billing information and protective connecting arrangements. Most of the comments addressing the various portions of Section 13 focus on the risks and conditions applicable to charges for maintenance of service and on the possible discriminatory effects of the presubscription provisions.

SUBJECT: Additional Engineering

ECA TARIFF REFERENCE: § 13.1

OTHER TARIFF REFERENCES: E.g., GTE Cos. § 8.2.2, Central Cos. § 8.1, and BOC tariffs.

TARIFF LANGUAGE:

The provision generally describes "Additional Engineering" as "that engineering or engineering consultation requested by the IC" as set forth in Sections 13.1.1 and 13.1.2. The telco will provide notice before any such engineering is undertaken.

ISSUES: The Networks argue that the extra costs for video service are unreasonable and unsupported.

DISCUSSION: We conclude that this entire provision fails to comply with Section 61.55(f) of the Rules and should be deleted. Many terms appearing in it, such as "Engineering Consultation" (§ 13.1.1) and "Engineering of Connections with Other Telephone Companies" (§ 13.1.2), are inherently unclear or vague, and the provision does not adequately describe when such terms would apply. Furthermore, engineering of connections with other telephone companies described in Section 13.1.2 is not an access service function and should not be tariffed.

SUBJECT: Additional Labor - Overtime Installation and Repair

ECA TARIFF REFERENCE: §§ 13.2.1 and 13.2.2

OTHER TARIFF REFERENCES: E.g., GTE Cos. § 8.2.3(A)(B), Central Cos. § 8.2.1-.2 and BOC tariffs.

TARIFF LANGUAGE:

"13.2.1 *Overtime Installation*

Overtime installation is that Telephone Company installation effort outside of regularly scheduled working hours.

13.2.2 *Overtime Repair*

Overtime repair is that Telephone Company maintenance effort performed outside of regularly scheduled working hours."

ISSUES: AT&T contends that the tariff is open to abuse because the provisions could be interpreted to impose overtime on an IC even where the telco employee's malfeasance or ineptitude is the cause of overtime. It suggests that the provision be clarified to apply only when the overtime work is clearly requested by the carrier and is the cause of the overtime expenses.

DISCUSSION: The lead provision to this section, § 13.2, states that additional work, including overtime, is only that work requested by the IC and agreed to by the Telephone Company. That provision further states that the telco will notify the IC before the additional labor is undertaken. This language largely obviates AT&T's concern. Its suggestion that overtime should only apply when "caused" by the IC is overly vague. However, § 13.2.5, which refers to "Other Labor" is itself a vague term and should be either clarified or deleted. In addition, the term "regularly scheduled working hours" should be defined.

SUBJECT: Charges For Additional Labor

ECA TARIFF REFERENCE: § 13.2.4

OTHER TARIFF REFERENCES: E.g., Central Cos. § 8.2.5, and BOC tariffs.

TARIFF LANGUAGE:

§ 13.2.4 sets forth the definition of additional testing, maintenance or repair of facilities connecting to telcos which are not "Concurring Carriers."

ISSUES: The use of the term "Concurring Carriers" is not clear.

DISCUSSION: Since there are no "Concurring Carriers" in the ECA tariff, only Issuing Carriers, and the provision does not specify or explain what tariffs the other carrier "concurs" in, the provision requires clarification.

SUBJECT: Maintenance of Service

ECA TARIFF REFERENCE: § 13.3.1

OTHER TARIFF REFERENCE: E.g., GTE Cos. § 8.2.4(A) and BOC tariffs. Similar provisions in Central Cos. § 8.3.1

TARIFF LANGUAGE:

"13.3.1 *Maintenance of Service*

(A) When an IC reports a trouble to the Telephone Company for clearance, the IC shall be responsible for payment of a Maintenance of Service charge when:

(1) the trouble is observed to be in the equipment or communications systems provided by other than the Telephone Company, or

(2) no trouble is found in the Telephone Company's facilities.

In either case, no credit allowance will be applicable for the interruption involved.

(B) The Telephone Company will advise the IC that it may be responsible for payment of a Maintenance of Service charge should either of the conditions in (A) preceding apply.

(C) The charges for Maintenance of Service are as follows:

Maintenance of Service *Periods*	*USOC*	*First Half Hour or Fraction Thereof*	*Each Additional Half Hour or Fraction Thereof*
Basic Time, regularly scheduled working hours, per technician	MVV	$44.12	$17.91
Overtime, outside of regularly scheduled working hours on a scheduled work day, per technician	MVV	$47.22*	$21.01*

ISSUES: ITT argues that the proposed change in ordering, maintenance, and test procedures shifts business risks formerly borne by the telcos to the ICs. AT&T contends that the provision gives telcos the power to apply access service charges in an arbitrary manner and that the maintenance of service charge should apply only where the telco dispatches its personnel to the customer's premises for testing and trouble is located in the customer's equipment. The BOCs/CSO reply first, that the charge does not apply if there is trouble in the telco's equipment, and second, that costs are incurred to test even when personnel are not sent to the premises. It also proposes a new subsection which would impose the charge on the IC in an additional situation.*

DISCUSSION: Subsection A could result in the IC being liable for the charge when the trouble is in CPE not provided by the IC or by the telco. In cases where the charge can be passed on by the IC to its customer, however, this does not appear unreasonable.

Although costs may be incurred for maintenance which does not require the dispatch of telco personnel, such maintenance seems generally a routine part of usual maintenance and is likely to be much less costly. The charge should be applied only when personnel are dispatched to a customer's premises. The provision should also make clear that the failure of telco personnel to find trouble in telco facilities will result in no charge, if the trouble is actually in those facilities but not discovered at the time. The telco also should not impose different maintenance charges for its own, unregulated, competitive customer premises equipment. Subsection B should be changed to provide: "The customer shall be responsible for payment of a Maintenance of Service charge when the Telephone Company dispatches personnel to the customer's premises, and the trouble is in equipment or communications systems provided by other than the Telephone Company or in detariffed CPE provided by the Telephone

* Reply of BOCs/CSO at V-64.

Company." The new subsection proposed by the BOCs/CSO should be filed separately with the usual justification.

SUBJECT: Presubscription

ECA TARIFF REFERENCE: § 13.3.3

OTHER TARIFF REFERENCES: *E.g.*, BOC tariffs, *Compare* GTE Cos. § 8.2.6.

TARIFF LANGUAGE:

"13.3.3 *Presubscription*

(A) Presubscription is an arrangement whereby an End User may select and designate to the Telephone Company an IC to access, without an access code, for interLATA interstate calls. This IC is referred to as the End User's predesignated IC.

(B) On the effective date of this tariff, all existing End Users will have Access Service to AT&T as their predesignated IC. Within 90 days after the introduction of Feature Group D in a serving end office, End Users may select one of the following options at no charge. Thereafter, a nonrecurring charge, as set forth in (D) following, applies for any change in Presubscription.

—Designate an IC as predesignated IC and dial 10XX or other access codes to each other ICs.

—Designate that they do not want to be presubscribed to any IC and choose to dial 10XX or other access codes for all calls for all ICs, including AT&T.

(C) New End Users will be asked to presubscribe to an IC at the time they place an order with the Telephone Company for Telephone Exchange Service. They may select either of the following options. There will be no additional charge for this initial selection.

—Designate an IC as predesignate IC and dial 10XX or other access codes to reach other ICs.

—Designate that they do not want to be presubscribed to any IC and choose to dial 10XX or other access codes for all calls to all ICs.

Subsequent to the installation of Telephone Exchange Service, a nonrecurring charge, as set forth in (D) following, applies for any change in Presubscription.

(D) The nonrecurring charge for Presubscription is as follows:

	Nonrecurring Charge
Presubscription, per Telephone Exchange Service line or trunk	$26.21

Note: This charge is billed to the End User which is the subscriber to the Telephone Exchange Service."

ISSUES: Various competing ICs argue that presubscription is inherently discriminatory (USTEL), unfair because AT&T is allowed to be the default carrier (MCI, TSC/SI, SBS, LC), and that it makes AT&T appear too integrated with the telco (GTES). It is also argued that the ninety-day period for free presubscritpion disadvantages later carriers and is not justified (GTES).

DISCUSSION: Presubscription does give an advantage to one interexchange carrier whose service can be used by the customer without dialing the four-digit access code. AT&T will also enjoy an immediate advantage over its competitors because of its dominant market position and its role as the default carrier. Other factors, however, weigh in favor of presubscription:

It avoids the reduction in the quality and convenience of service that mandatory access codes would require, while allowing customers to obtain access to all competing carriers by a four-digit code.

Carriers will also be free to compete for presubscriptions. Although AT&T will have a definite competitive advantage as the default carrier, under the MFJ the BOCs are required to publicize the fact that customers may presubscribe to any IC. New subscribers would also be required expressly to select any presubscription. This would mitigate and eventually eliminate AT&T's advantage without the inconvenience or expense of blocking or distributing calls by formula.

Although a charge for changing a presubscription could be reasonable to reflect administrative and technical costs, no justification is provided for allowing an initial presubscription without charge only within the first 90 days. It would be fairer to local customers and more equitable to competing carriers to allow a longer period, so that Feature Group D access can be implemented and marketed, and consumers can have an adequate opportunity to evaluate the competing services. The ECA is therefore directed to lengthen the ninety-day period to six months. The text of Section 13.3.3(B) should also be clarified to indicate whether a local subscriber may change its presubscription without charge during the initial period. See our discussion on non-recurring charges, *supra*, in relation to the level of charges.

SUBJECT: Standard Jacks—Registration Program

ECA TARIFF REFERENCE: § 13.3.4

OTHER TARIFF REFERENCES: *Compare* GTE Cos. § 8.2.7

TARIFF LANGUAGE:

This section cross-references Part 68 of the Rules and sets forth the charges for standard jacks used to terminate telco services and connect them with equipment registered under Part 68. Charges range from $11 for most standard voice jacks to $277 for a multiple line data jack.

ISSUES: USTEL suggests that the filing provides no basis for the levels of charges for standard jacks. As an example, USTEL notes that the charge for installation of an RJ11 jack used by AT&T is $11; the charge for a similar RJ31 jack, said to be very little different and used by OCCs, is $73. USTEL contends that this difference cannot be cost-justified. It also points out that other BOCs impose no charge to $11 for an RJ11 jack and from $18.66 to $73.13 for an RJ31 jack.

DISCUSSION: First, to avoid ambiguity, the tariff should clarify whether or not the charges include installation. The charges proposed for jacks are the charges which are currently in effect in other tariffs. In addition, an adjustment for inflation is proposed. We will permit the existing rates to continue in effect for an interim period only. The ECA and other carriers are directed to file cost supported rates for jacks in their 1985 filings. In the interim period, no adjustments for inflation will be permitted. The fact that these rates are being transferred from existing tariffs to proposed new ones does not automatically present an opportunity to increase rates. The proposed rates for jacks, therefore, should be modified in accordance with the above.

SUBJECT: Testing Services

ECA TARIFF REFERENCE: § 13.3.5

OTHER TARIFF REFERENCES: *E.g.*, BOC tariffs; *Compare* GTE Cos. § 8.2.8, and Central Cos. § 8.3.3

TARIFF LANGUAGE: This section describes the testing services available under the tariff and sets forth the rates and charges that apply for each of the various testing services offered.

DISCUSSION: It is not clear what testing is included in the basic charges and what is charged at additional rates. The tariff must provide standards (and a justification) for the distinction between scheduled and non-scheduled tests, and optional and non-optional tests. The provision is also defective because it contains incomplete specifications of tests by category. Furthermore, § 13.3.5(C) is unclear with regard to a minimum charge of four hours for certain call-outs, and the tariff provides no basis for the one-year minimum for certain tests. In addition, under § 13.3.5(A)(2), Automatic Scheduled Testing is required for Feature Groups C and D Switched Access Service. All required Feature Group C and D tests should be included in the overall rate for that service, and such maintenance obligations should be clarified in the applicable tariff provisions.

Section 14. Exceptions to Access Service Offerings

Finally, Section 14 reserves tariff sections for future listings regarding availability of service or components. No comments were filed on this section.

Tariff No. 3. Special Construction

Special construction tariffs have traditionally offered facilities when one or more of the following conditions exist: no other facilities are available and there is no other requirement for the facilities; the customer requests that service be furnished using a type of facility or via a route other than that normally used; the customer requests construction of a greater quantity of facilities than that which would otherwise be constructed to satisfy an order; the facilities are not available and the customer requests expedited construction at a greater expense than would otherwise be incurred; or the facilities are not available and the customer requests construction of temporary facilities while the permanent facilities are under construction. AT&T's special construction tariff, Tariff F.C.C. No. 262, includes three major types of charges: nonrecurring charges, recurring charges and termination charges. Under that and other special construction tariffs, the customer pays both special construction charges and any other charges contained in the service tariff applicable to the facility that is specially constructed. We refer throughout our analysis of the proposed special construction tariffs to AT&T's Tariff F.C.C. No. 262. This tariff currently contains terms and conditions for the AT&T, BOCs and independent telephone companies special construction offerings and therefore provides a convenient baseline for comparisons between proposed and existing tariffs.

The proposed ECA and BOCs tariffs basically continue the same conditions for special construction and the three types of charges. Those tariffs, however, propose a different basis for calculating termination charges. Under Tariff No. 262 there is no special construction charge for facilities in use more than ten years after they are placed in service. Thus, the maximum termination liability period is ten years. Under the proposed tariffs, the maximum termination liability period would be equal to the average account life of the facilities. For the federal government, however, this period would be equal to the average account life but would be calculated at ten year intervals. The ECA and BOCs have not justified this different treatment of two classes of customers. The proposed tariffs would also impose underutilization and excess capacity charges, but do not clearly distinguish between these two types of charges. The tariffs do not include any credit allowance for service interruptions, even though some customers will continue to be responsible for recurring charges if service is interrupted.

The proposed tariffs include a reference to the possible transfer of ownership of specially constructed facilities through an agreement outside the tariff. This provision is unlawful both because it refers to agreements outside the tariff and because it is potentially discriminatory. Finally, certain charges in these tariffs are either ambiguous, such as the partial payment charge, potentially duplicative, such as the expediting charge, or unreasonable, such as the rearrangement charge. Because the carriers filed no justification in support of these tariffs, the ECA and BOCs must eliminate or justify these charges.

SUBJECT: Special Construction—Ownership of facilities

ECA TARIFF REFERENCE: ECA Tariff F.C.C. No. 3, Section 2.2, and 2.6.4(A)

OTHER TARIFF REFERENCES: Essentially identical provisions in the BOCs special construction tariffs.

TARIFF LANGUAGE:

Section 2.2: "*Ownership of Facilities.* The Telephone Company retains ownership of all specially constructed facilities."

Section 2.6.4(A): "*Quotation Charge.* The payment of a quotation charge does not assign, confer, or transfer title or ownership rights of proposals or facilities designed or furnished by the Telephone Company. Title and ownership rights for any item remains with the Telephone Company, except as specifically provided by a written agreement, between all parties."

DISCUSSION: The language of Section 2.2 suggests that even those facilities constructed by connecting carriers are owned by the exchange carrier. This provision should be clarified to eliminate this ambiguity. The reference in Section 2.6.4(A) to a written agreement that could transfer ownership of facilities must be deleted. *See supra*, discussion ECA Tariff No. 1, § 2.4.7(B). If the carriers intend to provide an option to buy specially constructed facilities, the terms and conditions of such offering must be set forth in the tariff. *See* 47 C.F.R. § 61.74.

SUBJECT: Special Construction—Interval to provide facilities

ECA TARIFF REFERENCE: ECA Tariff F.C.C. No. 3, Section 2.3.

OTHER TARIFF REFERENCES: Essentially identical provisions in the BOCs special construction tariffs.

TARIFF LANGUAGE:

"*Interval to Provide Facilities*

Based on available information and the type of service ordered, the Telephone Company will establish a completion date for the specially constructed facilities. Although the Telephone Company will make every reasonable effort to ensure that the date is met, shortage of material, personnel or other factors may lengthen the installation interval. The Telephone Company does not guarantee that the facilities will be available on the scheduled date and assumes no liability other than that specified in the appropriate service tariff if that date is missed. If the scheduled completion date cannot be met, the party ordering the special construction will be notified and a new completion date will be established."

DISCUSSION: This exculpatory language is not contained in the current special construction tariff. The proposed provision would give the carrier unfettered discretion to reschedule a completion date for any reason. This attempt to relieve the carriers of any liability is unreasonable and therefore they should eliminate the second, third, and fourth sentences of this section. The carriers may provide instead that if circumstances beyond their control force them to reschedule, a new date for completion will be established.

SUBJECT: MIT Special Construction—Partial payment charge

ECA TARIFF REFERENCE: ECA Tariff F.C.C. No. 3, Section 2.5.3.

OTHER TARIFF REFERENCES: Essentially identical provisions in the BOCs special construction tariffs.

TARIFF LANGUAGE:

"*Partial Payments*

To safeguard its interests during construction, the Telephone Company may require a partial payment(s) for the portion of the estimated cost of the special construction for which a nonrecurring charge will apply. Partial payments may be requested as costs are incurred and will be credited against the total bill. Partial payments may not exceed the total nonrecurring charge for the special construction. If any partial payment is not received by the Telephone Company by the end of the first working day of the next month, the Telephone Company will cease all work on the special construction case and cancellation charges will apply as set forth in 2.6.4(G)."

ISSUES: MCI contends that this provision is open-ended and would allow the exchange carrier to require advance payments before special construction is begun and could require advance payment of any nonrecurring charge, including termination charges.

DISCUSSION: This provision is intended to relieve the telco of the risk of loss of investment and relates to the advance payment and deposit provisions of other service tariffs. As written, however, this provision is potentially discriminatory. The language, "[t]o safeguard its interests . . . the Telephone Company may require a partial payment(s)," would give the telco discretion to require partial payments from only certain customers. Therefore, this section should be eliminated. If the carriers intend to include deposit or advance payment provisions

for special construction, such deposit should be expressly limited in amount and should be required in a nondiscriminatory manner on the basis of specific standards, such as the customer's credit rating.

In addition, the provision that partial payments must be received by the end of the first working day of the next month is vague and ambiguous because it does not specify the exact amount of time between the due date for partial payment and the date the telco will cease work on the special construction case.

SUBJECT: Special Construction—Conditions requiring special construction

ECA TARIFF REFERENCE: ECA Tariff F.C.C. No. 3, Section 2.6.2.

OTHER TARIFF REFERENCES: Essentially identical provisions in the BOCs special construction tariffs.

"*Conditions Requiring Special Construction*

Special construction is required when 1) suitable facilities are not available to meet an order for service, and 2) the Telephone Company constructs facilities, and 3) one or more of the following conditions exist:

—The Telephone Company has no other requirement for the facilities requested.

—It is requested that service be furnished using a type of facility, or via a route, other than that which the Telephone Company would normally utilize in furnishing the requested service.

—More facilities are requested than would normally be required to satisfy an order.

—It is requested that construction be expedited, resulting in added cost to the Telephone Company."

ISSUES: MCI contends that the terms used in this section are vague and therefore violate Section 61.55(f) of the Commission's Rules and that the vague standards set forth in this tariff could be used to assess special construction liabilities for all OCC facilities requests, despite the elaborate ordering and forecasting procedures required in the access tariff.

DISCUSSION: The description of conditions requiring special construction contained in the ECA and BOCs tariffs are similar to those in the current special construction tariff. Since special construction is by nature developed on an individual case-by-case basis, certain terms such as "expedited" are defined as clearly as could be expected. The term "suitable facilities," however, which is not in the current special construction tariff, gives the exchange carrier too much discretion to determine when other facilities are available. Therefore, the ECA should eliminate the term "suitable" or substitute the term "suitable to the customer." Because special construction is determined on a case-by-case basis, we cannot address MCI's claims that, as a customer, it has been subjected to unilateral and arbitrary decisions by the carrier that special construction is required to meet MCI's requests for service.

SUBJECT: Special Construction—Quotation Charges

ECA TARIFF REFERENCE: ECA Tariff F.C.C. No. 3, Section 2.6.4(A)

OTHER TARIFF REFERENCES: Essentially identical provisions in the BOCs special construction tariffs.

TARIFF LANGUAGE:

"*Quotation Charge*

A nonrecurring charge for the preparation of a quotation applies whenever an estimate for special construction charges and liabilities is requested. The charge includes the costs associated with the development and preparation of the quotation.

The quotation is valid for 90 days and identifies all rates, charges and liabilities associated with the provision of the facilities required to satisfy a service request. Within this 90 day period, if the service is ordered as quoted and service is subsequently provided, the quotation charge will be credited to the appropriate account.

If a request for a quotation is cancelled prior to its completion, a bill will be rendered for the costs incurred for quotation preparation through the cancellation date. The payment of a quotation charge does not assign, confer, or transfer title or ownership rights of proposals or facilities designed or furnished by the Telephone Company. Title and ownership rights for any item remains with the Telephone Company, except as specifically provided by a written agreement between all parties."

DISCUSSION: The provisions imposing quotation charges should be deleted. *See supra*, discussion ECA Tariff No. 1, § 2.1.9. In addition, the carriers must delete the references in the special construction tariffs to quotation charges, both in Section 2.7 regarding deferral of services and in Section 2.9 regarding the application of quotation charges to the federal government.

SUBJECT: Special Construction—Case preparation charge

ECA TARIFF REFERENCE: ECA Tariff F.C.C. No. 3, Section 2.6.4(B)(1)

OTHER TARIFF REFERENCES: Essentially identical provisions in the BOCs special construction tariffs.

TARIFF LANGUAGE:

"*Case Preparation Charge*

A nonrecurring charge always includes a case preparation charge component to cover the administrative expenses associated with preparing a special construction case and the associated tariff filing."

ISSUES: MCI argues that this nonrecurring charge covers administrative costs that should be included in the total cost of special construction and recovered through termination liabilities and other charges.

DISCUSSION: The BOCs/CSO respond that because initial case preparation expenses are not properly capitalized on the books of an exchange carrier, they should be included as a nonrecurring charge. We do not find it unreasonable for a carrier to recover administrative expenses through this charge.

SUBJECT: Special Construction—Nonrecurring expediting charge

ECA TARIFF REFERENCE: ECA Tariff F.C.C. No. 3, Section 2.6.4(B)(2).

OTHER TARIFF REFERENCES: Essentially identical provisions in the BOCs special construction tariff.

TARIFF LANGUAGE:

"*Expediting Charge*

A nonrecurring charge may include an expediting charge when it is requested that special construction be completed on an expedited basis. The charge equals the difference in estimated cost between expedited and nonexpedited construction."

DISCUSSION: One of the conditions requiring special construction set forth in Section 2.6.2 of the ECA and BOCs tariffs is that the customer requests expedited construction. The proposed tariffs, however, would impose an expediting charge in addition to the nonrecurring, recurring and termination charges imposed for other cases of special construction and in addition to any expedition charges under the applicable service tariff. Because this nonrecurring charge for expedition is not contained in the current special construction tariff, the ECA and BOCs should justify or eliminate this charge.

SUBJECT: Special Construction—Nonrecurring rearrangement charge

ECA TARIFF REFERENCE: ECA Tariff F.C.C. No. 3, Section 2.6.4(B)(5).

OTHER TARIFF REFERENCES: Essentially identical provisions in the BOCs special construction tariffs.

TARIFF LANGUAGE:

"*Rearrangement Charge*

If the Telephone Company is requested to rearrange existing specially constructed facilities, a nonrecurring charge component equal to the cost of rearrangement will apply."

DISCUSSION: The ECA has not justified the imposition of a charge for rearranging existing special construction when no new special construction occurs. In such cases, the service rearrangement charge under the applicable service tariff would appear to compensate the carrier for any rearrangement costs. Therefore, the carrier should either eliminate this provision or provide instead:

"*Rearrangement Charge*:

If the Telephone Company is requested to rearrange existing specially constructed facilities, a nonrecurring charge equal to the cost of any additional special construction will apply."

SUBJECT: Special Construction—Termination liabilities

ECA TARIFF REFERENCE: ECA Tariff F.C.C. No. 3, Sections 2.6.4(C) and 2.9 [Issue 1]

OTHER TARIFF REFERENCES: Essentially identical provisions in the BOCs special construction tariffs.

TARIFF LANGUAGE:

2.6.4(C) "*Maximum Termination Liability and Termination Charge*

A Maximum Termination Liability is equal to the nonrecoverable costs associated with specially constructed facilities and is the maximum amount which could be applied as a Termination Charge if all specially constructed facilities were discontinued before the Maximum Termination Liability expires.

The liability period is equal to the average life of the account associated with the specially constructed facilities, except in the case of the Federal Government (see 2.9). The liability period is generally expressed in terms of an effective and expiration date.

A Termination Charge may apply when all services using specially constructed facilities which have a tariffed Maximum Termination Liability are discontinued prior to the expiration of the liability period. The charge reflects the unamortized portion of the nonrecoverable costs

at the time of termination, adjusted for net salvage and possible reuse. Administrative costs associated with the specific case of special construction and any cost for restoring a location to its original condition are also included. A Termination Charge may never exceed the filed Maximum Termination Liability."

2.9. "*Regulations for the Federal Government*

Special construction provided to the Government is subject to all regulations specified in 2.1 through 2.8, with the following exception. In lieu of a filed Maximum Termination Liability Period equal to the average account life of the specially constructed facilities, the Maximum Termination Liability will be filed at ten-year intervals for the average account life of the facilities. In the event that the average account life of the facilities is not an even multiple of ten, the last increment filed will reflect the appropriate number of years remaining (e.g., seven years for plant with a 27-year life).

Prior to the expiration of each liability period, the Government has the option to (A) extend the use of the specially constructed facilities for the new liability period, or (B) terminate the special construction case and pay the appropriate charges.

The Telephone Company will notify the Government six months in advance of the expiration date that the special construction case is subject to renewal. The Government must provide the Telephone Company with written notification of termination, to be received one month prior to the expiration of the liability period. Failure to do so, and payment of the next month's service charges, will result in an extension of the special construction case for the next ten-year interval.

(A) *Continued Use of Special Construction*

When the Government elects to continue the case of special construction, a revised Nonrecurring Charge, Maximum Termination Liability, and Maximum Termination Liability Period will be filed.

(B) *Termination of the Use of Special Construction*

When the Government elects to terminate a case of special construction at or prior to the expiration of the current liability period, termination charges will apply."

ISSUES: MCI argues that the tariff imposes unreasonably long liability periods and unjustifiably establishes a maximum termination liability period for the federal government different from that for other customers.

DISCUSSION: By way of background, the current tariff provides that, "[w]here the customer continues the use of services or channels involving special construction for a 10 year period after they are placed in service, no charge applies." AT&T's Tariff F.C.C. No. 262, Section 2.2.a.(1)(a). The ECA and BOCs propose to revise this maximum liability period so that termination charges would apply if specially constructed facilities are discontinued before the average account life of those facilities expires. MCI objects that such a liability period is unreasonably long and subjecting customers to such prolonged liabilities is inherently unreasonable. The "useful life" standard for maximum liability periods, MCI argues, is too vague and would allow unjustified wide variations in liability periods for different special construction cases. MCI urges that the ECA adopt a ten year maximum liability period as now exists in AT&T's Tariff No. 262 and as is proposed by the GTE Telephone Operating Companies in their special construction tariffs, NO. 4, Section 2.2.a.(1)(a). MCI also objects to the establishment of ten year maximum liability periods for the federal government but not for other customers.

We do not agree with MCI's argument that a termination liability period equal to the average account life of the specially constructed facilities is an unreasonable business practice. Those facilities do, as the BOCs/CSO maintain, generate a revenue requirement during their entire account life because they are carried on the carrier's books during that

time. Thus, the proposed termination liability period appears necessary to protect the carrier from revenue shortfalls caused by premature disconnection.

We do agree, however, that the ECA and BOCs have not justified the proposal to calculate termination liability periods for the federal government on a basis different from that for all other customers. The BOCs/CSO deny that the federal government's termination liability periods will be equal to ten years. None of the tariffs or pleadings, however, clarifies what is meant by the provision that maximum termination liability "will be filed at ten-year intervals for the average account life of the facilities." Thus, this tariff provision is ambiguous and unclear in violation of Section 61.55(f) of the Commission's Rules. 47 C.F.R. § 61.55(f). Moreover, if the ECA and BOCs intend to use a basis for calculating termination liabilities for the federal government different from that for other customers, they must justify such discrimination in treatment of different classes of customers.

In addition, the ECA and BOCs have not justified the imposition of terms and conditions of termination liability for the federal government different from those for other customers. For example, the ECA and BOCs tariffs do not justify revising the nonrecurring charge for the federal government at the ten year intervals when new maximum termination liability periods will be filed. Since the nonrecurring charge is a one time charge imposed at the initiation of special construction, this charge cannot be revised and reimposed at a later time during the life of the facilities.

Finally, we disagree with MCI's argument that the ECA tariff should provide, as does the current special construction tariff, that maximum termination liability will not apply when there is another requirement for all or part of the facilities. The ECA and BOCs tariffs adequately provide for this situation by including "possible reuse" in the calculation of termination charges.

SUBJECT: Special Construction—Recurring underutilization and excess capacity charges

ECA TARIFF REFERENCE: ECA Tariff F.C.C. No. 3, Sections 2.6.4(D) and 2.6.4(E)(1) [Issue 1]

OTHER TARIFF REFERENCES: Essentially identical provisions in the BOCs special construction tariffs.

TARIFF LANGUAGE:

Section 2.6.4 (D): "*Annual Underutilization Liability and Underutilization Charge*

Annual Underutilization Liability is a per unit amount which is based on the per unit cost of specially constructed facilities. The liability remains in effect until the expiration of the Maximum Termination Liability or until the special construction case is discontinued and all termination liabilities associated with the case are discharged. An underutilization charge may be applicable after the expiration of the minimum period, as set forth in the appropriate service tariff, depending on the quantity of specially constructed facilities in service.

No underutilization charges are computed or billed until one year after the minimum period expires. At that time, an underutilization charge applies to the difference, if any, between the original number of specially constructed facilities and the number of specially constructed facilities in service at filed tariff rates. *With voice grade cable pairs only, this computation is performed based on 70% of the original number of specially constructed cable pairs*. The underutilization charge applies from the date the minimum period expires and annually thereafter. For purposes of determining an underutilization charge, any facilities subject to minimum period monthly charges are considered to be in service at filed tariff rates."

Section 2.6.4 (E) (1): "*Recurring Monthly Charges*

(1) *Excess Capacity Charge*

A recurring monthly excess capacity charge applies when more facilities are requested and subsequently specially constructed than are required to satisfy an order for service.

The charge is based on the estimated cost difference between the facilities constructed and the facilities which would normally be required to meet the order for service. Charges apply until there are sufficient services to warrant the facilities which were originally constructed."

ISSUES: MCI contends that the underutilization charge requires an unreasonably high degree of traffic forecasting accuracy by the customer, is anticompetitive and is based on unclear standards.

DISCUSSION: The ECA and BOCs would impose an annual underutilization charge which provides that one year after the expiration of the minimum period set forth in the applicable service tariff, a customer will be liable for underutilization of specially constructed facilities. The underutilization charge will apply to the difference between the amount of originally ordered special construction and the amount of special construction in service at tariff rates. The underutilization charge is based on the per unit cost of unused specially constructed facilities.

MCI objects that the customer is required to forecast its traffic for unreasonably long periods with an unreasonable degree of accuracy. Such requirement, MCI argues, is anticompetitive because it is harmful to new entrants for whom the loss of a few large customers would cause significant shifts in traffic and unreasonably insulates an exchange carrier from normal market risks.

In response, the BOCs/CSO agree that 100% forecasting accuracy is an unreasonable standard in the case of voice grade cable pairs. Accordingly, a tariff modification is proposed to provide that in such cases, underutilization charges will apply where less than 70% of constructed voice grade cable pairs are in use. We will allow this proposed modification to be filed. The ECA and BOCs should, however, justify or eliminate the requirement of 100% forecasting accuracy for all other specially constructed facilities. To the extent questions of reasonableness are raised with respect to the forecasting accuracy required for facilities other than special construction, those will be addressed in other proceedings. *See also supra*, discussion ECA Tariff No. 1, § 5.

MCI also argues that the standards for application of underutilization charges would allow unreasonable application of these charges, such as the cases in which MCI's underutilization liability has exceeded the original cost of the specially constructed facilities. The BOCs/CSO response does not adequately address the question of how the underutilization charges would be calculated. Because this charge does not exist in the current special construction tariff, the ECA and BOCs should clarify and explain, perhaps by an example, how such charges will be calculated. In this regard, the BOCs/CSO have adequately explained that underutilization charges do not duplicate the activation charges under applicable service tariffs because underutilization charges apply only one year after the minimum service period expires, while activation charges are assessed during that minimum period.

Finally, the tariff does not clearly state how the exchange carrier would determine whether underutilization or excess capacity charges would apply. Without such clarification, these charges appear to be overlapping, potentially discriminatory and the application of each appears to depend on the customer's intent at time of ordering special construction. The ECA and BOCs should justify and explain the difference in these charges or eliminate them.

SUBJECT: Special Construction—Application of termination and underutilization charges

ECA TARIFF REFERENCE: ECA Tariff F.C.C. No. 3, Sections 2.6.4(C) and 2.6.4(D) [Issue 2]

ISSUES: MCI contends that the tariff should provide that no special construction charges will apply where replacement of facilities is required to achieve equal access or to change to more technically advanced facilities.

DISCUSSION: To require the carrier, as MCI argues, to discontinue termination and underutilization liabilities for outmoded equipment would impose the continuing cost of such facilities on all other ratepayers. Thus, it would not be unreasonable to apply special construction charges where the conditions of special construction exist even if such construction is required to replace existing facilities with more technically advanced ones. Moreover, equal access issues will be addressed in other proceedings.

SUBJECT: Special Construction—Credit allowance for service interruption

ECA TARIFF REFERENCE: ECA Tariff F.C.C. No. 3 [No reference]

DISCUSSION: Unlike the current special construction tariff, the ECA and BOCs special construction tariffs do not contain a provision for credit allowance for service interruption. This exclusion is unreasonable because customers may be obligated for continuing recurring charges even if service is completely interrupted. Therefore, they should revise their tariffs to include a reasonable credit allowance for service interruptions.

SUBJECT: Special Construction—Headings of pages

ECA TARIFF REFERENCE: ECA Tariff F.C.C. No. 3 [No reference]

DISCUSSION: This tariff does not contain the tariff title as a heading on any pages after the title page. The ECA should correct this ambiguity in any future filings to fully comply with Section 61.55(f) of the Commission's Rules.

EXHIBIT 42

Common Carrier, Service, Resale and Shared Use
Wide Area Telephone Service

Petition for declaratory ruling granted. BSOCs cannot invoke state tariff restrictions to prevent resale or sharing of intrastate WATS to terminate interstate communications. WATS between points within a state is interstate service when used to complete interstate calls, and as such is subject to FCC's policy favoring unrestricted resale and sharing of interstate public switched network services.
–*Market Structure (Phase I)*
CC Docket No. 78–72

FCC 82–579

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of MTS and WATS Market Structure	CC Docket No. 78–72, Phase I

THIRD REPORT AND ORDER

(Adopted December 22, 1982; Released February 28, 1983)

BY THE COMMISSION: COMMISSIONERS QUELLO, FOGARTY, DAWSON, RIVERA AND SHARP ISSUING SEPARATE STATEMENTS; COMMISSIONER JONES CONCURRING AND DISSENTING IN PART AND ISSUING A SEPARATE STATEMENT.

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I. *INTRODUCTION*

A. *Outline of the Plan*

1. When this Commission initiated this proceeding to determine an optimal market structure for the MTS-WATS market, we concluded that it would also be necessary to prescribe the compensation that exchange carriers should receive for the origination or termination of all interstate and international services of all carriers. We recognized that it would be impossible to determine

"access" compensation for services of carriers that compete with MTS or WATS without correcting existing disparities in access compensation among services offered by AT&T and its telephone company partners.

2. We subsequently invited comments upon a tentative plan for carrier's carrier access charges that would allocate exchange plant costs among four service categories on the basis of relative use. We hoped that such a plan would eliminate discrimination or preferences in rates that were charged to end users of all services that we regulate. Comments in this and other proceedings and other developments led us to conclude that the tentative plan would not produce a correct solution to the discrimination problem. The recovery of fixed costs through usage charges produces discrimination among MTS users that is a primary cause of the inter-service disparities. The comments in this proceeding reveal a fairly broad consensus that this is the case.

3. We have accordingly concluded that a substantial portion of fixed exchange plant costs that are assigned to interstate services should ultimately be recovered through flat per line charges that are assessed upon end users. We are adopting access charge computation rules that will accomplish that result.[1] Those rules incorporate exceptions for pay telephones, the portion of a local dial switch that is sometimes described as non-traffic sensitive, and "private line" facilities used for services that are not close substitutes for MTS. Certain other fixed costs assigned to interstate services for customer premises equipment, inside wiring, and a Universal Service Fund will not be recovered through end user charges and will continue to be recovered through carrier's carrier charges. The Universal Service Fund will be designed to preserve universal service by enabling high cost local exchange companies to establish local exchange rates that do not substantially exceed local exchange rates charged by other local exchange companies.

4. A transitional plan is necessary for several reasons. Immediate recovery of high fixed costs through flat end user charges might cause a significant number of local exchange service subscribers to cancel local exchange service despite the existence of a Universal Service Fund. Such a result would not be consistent with the goals of the Communications Act. Some transitional adjustments are also necessary to avoid anomalous effects of existing disparities in interstate costs in different areas and to establish access charges for competing carriers that reflect existing inequalities in the quality of access arrangements. The transitional plan will also enable us to

[1] The rules are contained in Appendix A. Appendices B and D list persons who filed comments in response to the *Second* and *Fourth Supplemental Notices*. Appendices C and E contain summaries of those comments. Appendix F contains supplemental information with respect to the "bypass" phenomenon and Appendix G contains supplemental information with respect to the universality of service.

adjust rules in the future if unexpected developments demonstrate that changes are warranted.

5. This combination of factors has led us to adopt rules that incorporate two transitions. Some fixed costs in addition to any high cost or Universal Service Fund costs will be recovered through carrier's carrier charges during a 5-year transition period. A substantial portion of those costs will initially be assessed to AT&T as a charge for premium access. The remaining costs will be assessed to end users and will be recovered through a combination of usage and flat charges during a 7-year transition period. Before the end of the fifth year of the 7-year transition, we will evaluate the rules and policies adopted in this *Report and Order* and, if necessary, will make adjustments needed to promote the expressed goals of this proceeding. A minimum charge will be assessed upon all end users. The remainder of the costs may be recovered through usage charges until the usage charge for any line equals a cap or maximum. We are giving the exchange carriers considerable discretion to devise a combination of minimum, usage and maximum charges. This will give the carriers discretion as to how rapidly to phase in flat charges. It will enable carriers to respond quickly to any bypass threat where this a problem, while allowing for a more gradual phase-in where it is not. We are, however, imposing some limits upon carrier discretion. A minimum charge cannot be less than $2 per month for residential customers and $4 per month for business customers and the business minimum cannot exceed 200% of the residential minimum. Maximum charges will assure that customers do not pay more through end user charges for interstate use of a line that is used for local exchange and interstate services than they would pay for a line that is dedicated to a particular interstate service.

6. We are also prescribing rules for the computation of carrier's carrier charges for access services other than exchange plant. Although the tentative plan we described in 1980 would have limited the definition of access to facilities that are used in common by exchange and interexchange services, we have expanded the definition of access to correspond with the *Modified Final Judgment* in the AT&T antitrust case.[2] We have established nine different elements for such carrier's carrier changes and are prescribing rules for the computation of each element charge that are tailored to the nature of each service. We have established two elements for the use of local dial switches, three elements for operator services, and two elements for other switching and transmission facilities. We have also established a Billing and Collection element and a Special Access

[2] *See* Modified Final Judgment in United States v. American Telephone and Telegraph Co., Civil Nos. 74–1698 and 82–0192,—F.Supp.—, 47 Fed. Reg. 40, 392 (D.D.C. 1982). (hereinafter "MFJ").

element that consists primarily of the use of a variety of "private line" facilities.

7. We have decided that we should neither compel all exchange carriers to join in pooled uniform charges for all access elements nor permit unrestricted deaveraging. We are mandating the creation of an exchange carrier association that will collect and distribute the carrier's carrier portion of the non-traffic sensitive charges and file tariffs and administer revenue pools for companies that choose to join in the association's common tariffs for other access elements.

8. We are directing AT&T to prepare the initial association tariffs in order to ensure that access charges will be in place on January 1, 1984.

B. *Background: The Origins and Purpose of the Access Charge Proceeding*

9. This proceeding began in February, 1978 with the issuance of a *Notice of Inquiry and Proposed Rulemaking* (the "*Initial Notice*"), 67 FCC 2d 757 (1978), to determine the MTS-WATS market structure that would best serve the public interest. To resolve this fundamental question, we have issued four subsequent notices of inquiry.[3] Each represented a refinement in our understanding of the issues requiring resolution. In the *Third Supplemental Notice*, we concluded that a general policy of open entry in the domestic MTS/WATS market, including Hawaii, would be in the public interest. While tentatively reaching the same conclusion for the Alaska submarket, we decided to give further consideration to issues relating to that submarket. In light of the conclusions reached in the *Third Supplemental Notice*, we determined that future proceedings in this docket would be restricted to consideration of two issues. In Phase I of the docket, we would develop a system of access charges by which local telephone companies would receive compensation for the use of their plant to complete competitive interstate telecommunications offerings. In Phase II we would determine the appropriate market structure for MTS/WATS in the Alaskan submarket.

10. We recently resolved Phase II of the docket by affirming our tentative conclusion that an open entry policy in the Alaskan interstate MTS/WATS market would be in the public interest. *See Second Report and Order* in CC Docket No. 78–72, FCC No. 82–515, released November 30, 1982. Today we resolve Phase I by adopting rules that will determine the rates interexchange carriers and end

[3] Supplemental Notice of Inquiry and Proposed Rulemaking ("First Supplemental Notice"), 73 FCC 2d 222 (1979), Second Supplemental Notice of Inquiry and Proposed Rulemaking ("Second Supplemental Notice"), 77 FCC 2d 224 (1980); Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking ("Third Supplemental Notice"), 81 FCC 2d 177 (1980); and Fourth Supplemental Notice of Inquiry and Proposed Rulemaking ("Fourth Supplemental Notice"), 90 FCC 2d 135 (1982).

users will pay for access to local telephone company facilities used to complete interstate service offerings. We believe that through these rules we shall achieve the competitive market structure that is the explicit goal of both this proceeding and of the MFJ.

11. As we have noted above, this phase of the proceeding was instituted to determine, first, whether the existing methods of compensation for exchange plant used in interstate telephone service should be replaced by a tariffed access charge framework and, second, if so, what the structure of such tariffs should be. The entry of the MFJ has effectively mooted the first question. Currently, approximately 80% of revenues for this plant are covered by the Bell System's Division of Revenues process. This private contractual agreement has transferred revenues of almost $7 billion per year within the Bell System. On the date of divestiture, the system will no longer exist. The MFJ requires the termination of this system and its replacement by a generalized tariffed offering of access service.

12. While it would theoretically be possible to maintain the private settlements mechanism (which is equivalent to the Division of Revenues plan) to compensate non-Bell telephone companies, we believe that, even absent this *Report and Order*, some generalized access charge tariff scheme would result. We now decide that the public interest requires that the basic structure of such access tariffs be set by this Commission. We expect access tariffs to be filed in 1983 and require that such access tariffs be in conformance with the rules adopted herein.

13. The plan described in this *Report and Order* is, of course, limited to basic, or regulated, services. The plan is also limited to interstate and foreign services subject to our jurisdiction. We have assumed, for purposes of the proceeding, that the existing *Separations Manual* correctly identifies the costs assignable to those interstate and foreign services. Some commenting participants, *e.g.*, Satellite Business Systems, have argued that non-traffic sensitive access costs should no longer be allocated between the intrastate and interstate jurisdictions. They propose that a single charge should recover the entire revenue requirement associated with non-traffic sensitive facilities. They claim that such a charge should fall within federal jurisdiction, despite the Supreme Court's decision in *Smith v. Illinois Bell Telephone*, 282 U.S. 133 (1930). In this proceeding we need make no determination as to whether *Smith* requires jurisdictional separations of NTS plant. As we said in the *Fourth Supplemental Notice*, 90 FCC 2d at 154, it is the separations process that determines what costs must be recovered from the interstate jurisdiction by means of an access charge. That process is currently being investigated by a Joint Board and is beyond the scope of this docket. In the *Order Requesting Further Comments* ("Joint Board Order" hereinafter), the Joint Board specifically invited parties to comment on whether separation of NTS costs by jurisdiction is

required, and on the desirability of a discretionary assignment of 100 percent to either jurisdiction.[4] 47 Fed. Reg. 54479, 54517 (December 3, 1982).

14. Finally, we have limited our consideration here to the provision of that portion of interstate and foreign service which we consider to be "access" service. We had earlier used the term "access" to describe the use of certain exchange plant necessary to originate and terminate interexchange services. We have, however, decided to expand the scope of our access charge rules to conform to the boundaries established by MFJ. In the *Fourth Supplemental Notice* we suggested that it might be desirable to expand our access charge plan to encompass all services or facilities that will be included in access charges of the divested Bell Operating Companies ("BOCs") and invited "interested persons to submit suggestions for accomplishing that purpose." 90 FCC 2d at 153. We have concluded that such a course would be desirable because disparities would be likely to arise in the future if independent telephone companies and the undivested BOCs[5] are compensated through some other mechanism for services or facilities that are included in divested BOC access charges. The access rules we prescribe will therefore cover all services and facilities that are classified as exchange access for purposes of the MFJ. We are, however, adopting less detailed rules for the computation of charges for access elements that we might have excluded from our plan if the MFJ did not exist. For non-access interstate facilities and services, we have assumed that any questions concerning apportionment or allocation will be resolved in the *Interim Cost Allocation Manual* or a successor to that *Manual*.[6]

15. Although Phase I of this docket is a part of a larger proceeding to determine and encourage an optimal structure for a market that includes MTS and WATS, we have not limited this phase to the apportionment of access costs among competing interexchange carriers. The *Initial Notice* said that we expect to prescribe "divisions" for all interstate services of all carriers. 67 FCC 2d at 759.

16. We reiterated this view in the *Second Supplemental Notice*. We explained that subsequent events had confirmed our preliminary conclusion that it will not be possible to establish access compensation for the MTS-WATS equivalent services of the new interex-

[4] A decision to assign 100% to either jurisdiction would, of course, require changes in the access charge rules we are adopting.

[5] Cincinnati Bell Inc. and Southern New England Telephone Company.

[6] The *Interim Cost Allocation Manual* or "*ICAM*" was adopted in *Amer. Tele. and Tele. Co.*, 84 FCC 2d 384, *recon. denied*, 86 FCC 2d 667 (1981), *affirmed sub nom. MCI Telecommunications Corp. v. FCC* ("*ICAM*"), 679 F.2d 408 (D.C. Cir. 1982), to establish rules for the apportionment of AT&T costs among the MTS, WATS, private line and ENFIA service categories. We expect to provide guidance in separate proceedings to enable AT&T to reflect access charges in *ICAM* cost apportionments.

change carriers without correcting existing disparities in access compensation that is paid directly or indirectly by users of services offered by the telephone company partnership. AT&T had proposed access charges for MTS-WATS equivalent services that purported to establish parity with the access compensation for MTS and WATS that the BOCs receive through the Bell System division of revenues process. Carriers that provided the MTS-WATS equivalent services claimed that the proposed charges would create unlawful discrimination because the charges would be much higher than the charges that customers of Foreign Exchange ("FX") service pay for access service at the foreign exchange or "open" end. Those carriers alleged that the access they received was identical with the access FX customers received. The affected carriers eventually entered into an agreement known as "ENFIA" that established an intermediate rate for MTS-WATS equivalent (or "Execunet/SPRINT type") access for an interim period.[7] This Commission concluded that allowing the negotiated rate for an interim period would serve the public interest.

17. The *Second Supplemental Notice* concluded (77 FCC 2d at 230–231):

> The history of the ENFIA negotiations demonstrates that it would be impossible to prescribe any charges for the origination and termination of services that are functionally equivalent to MTS or WATS without determining the appropriate relationship among origination and termination services for MTS-WATS, functional equivalents of MTS-WATS, and FX-CCSA open ends. That history also indicates that there is no basis for assuming that the present relationship is appropriate.

18. That *Notice* also concluded that "the discrimination problem" is not confined to differences in access compensation among MTS, WATS, FX, CCSA and MTS-WATS equivalent services and described a tentative access charge plan that included the origination and termination of private line services. *Id.* at 231. Some comments that were filed in response to the *Second Supplemental Notice* questioned the inclusion of private line services other than FX and CCSA in an access charge plan.[8]

19. Private line services are not as distinct from an engineering or an economic perspective as they are sometimes perceived to be. A private line between two customer locations is normally routed in much the same manner as are telecommunications that use the switch that is used also for local exchange service. The access portion of the private line service consists primarily of the provision of lines or loops that connect a customer terminal with the interexchange

[7] *See Exchange Network Facilities (ENFIA)*, 71 F.C.C. 2d 440 (1979).

[8] *E.g.*, American Satellite Co. Comments, p.7; ARINC reply, p.9.

portion of the facilities. The exchange carrier uses the right-of-way that it was granted for the purpose of providing local exchange service to place that line between the customer location and the interexchange facility.

20. Private line and message services not only employ similar facilities, but are also frequently used by customers to satisfy the same telecommunications needs. The interchangeability factor necessarily requires that at least some private line access service be included in an access compensation scheme that is designed to establish parity among all services that are reasonably interchangeable with MTS. We have specifically established such parity with MTS for the "open end" of FX and CCSA services.

21. It would be possible to distinguish private line service that is a close substitute for MTS from private line service that is not. We could possibly accomplish our original purpose by limiting access charge rules to access for MTS, WATS, MTS-WATS equivalents, FX, CCSA and other private line service that is a close substitute for MTS, limiting the scope of access to the use of equipment, facilities, or right-of-way used in common with local exchange services.

22. As already noted, however, we have decided, in response to the MFJ, to expand the scope of access to include all tariffed services and facilities that the BOCs will provide for the origination or termination of interstate calls. The decree definition of access service—and thus the conforming definition of access service relied upon in this *Report and Order* —includes some services and facilities that we might exclude in designing access charges for the sole purpose of establishing parity among MTS and all telephone company or "other" carrier services that are close substitutes for MTS.

23. The provision of an origination-termination service could be viewed as providing an interexchange carrier with access to exchange facilities. The service could also be viewed as providing an end user or subscriber with access to interexchange services through exchange facilities that interconnect with interexchange facilities.[9] The earlier notices in this proceeding viewed access services as

[9] When a divested BOC provides interstate access to another carrier, "interexchange" will usually be synonymous with a service that is described as inter-LATA for purposes of the MFJ and the "exchange" facilities will correspond to intra-LATA facilities. The geographic scope of access services provided by other local exchange telephone companies may be different. Such differences are most likely to be reflected in the access element we have described as Common Transport. The formula we have adopted for the computation of access charges will enable carriers to devise charges for the "common transport" that a particular carrier provides. Adapting access charge rules to access service that a divested BOC provides to itself or another carrier for an intra-LATA transmission that is interstate for purposes of the Communications Act may require a special approach. We have decided that it would not be appropriate to establish guidelines for such situations before a final determination of LATA boundaries.

services that a local carrier provides to a long haul carrier. These notices assumed that the local carrier would receive access compensation from a long haul carrier. Most of the earlier notices assumed that a carrier's carrier charge would be the mechanism for access compensation. The *Fourth Supplemental Notice* invited comment upon some additional alternatives that could result in a combination of end user and carrier's carrier charges. We have decided to prescribe such a combination. Terms such as access, access service and access charges will be used in this *Third Report and Order* to encompass both end user and carrier's carrier charges.

24. The inequities between existing forms of compensation for the identical use of such access plant by different interstate services make these forms an inappropriate model for the development of access tariffs. We have decided that a single, uniform and nondiscriminatory structure for interstate access tariffs covering those services that make identical or similar use of access facilities is required by the Communications Act. While we have provided considerable flexibility for telephone companies within our access rules, we believe that the development of the competitive interstate telecommunications market requires certain uniform principles covering both BOC and independent telephone company access tariffs.

25. The amount of money that will have to be recovered through the access tariffs is immense. The revenue requirement for interstate NTS exchange plant alone will be approximately 8.5 billion dollars in 1984, the first year of our plan. An additional amount of approximately 2.5 to 3 billion dollars will be required to recover the costs of traffic sensitive plant for the first year. Based upon the assumption that 100 million lines will be in use in 1984 (an assumption we consider to be reasonably accurate), this translates into a total revenue requirement per access line of approximately \$8.50 per month for NTS costs and \$3.50 to \$3.00 per month for traffic sensitive costs. In its first year the plan would assign \$4.00 per line per month or \$4.3 billion overall in interstate NTS costs to be recovered directly from the end user by his or her local telephone operating company. Of this amount a minimum of \$2.00 for residential subscribers and \$4.00 for business subscribers would have to be recovered through the use of a flat charge. The remainder of the \$4.00 per line revenue requirement could be recovered, at the carrier's option, through traffic sensitive charges. The maximum amount that could be charged any customer directly would be no greater than the interstate costs of obtaining a private access facility dedicated to interstate use. NTS costs over \$4.00 per line—approximately \$4.2 billion—will continue to be collected in the first year of the plan through carrier's carrier charges. Of this amount, \$1.4

billion will be paid by AT&T and its partners in the form of a charge for premium access.[10] The costs related to the Universal Service Fund, terminal equipment (CPE) ($1.4 billion in 1984) and inside wiring ($1.6 billion in 1984) will either be removed from the carrier revenue requirement through deregulation or will continue to be paid in subsequent years through carrier's carrier charges. The remaining amount collected through a carrier's carrier charge in the first year plus any additional amounts added in subsequent years will be converted to customer charges over a five year period. Over the same five year period the maximum end user charge that may be charged any specific customer for interstate access for message service will be reduced at the rate of 10% per year.

26. The plan is designed to move swiftly and surely from the present reliance on additions to the price of interstate toll minutes as the mechanism for recovery of these costs towards a pricing plan which recognizes that non-traffic sensitive costs covering plant dedicated to individual end users neither increase nor decrease as a result of usage made of that plant. We are taking this important step because we view this new direction as the only means of satisfying our goals of universal service, nondiscrimination, network efficiency, and prevention of uneconomic bypass.

27. Economics teaches us that, except in certain circumstances involving market failure, prices equal to the cost of producing another increment of a good, i.e., equal to the marginal cost of production, are optimal.[11] Provision of telephone services involves two marginal costs. One varies with the traffic level. The other varies with the number of access lines demanded. For this reason, efficient pricing requires both usage sensitive and non-usage sensitive charges for recovery of access costs.[12]

28. The costs imposed upon the nation's telecommunications system, and ultimately upon the general public, by our present usage sensitive method of recovering these NTS costs pose a substantial danger to the long term viability of our nation's telephone systems. New technologies and radical improvements in older technologies make available alternatives to the traditional telephone network. Telecommunications is substitutable for a wide variety of other goods and services produced by our society. Prices based upon the true cost characteristics of telephone company plant are necessary both to make a decision on whether use of the alternative technolo-

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[10] Some independent telephone companies will continue to participate in joint rate offerings with AT&T after access charges become effective. Therefore, the premium will in fact be paid by an interexchange partnership. Section 69.207 describes that partnership as "the carriers that offer MTS and WATS. . . ."

[11] *See*, for example, Francis M. Bator, "The Simple Analytics of Welfare Maximization," *The American Economic Review*, pp. 25–59, March 1957.

[12] *See also* P.R.G. Lazard and A.A. Walters, *Micro-Economic Theory*, McGraw-Hill Co., New York, 1978, p. 176.

gies is appropriate and to make a decision on whether to substitute telecommunications for other activities.

29. As telecommunications plays a larger and larger role in fundamental U.S. industries, the problems resulting from inappropriate pricing grow. Computer technology and communications have grown so similar that the Commission has redrawn its traditional definition of communications.[13] Access pricing that does not reflect cost can turn computer technologies from directions that would enhance the productivity of this essential U.S. industry and all of the industries that depend on computers and communications toward simple avoidance of non-cost based telecommunications prices. Investment may be misdirected as a result.

30. The possibility of users, particularly the nation's largest telecommunications users, abandoning the network for less efficient alternatives, *i.e.*, "uneconomic bypass", has been cited by many participants as a major justification for the movement toward cost based customer access charges. Bypass is a growing phenomenon.[14] We also recognize that the elimination of preferential rates covering NTS access plant for large users is certain to increase significantly the incentives of these users to bypass the local phone network. We could attempt to eliminate bypass through our facility authorization authority, but have determined that this is not a good solution. See Part III. A., *infra*.

31. Despite the uncertainty surrounding the precise size and threat of uneconomic bypass, a delay in the institution of a system of access charges that does not recover most fixed costs through usage rates is not justified. If we delayed making a change now, it is likely that circumstances would quickly force such changes upon us. In such a case, however, we would be unable to afford the luxury of the gradual transition needed to satisfy our objective of maintaining affordable service. Moreover, as a result of bypass, delay might mean higher long run costs for those who were required to remain on the network, and even for those who were able to use bypass services.

32. Moreover, were we to delay instituting the smooth movement towards a rational pricing system until a sufficient number of large users had initiated constructing alternative bypass systems, it could well be too late for any remedial action. Usually uneconomic bypass is uneconomic only before the construction of bypass facilities starts. Once a large telecommunications user has committed significant capital to building a private bypass system, the maintenance of that

[13] *See Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, 77 FCC 2d 384 (1980) (Final Decision), *reconsideration*, 84 FCC 2d 50 (1980), *further reconsideration*, 88 FCC 2d 512 (1981), *aff'd sub nom. CCIA v. FCC*, 693 F.2d 198 (D.C. Cir. 1982).

[14] Our staff has conducted a preliminary survey of the current status of bypass services. The results of that survey are set forth for informational purposes as Appendix F of the *Report and Order*.

system is no longer uneconomic. Consequently, we believe that prompt action is essential to preserve the public interest.

33. We believe it is important to state explicitly that this decision does not, in any way, constitute a judgment that subsidizing the costs of basic telephone services for certain customers or for all customers is improper. Our decision is, rather, based upon the more limited judgment that an attempt to generate revenues for such subsidization through a permanent bundling of NTS costs into interstate toll rates would be a harmful and, ultimately, futile approach—one that could lead to the deterioration of a nationwide telephone network providing a variety of services to a wide variety of consumers.

34. In the *Second Supplemental Notice* we had described a plan for imposing usage based charges for access to the local network upon both private line and public switched services. We had first thought that such an approach would assure full, fair competition in the MTS/WATS market and also avoid unlawful preferences or discrimination between private line users and users of switched services. Comments filed in response to that *Notice* caused us to question whether the plan might have the fundamental flaw of encouraging heavy users of private line service to bypass the local network. Our concern has been heightened by the terms of the MFJ that require AT&T to divest itself of its operating companies (other than Cincinnati Bell and Southern New England). For the first time AT&T itself could have a significant incentive to bypass local exchange facilities if such bypass would be profitable.

35. Responding to these concerns, in the *Fourth Supplemental Notice* we introduced an alternative approach that we believed could achieve our primary goals of promoting competition and eliminating discrimination while avoiding the potential problems of the original plan. Instead of creating an access rate structure for private line services like the usage-based MTS/WATS rate structures, we considered the possibility of treating facilities used for access to the public switched network like private line facilities. Specifically, we discussed the possibility of assigning the costs of non-traffic sensitive subscriber plant directly to the customers using it. Thus the costs of private line facilities would continue to be directly assigned, removing one potential incentive for heavy users of such services to bypass local facilities. Every customer of interstate switched services would, however, pay a flat monthly charge reflecting the cost of the non-traffic sensitive subscriber plant dedicated to his use in connection with these services. The plan we adopt today will ultimately point toward this result. In order to avoid the adverse effects that could accompany such a departure from the traditional way in which end users have paid for their use of interstate services, the plan provides for the gradual introduction of these end user access charges. This plan, like the tentative plan of the *Second Supplemen-*

tal Notice, still imposes a carrier's carrier charge upon all interexchange carriers for the use of the remainder of local telephone company plant upon which they rely to complete their interstate service offerings.

II. *COMMISSION AUTHORITY TO ADOPT ACCESS CHARGE RULES*

36. Most comments that have been filed in response to the various notices we have issued in this proceeding do not discuss the scope of this Commission's statutory authority to prescribe access charges for the origination and termination of interstate and foreign services. Almost all of the participants have assumed that this Commission does have the power to prescribe some kind of access service compensation arrangement.

A. *Section 201(a) Authority*

37. After noting that the division of revenues and settlements "have traditionally been industry devised" (67 FCC 2d at 759), the *Initial Notice* said (*id.*) that "[i]t may be timely to exercise our jurisdiction under Section 201(a) of the Communications Act to establish the divisions of charges." The carriers that provide local exchange service receive most of their access compensation through the division of revenues and settlements procedures that have been devised to divide revenues from joint rate services among the members of the telephone company partnership. Section 201(a) authorizes this Commission to replace the industry-devised contractual arrangement with a Commission-devised formula.

38. Section 201(a) provides in pertinent part:

> It shall be the duty of every common carrier . . . in accordance with the orders of this Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes.

39. After we received comments in response to the *Initial Notice* and considered filings that were provoked by AT&T's initial ENFIA tariff, we tentatively concluded that a system of carrier's carrier access charges should be established to replace the existing combination of carrier's carrier charges, end user charges, and contractual "divisions" and "settlements." That conclusion was announced in the *Supplemental Notice* and a tentative plan for carrier's carrier access charges was described in the *Second Supplemental Notice*.[15]

[15] Several different methods have been used in the telecommunications and transportation industries to compensate participating carriers when two or more

40. Western Union comments that were filed in response to the *Second Supplemental Notice* claimed that Section 201(a) cannot be invoked to replace carrier's carrier access charges with different carrier's carrier charges. Western Union noted that the term "divisions" is normally used to describe the division of joint rate revenues and that it does not maintain any joint rates with the telephone companies. We have concluded that Western Union's claim is incorrect because the language and history of Section 201(a) demonstrate that Congress used the term "divisions" in that particular provision to encompass any arrangement for the compensation of carriers that participate in a through service.[16] That term is at least broad enough to include carrier's carrier charges that compensate an exchange carrier for its participation in a through service that an interexchange carrier offers to the public.

41. Section 201(a) authorizes this Commission to prescribe "divisions" if we find that such action is "necessary or desirable."[17] We have concluded that it is necessary and desirable to establish access charges in lieu of existing access compensation arrangements in order to eliminate existing access compensation disparities and to prevent the development of disparities that might arise if a variety of access compensation mechanisms were used in the future.

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carriers participate in the transmission or transportation. The ultimate customer or end user could be billed separately for the service each carrier provides, but the end user usually pays one of the carriers and that carrier transmits money to the other carrier. The end user may pay a combination or end-on-end rate that is equal to the combined separate charges of the participating carriers. The end user may pay a joint rate and the carriers may divide joint rate revenues in accordance with an agreed or prescribed formula. Sometimes one of the carriers offers the service to the public and pays a charge to a connecting carrier for the use of the other carrier's facilities. We have used the term "carrier's carrier" charge to describe such an arrangement and have used the term "end user" to distinguish the ultimate user from a carrier or an enhanced service provider that obtains service as a customer of another carrier. The carrier's carrier charge arrangement produces essentially the same result as the remission of a "local" rate by a carrier that collected a combination rate charge. Changes in a carrier's carrier charge are not, however, automatically and instantaneously reflected in the rate that an end user pays.

[16] In *St. Louis Southwestern R. Co.* v. *United States*, 245 U.S. 135, 139 n.2 (1917), the Court defined "through route" as "an arrangement, express or implied, between connecting railroads for continuous carriage of goods from the originating point on the line of one carrier to destination on the line of another." The Court added (*id.*) "Through carriage implies a through rate. This 'through rate' is not necessarily a 'joint rate.' It may be merely an aggregation of separate rates fixed independently by the several carriers forming the through route . . . ." The reports of the House and Senate Commerce Committees on bills that became the Communications Act of 1934 describe Section 201(a) as requiring carriers "to establish with other carriers physical connections, through routes, through rates, and divisions of through rates." Committee on Interstate Commerce, S. Rep. No. 781, 73rd Cong., 2d Sess., p. 4 (1934); Committee on Interstate and Foreign Commerce, H.R. Rep. No. 1850, 73rd Cong., 2d Sess., p. 5 (1934).

[17] *See United Telephone Co. of the Carolinas*, 54 FCC 2d at 289, 290 (1975), *affirmed*, *United Telephone Co. of the Carolinas v. FCC*, 559 F.2d 720 (D.C. Cir. 1977).

B. *Section 205 Authority*

42. When we issued the *Fourth Supplemental Notice* that invited comments upon some alternative plans that included end user access charges, we expanded the list of Communications Act provisions we might invoke to include Section 205. Section 205(a) of the Act, 47 U.S.C. §205(a), empowers this Commission to prescribe end user or carrier's carrier charges for any interstate or foreign service.

43. Although the rules we are adopting will not establish the precise charge for most access elements, we are establishing many of the steps that carriers must follow in order to compute access charges. Our Section 205(a) power to prescribe charges includes the power to prescribe steps in the computation of charges. We have exercised that power in the past in prescribing a rate of return that is to be used in computing charges and in prescribing an allocation of investment and expense among major service categories that is to be used in computing AT&T rates. Those actions were affirmed in *Nader v FCC*, 520 F.2d 182, 204 (D.C. Cir. 1975) and *MCI Telecommunications Corp. v. FCC* ("*ICAM*"), *supra*.

44. Section 205(a) provides in pertinent part that whenever "the Commission shall be of the opinion that any charge . . . is or will be in violation of any of the provisions of this Act, the Commission is authorized and empowered to determine and prescribe what will be the just and reasonable charge. . . . " Thus, this Commission must find that existing charges are or will be unlawful and that the new methods for computing charges will be "just and reasonable" in order to prescribe methods for computing charges pursuant to Section 205(a).[18]

45. Paragraph 28 of the *Second Supplemental Notice* states that disparities in access service compensation "may also indirectly result in end user rates which violate Section 202(a) of the Communications Act. . . . " 77 FCC 2d at 230. We refrained from using conclusory language in that paragraph in order to afford persons who might wish to defend the *status quo* an opportunity to do so before we made a final determination with respect to the legality of the existing combination of access service compensation arrangements. We are now prepared to make such a determination.

46. Section 202(a) provides:

> It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications,

[18] Section 205(a) states that the prescription power may be exercised "after full opportunity for hearings, upon complaint or under an order for investigation and hearing made by the Commission on its own initiatives. . . . " Notice and comment rulemaking proceedings are sufficient to satisfy that hearing requirement. *American Tel. & Tel. Co. v. FCC*, 572 F.2d 17, 21–23 (2d Cir.), *cert. denied*, 439 U.S. 875 (1978). Such proceedings also satisfy the Section 201(a) hearing requirement. *Bell Telephone Co. of Pennsylvania v. FCC*, 503 F.2d 1250, 1264–68 (3rd Cir. 1974), cert. denied, 422 U.S. 1026 (1975).

regulations, facilities, or services for or in connection with like communications services, directly or indirectly, by any means, or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

47. The portion of Section 202(a) that prohibits "unreasonable discrimination" in connection with "like services" was derived from Section 2 of the original Interstate Commerce Act, 24 Stat. 379. Section 2 of the Interstate Commerce Act was designed primarily to eliminate rebates to favored shippers that produced different charges for the shipment of the same quantity of the same commodity at approximately the same time.

48. The portion of Section 202(a) that prohibits "undue" preferences was derived from Section 3(1) of the Interstate Commerce Act, 24 Stat. 380. Section 3(1) of that Act was designed to remedy disparities in rates to different points that did not reflect actual cost differences. Although Section 3(1) was designed primarily to remedy the locality discrimination problem, the prohibition also encompassed excessive rate differentials for different commodities and shipments of different quantities of the same commodity.

49. In view of the origin of Section 202(a) the unjust discrimination prohibition must be interpreted as imposing a heavy burden upon telecommunications carriers to justify any differential in rates for like services and the undue preference prohibition must be interpreted as imposing a duty upon carriers to maintain rational and reasonable differentials for unlike services.

50. The existing access service compensation arrangements do not produce results that are consistent with those Congressional objectives. This is scarcely surprising in view of the manner in which those arrangements evolved. Neither the carriers nor the regulators viewed access service as a distinct service before this Commission ordered the telephone companies to provide access service to the new "specialized" carriers.[19] The preexisting access compensation arrangements were by-products of managerial or regulatory decisions that were made for some purpose other than fixing access service compensation. Access service compensation for the new carriers could not be fixed in a manner that established parity with each of the preexisting services offered by the telephone companies or the old "other" carriers.

51. Comments from the carriers that receive access service compensation generally acknowledge that there is no system.

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[19] *See Specialized Common Carrier Services*, 29 FCC 2d 870, 940 (1971), *affirmed sub nom. Washington Utilities and Transportation Commission v. FCC*, 513 F.2d 1142 (9th Cir.), *cert. denied*, 423 U.S. 836 (1975). See also *Bell System Tariff Offerings*, 46 FCC 2d 413 (1974), *affirmed sub nom. Bell Tel. Co. of Pennsylvania v. FCC*, *supra*.

Although comments from some carriers and some end users that indirectly pay access service compensation claim that any discrimination or preference problem can and should be remedied without changing the access compensation for some services, none of the participants has attempted to demonstrate that there is any reasonable or rational relationship to justify the wide disparities among the charges for access that are directly or indirectly levied upon users of the various interstate services that might satisfy the requirements of Section 202(a). It is readily apparent that it would be impossible to do so. Indeed, the current methods of recovering costs of jointly used non-traffic sensitive subscriber plant for MTS, open-end FX, CCSA and WATS services and the ENFIA services are totally different and produce widely differing results even though each service uses the same plant in the same manner. The FX and CCSA services pay local exchange rates for open end access, the MTS/WATS equivalent services must pay the higher ENFIA rates, and MTS and WATS pay even higher access compensation through the settlements and divisions of revenues process. The level of the ENFIA charge has been negotiated to reflect a discount from the MTS access compensation. It was also designed to produce a rate that is higher than the local exchange rate paid by FX and CCSA customers. Since no one has attempted to justify the disparate rates charged for like access services in this proceeding, we must find them to be unlawfully discriminatory. Moreover, the access compensation differences among services that do use exchange plant differently bear little relationship to actual cost differences. In the absence of any justification for such rate disparities, we must also find that such disparities violate the prohibition of undue preferences. We accordingly conclude that the existing combination of access service compensation arrangements violates Section 202(a) of the Communications Act.[20]

52. Moreover, the existing access compensation arrangements produce results that conflict with Congressional goals other than the elimination of discrimination or preferences that are discussed in Subpart II.D, *infra*. Congress has conferred broad powers upon this

[20] That conclusion is reinforced by the observations in a December 17, 1981 MCI filing. That filing was styled as a complaint, but could not be processed as a complaint because it was not directed at any existing tariff. We accordingly decided to incorporate that document as a comment in the access charge phase of this docket. *See Extension of ENFIA Agreement*, 90 FCC 2d 6, 9, n.3 (1982) *review pending sub nom. MCI Telecommunications Corporation v. FCC*, D.C. Cir. No. 82–1553. That MCI filing argued that "local exchange service" provided to business customers with PBXs, foreign exchange customers, WATS extension customers, Federal Telephone System customers, value-added carriers, domestic record carriers, international record carriers, time sharers and CCSA customers, was functionally identical to "local exchange service" provided to MCI. MCI requested that the Commission issue an order requiring that unlawful discrimination promptly be eliminated. As a result of this *Report and Order*, any discrimination among interstate services will be eliminated.

Commission in Section 4(i) of the Act, 47 U.S.C. §154(i), to adopt orders and regulations to achieve those goals. Those powers would be sufficient to enable us to adopt the access charge rules we are adopting in this *Report and Order* apart from the powers conferred by Sections 201(a) and 205.[21]

53. We believe that the procedures for computing access charges that we are prescribing in this phase of this proceeding are "just and reasonable" or "just, fair and reasonable" for purposes of Section 205(a). Several comments that were filed in response to the *Second Supplemental Notice* urged us to consider the then recent decision in *MCI Telecommunications Corp. v. FCC*, 627 F.2d 322 (D.C. Cir. 1980), in deciding how to proceed in prescribing new access service compensation arrangements. That court concluded that a Section 205(a) just and reasonable warranty does not require absolute certainty and precision. After noting that WATS tariffs had remained in effect for several years after this Commission concluded that AT&T had failed to demonstrate that existing tariffs are just and reasonable, that Court declared (*id.* at 340):

> [The Communications Act] assumes that rates will be finally decided within a reasonable time encompassing months, occasionally a year or two, but not several years or a decade. The standard of 'just and reasonable' rates is subverted when the delay continues for several years. Rate making theories may change; new information may become relevant; one proceeding may have to take account of another. But there must be some reasonably prompt decisionmaking point at which the FCC says: 'To the best of our knowledge and expertise at this time, the rates are just and reasonable. Perfect, perhaps not, but just and reasonable, yes.' That is all the statute requires.

54. Thus, a prescribed rate is just and reasonable for purposes of Section 205(a) if it represents the best approximation of a rate that satisfies all statutory requirements that this Commission is capable of devising within a reasonable period of time. We proceeded on that assumption when we adopted an *Interim Cost Allocation Manual* for AT&T services that we described as "far from perfect." *Amer. Tele. and Tele. Co., supra*, 84 FCC 2d at 411. The Court of Appeals for the District of Columbia Circuit affirmed that exercise of our Section 205 prescription powers. *MCI Telecommunications Corp. v. FCC (ICAM), supra*.

55. The rules we are adopting in this order are designed in part as a replacement for ICAM allocations of exchange and certain

[21] In *Nader v. FCC, supra*, the Court observed (520 F.2d at 203):

> The discretion that must be afforded the Commission in the exercise of its ratemaking power is enhanced by Section 4(i) of the Communications Act, 47 U.S.C. §154(i) (1970), which gives the Commission the power to issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions.

interexchange plant costs. We believe that these rules represent a significant further improvement. In light of the Court of Appeals interpretation of the Section 205(a) warranty requirement, we can and do warrant that the rules for the computation of access charges and the allocation of access charge revenues that we are prescribing are "just and reasonable."[22]

C. *Effect of Dual Regulation Upon Commission Powers*

56. A number of participants have asserted that this Commission cannot prescribe particular types of access charges or cannot prescribe access charges at this particular time because such actions would intrude upon the jurisdiction or prerogatives of state regulatory commissions. One participant has even asserted that this Commission cannot prescribe interstate access charges of any kind because such power is vested in the state commissions.[23]

57. We believe the latter claim reflects a misconception with respect to the nature of jurisdiction to regulate interstate commerce. Any action of this Commission that establishes or prescribes charges for the origination and termination of interstate services cannot appropriately be described as a "preemption" of state regulation because such charges are appropriately within the federal jurisdiction, not state jurisdiction. Federal rate regulation began with the enactment of the Interstate Commerce Act in 1887. The creation of a federal commission to regulate interstate rail rates was prompted in part by the Supreme Court decision in *Wabash, St. Louis & Pacific Railway Co. v. Illinois*, 118 U.S. 557 (1886), that held that state legislatures and state commissions cannot regulate rates for interstate railroad shipments because such regulation is precluded by the Commerce Clause of the United States Constitution. The Interstate Commerce Act filled the gap in railroad regulation that was created by the *Wabash* decision. That Act was amended in 1910 to fill a similar gap in telecommunications regulation. The Communications Act of 1934 transferred jurisdiction to regulate interstate and foreign telecommunications rates from the Interstate Commerce Commission to this Commission.

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[22] Our decision to adopt the ICAM at that time was based in part upon our desire to comply with the Court of Appeals schedule for the resolution of some questions relating to WATS tariffs. Similar considerations have caused us to conclude that we should not defer the adoption of access charge rules in order to achieve further refinements. The MFJ will cause the filing of BOC access charge tariffs that will become effective on the day of divestiture unless we reject or suspend the tariffs. The public interest would not be served if we allowed BOC access charge tariffs to become effective and implemented a significantly different methodology a few months later. We have decided that we should act now in order to establish Commission access charge rules that can be implemented at the beginning of 1984.

[23] District of Columbia Public Service Commission, pp. 2–4.

58. The origination or termination of an interstate communication, including the use of a local loop between an end user's home or office and a local switch of a local exchange carrier, is necessarily a part of an interstate communication.[24] It is as much "in commerce" as the interexchange trunk that actually crosses a state line. If the *Wabash* principle is still applicable, the states would not acquire jurisdiction to regulate rates for such interstate access even if this Commission were abolished.

59. The Supreme Court's decision in *Smith v. Illinois Bell, supra*, supports this view of federal jurisdiction. In *Smith* the Court considered the validity of a state public utility commission prescription of telephone rates based on evidence that made no distinction between the interstate and intrastate uses of jointly used telephone property. The telephone companies and the regulators had been using a "board-to-board" separations methodology to determine toll and local exchange rates. The toll rates reflected transmission costs from one long distance switchboard to another. All the costs we have described as NTS and some of the traffic sensitive exchange plant costs were reflected in local exchange service rates. The Supreme Court concluded that the board-to-board method was improper. The Court said (*id.* at 148):

> The separation of the intrastate and interstate property, revenues and expenses of the company is important not simply as a theoretical allocation to two branches of the business. It is essential to the appropriate recognition of the competent governmental authority in each field of regulation.

60. We reject claims in some comments that the *Smith* decision in some way precludes this Commission from establishing any flat rates for interstate access.[25] The Supreme Court did not purport to determine whether state or federal commissions should mandate flat or usage rates or some combination of flat and usage rates for exchange or toll services. Such rate structure questions were not presented in that case and were not discussed in the opinion. The Court merely attempted to ensure that state or federal regulators do not exceed the limits of their respective powers when they determine economic and social policy questions that have been entrusted to their judgment.

61. The decision to exclude interstate access from local rates could have been implemented by including the interstate access costs in flat or usage rates regulated by federal regulators without violating any express or implicit directive in the *Smith* opinion. AT&T made the decision to recover the interstate exchange plant costs on a usage basis when it recomputed its interstate investment

[24] *See, e.g., New York Telephone v. FCC*, 631 F.2d 1059 (2d Cir. 1980).

[25] *See* Kansas Corporation Commission, p. 8; California Public Utilities Commission, p. 3; Haviland Telephone Co., p. 6; NARUC Reply, p. 8; Roseville Reply, p. 4.

and expenses in 1943 to reflect some exchange plant costs in interstate MTS rates. It had always imposed distance-weighted usage charges upon MTS customers and did not change the pre-existing rate structure when some NTS costs were added to the MTS costs. The NTS exchange plant costs represented a relatively small part of interstate MTS costs at that time. Changes in relative costs and separations allocations during the intervening years have caused NTS costs to become a very significant part of MTS costs. No opinion of this Commission prior to the *Fourth Supplemental Notice* discusses legal, economic or policy implications of recovering the NTS portion of MTS costs through flat or usage charges. Thus, the inclusion of flat charges in an access charge plan does not conflict with precedent. It merely alters a carrier-initiated practice that appears to be the product of historical accident.

62. We accordingly conclude that this Commission's discretion to establish flat or usage charges or some combination of flat and usage charges for interstate access is not inconsistent with past court or Commission decisions.

63. Some comments have expressed the view that we are required to consult with state regulators through the Joint Board mechanism before we make any final decision to adopt an access charge plan.[26] We received extensive comments with respect to the appropriate role of a Joint Board in response to the *First Supplemental Notice*. We concluded in the *Second Supplemental Notice* that a Joint Board referral of questions with respect to interstate rates and the apportionment of interstate costs among interstate services would not be necessary or desirable. 77 FCC 2d at 236.

64. Most who claim that a Joint Board must or should be consulted claim that interstate access charges will affect jurisdictional separations.[27] Section 410(c) of the Communications Act, 47 U.S.C. § 410(c), requires that this Commission obtain an Initial Decision of a Joint Board composed of three federal and four state commissioners before we adopt any change in separations rules.

65. The Missouri Public Service Commission Staff claims a Joint Board referral is mandatory because the implementation of access charges will affect the results that are produced by any separations formula. We do not believe Section 410(c) requires any Joint Board consideration of decisions that merely indirectly affect separations

[26] *See* Kansas Corporation Commission Staff, pp. 1–2; Michigan Action Group, p. 6; NARUC, p. 4; Missouri Public Service Commission Staff, pp. 2–3; Michigan Public Service Commission, p. 4; California Public Utility Commission, p. 3; Rural Telephone Coalition, pp. 43–48; REA, p. 2; Haviland Telephone Co., p. 5; Utah Public Service Commission, p. 2; Ketchikan Public Utilities, pp. 3, 10; Rural Coalition Reply, p. 41; NARUC Reply, pp. 8–9.

[27] We are using the term "separations" to describe the process of apportioning investment and expense between the interstate and intrastate jurisdictions. We are not using the term "separations" to describe the divisions/settlements process that is described in the *Second Supplemental Notice*. *Id.* at 226–228.

results. Every rate decision by this Commission or any state commission has some effect upon separations results. The regulatory processes would be paralyzed if consultation were required before a state or federal commission adopted any decision that affects separations results.

66. Most participants who say that interstate access charge questions should be referred to a Joint Board contend that the adoption of access charges rules will affect the final decision in the pending Docket 80–286 proceeding to reexamine separations rules for the apportionment of exchange plant. NARUC and the Rural Telephone Coalition even assert that the outcome of that proceeding will be "foreordained" by any decision to adopt rules for the computation of interstate access charges. *See* NARUC Reply, p. 9.

67. Such fears are unfounded. We have, of course, asked the Joint Board to consider consistency with access charges in formulating its recommendations for separations changes. *Amendment of Part 67 of the Commission's Rules*, 78 FCC 2d 837, 845 (1980).[28] We have also necessarily made some assumptions with respect to the likely outcome of the pending separations proceeding in order to devise access charge rules that can be implemented in 1984. These actions should not be interpreted as a final decision upon the part of this Commission with respect to questions in Docket No. 80–286 and should not be interpreted as inhibiting the discretion of the Joint Board in formulating its recommendations. If the final decision in that proceeding departs from our current assumptions in a manner that requires a revision of the access charge rules, we will, of course, revise the rules we are adopting in this *Report and Order*.

68. Some participants have recommended that we either refer access charge questions to the Docket 80–286 Joint Board or defer action on access charges until we make a final decision with respect to separations changes in order to avoid the possibility that access charge rules may have to be revised to fit unanticipated separations changes. We have concluded that such a course would not be desirable under the present circumstances because a delay of a few months in the adoption of access charges would not allow sufficient lead time to enable carriers to prepare access charge tariffs that can be filed on or before October 3.[29] If BOC access charges that are not based upon these rules become effective at the beginning of 1984 and radically different charges were substituted a few months later, we could expect considerable confusion and disruption. Such a scenario would be likely to create far greater problems than any changes that

[28] P art III of the *Joint Board Order* discusses possible separations changes to achieve consistency with access charges.

[29] Access charges must be filed on October 3, 1983, to provide a full 90 days notice before a January 1, 1984 effective date.

might be required to adapt access charges to fit unanticipated separations changes.[30]

69. Some participants have suggested that we refer access charge questions to a Joint Board because they hope that such a proceeding would produce a consensus among all regulators that would enable carriers to compute interstate and intrastate access charges in the same manner. It appears doubtful that such a consensus would emerge within a short period of time. Some participants have proposed alternative methods to achieve unified access charges. SBS has proposed that we preempt state regulation of intrastate access charges and others have suggested that we delegate responsibility for interstate access charges to the state commissions. We rejected somewhat similar suggestions when we adopted the *Second Supplemental Notice*. 77 FCC 2d at 232.

70. Unified access charges conceivably might be achieved without new legislation by assigning 100% of the exchange plant investment and related expenses to one jurisdiction or the other. Such a change in jurisdictional separations would, of course, have to be considered by a Joint Board in the first instance. The Joint Board has recently invited comments with respect to the legality and desirability of a 100% assignment of NTS costs in Docket 80–286. *See* para. 13, *supra*.

71. We believe there is reason to hope that a considerable degree of uniformity will in fact emerge even though this *Report and Order* does not require that state commissions follow this Commission's approach to charging for access. The same considerations that have led us to conclude that our plan is an appropriate strategy for reducing discrimination may lead many state commissions to reach similar conclusions. Moreover, all commissions will necessarily recognize that administrative efficiency is served when a single approach to structuring access charges for long distance use of local plant is adopted. State commissions that do not choose to recover all costs in precisely the same way will undoubtedly find many of our methodologies helpful. State commissions will also have an incentive to adopt end user charges because failure to adopt a similar approach to the recovery of non-traffic sensitive costs assigned to state toll would increase toll rate disparity.[31]

72. Our access charge plan for NTS plant is based upon the

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[30] Many decisions that affect the computation of access charges will, of course, be made in the separations proceeding. For example, the size of the Universal Service Fund, the characteristics of participating exchange carriers, and the formula that indirectly determines Fund distributions to particular local exchange carriers will be determined in Docket 80–286 after an Initial Decision of that Joint Board.

[31] Toll rate disparity describes the condition that occurs when, because of different ratemaking philosophies adopted by the federal and state jurisdictions and other factors, a call of given duration is priced at different levels depending upon whether it is intrastate or interstate. Toll rate disparity sometimes results in a

following four principles. First, it is important to move towards collecting these costs from customers rather than carriers and on a flat rather than on a usage sensitive basis. Second, it is important to accomplish the transition to flat rates in a smooth and measured way. Third, it is vital to ensure that the plan does not threaten the universal character of telephone service. Fourth, the plan should provide for sufficient flexibility so that telephone companies serving dramatically different service areas can adopt transitional approaches that best serve their unique areas.

73. While the precise timing and mechanics of our access charge plan are based upon the interstate telecommunications market, we believe that these same four principles can serve as the basis for appropriate and acceptable state access charge plans. Obviously, the precise minima, maxima and transition periods would reflect not only unique state usage characteristics but also the level of NTS assignment to state toll service. We stand ready to provide technical or other assistance to state commissions that wish to integrate their access charge plans with the interstate approach. This integration would also be appropriate, technically feasible and reasonable with respect to traffic sensitive plant.

D. *Effect of Section 1 Upon Commission Discretion*

74. Although we are establishing rules for the computation of interstate access charges in order to remedy discrimination and preferences that violate Section 202(a) of the Communications Act, we are also required to consider other policies in designing an appropriate remedy. A variety of different methods could be used to produce access charges that do not result in unreasonable discrimination or undue preferences. We must be guided by Congressional goals expressed in Section 1 of the Act, 47 U.S.C. §151, in choosing among such methods. We observed in the *First Supplemental Notice* that "[a]ll provisions of the Act must be read in the light of that statement of purpose." 73 FCC 2d at 230.

75. Section 1 provides in relevant part:

> For the purpose of regulating interstate and foreign commerce in communications by wire and radio so as to make available, so far as possible, to all people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of promoting safety of life and property through the use of wire and radio communication, . . . there is hereby created a commission to be known as the 'Federal Communications Commission,' . . . which shall execute and enforce the provisions of this Act.

price for a call to a city in the same state that is much higher than the price for a call to a more distant city in another state.

76. The *First Supplemental Notice* said (73 FCC 2d at 230):

> The reference to the rapidity and efficiency of service and the adequacy of facilities obviously means that Congress wanted to maintain and enhance the quality of communications services. The reference to reasonable charges demonstrates that Congress was also concerned with the level of rates and expected this Commission to follow policies which would mnimize the cost of communications services to ultimate users. This concern with the cost and quality of service demonstrates that economic efficiency is one of the goals of the Act.

77. An efficient communication service could also be defined in a narrower sense as efficient utilization of a network that enables a carrier to provide service at the lowest possible unit cost. Customer choices that affect the utilization of a network are necessarily influenced by the rate structure. Therefore, the creation of customer incentives that will promote efficient network utilization necessarily must be one of the objectives of any rate structure proceeding.

78. The bypass phenomenon that we discussed in the *Fourth Supplemental Notice* can be viewed as a network utilization problem. Diversion of traffic to bypass facilities that are in fact more costly than the access facilities provided by the local exchange telephone companies obviously would not promote efficient utilization of telecommunications facilities. Therefore, we concluded that discouraging uneconomic bypass must be one of the criteria for the design of an access plan.

79. The *Fourth Supplemental Notice* identified a fourth objective in addition to eliminating discrimination or preferences, promoting efficient network utilization generally, and discouraging uneconomic bypass. We said that an access charge plan should be designed to "limit any substantial setback in the availability of telephone service" (90 FCC 2d at 147) and noted that some options could produce "an increase in the price of access to the public network, and a possible reduction in the subscriber base." *Id.* at 140.

80. Most participants who filed comments in response to the *Fourth Supplemental Notice* apparently agree that encouraging persons to subscribe to local exchange service must be one of the objectives of this proceeding. This is usually described as the "universal service" objective or goal. The term "universal service" has rarely been defined. Most participants apparently agree that "universal service" has existed on a nationwide basis for several years. In the context of this proceeding a "universal service objective" means avoiding actions that would cause a significant number of local exchange service subscribers to cancel that service.

81. Although interstate access charges will not have any effect upon local exchange service rates, a customer's decision to subscribe to local exchange service will necessarily be affected by the combined fixed charges that a customer must pay to access all services from a

terminal in his own home or place of business. One could not describe every increase in fixed charges subscribers must pay for local, intrastate toll and interstate access as conflicting with a universal service objective. Such a conflict would arise only if the magnitude and timing of any increase in the fixed charges were sufficient to cause a significant number of subscribers to cancel service.[32]

82. Although most participants apparently agree that universal service is one of the goals of the Act, MCI has questioned the existence of such a statutory goal. Comments, p. 5, Reply, pp. 5–6. The term "universal service" does not appear in the Communications Act and the existence of a universal service goal may not be self-evident from the language Congress used to describe its purposes in Section 1.

83. The *First Supplemental Notice* noted that making service "available . . . to all the people of the United States . . . at reasonable charges" could mean that "Congress wanted to create conditions in which such services, or some of them, are 'affordable' to all." 73 FCC 2d at 231. We also said: "While this may be a credible interpretation of Section 1, it does not appear to be the only possible interpretation." *id.* We have now concluded that the "available . . . to all" language does contemplate that telephone exchange service should be made available at reasonable rates. Such a universal service goal should also be inferred from the Congressional declaration that "promoting safety of life and property through the use of wire and radio communication" is one of the purposes of the Act. A subscription to local exchange service can be useful for safety purposes.

84. Many of the participants have argued that the relative universality of service affects the value of a telecommunications service for all users of a service. If some persons elected to cancel local exchage service, other customers would not be able to place local or long distance calls to those persons. Even if economic efficiency were the sole goal of the Act, a diminution of universal service might reduce economic efficiency in a broader sense.

85. In addition to those four objectives, we necessarily must consider the competitive effects of alternative rate structures. We concluded in the *Third Supplement Notice* that a competitive interexchange market structure will further the goals of the Communications Act. If identical access services were offered to all competing interexchange carriers, we could assume that cost-based access charges will lead to an optimal interexchange market structure. This is not the case today and it will not be possible to remedy all inequalities in access service offerings before the initial access charges become effective. Therefore, preserving an opportuni-

[32] Appendix G of this *Report and Order* describes and discusses past studies of the effect of rate increases upon demand for local exchange telephone service.

ty for fair competition during a transition period must also be viewed as an objective that will further the goals of the Act.

86. The relative priorities that should be afforded goals or factors that can be inferred from Section 1 is an open question. The priorities question was also discussed in the *First Supplemental Notice*. Paragraph 24 said (73 FCC 2d at 231):

> Some comments have suggested that we establish relative priorities in this Supplemental Notice which will be observed if some of the explicit or implicit goals of the Act conflict. It would be unwise to assign any priorities at this time. It seems unlikely that Congress intended to give priority to any particular goal under all conceivable circumstances. A public interest determination is necessarily a balancing process which requires the exercise of judgment, and different goals may take precedence depending on the facts of each case. Therefore, we shall wait until the facts have been developed in the record before we attempt to set priorities for goals in this case.

87. Although those observations related primarily to the entry policy question and a Section 214 public interest determination, we believe that a similar balancing process is required when we exercise our Section 201(a) power to establish through rate divisions or our Section 205 or Section 4(i) powers to prescribe steps in the computation of a charge.

88. An ideal access charge plan would eliminate all discrimination or preferences within or among services, create incentives for the most efficient utilization of all telecommunications facilities, discourage all uneconomic bypass, ensure that no local exchange service subscriber cancels that service, and establish full and fair competition in the interexchange services market. All of those objectives could not be fully accomplished simultaneously and immediately even if we had perfect knowledge. Therefore, we necessarily must exercise judgment and discretion in devising an access charge plan that takes all of those objectives into account.

89. Neither the language of the Act nor past court or Commission opinions preclude this Commission from striking a reasonable balance. On the contrary, Congress undoubtedly anticipated that an exercise of judgment would be required when it declared that it was creating this Commission in order to achieve multiple purposes "so far as possible." Congress conferred broad discretion upon this Commission in order to enable us to fulfill that mandate.

III. *GUIDELINES FOR RECOVERY OF NTS COSTS*

A. *Alternative Strategies For Reducing Discrimination*

90. Exchange plant that an end user or subscriber would need in order to use any local or long distance service is often described as non-traffic sensitive or NTS plant because the cost of providing such

equipment does not vary with usage. NTS encompasses all equipment that a subscriber would need to access the local exchange switch including terminals and other customer premises equipment, the protection block and drop wire and the line or loop between the customer's premises and a local exchange switch or a manual switchboard.

91. A portion of a local dial switch is also classified as non-traffic sensitive plant for separations purposes in order to segregate costs of terminating a line in the switch from the costs of switching. We proposed to include such costs in a non-traffic sensitive element in the tentative plan described in the *Second Supplemental Notice*. We subsequently asked a Joint Board to reexamine the classification of local dial switching equipment.[33] Inasmuch as that proceeding may produce new classifications we have decided that it would not be appropriate to include any local dial switching equipment in an NTS access plan at this time.

92. In order to achieve parity between interstate and international services that use the same subscriber line that is used for local exchange service and other services that are close substitutes for such services, an NTS plan must include comparable facilities that are used by such substitute services. Therefore, for purposes of this *Report and Order* NTS also includes portions of various lines on the customer's side of the class 5 or "end office" that are dedicated to a particular service. These include a WATS access line, an FX or CCSA "closed end" line, or a "private line" terminating in a PBX or other customer premises equipment that may be used for local exchange service. Our NTS plan does not encompass customer side dedicated lines that do not terminate in such equipment.

93. In the *Second Supplemental Notice* we presented a tentative plan to achieve parity among such services by apportioning the total NTS costs among four service categories—MTS/WATS, FX-CCSA Open End, OCC-ENFIA and Private Line—on the basis of relative use. This would have represented a substantial departure from the cost apportionment that is presently used to compute private line rates. The *Separations Manual* has generally assigned the entire cost of facilities that are used exclusively for interstate services to the interstate jurisdiction and has usually apportioned the cost of facilities used jointly for interstate and intrastate calling. A usage-based formula has traditionally been used to apportion jointly used NTS facilities between the jurisdictions. For ratemaking purposes all costs of AT&T assigned to the interstate jurisdiction are apportioned among interstate service categories through the *ICAM*.[34] The costs assigned by the *ICAM* to private line services are, in general, based

[33] *Amendment of Part 67 of the Commission's Rules, supra*, 78 FCC 2d at 842.

[34] *See* footnote 6, *supra*. With some exceptions the other telephone companies concur in AT&T's tariffs for MTS, WATS and private line service.

upon the assignment of these costs to the interstate jurisdiction. Thus, the present rates for private line services reflect the "directly assigned" costs of private line loops. Inasmuch as private line customers normally have very high usage per line as compared to MTS customers, a usage cost allocation would produce a per line assignment to private lines that is much higher than the per line cost that is directly assigned under the *Separations Manual.*

94. Many of the comments that were filed in response to the *Second Supplemental Notice* contended that it would be unjust, inequitable and unlawful to compel private line customers to pay charges that are based upon a cost assignment that exceeds the actual cost of the line they use. Many of those comments also contended that a usage assignment of such fixed costs would be uneconomic because it would discourage usage by pricing the facilities in a manner that greatly exceeds the actual costs of the private line loops.

95. Those arguments caused us to reexamine the assumption that discrimination or preferences between private line and MTS users could best be corrected by assigning all NTS costs on a usage basis. The ratemaking principles advanced in those comments would compel the conclusion that the existing MTS rate structure is incorrect because the usage rates for MTS allocate some fixed costs on a usage basis. The same arguments would support the conclusion that the MTS rate structure compels large MTS users to subsidize other MTS users because a large user of that service would pay NTS costs that substantially exceed the cost of the NTS facilities such a customer uses to make MTS calls. That analysis also suggests that the increasing use of private lines for purposes that could be served by MTS reflects an effort to avoid the subsidy that is inherent in the MTS rate structure and that private lines are being used inefficiently to serve purposes that from a network standpoint could be accomplished more economically through MTS.

96. The discrimination or preference problem could not be solved by maintaining the *status quo.* If one assumes that all users of competing services should pay per minute charges for NTS, total equality could be achieved by apportioning total NTS costs among such services on the basis of minutes of use. If one assumes that all users of competing services should pay per line charges, total equality could be achieved by continuing to assign private line NTS costs on a direct assignment basis and revising the MTS rate structure to include a flat charge for NTS and a reduced usage charge for the other exchange and interexchange facilities that are used to place an MTS call. We described those alternatives as "pure strategies" in the *Fourth Supplemental Notice* because they would produce equality on a per minute or on a per line basis. For convenience, we called the usage apportionment described in the

Second Supplemental Notice "Pure 1" and the per line apportionment alternative "Pure 2."

97. Section 202(a) of the Communications Act does not require total equality of rates at all times or under all circumstances. The Act prohibits "unjust or unreasonable" discrimination, "undue or unreasonable" preferences, and subjecting persons or localities to an "undue or unreasonable prejudice or disadvantage." This necessarily implies that departures from total equality are permissible and may be required to achieve Communications Act goals other than the elimination of discrimination or preferences. The *Fourth Supplemental Notice* accordingly invited comments upon "mixed" strategies that might combine usage and flat charges or usage and fixed cost apportionments. We described two examples of such "mixed strategies" in that *Notice* and invited interested persons to suggest other alternatives. The *Notice* called the two examples "Mixed 1" and "Mixed 2" for convenience. "Mixed 1" would have allocated NTS costs between MTS/WATS and private line service using "equivalent lines." While the charge for private line users would have been a flat rate, each would be required to participate in the "contribution" to the local revenue requirement embodied in an interstate revenue requirement based on the subscriber plant factor. The "Mixed 2" strategy would have continued charging for private line services on a dedicated basis, but would have imposed a new rate structure on MTS. Under this plan, customers would be charged a usage based rate for recovery of NTS costs up to a cap. After this point, no additional NTS contribution would be required. Thus there would be economically efficient pricing for those calls made after the cap was reached.

98. Our decision to invite comments on alternative plans was based on developments that had occurred since the adoption of the *Second Supplemental Notice* and that suggested that Pure 1 might not be feasible even if we concluded that per minute equality would be ideal. At the time we adopted the *Second Supplemental Notice* we assumed that a reapportionment of costs among service categories would produce a shift from telephone company private line services to MTS that would enhance efficient utilization of the telephone companies network by discouraging the use of service-dedicated lines for purposes that could be served by the use of lines that can be commonly used for multiple services to multiple points. We also assumed that the reallocation of costs would produce a reduction in MTS rates.

99. The comments that were filed in this proceeding in 1980 did not dispute those assumptions, but some of the 1981 comments in the Joint Board proceeding did. Several of those comments noted that new technologies provide alternatives to the use of any telephone company loop for the orgination or termination of interexchange telecommunications. Some asserted that any change in rate struc-

ture that increases telephone company private line charges would cause private line users to shift to such alternative services. Some also asserted that the access compensation that is reflected in MTS rates must also be reduced in order to avoid a shift to alternative technology services that "bypass" all telephone company facilities.

100. The subsequent settlement of the AT&T anti-trust case caused us to conclude that bypass may be an even more imminent possibility than it originally appeared to be. AT&T would have a much greater capability to provide bypass services on a large scale than other entrants in interexchange markets. AT&T would not have any incentive to do so as long it retained a massive investment in local exchange facilities. The divestiture of all of its local exchange facilities would remove that inhibition.

101. The selection of a cost apportionment method necessarily affects the decision to prescribe end user or carrier's carrier access charges or some combination of such charges. Although some access charge options might be implemented through any of those methods, the Pure 2 alternative necessarily requires flat rates that are assessed upon end users in order to ensure that each end user pays the fixed costs that are attributable to NTS facilities that are dedicated to that particular user. Such a flat end user charge also must be collected by the exchange carrier because the subscriber line that is used for MTS access can be used for other interstate services including open end WATS, FX and CCSA originations and terminations and switched services offered by carriers that compete with AT&T interexchange services. The *Fourth Supplemental Notice* assumed that Pure 1 or Mixed 1 would be implemented through carrier's carrier access charges and Mixed 2 would be implemented through end user charges.

102. Each of the plans received support from at least some of the participants who responded to the *Fourth Supplemental Notice*. Several states and small telephone companies preferred the Pure 1 scheme. Mixed 1 received some support from commenting parties. This approach was supported (at least as an interim measure) by several participants who were convinced that a Pure 1 approach was overly restrictive.[35] Participants supporting this approach argued that private line users should be expected to contribute to the support of the nationwide system. To some extent the support for Mixed 1 appeared to be based on the perception that this approach represents a relatively small deviation from the current rate structure.

103. Pure 2, or some variation of Pure 2, was supported by many of the participants who filed comments in response to the *Fourth Supplemental Notice*. Most of the support for Mixed 2 came from

[35] *See*, e.g., Comments of Florida PSC, Michigan PSC Staff, NARUC, Oregon PUC, Washington UTC.

those who saw it as the first step toward a Pure 2 approach. However, while the concept of a rate structure combining a flat fee with a usage-based charge to recover NTS costs received considerable support, the Mixed 2 scheme itself was viewed by most participants as unviable. Because many customers make few or no calls in any one period, and because the interstate jurisdiction is assigned NTS costs regardless of the actual use of those facilities, both the charge per unit of use and the cap would have had to be so great that the benefits of cost-based pricing would have been denied to most consumers. Thus, even those participants supporting a rate structure that combined a usage charge with a flat fee were almost unanimous in recommending that each end user be assessed some flat fee for access to the network regardless of his actual usage.

104. We have decided that none of the access charge options presented in our *Fourth Supplemental Notice* is entirely satisfactory. The access charge plan that we are adopting herein is more complex, and we believe it fair to say more sophisticated, than any of these options. Our new plan, however, incorporates elements of the options in the *Fourth Supplemental Notice* and reflects the ideas and suggestions expressed in many of the comments.

105. The pure strategies that were discussed in the *Fourth Supplemental Notice* do have the advantage of providing for a uniform rate structure for MTS and WATS service on the one hand, and private line services on the other. This is an important advantage because we have found that it is virtually impossible to eliminate discrimination among services while maintaining the current MTS/WATS structure and encouraging cost-based rates for other services. We have attempted for many years to eliminate unreasonable discrimination among private line, WATS, and MTS services. These attempts have imposed heavy burdens on users, carriers, and on the Commission, but have achieved, at best, mixed results. We conclude that the costs associated with the non-traffic sensitive plant used to provide these services must ultimately be recovered through charges based on the same rate structure.

106. These NTS facilities are essentially identical regardless of the service with which they are associated. Specifically, all of these facilities include access loops and associated wire and CPE that are dedicated to particular customers and allocated to the interstate jurisdiction. We have found in Part II. B, *supra*, that the rate structures for recovering the costs of these similar facilities are very different and result in unlawful discrimination. Only by charging for these facilities on a similar basis can the problems of discrimination be resolved.

107. Although the Pure 1 approach would have the advantage of charging all facilities on the same basis, we must reject the Pure 1

option. Comments by numerous participants have convinced us that bypass is an actual threat and present danger.[36] For this reason, and because of the dynamic economic distortions that Pure 1 would impose on the U.S. economy, we find Pure 1 to be an unacceptable solution.[37]

108. In the *Fourth Supplemental Notice*, we asked whether large users were likely to abandon the network if they were forced to pay prices equal to those paid by MTS users (the Pure 1 approach). Numerous comments indicated that bypass is real. Even with today's rate structure, which allows many large users to escape paying the full MTS rate through use of private line or other services, many large corporations and state, local, and federal governments are planning or using facilities that bypass the local loop. Newly available technologies such as digital termination service (DTS) and cellular radio provide valuable new services in their own right, but may also be used to provide uneconomic bypass if access pricing continues to diverge from cost. Alternative means of resolving unlawful discrimination among services (such as the plan proposed in the *Second Supplemental Notice*) would encourage still more bypass.

109. Because users have alternatives to the traditional telephone network, it is increasingly difficult to force heavy users to pay rates that greatly exceed their costs. Such users would abandon the network, leaving the small consumers who have fewer options with the full costs of the network. Indeed, attempts to overrecover costs from those groups most able to escape these charges may backfire and result in inferior service to large and small users alike.

110. Many participants responded to our expressed concern with the effects of uneconomic bypass by suggesting that we use our powers under Section 214 of the Communications Act, 47 U.S.C. § 214, to deny authorizations to construct facilities that would bypass local telephone company facilities.[38] We reject that suggestion. We noted in the *Fourth Supplemental Notice* that a flat prohibition of bypass services would not be desirable because bypass services can serve functions that are not adequately served by existing telephone company services. We also noted that overpricing of telephone

[36] *See, e.g.*, comments of Aeronautical Radio, Inc; American Petroleum Institute; Association of Data Communications Users; AT&T and BOCs; Centel; Executive Agencies of the United States; Florida PSC; IBM; Ketchikan Public Utilities; Nevada PSC; NTIA; Pennsylvania PSC; Rochester Telephone; SBS; Southern New England Tel (SNET); Southern Pacific Communications (SPC); United Telephone System, Inc.; USITA; Western Union.

[37] Such distortions include the misdirection of investment and industry from paths that make the most productive use of communications to paths that respond to non-cost related communication pricing. For example, the development of computer and related technologies could be inhibited by such a rate structure.

[38] *See, e.g.*, NARUC and Rural Telephone Coalition comments.

company services could lead to the substitution of bypass services that may in fact be more costly to provide than telephone company services that could serve the same purpose. We concluded that access charges should accordingly be designed to avoid this "uneconomic bypass" and invited interested persons to comment upon the compatibility of various pure or mixed NTS access plans with that objective.

111. We continue to adhere to this view. Development of bypass technology provides a competitive spur to ensure that the telephone system offers the type of service that is in demand and is technologically feasible. In many cases it may be appropriate to use some service other than the traditional wireline carrier. We are simply not in a position to determine what constitutes an uneconomic "bypass" service and what is a wholly new service that will attract a new set of users and enhance the ability of all users to make full use of telecommunications service-potential. For example, some comments assert that cellular services constitute a bypass technology. We have concluded, however, that cellular radio is a distinct service that serves distinct needs and that cellular service could be complementary to existing wireline service. Indeed, a given technology may be the efficient means of providing service to certain groups yet constitute uneconomic bypass for other services or groups.

112. In addition to the bypass problem, long run reliance upon usage-based prices for the recovery of fixed-costs will distort economy-wide investment decisions, artificially restrict calling patterns, and may jeopardize the competitive position the U.S. now holds in the world marketplace. In comments filed in response to the *Fourth Supplemental Notice*, NTIA has estimated that non-cost based pricing results in a $1.7 billion annual consumer loss due to repression of calls that would have been made at rates equal to cost. While we have some questions concerning the methodology used in this study, we find the prospect of losses of such a magnitude to be deeply disturbing.[39]

113. Cost-based rates provide correct signals to the marketplace. Both investors and consumers are certain to respond to such cost-based rates by redirecting their behavior in ways that redound to the benefit of the U.S. economy. In the short run, substantial growth in toll calling could be expected as consumers make better use of the network. In the long run, technologies that make more intensive use of the telecommunications system will create even larger benefits. In

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[39] In an independent study, James Griffin estimates this loss (including the loss due to intrastate MTS pricing) as $1.5 billion annually. *See* James M. Griffin, "The Welfare Implication of Externalities and Price Elasticities for Telecommunication Pricing," *Review of Economics and Statistics*, February 1982, pp. 59–66. Certain assumptions underlying the results of this study are questionable or unclear. Nevertheless, while this Commission has been unable fully to corroborate estimates of damage, the evidence that significant harm results from current pricing structures seems strong.

an economy increasingly dependent upon information and communications, the dynamic losses caused by investment misdirection can no longer be afforded.

114. Arguments against the Mixed 1 option were similar to those leveled against Pure 1. As with the Pure 1 approach, rates for private line users would be substantially increased. As with Pure 1, it was argued that such substantial rate increases would result in bypass and in economic inefficiency. Several of these participants also argued that the means by which the contribution would have been allocated between private line and message services under Mixed 1 was arbitrary.[40]

115. We are persuaded that either the Pure 1 or Mixed 1 approaches would result in rates that are unrelated to costs for an important class of users and that any subsidy that could be collected from these rates would be shortlived. As users who are best served by the telephone network found lower priced (though higher cost) alternatives, society as a whole would be the loser and the public interest would be disserved.

116. The Mixed 2 plan would eliminate much of the discrimination between private line and message services through use of a ceiling rate. Telephone subscribers who make no use of the interstate network, however, would continue to pay nothing. Supporters of the Mixed 2 approach argued that this approach would resolve the bypass threat by greatly reducing the total bill paid by any large user, while continuing to allow small users and non-users to pay very little or nothing, maintaining universal service.[41]

117. We are convinced, however, that the Mixed 2 proposal, as described in the *Fourth Supplemental Notice*, is unworkable. The distribution of interstate calls by subscribers is highly skewed. A substantial portion of total callers make no calls in any given month. Under the Mixed 2 approach, such users would pay nothing. Heavy users are currently a small fraction of total users, but make a large majority of total calls. Such users would be protected by the maximum charge. The Mixed 2 approach, however, does not alter total revenue requirements. The costs allocated to the interstate jurisdiction are unlikely to fall as a result of the Mixed 2 approach. To recover revenue requirements, access tariffs would have to levy heavy usage charges on moderate users. These charges could be far in excess of the current payments. This approach could result in an inefficient and undesirable increase in the number of subscribers who make no interstate calls. As a result, telephone companies could

[40] *See, e.g.*, Comments of Ad Hoc Telecommunications Users; Aeronautical Radio, Inc.; AT&T/BOCs; First Data Resources; GTE; IBM; Kansas Public Service Commission; NTIA; Pennsylvania PUC.

[41] *See, e.g.*, Comments of Rural Electrification Administration, Virginia Corporation Commission.

find themselves unable to devise charges to meet their authorized revenue requirements. For these reasons, we conclude that the Mixed 2 approach is inappropriate.

118. Proponents of the Pure 2 approach[42] argue that Pure 2 corresponds with economic cost causation and that only the Pure 2 approach can eliminate bypass, encourage efficient use of the national telecommunications network, and be sustained in a competitive environment. Pure 2 would also resolve the discrimination between private line and message service, a fundamental objective of this proceeding. It would do so by charging all users in the same way. Only costs that vary on a usage basis would be recovered on a usage basis. Costs imposed on a non-usage basis would be recovered on a non-usage basis.

119. The majority of those commenting supported the Pure 2 option for the same reasons they found both the Pure 1 and Mixed 1 schemes objectionable.[43] They assert that the Pure 2 approach would enhance network efficiency in at least two ways. First, since under this plan charges would reflect costs, they claim that Pure 2 would eliminate uneconomic bypass. Only these alternative technologies that have real advantages over the telephone network would survive. Second, usage based rates could fall substantially since such rates would no longer recover NTS costs. As a result, telephone users would no longer artificially restrain their calling. Users could weigh the price of a call against the benefit that they would receive from a call, and would make that call whenever the value of the call is at least equal to its cost.

120. Opponents of the Pure 2 approach[44] make two arguments. First, some contended that we could not lawfully impose charges on end users. Access charges, they argue, must be paid from interstate carriers to exchange carriers. In the alternative, some argued that we could not impose charges on subscribers who make no interstate calls. Second, many argued that even if we could impose such a charge we should not. It was argued that Pure 2 would constitute a

[42] Proponents of the Pure 2 approach include ABC/CBS/NBC; Ad Hoc TeleCommunications Uers Committee; Aeronautical Radio; Association of Long Distance Telephone Companies; AT&T/BOCs; Business Telecommunications Corporation; Department of Justice (in reply comments); First Data Resources; GTE; IBM; MCI; Rochester Tel; SNET; SPC; Tel. Systems Management Corp., *et al.*; US Tel; USTS; Western Union.

[43] AT&T and many other telephone companies that had supported the tentative plan in their comments filed in response to the *Second Supplemental Notice*, reversed their earlier position and agreed with heavy users that Pure 1 is an invitation to bypass.

[44] Those arguing against the Pure 2 approach include the California PUC; Consumers Union, *et al.*; Florida PSC; Haviland Telephone *et al.*; Michigan PSC staff; NARUC; National Association of State Utility Consumer advocates; North Dakota PSC; Rural Electrification Administration; Washington UTC; Wisconsin PSC.

substantial step away from universal service since many users would be unable or unwilling to pay the flat fee for interstate access. Further, it was argued that the Pure 2 approach could lead to the loss of nationwide rate averaging. These drawbacks, it was felt, would be particularly severe in high cost rural areas. Some of these considerations have led us to reject the Pure 2 approach.

121. We reject the notion that we cannot impose a flat fee on subscribers, or that a subscriber must make interstate calls before a subscriber can be assessed such a charge. A subscriber who obtains a line to a local dial switch or a manual switchboard necessarily obtains access to interstate as well as local services. The cost of that access has traditionally been described as non-traffic sensitive because such costs do not vary with usage. A subscriber who does not use the subscriber line to place or receive calls imposes the same NTS costs as a subscriber who does use the line. A subscriber who does not make local calls would normally pay a flat fee for the exchange portion of such costs. Imposing a flat change for the interstate portion of those costs is equally reasonable. Any other procedure violates the general principle that costs should be recovered from the cost-causative ratepayer whenever it is possible to do so.[45]

122. We find more merit, however, in the second point raised by the opponents of Pure 2. We cannot ignore the problems which the implementation of Pure 2, especially its implementation on an immediate basis, would have upon universal service and rural subscribers. It has become quite clear to us that the major goals in this proceeding—the continued assurance of universal service; the elimination of unjust discrimination or unlawful preferential rates; the encouragement of network efficiency; and the prevention of uneconomic bypass—are to some extent conflicting and that there is no possibility of devising a "perfect" plan that would fully and immediately effectuate all of our goals. Rather, it has become clear that any acceptable plan must balance these goals in a satisfactory manner. For example, it would be unacceptable for the Commission to put a plan into effect that ameliorates existing efficiency, bypass and discrimination problems, but which, at the same time, had serious consequences for universal service.

123. Moreover, we recognize that the balance to be drawn is a very delicate one and that some adjustments may be necessary. For this reason, we have felt it necessary to move cautiously and have incorporated a transition period for our plan. We have also taken the special precaution of establishing a Universal Service Fund to

[45] *See Phase II Final Decision and Order in Docket 19129*, 64 FCC 2d 1 (1977); *see also First Report and Order in CC Docket 79–105*, (uniform system of accounts), 85 FCC 2d 818 (1981).

protect the needs of subscribers in rural or high costs areas. We now proceed in the succeeding sections to describe our plan.

B. *The Long Range Plan*

124. We are adopting a transition plan that will produce steps toward a rate structure that promotes optimal utilization of telecommunications facilities and a long range plan that will recover significant portions of NTS costs through flat charges that are collected from end users by exchange carriers. We believe it will be possible to achieve that result at the end of a transition period without jeopardizing universal service. We will, however, keep CC Docket 78–72 open in order to conduct a proceeding in the fifth year of the transition and to receive periodic or special reports during the course of the transition period that will enable this Commission to make any adjustments that might be necessary.

125. Although the long range NTS plan will not be fully effective until the 1990s, the total plan will probably be more understandable if we begin with a description of that plan. Under the long range plan, different charges will be assessed for the interstate use of lines that are also used for local exchange service and the use of lines that are dedicated to interstate service. The latter category includes interstate WATS access lines. It also includes all private lines, including closed end FX or CCSA lines, that terminate in a PBX, key system, or other customer premises equipment that is not used exclusively for a particular interstate service.

126. The charges for the line that is commonly used for multiple services will reflect the interstate portion of investment in that line, associated NTS plant, and other investment and expenses that are attributed to that element. We will call these the "Common Line" charges. The charge for the other category, which we will call "Dedicated Access Line", will inevitably be higher because it will reflect the total or unseparated cost of these facilities.[46]

127. We have made some revisions in the existing cost allocations to reflect private line usage of certain station equipment that is in fact jointly used by common line users and users of any private line that terminates in a PBX or similar equipment. Such jointly used equipment is apportioned to MTS and WATS under the current cost apportionment procedures. We are also apportioning a pro rata share of investment in unused or reserve lines to the Dedicated Access Line element. These changes will correct anomalies in the existing cost apportionment methods that impose an unfair burden upon MTS customers. We have decided to refrain from apportioning costs to a private line category as a surrogate for a leaky PBX charge

[46] Although we are describing this element as the "Dedicated Access Line" element, it does not include all lines that are dedicated to interstate services. Some of those lines or portions of such lines are included in the Special Access and Dedicated Transport elements.

as proposed in the *Second Supplemental Notice.* 77 FCC 2d at 241. This problem is likely to become much less significant in the future because the access charge plan will remove much of the incentive for substituting private line service for MTS. Moreover, any remaining inequity will be at least roughly balanced by the assignment of investment in unused lines to the Dedicated Access Line element on the basis of relative use. An apportionment that was based upon projected use would probably apportion a smaller portion of that investment to the Dedicated Access Line element because common line use is likely to grow at a faster rate than private line use in the future.

128. We are also establishing a third NTS category for pay telephones. Although the NTS costs associated with pay telephone calls do represent fixed costs, it would be impossible to recover such costs through flat rates. We are accordingly prescribing usage charges that will be collected from end users when an interstate or international call is made from a pay telephone. We will call this element the Pay Telephone element.

129. We have also decided that a portion of the common line revenue requirement should be recovered through a carrier's carrier charge. At the present time most interstate common line costs are reflected in nationally averaged MTS and WATS rates, but the compensation that exchange carriers receive through the settlements and divisions of revenues process reflects the actual costs of each carrier that participates in the pool arrangement.[47] When we adopted the *Second Supplemental Notice* we assumed that we could eliminate discrimination and preferences in end user rates for interstate services without drastically altering the telephone industry's voluntary pooling arrangement. We accordingly proposed to establish carrier's carrier access charges that would be uniform in all exchanges of all carriers and proposed that access charge revenues be pooled in essentially the same manner that MTS and WATS revenues are pooled now.[48]

130. Although some comments that were filed in response to the *Second Supplemental Notice* questioned the desirability of uniform access charges with pooling, comments from both large and small telephone companies generally supported that proposal. None of the telephone companies indicated that it would not wish to be included in any such arrangement.

131. After the settlement of the AT&T antitrust case was announced, we recognized that it would probably be necessary to create different arrangements for the preparation of any common

[47] That arrangement is described in the *Second Supplemental Notice. See* 77 FCC 2d at 226-228.

[48] The pool we proposed at that time would have differed from the settlements/divisions pool in some respects. *Id.* at 238-239.

tariffs and the administration of any revenue pools. The *Fourth Supplemental Notice* invited comment upon a proposal to create an association to perform administrative functions that AT&T would have performed under the tentative plan in the *Second Supplemental Notice*. The *Fourth Supplemental Notice* also invited further comments upon some possible alternatives to nationwide averaging of access charges.

132. The most recent comments demonstrate that the telephone industry consensus no longer exists. The AT&T comments indicate that the BOCs do not wish to participate in common access tariffs or access revenue pools. Rochester, Continental and Centel have also indicated that they do not wish to participate in such arrangements. Many telephone companies and others have argued that nationwide averaging of access charges should be maintained. Some contend that nationwide averaging with pooling is essential to avoid severe hardships for some subscribers.[49] Such national averaging would allow below cost rates in high cost rural areas with attendant gains in universal service. Opponents of nationwide averaging argue that averaging results in a deviation of costs from rates and the prospect of inefficient use of the network.[50] Some contend that averaging might also have an undesirable effect on incentives to contain costs.[51] Uniform rates also limit a carrier's flexibility to meet unique circumstances, such as an unusual threat of uneconomic bypass or a reduction in universal service in the area served by a particular carrier. If we adopt rules that require every carrier to follow the same path, we will be hardpressed to satisfy legitimate needs of companies that require more rapid movement toward cost-based pricing and those companies that require a more gradual transition.

133. For reasons that are explained more fully in Part VI, we have decided that we should not require every exchange carrier to participate in common tariffs for all access elements. We have also concluded that some adjustment in flat end user common line access charges must be made in order to balance the critical need to move towards a rational cost-based pricing system for access plant with the maintenance of universal service. We do not anticipate that end user rates will ever reflect the full common line NTS costs of the highest cost carriers.

134. Costs of different local exchange carriers do vary. Many of these cost variations are attributable to factors that carrier management cannot control. The Docket 80–286 Joint Board has tentatively

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[49] *See especially*, Haviland Telephone Company, p. 7; Ketchikan Public Utilities, p. 2; Michigan Action Groups, p. 6; Rural Telephone Coalition, p. 14; REA, p. 6; Curtis M. Bushnell, p. 2; First Data Resources Reply, p. 16; NARUC Reply, p. 2.

[50] *See, e.g.*, comments of AT&T; Centel; Continental Telecom; GTE (in the future); NTIA; Rochester Telephone; SNET; Cincinnati Bell; USTS; Vermont PSB; Western Union.

[51] *See especially* Rochester Telephone, p. 34.

endorsed an industry proposal to include a high cost factor in any new separations formula for the apportionment of NTS plant. *Joint Board Order*, *supra*, 47 Fed. Reg. at 54485. Such a factor would represent a percentage of the NTS costs of high cost companies that would be added to a base factor percentage to determine the portion of such a company's NTS costs that would be allocated to the interstate jurisdiction. Such a percentage factor would necessarily take into account any increasing cost pressures caused by inflation or other factors. The high cost factor would promote or preserve universal service by enabling high cost companies to establish local exchange rates that do not substantially exceed rates charged by other companies. In view of the purpose such a factor would serve, we will describe it as a universal service factor in this *Report and Order*. Revenues attributable to the universal service factor will be described as the Universal Service Fund.

135. The purpose that the Universal Service Fund would be designed to serve would obviously be frustrated if all NTS costs were recovered through end user charges that reflect the interstate NTS costs of a particular exchange carrier. Any reduction in the local exchange rates of such a carrier would be offset by increased end user access charges. We have accordingly decided that common line costs that are assigned to the interstate jurisdiction as a result of the application of a universal service factor should be recovered through an access charge that is assessed upon interexchange carriers.

136. Many parties have called for the creation of a "life line" exception to any mandatory flat customer access charge. Life line services have been introduced in a considerable number of state jurisdictions. Such rates have not always provided benefits to the class of users who are the intended beneficiaries.

137. We are, nevertheless, prepared to entertain waiver requests from carriers who wish to provide "life line" options under the following circumstances. First, any such waiver request should state with specificity the terms and conditions which apply to life line service. Second, such waiver requests must specify the revenues which would be lost were such a life line option to be instituted. Third, such waiver requests must specify the specific adjustment to the customer access charge tariff which has been made to secure the revenues lost through the life line option. During the transition period these measures may be either an increase in the minimum flat rates or an increase in the usage charge imposed upon customers for access service. An increase in the transitional maximum charge will not be permitted. Of course, states continue to have full authority to modify existing life line rates for local exchange telephone service or to institute such rates should they believe it is necessary to ameliorate the effects of interstate access charges.

C. *The Transitional Plan for Carrier Common Line Charges*

138. Although we expect that revenues from the Carrier Common Line element will eventually be limited to the Universal Service Fund portion of the Common Line revenue requirement, substantial additional amounts must be included in that carrier's carrier charge during an interim period to avoid anomalous results that would occur if deaveraged end user rates for all other Common Line costs were implemented in 1984.

139. We have recently adopted a change in jurisdictional separations rules that will accomplish the phased removal of CPE from the interstate rate base. We decided to implement that aspect of our decision in *Second Computer Inquiry*, *supra*, in that manner in order to avoid an abrupt increase in local exchange rates that would result if the interstate CPE allocation were removed on a flash cut basis. The Joint Board has recently invited comment upon an alternative formula that will achieve the same results even if the divested BOCs do not have any CPE to allocate after the divestiture occurs.[52]

140. The purposes of the phased removal of CPE or the allocation of surrogate CPE costs would be frustrated if costs assigned to the interstate jurisdiction to limit increases in local exchange service rates were added to end user access charges. Such a cost assignment could have the same effect upon end users as a local rate increase. In these circumstances, we have concluded that it would be more appropriate to recover such costs through a carrier's carrier charge. Since such costs will disappear four years after the access charges become effective, the exclusion of such costs from End User Common Line charges will avoid churning effects upon End User Common Line charges that could make the transition to a new rate structure unnecessarily difficult.

141. Similar considerations warrant the exclusion of inside wiring costs from End User Common Line charges. Inside wiring that was capitalized as investment before this Commission required the expensing of inside wiring is being amortized and will disappear from the rate base in the early 1990's. We are also considering proposals to remove expenses associated with the installation of new inside wiring from interstate rate computations.[53] It would be inappropriate to add such costs to new flat charges imposed upon end users in view of the uncertainties with respect to the future status of inside wiring. It would also be inappropriate to recover inside wiring or CPE costs through a per line charge because there is little or no

[52] The alternative formular is described in Part IV. D. of the *Joint Board Order*.

[53] *See Deregulation of Customer Premise Inside Wiring*, 86 FCC 2d 885 (1981); *Notice of Proposed Rulemaking*, (CC Docket No. 82–681), 47 Fed Reg. 44770 (October 12, 1982).

relationship between CPE or inside wiring costs of a particular subscriber and the number of loops used by that subscriber.

142. The present *Separations Manual* apportions NTS plant on the basis of a factor, which is called the Subscriber Plant Factor or SPF, that has been computed separately for each "study area." A study area normally means the area served by a particular telephone company within a particular state. The current factors differ widely from one study area to another and many companies that probably will not be classified as high cost companies have interstate NTS costs that are substantially higher than the national average because they happen to have a high interstate SPF. If deaveraged end user rates were implemented under the present circumstances, their customers would be subjected to excessive rate increases.

143. The Joint Board is presently considering a number of alternatives to the current factors that would not be likely to produce such results. Any new factor that differs significantly from an existing factor is, however, likely to be phased in over a transition period. In these circumstances common line costs other than Universal Service Fund (USF), CPE and inside wiring costs that exceed an appropriate cut-off will be assigned to the Carrier Common Line element for an interim period.[54]

144. An additional assignment to the Carrier Common Line element is also desirable to place some limit upon the flat end user charges that carriers would be permitted to adopt during the transition period for End User Common Line charges. In view of all of these considerations, we have decided that, in 1984, Common Line revenue requirements that exceed $4 per line per month should be allocated to the Carrier Common Line charges.

145. The rules we are adopting establish a five-year transition period for the elimination of Common Line costs other than USF, CPE and inside wiring costs from the pooled Carrier Common Line charges. Common Line costs other than USF, CPE and inside wiring could be described as the third component of a Common Line revenue requirement. This third component contains all the residual costs. For each local telephone company, this total residual amount is calculated as follows: Total interstate per line residual amount = total Common Line per line revenue requirement - $4. - (CPE + USF + Inside Wiring)

146. Over a five year period, the total residual amount is to be allocated annually between the End User Common Line charges and the Carrier Common Line charge under the following formula:

[54] *See* Subpart F of the rules.

Year	*Carrier Contribution to total Residual amount*	*End User Contribution to total residual amount*
1984	100%	0%
1985	80%	20%
1986	60%	40%
1987	40%	60%
1988	20%	80%
1989	0%	100%
1990	0%	100%

147. Thus, in the first year of the transition period these residual costs will be recovered fully through the Carrier Common Line charges imposed on all providers of interstate switched services. In the second year, only 80 percent of the residual costs for that year will be recovered from carriers, with 20 percent recovered from end users.

148. We recognize that end user charges constitute a substantial departure from the historic means of cost recovery. Exchange carriers are unfamiliar with this new system. Such carriers, especially small carriers that are unable to devote substantial resources to this task, might be subjected to unnecessary risks if forced to move immediately to full recovery of subscriber plant through subscriber charges. The Carrier Common Line charges, administered through the exchange carrier association, offer a limited degree of risk sharing and increased certainty to these exchange carriers in the early years of the new environment. The fairly rapid reduction of such charges through the transition appears likely to limit uneconomic bypass substantially during the transition to cost-based pricing.

149. The Carrier Common Line charge will also provide the mechanism to adjust the prices charged interexchange carriers for access to reflect differences in access quality. To achieve this result, we have required that the Carrier Common Line element be subdivided into two charges. The first charge, a usage charge, will be imposed upon all interexchange carriers. The second, a premium access charge, will be imposed upon only certain carriers described below.

1. *The Usage Charge*

150. This charge shall be calculated on a straightforward minutes of use basis for services using common lines (*e.g.*, MTS, WATS, FX, and OCC-ENFIA). This charge shall be levied on a nationwide equal per minute basis regardless of the costs of particular originating or terminating exchange carriers, the length of haul, or the rate charged by the interexchange carrier. An exchange carrier association, described in Part VI, shall be responsi-

ble for tariffing and collecting both the premium charge and this usage charge and distributing revenues to all participating carriers.

2. *The Premium Access Charge*

151. There is little disagreement that the quality of interconnection now received by the OCCs[55] through their ENFIA A arrangements is distinctly inferior to that received by the traditional interexchange partnership (predominantly AT&T). Indeed, it appears that the level of interconnection received by the OCCs even under ENFIA B and ENFIA C arrangements (if available) is inferior to that received by the partnership.[56] Such quality differences would give a substantial advantage to the carriers that offer MTS and WATS unless access pricing is adjusted to account for quality differences until equal interconnection is available to all interexchange carriers. It is not clear, however, that this inferior level of interconnection is any cheaper to provide. Cost-based pricing would appear to require that all carriers pay their full costs regardless of any quality differences.

152. Over the past several years, BOCs have been compensated for use of their facilities for OCC interconnection through the ENFIA tariff. That tariff provides a 45 percent discount from the "SEP" amount, *i.e.*, the amount that AT&T calculates that BOCs receive for exchange access through the division of revenue process. This arrangement is the result of compromise, and was adopted only as an interim measure, until the issues involved in this proceeding are solved and an access charge devised.

153. While the OCCs have generally sought a continued rate differential, few participants in this proceeding now assert that any differential should take the form of a "discount". Southern Pacific argues, however, that the existing OCC rate should not be described as a discount since the concept of discount implies that the same good is being provided. While we shall not dispute that definition of discount, cost-based pricing does not appear to allow non-cost based rates, including reductions below the cost of service, regardless of whether the service being provided is inferior to an equally costly service provided others. Instead of justifying an OCC discount, MCI claims, in reply comments, that an AT&T surcharge is appropriate.

154. If the type of access received by AT&T can be provided only to one carrier (at least in the short run), then even if it does not cost much to provide this access to that one carrier, this access has an

[55] The term "Other Common Carriers" or "OCCs" is often used to describe carriers other than telephone companies. The term "OCC" is used in the context of this *Report and Order* to describe an interexchange carrier that offers an MTS/WATS equivalent service such as Execunet or SPRINT.

[56] ENFIA A provides interconnection to the line side of a Class 5 switch, ENFIA B provides interconnection to the trunk side of a Class 5 switch, and ENFIA C provides interconnection through a tandem switch.

"opportunity cost" that is equal to the amount that other carriers would be willing to pay for this preferred access. The cost of providing the favored carrier with this unique level of access includes the denial of this access to other carriers. Those carriers who receive the level of service that could be provided to any number of carriers would pay the full costs of this service. Carriers who receive the premium access service would pay the observable costs and an additional amount reflecting these opportunity costs. A surcharge for such premium access could theoretically be computed to reflect such opportunity costs, but it would probably be necessary to conduct an auction to determine the amount a carrier would pay for such premium access. We have decided that an auction would not be feasible. We will, however, assess a charge upon AT&T and its interexchange partners that will reflect an estimate of premium value. We will describe that charge as the premium access charge. We will not, however, permit exchange carriers to recover premium value in addition to a total revenue requirement that is computed in the usual manner. The premium access payments will be deducted from the Carrier Common Line revenue requirement in order to compute usage charges.

155. Revenues collected from the premium carrier need not flow to the exchange carrier having the greatest value of premium access. Indeed, if exchange carriers were able to levy premium access charges, such exchange carriers would have strong incentives to continue to offer preferential service for a longer period than would be necessary. We have concluded, therefore, that the premium charge should be levied by the exchange carrier association on a nationwide basis.

156. By September of 1986, the quality of interconnection generally available to OCCs will have to be far closer to the quality of access offered the premium carrier because of MFJ requirements. Even then, however, there will still be differences having potential advantages to a premium carrier, including the premium carrier's position as fallback carrier for current subscribers not specifying some other default carrier, and the continued unique premium access to nonelectronic and small switches. This residual premium access will have some value, but will have a value far smaller than is given by its present position. A decreasing surcharge is, therefore, appropriate.[57]

157. A premium charge might be levied as either a lump sum or a per minute charge. We have determined that a lump sum approach

[57] Nothing in the record causes us to expect any carrier other than the AT&T partnership will receive premium access. Improved access received by other carriers appears to reduce the value of AT&T's premium, but not to constitute a replacement of AT&T as the premium carrier. Our prescribing the gradual elimination of the premium access charge reflects our belief that exchange carriers will quickly move toward equal access.

serves the public interest. The value of premium access does not depend on the actual rate structure selected by the premium carrier or the usage generated through that rate structure. Rather, it depends on the value of premium access in its best alternative use. This value is constant without respect to the behavior of the particular carrier receiving premium access.

158. Thus, for example, the premium carrier may make investments to expand its network or reduce blockage in hopes of stimulating increased call volumes. If the premium charge were assessed on a usage basis, these investments might not be made even if they would redound to the benefit of the calling public. By levying a lump sum charge on the carrier receiving premium access, this distortion is avoided. The economic justification for a premium charge is, therefore, consistent with a lump sum charge rather than with a usage based premium charge.

159. We have invited proponents of a large or a small differential in the access compensation paid by OCCs and the telephone company partnership to submit a case for a particular differential both in this docket and in proceedings relating to the ENFIA agreement. Those participants have apparently been unable to produce submissions that have much evidentiary value. In these circumstances, we necessarily must exercise our best judgment to establish an appropriate premium amount.

160. The Element 3 discount in the ENFIA agreement was designed in part to reflect an estimate of the value of differences in access arrangements by the parties to that agreement, but that discount would not establish an appropriate 1984 premium even if that discount could be readily translated into a premium. We noted in *Extension of ENFIA Agreement*, *supra*, 90 FCC 2d at 16, that the formula for the computation of ENFIA charges was probably designed to produce a charge that would be higher than the FX Open End charge and lower than a charge that would replicate the compensation BOCs receive from the division of MTS revenues. This was apparently perceived to be necessary to achieve equity in view of access compensation disparities between MTS and FX.

161. The existence of those disparities was an important factor in our decision to extend the ENFIA agreement without altering the Element 3 discount factor. We said (*id.* at 16–17):

> We believe it is still reasonable to allow OCCs to pay charges that are lower than MTS/WATS access charges and higher than other access costs during the interim period. That interim period will, of course, end when access charges are established pursuant to the rules we are prescribing in CC Docket No. 78–72.

162. The access charge rules we are adopting do eliminate those disparities. We would have adopted a smaller discount factor when we extended the ENFIA agreement if that factor had been designed for the sole purpose of reflecting the value of qualitative differences

between ENFIA and MTS/WATS access. We would have made a further reduction in the ENFIA Element 3 discount if ENFIA element 2 had been computed to reflect differences in switching costs that will be reflected in our rules for the computation of charges for the Local Switching element. See Part IV.A, *infra*. A smaller premium is also necessary because OCCs will be receiving some access before and during 1984 that is better than the ENFIA A arrangements that existed at the time the ENFIA agreement was negotiated. Nothing has occurred during the years since the ENFIA agreement was signed that would indicate that the parties to the ENFIA agreement overestimated the value of the qualitative differences in OCC and partnership access arrangements. Therefore, the 1984 premium should be smaller than an amount that would replicate the present ENFIA discount.

163. Nevertheless, a substantial premium access assessment is required in 1984 because significant disparities in the quality of access will exist during that year. Those disparities will continue to provide AT&T with a significant competitive advantage.

164. Although we have not approved a differential in access compensation to provide artificial advantages for new competitors, we are, of course, mindful of the adverse effect than an abrupt elimination of access compensation disparities could have upon competition under existing conditions of unequal interconnection. In view of the uncertainties with respect to the magnitude of premium access value and the future progress to equal access, we have decided that a phased elimination of the access compensation differential is justified in order to encourage full and fair competition. That course is consistent with our determination in this proceeding that a competitive interexchange market will produce significant public benefits.

165. We have decided to implement that decision by using the dollar amount of the interstate CPE costs or surrogate CPE costs of all local exchange carriers to determine the premium access assessment.

166. Those costs have been fixed through our decision to remove a base amount from the interstate rate base during a five year transition period that begins in 1983. Thus, the interstate CPE costs will be declining at the rate of 25% per year during the first years that access charges are in effect. Disparities in the quality of access arrangements for OCCs and premium carriers will be phased out during approximately the same time frame.

167. We also believe that 1984 interstate CPE costs, which we estimate to be about $1.4 billion, will correspond with our present estimate of 1984 premium access value. Such an assessment will be substantial and is likely to be significantly smaller than an assessment that would replicate the ENFIA A Element 3 discount. The use of CPE costs also serves administrative convenience.

168. We cannot, however, be certain that the decline in the premium value will correspond to the decline in CPE costs. We have accordingly described the CPE costs as a default formula for the computation of the premium in the access charge rules. Section 69.207 of the Rules says that premium access shall be equal to a CPE or CPE surrogate revenue requirement "[i]n the absence of a Commission order designating the premium access portion . . ." We do not intend to designate a different amount for the 1984 premium assessment, but we may designate a different amount in subsequent years if we have reason to believe that premium value is declining at a much faster or slower rate than the interstate CPE costs.

D. *Transitional End User Common Line Charges*

169. Although the allocation of Common Line costs to Carrier Common Line charges should be sufficient to offset anomalies that could result from the application of transitional separations factors, this would not be sufficient to avoid the disruptive effects of immediate implementation of flat charges for the entire end user portion. The introduction of a $4 per month per line charge for residential end users on a flash cut basis could create an undue risk that a number of residential users would choose to cancel local exchange service.[58]

170. As we noted in the *Fourth Supplemental Notice*, we are quite concerned about the impact of flat charges for NTS costs, and especially a sudden shift to flat charges, on small users and on subscribers in high cost areas. Despite the attractiveness of such flat charges from the standpoint of economic efficiency, we are unwilling to require immediate implementation of flat charges for the entire end user portion. The guidelines that we adopt, however, constitute a gradual transition to a new approach to compensation for interstate access that balances the goals of the Communications Act in a manner that best serves the public interest.

171. Many participants who found at least some flat charges acceptable or desirable argue that a transition period is appropriate.[59] Such a transition would allow subscribers and telephone companies the opportunity to adjust to the new environment. Other participants take the opposite view that a flash-cut approach would be most appropriate.[60] Such a flash cut would allow cost-based pricing immediately to go into effect and confer the economic advantages of flat charges that much earlier.

[58] Possible effects of access charges upon the universality of service are discussed in Appendix G.

[59] *See, e.g.*, Comments of Ad Hoc Telecommunications User's Committee; AT&T; MCI; NTIA; Pennsylvania PUC; SNET; SPCC; United Telephone System, Inc.; USITA; U.S. Tel.; Vermont PSB.

[60] *See, e.g.*, Comments of Aeronautical Radio, Inc.; GTE; Rochester Tel; Tel. Systems Management Corp., *et. al.*

172. We have concluded that a transition to the flat End User Common Line charge we require is appropriate. A gradual transition allows a more comfortable adjustment to the new economic realities. If the timing of the transition is known, the dynamic efficiency losses that result from failing immediately to move will be small. The extremely long transition advocated by MCI appears unnecessary.

173. The gradual transition we are adopting has several advantages that, we believe, will outweigh any drawbacks. First, it establishes a schedule for movement to a cost-based access arrangement over a medium length period. Companies that have invested heavily in technologies made economic only by the continuance of uneconomic and non-cost based prices will have several years in which to amortize these investments. A pre-set transition will encourage investors to target new investments on technologies that are consistent with the underlying costs of the network and hence on the most efficient possible use of the nationwide telecommunications system.

174. A pre-set transition plan like the one we are adopting has the advantage of providing some certainty to those who must make investments in communications technologies. A fairly rapid movement toward cost-based pricing can allow time for corrections in past investment, yet new investments would be made with the forthcoming prices in mind. It appears unlikely that any company would spend the thousands or even millions of dollars necessary to take advantage of the variance between price and cost during the transition if it understands that the gap is to be reduced year by year, until it is completely eliminated at the end of a mid-length transition period. Thus, while the transition plan incorporates some features in the Mixed 2 plan in the *Fourth Supplemental Notice*, it will not have the fundamental flaw that the maximum rate must remain many times higher than cost.

175. We believe that a more lengthy transition would unnecessarily delay the advantages of cost based rates and might encourage unnecessary bypass and inefficient development of the economy. While the seven-year transition plan we have adopted might appear unnecessarily slow to some users and exchange carriers, the flexibility it provides will allow those carriers who feel compelled to move rapidly the opportunity to do so, while not forcing all carriers to adjust at this same pace. The details of the transition plan are explained in the next subpart and in Subpart C of the access charge rules.

E. *End User Common Line Rate Structure*

1. *The Minimum Change.*

176. As we have already indicated, the End User Common Line charges will meet an increasing share of total NTS costs assigned to

the interstate jurisdiction. This element, combined with the Carrier Common Line charges, will recover most of the costs of subscriber plant, including CPE, inside wire, outside wire (*i.e.*, the drop line and interface) and loop costs allocated to the interstate jurisdiction. All of these costs are non-traffic sensitive and, for the most part, are dedicated to particular consumers. (Only party line loops and any investment associated with coin phones are non-dedicated.)

177. During the transition period for End User Common Line charges we shall require that the access tariff include a minimum flat fee of at least two dollars per month for each residential common line. This payment shall be imposed regardless of whether the particular customer makes or receives any interstate calls. The minimum business line customer charge shall be four dollars per common line loop per month. The difference in these charges should reflect the typically higher interstate revenue requirement generated by business lines as compared to residential lines. In addition, we believe that this differential should reduce the incentive a business subscriber might have to use its dedicated facilities in a way calculated to reduce the usage sensitive portion of its access charge, solely to escape usage payments.

178. We also believe that a differential in the transitional minimum charges for business and residential customers is justified because we have selected a low residential minimum in order to avoid an adverse effect upon universal service. Minimum charges for business customers are unlikely to have any meaningful effect upon universal service because demand for business local exchange service -at least for a single line- tends to be inelastic. We have, however, concluded that some limitations should be imposed upon carrier discretion to select a higher minimum rate. Section 69.203 of our Rules precludes any carrier from establishing a business minimum charge that is more than 200% of the residential minimum charge.

2. *The Usage Charge*

179. The difference between the minimum flat fee (which must be at least two dollars per month per line for residence and four dollars per month per line for business) and the total revenue requirement associated with the end user charge (four dollars per month per line in the first year and increasing amounts in later years) may be recovered through a usage charge, up to a maximum.

180. Traditionally usage has been measured on the basis of minutes of use. The *Fourth Supplemental Notice* had suggested that a per call (rather than per minute) usage measure might be more appropriate for any usage component in the end user access charge. Because nontraffic sensitive costs do not vary with minutes or number of calls, we find neither of these approaches to be clearly superior in all cases. The selection should be based on which will lead to the smaller distortion in usage patterns.

181. Charging users on a per minute basis will encourage users to make shorter calls than they would under efficient pricing. Charging users on a per call basis would encourage them to make fewer and longer calls. Once customers make a call they would have an incentive to communicate as long as efficient, but this efficiency gain must be evaluated against the efficiency loss of fewer calls.

182. The selection of a measure of usage should be based on relative elasticities of demand.[61] If most short calls are made to convey pressing information, the per call charge would not discourage too many callers and this alternative would be desirable. If this is not the case and customers would be willing to make fewer calls or take advantage of patterned calling (*e.g.*, making collect or person-to-person calls that are designed to be refused but to convey information in the request), the per minute option would be preferable. Either a per call or a per minute charge could be used as a valuable component in our transitional plan. Such a charge could be set in order to recover revenue directly from end users (rather than carriers) while prolonging the period before all rates are set on a flat basis. In the *Fourth Supplemental Notice*, we expressed our belief that the elasticity and measurement cost conditions might warrant a per call charge. Several of the comments suggest that under a Mixed 2 option the per call fee would be so high that it would discourage large numbers of calls, and that a per minute charge would be more appropriate. Under the rate structure we have prescribed the per minute or per call charge would be substantially lower than would be necessary under a zero-based Mixed 2 option. We have concluded, however, that the selection of a measure of usage should be left to the exchange carriers. It is certainly possible that different carriers may face customer demands of varying elasticities. The choice that is appropriate for some may be inappropriate for others.

3. *The Maximum Charge*

183. Because common lines are similar to dedicated interstate lines, we shall require that the maximum collected on any such line through end user charges (the sum of the minimum and any usage payment) be less than or equal to the rate established for dedicated access lines. Throughout the transition period we shall require that no one customer be charged in excess of a pre-set maximum. To eliminate unlawful discrimination among services, the maximum should be no more than the rate that a customer would pay as an end user Dedicated Access Line charge.[62] In special cases, however, we

[61] For a discussion of how relative elasticities of demand are related to cost recovery, *see* W.J. Baumol and D. Bradford, "Optimal Departures from Marginal Cost Pricing," American Economic Review, vol. 60, pp. 265–283, June, 1970.

[62] *See* Section 69.205 of the rules for a description of the computation of maximum rates in each transition year.

may allow local companies facing hardship in meeting our requirements to raise the maximum and the rate charged for the Dedicated Access Line element above the Dedicated Access Line per line cost. Such an exception would be allowed only as a temporary expedient in the early years of the transition.

184. In each of the five years subsequent to the introduction of the access charge, the maximum allowed each carrier shall be reduced by 10 percent, but shall never fall below total interstate costs. The exchange carrier or the exchange carrier association may adjust either the minimum, usage component, or both to recover revenue. At the end of the five year transition period, the highest maximum allowed would be reduced to 50 percent of its initial level and all Common Line costs, other than the Universal Service Fund and inside wiring costs would be recovered directly from end users.

185. For the last two years of the seven year transition period, we shall allow exchange carriers to continue to recover their End User Common Line revenue requirement through such a combination of flat fee minimum charges and usage charges with the pre-set maximum. Exchange carriers facing substantial bypass threat may wish to introduce flat rate pricing for recovery of all End User Common Line costs early in the transition period. In areas where bypass is a smaller threat, the more gradual transition permitted by continuing to allow usage recovery (to a maximum) appears to have benefits that outweigh the costs.

186. A maximum End User Common Line charge that is no greater than the price paid for a dedicated interstate loop (such as that associated with a closed end WATS line) or an interstate closed end FX line will allow heavy users to make a more rational choice among private line, MTS, WATS or FX service. It would resolve fundamental problems facing this Commission in this and other proceedings. The maximum is also desirable in its own right to reduce the threat of bypass. Since a substantial share of non-traffic sensitive costs is to be assigned to the End User Common Line element and recovered through minimum and maximum charges, the portion of NTS costs recovered in usage sensitive interstate rates will be substantially reduced. Heavy users, therefore, will find message rates that are dramatically reduced toward costs and would find bypass a less desirable option. The expectation of further reductions in both the maximum and the usage charge will further reduce the dangers of uneconomic bypass.

187. Generally, the usage charges will be imposed upon originating callers. We find, however, that it would be inappropriate to assess a usage charge upon the originating caller for certain calls that have traditionally been charged to the recipient. These include collect MTS calls, IN-WATS calls, and calls to an FX or CCSA subscriber that originate at the open end. The purposes that these

services were designed to serve would be frustrated if usage charges were assessed to the originating caller.

188. It would be difficult to assess such usage charges directly to the party who receives the call because that end user will normally be served by a different local exchange carrier. We have, therefore, decided to impose a charge upon the interexchange carriers that provide such services as a surrogate for a usage charge upon the recipient of the call. Such surrogate charges will, of course, be reflected in the interexchange carrier's charges to recipients in a manner that indirectly recovers appropriate costs from such recipients.

189. We have described this surrogate charge as a "transitional surcharge" in our Rules. Section 69.206 of the Rules describes the formula for computing the transitional surcharges. Although the transitional surcharge will be a carrier's carrier charge, it is an integral part of the transition plan for End User Common Line charges. Transitional surcharge revenues will be deducted from the End User Common Line revenue requirement in order to compute the usage charges that are assessed directly to end users.

190. As ENFIA A access is currently provided, it is difficult for some exchange companies to attribute usage to originating customers. It might appear difficult, therefore, to apply the usage sensitive charges and the maximum charge to these services. One solution is to develop a surrogate charge for these services. We believe, however, that coordination of billing between the exchange carrier and the interexchange carrier offering ENFIA A service is more desirable, efficient, and non-discriminatory.

191. In this *Report and Order* we require local exchange carriers to offer billing services to all interexchange carriers if they offer billing services to any. *See* Part IV. C, *infra*. We anticipate that the OCCs will take advantage of exchange carrier billing services and will submit their calling records to the exchange carriers doing the billing. The exchange carriers can, and are expected to, compare the identities of ENFIA A or C callers with their own subscriber rolls, coordinate calls and callers made over ENFIA A or C lines with calls made over other types of interconnection, and bill the end user with a usage charge appropriate for the totality of interstate calls made. If OCCs take advantage of exchange carrier billing services, or if ENFIA A or C minutes can be attributed to end users without this service, no surrogate charge is necessary.[63]

192. So long as the maximum End User Common Line charge differs from the minimum, we must deal with the incentives that

[63] We are not including such a surrogate charge in the rules we are adopting, but will consider waiver petitions to permit such surrogate ENFIA A charges if a carrier demonstrates that it would not be feasible to collect the charges from end users. We would expect a strong showing that alternative methods are not feasible.

might encourage heavy use of one line for interstate and other lines for local or intrastate toll calling. We have considered two options. First, all users, business or residential, could be required to pay the maximum for all lines in addition to their first line. Alternatively, total usage could be aggregated and divided over total lines regardless of use.

193. Transitional issues become important in making that choice. While such users should not expect to be subsidized in the long run, it might be unjust and inefficient to require them to pay high rates if they made their original investments in good faith and with the expectation that the current pricing structure would continue. Furthermore, the number of lines is likely to be a very poor proxy for ability to pay. Such users appear entitled to the benefits of a transition.

194. We, therefore, shall require customers having multiple lines to pay as if their calling had been spread evenly over all of their lines. Because the total usage of all of these phones is aggregated, customers would have no incentive to load all interstate calling inefficiently on any one line. Moreover, the transition plan will tend to limit the willingness of any user to distort investment strategies in response to differences in single line and multiline rates.

F. *Monitoring of the Effects of End User Charges*

195. We are well aware that the plan we adopt today constitutes a significant departure from interstate pricing approaches developed in a monopoly environment. We are totally committed to insure that this approach does not lead to a disruption of our nation's telecommunications system or to the elimination of universal service. That commitment is reflected in our decision to exclude Universal Service Fund costs from end user charges before and after the transition periods that are described in this *Report and Order.* That commitment is also reflected in our decision to conduct another notice-and-comment phase of this docket before taking the final steps in the transition to flat rate end user charges.

196. In view of the importance that we attach to the universal service objective, we have decided that this Commission should also monitor the effects of the implementation of end user access charges during the transition period. We are accordingly directing the Common Carrier Bureau to develop and present to us a monitoring system designed to insure that any developments based upon our access charge plan which threaten the "universal" character of service are brought to our attention in sufficient time for us to be able to take ameliorative action. We further direct that such a plan be in place on or before January 1, 1984, the date of institution of access charges. This monitoring plan should be designed to place as little a burden as possible upon the small businesses which constitute the overwhelming majority of our nation's telephone systems.

The Common Carrier Bureau is directed to present to us within 90 days of the release of this *Report and Order* its proposal for such a monitoring program.

IV. *GUIDELINES FOR RECOVERY OF TRAFFIC SENSITIVE COSTS*

197. In the *Second Supplemental Notice* we presented a plan to prescribe access charges for four categories of interstate service: MTS/WATS; FX/CCSA open-end access; private line; and OCC-ENFIA. Because it would have included toll connecting trunks which did not carry exchange traffic, we rejected the definition of "exchange circuit plant" appearing in the *Separations Manual* as a basis for defining the investment to be included in the access revenue requirement. Instead, in order to determine the investment that would be allocated to exchange access services, we defined "exchange plant" as plant used to furnish both toll and local service. Investment in other plant, called interexchange plant, would be excluded from the access revenue requirement. 77 FCC 2d at 239-240.

198. We had proposed that investment in exchange trunk outside plant (OSP) used jointly for exchange and toll message service (exchange trunk OSP in Category 1.22) and related exchange trunk circuit equipment (central office equipment in Category 8.12) be distributed among the three message service categories on the basis of minutes of use. Investment in exchange plant used for private line services and related equipment was to be directly assigned to the private line category. (OSP linking end offices and toll offices, however, was to be excluded and considered interexchange plant.)

199. Investment in traffic sensitive Category 6 central office equipment (local dial switching equipment) was to be distributed among the message access service categories (MTS/WATS; OCC-ENFIA, and FX/CCSA) on the basis of relative dial equipment minutes (DEMs), except for that portion directly assigned to private line services like CCSA. We proposed to rely on the factors specified in the *Separations Manual* for allocating investment in other traffic sensitive plant among the four access service categories. Direct investment in traffic sensitive equipment unrelated to OCC exchange access, however, was to be excluded from exchange plant. If *Manual* factors could not be used, we proposed at least to rely upon *Manual* principles or, alternatively, relative minutes of use to distribute the cost of the remaining traffic sensitive plant among the service categories.

200. Because the costs and revenues associated with interstate FX and CCSA open-end access services have been treated as intrastate, we found it necessary to adjust the revenue requirement for each access service category to reflect a credit to the FX/CCSA

category. Only in this way could we prevent a double charge to users of this interstate service. By the time our access charge plan is implemented, however, we expect that the *Separations Manual* will be revised. We note that the Joint Board has unanimously proposed that the investment, expenses and revenue attributable to interstate FX and CCSA open-end access services be treated as interstate costs and revenues. [64] Thus, when the access charge tariff replaces the intrastate tariff for these services, there should be no need to make the proposed credit adjustment.

201. To compute the access charge for each message service, we proposed that its revenue requirement be divided by total holding qtime minutes of use for that category to obtain a charge per holding time minute of use. An interstate carrier using that message access service would then pay the local carrier an amount equal to the product of that unit charge and that carrier's holding time minutes of use.

202. The MFJ is, of course, a supervening event that occurred since we released the *Second Supplemental Notice.* The MFJ not only requires AT&T's divestiture of the BOCs, but also imposes upon the BOCs the obligation to provide exchange access to all interexchange carriers equal in price and quality to that provided to AT&T. Recognizing that facilities to provide such access do not presently exist, the MFJ sets a timetable for phasing in the required equal access. Each BOC must begin to offer such access to all interexchange carriers no later than September 1, 1984.[65] BOCs must file tariffs (to be effective on the date of divestiture) which will govern BOC provision of exchange access to all interexchange carriers.

203. Tariffs described in the MFJ must meet the following general criteria:

(1) that they provide unbundled schedules of charges for all exchange access services, including those provided to AT&T (MFJ, App. B, Section B, para. 1);

(2) that they discriminate against no carrier or other customer (MFJ, App. B, Section B, para. 1);

(3) that they require interexchange carriers to pay only for the

[64] *See Joint Board Order, supra,* 47 Fed. Reg. at 54495.

[65] By September 1, 1985, equal access must be available through end offices serving at least one-third of the BOC's exchange access lines. Unless a BOC obtains a waiver of the schedule requirements, equal access through each of its end offices must be available by September 1, 1986. Such a waiver is available only for end offices using electromechanical switches or serving fewer than 10,000 access lines. To receive the waiver, the BOC must show the Court that for particular categories of service the cost of equal access through such end offices outweighs the potential benefits to users of telecommunications services. Any denial of access based on this exception must be minimized both to its extent and duration. *See MFJ,* App. B, Section A, para. 3.

type of access they use (i.e., no "take it or leave it" bundling of services) (MFJ, App. B, Section B, para. 2);[66]

(4) that their charge for each type of exchange access must be cost justified (MFJ, App. B, Section B, para. 2).[67]

204. The MFJ defines "exchange access" to include any activity or function that a BOC performs in connection with the origination or termination of interexchange telecommunications. The judgment envisions a tariffed "menu" of such services from which an interexchange carrier may select the options it wants. It expects that each BOC will unbundle the rates for as many of these services or functions as technology will permit. The goal of this requirement is to give an interexchange carrier maximum flexibility in requesting and paying for the precise type of exchange access it requires.

205. As the Competitive Impact Statement prepared by the Department of Justice makes clear,[68] the MFJ does not purport to prevent the Commission from prescribing access charges to recover BOC costs allocated to exchange access by jurisdictional separations that do not satisfy all the conditions imposed by the MFJ upon carrier initiated tariffs. Its intent is only to require that, given the Commission's ground rules, the BOCs use a cost-based tariff structure, non-discriminatory in effect, to differentiate among the access charges they levy for each element of service.[69]

206. In the *Second Supplemental Notice*, we had concluded that the only way to eliminate the discrimination among interstate and foreign services was to develop "new allocation procedures in which formulae would be applied uniformly for all services to those plant elements which are used in basically the same way by all services and applied selectively to specific services for those plant elements which are used differently for different services." 77 FCC 2d at 231. Thus, the general criteria that the MFJ imposes upon BOC initiated access charges are fundamentally consistent with the goals of this proceeding. The MFJ, however, would include in access charges compensation for the use of facilities and services that our tentative plan had excluded from its definition of access services. In the *Fourth Supplemental Notice* we noted that while the BOCs could comply with MFJ requirements by filing supplemental charges for elements excluded from our rules for computing access charges, it

[66] Nothing in the decree precludes a BOC from also offering exchange access superior or inferior in type or quality to that provided AT&T at charges reflecting the increased or reduced cost of access.

[67] This means that differences in charges must be justified on the basis of differences in services.

[68] *See* Competitive Impact Statement filed by United States Department of Justice at 35-36, United States v. American Telephone and Telegraph Co., D.D.C. Civil Action No. 74-169.

[69] An antitrust decree could not, of course, limit this Commission's power to prescribe a system of charges that is designed to satisfy Communications Act requirements. The MFJ does not purport to do so.

might be desirable to adapt our plan to include charges for such facilities and services.[70] 90 FCC 2d at 153. We sought suggestions to adapt that plan to include these additional services and facilities.

207. We have concluded that, for reasons we have already discussed, the better choice is to adapt our tentative plan to account for the additional access elements contemplated by the MFJ. In particular, we have added to the plan an element we call the "Dedicated Transport element" through which local telephone companies will recover the interstate revenue requirement associated with the costs of the facilities linking the switches of interexchange carriers to the distribution facilities of local carriers. While we recognize that this element reflects costs that are fundamentally non-traffic sensitive in nature, we have chosen to include the Dedicated Transport element in our discussion of traffic sensitive costs because we perceive it to be an intrinsic part of the costs associated with providing interexchange carriers with access to the local network. Moreover, while the costs associated with the Dedicated Transport element are not traffic sensitive and will not be recovered through usage sensitive rates, these facilities will continue to have such an impact upon the local carrier's configuration of the traffic sensitive components of its network that we believe it is logical to discuss recovery of the cost associated with this component of local network facilities in this Part of this *Report and Order*.

208. The *Separations Manual* classifies certain central office equipment as non-traffic sensitive and allocates the related investment between the jurisdictions as if it were subscriber plant equipment. As previously noted, we have decided that we should not include this non-traffic sensitive central office equipment in our NTS plan because the separations classifications may change in the future. We are, nevertheless, including separate elements for traffic sensitive and non-traffic sensitive portions of Category 6 central office equipment in this part of our plan for the initial access charges because it appears unlikely that any changes in the separations classifications for Category 6 central office equipment could be implemented in 1984.

209. In the *Fourth Supplemental Notice*, we stated that we still found it "reasonable to expect interexchange carriers to compensate exchange carriers for traffic sensitive costs on a traffic sensitive basis." 90 FCC 2d at 152. The tentative plan in the *Second Supplemental Notice* called for interexchange carriers to compensate exchange carriers for traffic sensitive costs on a traffic sensitive basis. In their responses to the *Fourth Supplemental Notice*, some participants stated that end users should be charged directly for all

[70] Examples of such facilities and services include the lines or trunks between a telephone company end office and an interexchange switch and billing and collection services.

costs associated with access services, including traffic sensitive costs.[71] This, they asserted, would reduce administrative expenses and eliminate the inaccuracies of separations and settlements. We believe it would accomplish neither. With the adoption of our access rules, the settlements process for access service compensation will end. While billing end users for all access costs might indeed reduce administrative expenses for the interexchange carriers, such an approach would impose a tremendous burden on the exchange carriers and end users. If the customer originating the call had to pay directly for the costs of the facilities used to terminate his interstate call, this would require the terminating exchange carrier, apparently through recourse to the interexchange carrier involved, to identify the end user originating the call and then to bill that user directly for the costs associated with the type of interconnection provided to the interexchange carrier. This would not only impose substantially greater administrative burdens upon these exchange carriers, but also would constitute a drastic change in the relationships among end users, local telephone companies and interexchange carriers, a change that we cannot perceive to be in the public interest. If instead all end users are expected to bear the costs of all plant in their exchange area used to provide access service to interstate carriers, whether the resulting charge is flat, usage sensitive or a combination of both, almost certainly that approach will result in costs being recovered from customers who have not caused the exchange carrier to incur those costs. In particular, end users will be subsidizing the use of their local facilities by those terminating calls in their exchange area. Such an unfair result cannot be in the public interest. Moreover, this approach would not eliminate any alleged inaccuracies in the separations process.

210. In general, those participants addressing the appropriate structure for charges to recover traffic sensitive costs agreed that the rates should be usage sensitive.[72] In its comments to the *Fourth Supplemental Notice*, Southern Pacific adds that these charges should be sufficiently unbundled to assure that each interexchange carrier pays only for the local access facilities it receives. We believe that the rules we have adopted to recover the costs of access facilities are sufficiently refined to achieve this result. Southern Pacific also asserts that these charges should be adjusted to reflect the diminished value of interexchange service resulting from unequal interconnection. We have already explained why we have chosen to rely

[71] *See, e.g.*, Comments of United States Transmission Services, pp. 12, 20; Comments of the Association of Long Distance Telephone Companies, p. 8 at n. 10, pp. 25–26; Joint Comments of Tel. Systems Management Corporation, Satelco, Inc. and Teltec Saving Communications Co., p. 2; Comments of Curtis M. Bushnell, Public Utility Consultant, pp. 15, 19.

[72] *See, e.g.*, Comments of Centel, SBS and USITA.

upon a premium access charge to account for differences in the quality of interconnection offered to different interexchange carriers. *See* Part III.C, *supra*. Consequently, our rules for computing charges to recover traffic sensitive costs rely only upon cost causation to compute charges.

211. In developing our access charge rules we have considered exchange access for interexchange carriers providing switched services to be composed of two categories or groups of elements. The first category consists of the transmission (and related switching) facilities which carry interexchange traffic between the interexchange carrier's facilities and the Class 5 (end) office at which this traffic originates or terminates. This plant always includes some dedicated trunks which carry only that interexchange carrier's traffic to a switch within the exchange. It also includes the interface between the dedicated transport line and the exchange carrier's switch. For the OCCs, it would correspond to Rate Element 1 in the ENFIA A tariff (BSOC-8) and in the ENFIA B and C tariff (BSOC-9). This is the element we have called "Dedicated Transport." If the local switch is not the end office switch used to terminate or originate an interexchange call, additional trunks and possibly local tandem switches will be required to complete transmission between that end office switch and the interexchange carrier facilities. Most of this equipment is traffic sensitive (TS) and because it may be shared by several carriers, we call the associated access element "Common Transport."

212. The second category, called the "end office" category, corresponds to the central office equipment in the end office at which the interexchange carrier's traffic originates or terminates. This element includes all the traffic sensitive central office equipment (COE) used to provide switching and related services, including operator assistance services. In this Part, we describe the guidelines we have developed to recover the costs allocated to the different plant elements within the categories. We also discuss the rules that will govern recovery of costs for such special services as Billing and Collection.

A. *End Office Charges*

213. To complete transmission of interstate or foreign switched communications to and from the premises of an end user, an interexchange carrier must rely upon facilities located at the end office to which that end user's telephone is directly linked. In particular it must use local dial switching equipment and may use operator services to assure successful transmissions. We refer to the charges associated with the use of this equipment generically as "end office charges." In this section we unbundle these charges into five elements: (1) Line Termination; (2) Local Switching; (3) Intercept services; (4) Information services; and (5) Operator Assistance

services. The first two elements reflect an interexchange carrier's use of local switching equipment, which the *Separations Manual* classifies as Category 6 central office equipment; the remaining three elements reflect an interexchange carrier's use of equipment that the *Separations Manual* classifies as Category 1 central office equipment. For this reason we are adopting these *Separations Manual* categories as the basis for defining the direct costs allocated to each of these elements.[73]

1. *Category 6 Central Office Equipment*

214. *Line Termination Element.* The *Separations Manual* divides Category 6 Central Office Equipment (COE) into non-traffic sensitive (NTS) and traffic sensitive (TS) subcategories to distinguish the fixed costs of terminating lines in the switch from the usage sensitive costs of switching.[74] The Line Termination element consists of the portion of the investment in the local switch that separations considers non-traffic sensitive and the associated indirect investment and expenses. Such costs should be recovered from all interstate carriers providing switched services and allocated among these carriers based on their relative conversation minutes.[75]

215. Separations has relied upon factors developed by Bell-USITA studies to determine the portion of investment in different types of switches that is and is not traffic sensitive. In CC Docket No.

[73] The procedures for computing charges for those elements are described in Section 69.106-69.110 of the rules.

[74] That portion of non-traffic sensitive category 6 central office equipment used to provide trunk conditioning and signalling between the carriers' switching facilities is included in the Dedicated Transport element.

[75] The allocation of NTS Central Office Equipment on a usage basis represents an apparent inconsistency with the approach we have taken to recover almost all other non-traffic sensitive plant. We believe, however, that this apparent inconsistency is resolved by a closer examination of the facilities involved.

Non-traffic sensitive facilities the costs of which are to be recovered through end user charges are all dedicated to particular subscribers or, in the case of party lines, groups of subscribers. (The only exception is pay phone service, the costs of which are apportioned on a usage basis).

As compared to older electro-mechanical facilities, a far larger fraction of modern central office facilities has been classified as non-traffic sensitive. Such modern facilities can offer subscribers many more or improved service options than could the facilities that they replace. Not all subscribers require or even desire such additional services. It does not seem appropriate, therefore, to treat these facilities as if they were dedicated.

The Joint Board will have the opportunity more closely to investigate whether the *Separations Manual's* treatment of the costs associated with these electronic switches should be revised. It is possible that after its investigation is completed we shall perceive a need to revise the rate structure for this element so that it reflects cost causation more accurately.

80-286, the Joint Board is considering whether these factors should be revised.[76] We believe, however, that to assure that our access charge plan becomes effective on January 1, 1984, we must provide carriers with specific guidelines for developing their access charges as early as possible. Consequently, we must proceed to establish these guidelines without the benefit of the Joint Board's recommendations. We have concluded that in developing the access charges to become effective in 1984 it is reasonable to rely upon existing Bell-USITA factors to distinguish NTS from TS Category 6 COE. If Joint Board recommendations result in the revision of these factors, we would expect these changes to be reflected in access charges for later years.

216. Our tentative plan in the *Second Supplemental Notice* had assigned Line Termination costs to private lines even though they do not terminate in a Class 5 (end office) switch. We intended that apportionment to serve as a surrogate for certain costs, including those attributable to "leaky PBXs", that cannot be easily identified.[77] In the plan we adopt today, we have already allocated to private lines the costs of other NTS plant that could serve to ensure recovery as a surrogate for these less easily identifiable costs. We also believe that the leaky PBX phenomenon may become much less significant in the future as cost-based access charges produce a shift to MTS by those private line customers capable of "leaking." For these reasons we are not assigning any Line Termination costs to private line services.

217. *Local Switching Element.* Through charges associated with this element, local carriers will recover the costs associated with interexchange carriers' use of traffic sensitive (TS) Category 6 central office equipment (COE) to complete interstate switched services.[78]

218. In the *Second Supplemental Notice* we had concluded that no traffic sensitive costs should be assigned to services not using the local exchange's switching facilities. Consequently, we proposed that these costs be allocated on a usage basis among three switched service categories: MTS/WATS; FX/CCSA open end access; and

[76] *See Joint Board Order, supra,* 47 Fed. Reg. at 54498.

[77] These costs include the costs of "hard wiring" these lines into place or otherwise providing special arrangements or treatment for private lines. They also include costs attributable to the "leaky PBX" phenomenon that we described in the *Second Supplemental Notice* . *See* 77 FCC 2d at 241. This phenomenon arises whenever an interstate call is "patched" through a PBX from a private line to a common subscriber line. That common line, the local exchange switch, another subscriber's common line and another subscriber's station equipment are all used to complete the call, but such private line usage of those facilities is not presently reflected in the computation of private line access service compensation.

[78] Some services classified as private line are, in fact, switched (*e.g.* , CCSA). If costs of some traffic sensitive switching equipment are now directly assigned to such services, we intend such direct assignment to continue.

OCC-ENFIA. Weighted dial equipment minutes (DEMs) were used as the unit of measurement.

219. The *Separations Manual* uses DEMs as the unit of measurement for purposes of allocating the traffic sensitive portion of Category 6 COE between the interstate and intrastate jurisdictions. However, Section 24.83 of the *Manual* applies a weighting factor known as TWF (Toll Weighting Factor) to the "toll" DEMs to reflect the difference in average cost per toll minute of use as compared to the average cost per exchange minute of use. The present *Manual* does not specify the TWF factors.[79] Different factors were developed for different types of switches in the Bell-USITA studies that developed NTS-TS ratios for the same categories of switches. The TWF factor differs from the subscriber plant factor (SPF) in that TWF is related to cost causational principles. Long distance calls require switching capabilities that local exchange calls do not. the TWF factor was designed to segregate costs that are peculiar to long distance calls.[80]

220. In comments filed in response to the *Second Supplemental Notice* , Southern Pacific suggested that costs that are assigned to the interstate jurisdiction as a result of the application of the TWF factor should be excluded from the computation of ENFIA A access charges because ENFIA A services use the local exchange in the same manner as local exchange service.[81] (Comments, pp. 47-50). In Reply Comments to the same *Notice* , AT&T agreed that some adjustment would be reasonable. It noted that at the open-end FX also uses local exchange switching in the same manner as local exchange service. (Reply, p. 63).

221. In the recent *Joint Board Order* ,[82] the Joint Board proposed that both interstate FX/CCSA open-end access services and interstate ENFIA services be explicitly recognized in the *Separations Manual* as interstate services. It also recommended that for apportioning costs of traffic sensitive switching equipment, all FX/CCSA,

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[79] The Joint Board has tentatively recommended that this continue. *See Joint Board Order* , *supra* , 47 Fed. Reg. at 54505.

[80] Although the TWF factor was designed to reflect cost causational principles, it is not based on a historical cost causational principle. The *Manual* was designed to allocate costs between two "old" services that will continue to exist. Allocations are based upon actual relative use during a prior period rather than projected use during some future period.

[81] At the time these comments were filed, the ENFIA B and ENFIA C service offerings did not exist. ENFIA B and ENFIA C provide access through trunk side connections to end offices and through trunk side connections to tandem offices respectively. ENFIA B provides more signaling information to the interexchange carrier than does ENFIA A, as well as automatic number identification and answer supervision. ENFIA B also permits subscriber use of rotary dial telephones to reach OCC switches. While ENFIA C does not provide these additional services, it permits an OCC switch to serve subscribers in more than one exchange directly.

[82] *See Joint Board Order* , *supra* , 47 Fed. Reg. at 54495, 54498.

ENFIA A and ENFIA C dial equipment minutes be treated like exchange service DEMs with no toll weighting factor applied to them. Recognizing that ENFIA B appeared to use the local switch more like MTS than like exchange service, the Joint Board is seeking to determine whether the similarity between ENFIA B and MTS warrants treating DEMs generated by ENFIA B use of local switches like DEMs generated by MTS use.

222. If the average costs associated with different interstate switched services' use of local dial switching equipment vary, these differences should be reflected in the rate structure of this element in order to assure that there will be no unlawful discrimination in rates for functionally equivalent services. As a first approximation to achieving this goal we are requiring that exchange carriers establish separate charges for two categories of service. The first category corresponds to local dial switching provided through line side termination at a Class 5 (or end) office or, for interstate services other than MTS and WATS, through termination in a local tandem switch. The second corresponds to local dial switching provided through trunk side termination at a Class 5 office for MTS/WATS equivalent services and switching provided for MTS and WATS. Based on available information we believe these service categories result in a grouping together of those interstate service offerings for which the average cost per minute of using the local switch is approximately the same. In particular, use of switching equipment by FX/CCSA open-end access, ENFIA A and ENFIA C services should fall within the first category of service while end office switching for MTS, WATS and ENFIA B should fall within the second category.

223. For computing 1984 access charges, the costs associated with local dial switching equipment shall be allocated between the two service categories based on relative DEMs, after the toll weighting factors developed in the separations process have been applied to DEMs generated by services in the second service category.[83] To convert these allocations to monthly per minute

[83] We recognize that the Joint Board deliberations may result in development of new TWFs to be applied exclusively to ENFIA B services. We anticipate that the scheme for allocating investment in TS local dial switching equipment we prescribe here would be altered so that these new TWFs would be applied to ENFIA B DEMs. We believe, however, that it is unrealistic to expect that development of such new TWFs could be completed before the end of the third quarter of 1983. The carriers require a reasonable time to develop and file their 1984 access charges and we shall require time to review these filings. For this reason, we conclude that 1984 access charges should not reflect the development of any new TWFs for ENFIA B services.

charges, the revenue requirement for each service category shall be divided by that category's projected average conversation minutes.[84] For a given month, the local switching equipment charge levied upon a carrier providing a service (or services) included in that service category will be the product of that category's unit charge and the conversation minutes generated by the carrier's service(s).

224. In responses to our *Second Supplemental Notice* , some participants had suggested that the tentative plan be modified in order to incorporate peak and off-peak pricing in the prescribed access charges. (Consumers Union Reply, pp. 9-10; NTIA Reply, pp. 32–33) Such a modification would presumably be limited to the traffic sensitive components like the Local Switching element inasmuch as non-traffic sensitive costs do not vary with usage. That suggestion warrants consideration as a long-run solution. However, we could not devise adequate rules for computing cost-based peak or off-peak access charges for this traffic sensitive plant from the information in this record. Therefore the rate structure, at least for 1984 access charges, will reflect no discount for off-peak usage of traffic sensitive exchange facilities.[85]

225. It should be noted that the efficiency benefits of peak pricing flow from the use of peak pricing in end user rates. The use of peak pricing in a carrier's carrier charge need not have any direct effect upon usage. Consistency between carrier's carrier charges and end user rates would be desirable, but time of day pricing of access service compensation is not a condition precedent for time of day pricing of end user services. MTS tariffs have established different rates for different times for a number of years even though the settlements formula for computing MTS access service compensation has never assigned different weights to different MTS minutes.

2. *Manual Switchboard Services*

226. Category 1 central office equipment consists of investment in manual switchboards. Manual switchboards are used primarily in connection with MTS and WATS service. In reply comments to the *Second Supplemental Notice* , however, AT&T asserted that the OCC-ENFIA and FX-CCSA services should share in costs relating to manual switchboards providing information and intercept services because both FX-CCSA open end access and OCC-ENFIA services

[84] These averages shall be developed through traffic studies, with necessary information being supplied by the interexchange carriers if the exchange carrier is unable to obtain such information directly.

[85] We intend shortly to establish a Joint Board that will consider the need for changes to the *Separations Manual* that will allocate investment and expenses between the jurisdictions based on peak and off-peak use of exchange facilities. When that Board has completed its work on this subject, we shall reconsider our decision concerning a peak/off-peak rate structure for traffic sensitive access charge elements.

also rely upon those operator services. AT&T indicated that directory and intercept switchboards can be identified without undue difficulty. Therefore, we propose to associate Category 1 investment allocated to the interstate access with one of three access elements: (a) the Intercept element; (b) the Information element; and (c) the Operator Assistance element.

227. *Intercept Element* . A local carrier provides Intercept services when it causes a telephone call directed to an improper telephone number to be redirected to an operator or a recording that tells the caller why the call, as dialed, could not be completed and if possible, provides the correct number. By its nature, this service must be provided either to all interexchange carriers or to none. We believe that because all rely upon this service to assure successful completion of their customers' interexchange calls, all should share in the costs associated with its provision. There do not appear to be any cost or value differences with respect to the use of Intercept services that would warrant the application of any weighting factors to distinguish one interexchange carrier's use from another's. Therefore, we have decided to subject all interexchange carriers to a per minute Intercept charge that is computed by dividing costs allocable to this element by total conversation minutes for all switched or partially switched interstate services.

228. *Information Element* . As its name suggests, Information service is provided when, by dialing the proper service code or number, a customer is connected to an operator who will tell him the telephone number of another customer, provided that the latter's number is or will be listed in the telephone directory. Based upon AT&T's *Second Supplemental Notice* Reply Comments we conclude that the costs associated with this service can be unbundled from those associated with the use of other Category 1 COE. We believe that these costs should be unbundled from other manual switchboard costs. At the present time directory information that is provided for long distance services is provided through transmission facilities of AT&T and its interexchange partners. These costs will accordingly be assessed upon those carriers unless other interexchange carriers establish connections with such directory assistance facilities.[86]

229. *Operator Assistance Element* . This element describes the remaining interstate operator services, primarily direct assistance in the completion of toll calls. To this element we allocate that investment in Category 1 COE not already allocated to either the Intercept or Information elements, as well as the indirect investment and expenses associated with this Category 1 investment under our

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[86] If that contingency arises, exchange carriers that provide the information service will be required to devise an appropriate method to apportion such costs among all interexchange carriers that are connected with such directory assistance switchboards.

allocation rules. The costs associated with this element should be recovered through a non-discriminatory, usage-sensitive rate structure imposed only upon those interexchange carriers who in fact use these interstate Operator Assistance services.

B. *Transport Charges*

230. As part of its access service, each local exchange carrier will provide transmission (and possibly) switching facilities to carry interstate switched traffic between an interexchange carrier's facilities and the end office through which this traffic originates or terminates. This plant always includes some dedicated trunks or lines, which carry only that interexchange carrier's traffic to a switch within the area served by the local carrier.[87] We refer to the element corresponding to this plant as the "Dedicated Transport" element. If this exchange carrier switch is not the end office switch used to originate or terminate the interstate call, additional trunks, local office and local tandem switches will be required to complete the communications path between the originating (or terminating) end office and the interexchange carrier's facilities. We refer to the element corresponding to this plant as the "Common Transport" element.[88] The costs associated with both Dedicated Transport and Common Transport will be recovered as part of the carrier's carrier charge for access to the local company's facilities needed to complete interstate communications.[89]

1. *Dedicated Transport Element*

231. This element consists of the dedicated voice grade transmission facilities and the interface at which those facilities and the exchange carrier's switch are joined.[90] For non-premium carriers, *i.e*

[87] In some cases, two exchange companies jointly might provide such a trunking service.

[88] The procedures for computing charges for the Transport elements are described in Sections 69.111 and 69.112 of the Rules.

[89] We are not, however, including any use of switching in a local dial (Category 6) switch in the Common Transport element.

[90] The facilities included in this element and other elements are the subject of the Settlement Agreement between the Bell System companies and the OCCs that we accepted as a disposition of Docket 20099. *See* 52 FCC 2d 727 (1975). That agreement established interim rates for the OCCs' use of certain Bell System facilities. It also established procedures for revising such rates that are still in effect. In particular, it permitted a carrier-initiated increase in the rates only on six months' notice to the OCCs. *Id* . at 734–35. We predicated our acceptance of that agreement on our finding that "the responsibilities undertaken by the parties are in the public interest because they expedite and further the implementation of established Commission policy." *Id* . at 732. If applied to the access tariffs which will replace the existing tariffs under which the BOCs provide dedicated transport facilities to the OCCs, such a notice requirement could prevent the timely implementation of these access tariffs. We have not determined whether the agreement purports to establish a notice requirement under these circumstances. Because we find such delay contrary to the public

the OCCs, this element would correspond to what is now designated as rate element 1 in the ENFIA A tariff. To this element we allocate investment in the outside plant linking the carriers' switching facilities as well as any Category 8 and non-traffic sensitive Category 6 central office equipment used to provide trunk conditioning and signaling between the carriers switching facilities.

232. USITA has suggested that the costs associated with this element be recovered through rate structures reflecting "capacity ordered." A rate structure based on "capacity ordered" may bear little relationship to what is, in fact, provided. We believe that an interexchange carrier should pay only for facilities it in fact receives. We can appreciate that in order to plan its network to assure the highest quality of service to all its customers a local carrier requires advance information of an interexchange carrier's anticipated needs and demands upon the local system. We do not believe that this information bears any intrinsic relationship to the costs incurred in currently providing services to these carriers.[91]

233. We are requiring that the revenue requirement associated with the Dedicated Transport element be split into three parts on the basis of relative net investment in: (1) interface arrangements; (2) voice grade transmission facilities; and (3) equipment used to provide conditioning for such transmission facilities. As a result, the charge associated with the Dedicated Transport element will be the sum of a charge reflecting the costs of voice grade transmission facilities dedicated to an interexchange carrier's use, a charge reflecting the costs of conditioning those facilities and a charge reflecting the costs of any additional central office equipment located at the boundary between those facilities and the local carrier's switch to which they are joined. In requiring this unbundling of charges our aim is to assure that the charges imposed upon an interexchange carrier for its use of dedicated transport facilities reflect the costs associated with the facilities provided to that carrier.[92]

234. *Interface Arrangements* . To this subelement we have allocated all investment in central office equipment used to provide

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interest, we are abrogating any contractual notice requirement of the Settlement Agreement that might be applicable. Any other provision of that agreement or the subsequent ENFIA agreement that may be inconsistent with the Rules we are adopting will, of course, cease to be effective when access charges become effective. The decision in *MCI Telecommunications Corp. v. FCC* , 665 F.2d 1300 (D.C. Cir. 1981) does not preclude us from abrogating provisions that are inconsistent with our prescription of an access charge plan. That decision related to carrier-initiated tariff charges.

[91] *See* Reply Comments of United States Independent Telephone Association.

[92] We believe that this is very similar to the refinements within this rate element advocated by the Ad Hoc Committee and Southern Pacific in their comments submitted in response to the *Fourth Supplemental Notice* . *See* Report on Access Charges attached to Comments on the Fourth Supplemental Notice filed by the Committee and Comments of Southern Pacific Communications Company, Appendix B.

interface arrangements. We have taken this step because we recognize that exchange carriers will be offering to interexchange carriers access arrangements that rely upon central office equipment to provide different signaling and other capabilities. We shall require that each exchange carrier establish in its access tariff a separate charge for each additional kind of interface arrangement it proposes to offer.[93]

235. We shall require that each exchange carrier present a listing of subelements corresponding to all the interface arrangements it intends to offer. It is through these subelements that the carrier will recover the share of its projected revenue requirement for Dedicated Transport that our allocation rules have apportioned to interface arrangements. To provide carriers with sufficient flexibility to develop access charges reflecting the many kinds of interface arrangements they may choose to offer, we have refrained from prescribing rules specifying precisely how the charges associated with these subelements must be calculated. We do require, however, that differences in the charges for these interface arrangements reflect cost differences.

236. *Conditioning arrangements*. The quality of voice communications over transmission facilities may be impaired by such factors as trunk loss, noise or echo. Alone or in combination, these factors may partially or sometimes completely obscure the information content of voice transmissions. Transmission facilities, however, may be conditioned to control these parameters[94] in order to improve the quality of such transmissions.

237. We shall require that each exchange carrier present a system of subelements corresponding to all the conditioning arrangements it intends to offer. Subelement charges will also be designed to recover the aggregate conditioning revenue requirement and charges for particular subelements will be designed to reflect cost differences among conditioning arrangements.[95]

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[93] Such arrangement might include, for example, an E & M lead interface, which is:

> A specific form of interface between a switching system and a trunk in which the signaling information is transferred across the interface via 2-state voltage conditions on two leads, each with ground return, separate from the leads used for message information. The message and signaling information are combined (and separated) by a signaling system appropriate for application to the transmission facility.

Engineering and Operations in the Bell System (1977) at 652. For a general discussion of common interface arrangements, *see id* . 181–86, 384–403.

[94] *See, e.g.*, the family of "W types" of conditioning offered in the Bell System's Facilities for Other Common Carrier Tariffs.

[95] Association tariffs may contain exceptions for participating carriers that offer interface and conditioning arrangements that differ from any standard subelements in the association tariff. Similar exceptions will be permitted for Special Access subelements.

238. *Transmission facilities.* To this subelement we allocate investment in all dedicated voice grade transmission facilities to be provided to interexchange carriers to complete their interstate or international communications services. These dedicated facilities are analogous to the non-traffic sensitive subscriber line plant dedicated to an end user's use. Consequently, we shall require local telephone companies to recover the costs associated under our allocation rules with this subelement through a flat monthly charge imposed upon each interexchange carrier receiving access through such facilities. The costs associated with Dedicated Transport facilities are a function of two parameters. The first is the distance between the interexchange carrier's facilities and the "entry switch" through which that carrier's traffic enters the exchange area. The second is the number of voice grade channels provided to the interexchange carrier. The latter we shall call "conversation capacity." We shall require that the monthly charge levied upon an interexchange carrier for voice grade facilities dedicated to its use shall be based upon the conversation capacity provided by these facilities and a distance factor.

239. At this time all AT&T toll offices are linked to local offices through 4-wire or 4-wire equivalent voice grade facilities. At least some AT&T offices are collocated with end office switches. Other interexchange carriers, however, have never been allowed to collocate their switches with local telephone company switches. A strictly distance-sensitive rate structure for dedicated transmission facilities would thus give AT&T an unfair competitive advantage. Consequently, we shall require that for purposes of computing a monthly charge associated with this subelement, for an interexchange carrier other than AT&T the distance between the interexchange carrier's facility and the "entry switch" to which it is linked shall be deemed to be the minimum of the following: the airline distance between the entry switch and this interexchange carrier facility; and the airline distance between the entry switch and any AT&T toll switch within 5 miles of the interexchange carrier's facility.[96]

[96] This "five-mile" requirement is similar to one imposed in the MFJ upon any BOC-initiated tariff to reduce the competitive advantage AT&T enjoys over other interexchange carriers because of the location of some of its switches. The MFJ has required that under such tariffs until September 1, 1991, the charge for delivery or receipt of traffic of the same type between an end office and each interexchange carrier's facilities located within the exchange area (or any reasonable subzones) be equal per unit of traffic delivered or received for all such carriers. If the facilities of another interexchange carrier are located within 5 miles of an AT&T Class 4 switch, with respect to any end office served by that switch, the OCC facility is to be considered within the same subzone as the AT&T switch. This requirement applies even if a BOC uses different transmission and switching facilities to serve AT&T and the other interexchange carriers; it exists to assure that the OCCs are not charged more for transmission merely because AT&T's switches are more advantageously located with respect to or linked to an end office.

240. We recognize that the costs of providing Dedicated Transport to a particular interexchange carrier also depend upon the transmission media selected to carry its traffic between its facilities and the "entry switch." A purely cost-based rate structure would tie the charges imposed on an interexchange carrier to this factor also. With all the permutations and combinations of transmission media possible, however, such a rate structure could easily become unworkably complicated. The rate structure we have adopted today, while not purely cost-based, avoids the administrative problems associated with such a rate structure and provides local exchange carriers with the incentive to use the most efficient means of transmitting traffic and the flexibility they need in planning their network. We believe that these advantages warrant this limited departure from cost-based pricing, at least during the first year in which access charges are in effect.

2. *Common Transport Element*

241. To this element we allocate the investment in all outside plant used in whole or in part to transmit an interexchange carrier's switched traffic between the end office at which it originates or terminates and the transport facilities dedicated to that carrier's use. We also allocate some investment in intermediate switching facilities such as local tandem offices.[97]

242. The costs associated with this access element are both usage and distance sensitive. Consequently, we are prescribing a rate structure that is both usage and distance sensitive. The measure of usage shall be conversation minutes of use, while the measure of distance shall be the airline distance from "entry switch" to the end office at which a call originates or terminates.

C. *Other Charges*

1. *Billing and Collection Services*

243. To this element we are allocating all the costs associated with a local carrier's providing billing and collection services to an interexchange carrier. In particular this would include investment in Category 4 central office equipment, automatic message recording equipment, and most of the revenue accounting expenses allocated to the interstate jurisdiction.[98]

244. The MFJ would permit a BOC to restrict its offer of billing

[97] We note that the plan we adopt today for developing a carrier's carrier charge will accommodate access arrangements provided by the independent telephone companies and by the divested BOC, regardless of the shape of the local access and transport areas (LATAs) ultimately approved by the court in United States v. Western Electric Company, D.D.C. Civil Action No. 82–0192.

[98] Computation of charges for this element is described in Section 69.114 of the Rules.

and collection services to only some interexchange carriers unless the BOC threatened to withhold service from a customer failing to pay charges levied by such interexchange carriers.[99] The MFJ does require, however, that if a BOC offers billing and collection services to even one interexchange carrier, that the charge for this service must be in the BOC's access tariff. Only common carrier services can be tariffed. The hallmark of a common carrier service is that it is offered to all indifferently. *See CCIA* v. *FCC, supra*, slip op. at 25. Consequently, to assure a result consistent with our powers under Title II of the Communications Act of 1934, as amended, 47 U.S.C. 201 *et seq.*, and the intent of the MFJ, we shall require that an exchange carrier offering billing or collection or billing information services to one interexchange carrier must offer them to all.

245. In contrast with our treatment of rates related to other access elements, the only restrictions we shall place upon a local carrier offering Billing and Collection services is that it not discriminate among carriers selecting these services. Any differences in charges levied for these services must be cost justified.

2. *Special Access*

246. Special Access includes a variety of services and facilities that we have decided to include in our system of access charges in order to ensure that tariffed access charges of all exchange carriers encompass services and facilities that the divested BOCs will be offering pursuant to tariffed access charges.[100] If the MFJ did not exist, we would probably exclude these facilities from the access charge scheme and classify them as "interexchange" for this purpose. Most services that use these facilities—such as program transmission, telex, etc.—are not close substitutes for MTS and changes in existing rate structures would not be required in order to eliminate discrimination or preferences among MTS and services that are close substitutes for MTS.

247. The Special Access category also includes a portion of interstate or international private lines that terminate in a PBX or similar equipment and interstate WATS lines. We limit the Dedicated Access Line element to the portion of those lines on the customer side of an end office in order to create a Dedicated Access Line element that is analogous to the Common Line element. We use that demarcation in order to establish parity for comparable elements. A portion of such private lines and a portion of some WATS access lines that are not included in the Dedicated Access Line element are included in access service for purposes of the MFJ. We are assigning

[99] In the latter case the MFJ does require the BOC to offer billing and collection services to all.

[100] Computation of charges for this element is described in Section 69.113 of the Rules.

those portions of those lines to Special Access in order to make access changes for all carriers correspond with the BOC access charges.

248. Although we have described Special Access as an element for cost allocation purposes, the Special Access category in fact encompasses a number of elements that must be priced separately. The same charges could not be applied to video "lines", telex lines and pieces of WATS access lines without creating unlawful preferences. Such facilities have very different cost characteristics and are used for very different purposes.

249. We have not attempted to provide guidelines for apportioning the Special Access revenue requirement among the rate elements or subelements within that category and we have not described the subelements that should be used. This proceeding was not designed to develop criteria for designating such subelements or for apportioning costs among appropriate subelements and the record in this docket does not contain much information that would be useful for those purposes. Such questions have been or will be addressed in other Commission proceedings.[101] We are accordingly directing exchange carriers to establish subelements and methods for computing subelement charges that are consistent with applicable Commission rules and decisions.

V. *COMPUTATION OF ACCESS CHARGES*

250. In order to compute a charge for an access element it will generally be necessary to compute a revenue requirement for that element. Under the rate base - rate of return method of ratemaking costs or revenue requirements consist of two components. The return component is computed by multiplying the rate base or investment by an allowed rate of return. The expense component covers the carrier's allowable operating expenses.

251. We have decided that the usual rate base - rate of return method should be used to compute access charges for each element except Billing and Collection. We are not imposing any constraint upon the return carriers may earn for that service because local exchange carriers do not possess sufficient market power with respect to that service to warrant a rate of return prescription. If the local exchange carriers establish excessive Billing and Collection charges, the interexchange carriers can, and undoubtedly will, do their own billing and collection.

A. *Rate of Return*

252. We will require the exchange carriers to compute charges for all the other access elements that are targeted to earn the same return. We are not, however, specifying a prescribed return in the

[101] *See AT&T Private Line Rate Structure and Volume Discount Practices*, 74 FCC 2d 226 (1979).

text of the access charge rules. Such prescriptions necessarily must be revised from time to time in *ad hoc* proceedings that are designed for that purpose. It would not be appropriate to effect changes in a prescribed rate of return through amendments to the rules. We are, however, requiring exchange carriers to use the currently authorized rate of return to compute access charges until that prescription is superseded by further order of this Commission.

253. We have already prescribed a rate of return of 12.75% for AT&T interstate operations. This targeted rate was established after consideration of all AT&T interstate capital costs, including capital costs associated with the provision of access service. Although that prescription has not been imposed directly upon other telephone companies, the existing partnership interstate settlements arrangement has been designed to enable every telephone company to realize the same achieved rate of return that AT&T realizes on interstate operations. Thus, the use of any rate of return other than 12.75% for the purpose of targeting access charges for BOCs or independent telephone companies would be a departure from the *status quo*.

254. Although the *Second Supplemental Notice* did propose to use the AT&T authorized rate of return for purposes of targeting access charges, the *Fourth Supplemental Notice* invited comment on the desirability of prescribing a different return inasmuch as BOC costs of capital may diverge from AT&T costs of capital after divestiture.[102] Most participants who have discussed this subject have suggested that the 12.75% return be used for the initial access charges. No evidence has been developed in this record that would enable us to predict any future divergence in AT&T and BOC costs of capital. Therefore, we will require that a 12.75% return be used to target access charges of any exchange carrier and interexchange services of AT&T until a different authorized rate of return is established in subsequent proceedings. We may or may not conduct separate proceedings to consider any future revisions in the prescribed rate of return for access and interexchange services.

B. *Identification of Access Costs*

255. Several steps are necessary to identify the investment and expense that is attributable to a particular access element. Invest-

[102] The *Fourth Supplemental Notice* also suggested that returns allowed by state commissions might be used if access charges are disaggregated on a state-by-state basis. The Executive Agencies of the United States recommended that procedure (Comments, p. 18), but Southern New England Telephone Company said (Comments, p. 12) that it would probably be "inappropriate" to use a state rate of return for any interstate service. Inasmuch as we have decided that such disaggregation would not be appropriate, there is no reason to give further consideration to that approach. Any nationwide charges necessarily must be based upon a nationwide rate of return.

ment and expenses relating to telephone operations must be segregated from other investment and expense. Interstate telephone operations investment and expense must be segregated from intrastate investment and expense. The access charge or exchange plant portion of interstate investment and expense must be segregated from other interstate investment and expense. The access portion must be allocated among the access elements.

256. Carriers are already obliged to perform the first two steps in order to compute revenue requirements for interstate services. This Commission has provided guidance for the identification of regulated service costs through accounting rules and decisions in tariff proceedings. We have also prescribed rules for the separation of investment and expense between the interstate and intrastate jurisdictions. Those rules are contained in the *Separations Manual* that has been incorporated as Part 67 of our Rules, 47 C.F.R. Part 67. The telephone companies have developed detailed and elaborate procedures to implement the separations rules.

257. The tentative plan described in the *Second Supplemental Notice* would have used the division of revenue or "DR" procedure that AT&T developed to implement the *Separations Manual* in order to determine interstate investment and expense for the computation of access charges. Several comments that were filed in response to that *Notice* questioned the wisdom or propriety of using the DR procedures for that purpose. MCI noted that there is no single fixed document describing Bell System DR procedures that could be incorporated by reference in access charge computation rules. MCI observed that the 11-volume DR Manual is revised monthly and does not contain a complete description of the procedures used to separate interstate and intrastate costs. In its *Second Supplemental Notice* comments, MCI said (p. 55):

> The operative steps are actually taken by a computer located in Atlanta referred to as ISIS. AT&T has informally advised MCI that the programming for ISIS was developed sequentially over a period of many years and that there is no complete set of program inputs in existence.

258. Inasmuch as there is no fixed set of DR procedures we could not incorporate the DR procedures in access charge rules even if we could warrant that the DR procedures have produced accurate results in the past. Moreover, we are not in a position to give such a warranty. The SBS *Second Supplemental Notice* comments observed (p. 48) that the 11-volume DR Manual implements a 96-page *Separations Manual*. SBS implied that some errors of interpretation must have been introduced into the separations implementation process in the course of amplifying the prescribed rules. Although our staff does monitor these processes, this Commission has not formally addressed the myriad of interpretation questions that are lurking within the separations implementation process.

259. USTS filed a petition for evidentiary hearing that was based in large part upon its contention that an evidentiary hearing would be required to compile a record that would enable us to prescribe any separations implementation procedures. We agree that an evidentiary hearing may be necessary to prescribe separations implementation procedures. We have, however, concluded that it will not be necessary to prescribe such procedures in order to prescribe rules for the computation of access charges. We are adopting rules for the computation of access charge revenue requirements that are based upon the premise that investment and expense attributable to regulated interstate operations has already been identified. We can proceed on that assumption without sanctioning separations implementation procedures that may be questionable or foreclosing interested persons from raising questions with respect to the accuracy of the underlying data when access service tariffs are filed.

260. We recognize that the information filed pursuant to Rule 61.38 may not at present be sufficient to enable this Commission or affected persons to identify all questions with respect to the accuracy of interstate costs that might be raised in a tariff proceeding. We have, however, decided that we should not delay the adoption of access charge rules to resolve data problems that are not unique to access charges. Any errors in the separations implementation process affect all state and federal tariffs for services offered by telephone companies. Proceedings other than this docket can and will be used to make separations implementation more visible to regulators and all affected persons.[103]

261. The allocation rules we are adopting do establish procedures for segregating access investment and expense from other interstate investment and expense and procedures for apportioning the access investment and expense among access elements. We have generally used the term "interexchange category" to describe investment, etc., that is not apportioned to any access element. For convenience, we have combined apportionments between interexchange and access and apportionments among access elements in a single set of rules. We have included the Billing and Collection element in that apportionment scheme even though our rules do not require the computation of a revenue requirement for that element because it is necessary to apportion costs to that element in order to identify the costs that are attributable to the other elements.

262. The plan we have adopted for the allocation of certain non-traffic sensitive costs between end user and carrier's carrier charges requires a further step in order to compute charges for the End User Common Line and Carrier Common Line elements. The combined charges for those elements will be designed to recover a revenue

[103] The exchange plant Joint Board has invited comments upon a proposal that may serve that purpose. *See Joint Board Order, supra*, 47 Fed. Reg. at 54490.

requirement for the provision of common lines. Subpart F describes the procedure for segregating that revenue requirement among those elements. We have described the combined revenue requirement for those elements as the Common Line element in the investment and expense allocation rules.[104]

C. *Apportionment of Investment*

263. Investment can be described as direct investment or indirect investment. The direct investment includes the facilities and equipment such as terminals, lines and switches that are actually used in the telephone operations. Indirect investment includes land, buildings, vehicles, office furniture, etc.

264. The allocation of direct investment is generally determined by the nature of the access elements we have described in Parts III and IV of this *Report and Order*. The elements encompass functions that usually correspond to particular categories of facilities and equipment.[105] For example, the Intercept element encompasses the switching facilities and operator services that perform the intercept function and the portion of manual switchboard facilities that are used for that purpose are assigned to the Intercept element.

265. The direct investment allocation rules (Sections 69.303–69.306) relate the description of access elements in Parts III and IV to the plant categories that have traditionally been used for separations purposes. The *Separations Manual* describes three major categories of direct investment - station equipment, outside plant or OSP and central office equipment or COE.

266. Station equipment consists primarily of equipment included in Accounts 231 (station apparatus), 232 (station connections) and 234 (large PBXs). All such equipment is normally described as non-traffic sensitive plant. Some station equipment is used exclusively in connection with Special Access or Pay Telephone services and is assigned to those access elements. Some station equipment is used by the telephone companies in their own operations and should be viewed as indirect investment that is not directly associated with any access element. That investment will be apportioned in the same manner as furniture, office equipment, vehicles, etc.

267. Most of the station equipment is used in conjunction with common lines, but this same equipment is often used in connection with WATS access lines or private lines. Whenever a private line terminates in a PBX, the PBX, the terminals and the inside wiring

[104] Total revenue requirements for some other elements such as Local Switching, Dedicated Transport and Special Access will also have to be segregated to compute subelement charges.

[105] In view of the functional nature of the access charge elements, the rules for apportionment of direct investment in subpart D essentially define each access element except the End User Common Line and Carrier Common Line elements.

between the terminals and the PBX are used to originate or terminate calls that are transmitted over the private line. Therefore, this category must be apportioned between the Common Line element and the Dedicated Access Line element. We have decided to use an equivalent line concept that is similar to the Mixed 1 proposal for that purpose. The total number of common or local exchange subscriber lines will be multiplied by the applicable interstate separations factor to determine the Common Line element line count that will be used for purposes of that apportionment.

268. The Joint Board in Docket 80–286 is considering a new formula in order to replicate the results that would be produced by the present transitional plan for the elimination of CPE from the interstate rate base in an environment in which some local exchange telephone companies may not own any CPE. We have generally described such an interstate apportionment as surrogate CPE in the access charge rules. Inasmuch as any surrogate CPE investment or expense is indirectly attributable to the use of CPE, surrogate CPE will be apportioned in the same manner as CPE investment or expenses if we adopt such a transitional separations factor.

269. The apportionment of Outside Plant or OSP reflects the basic scheme of the access charge plan. The rules use the term "Customer OSP" to describe lines that are included in our NTS plan and comparable portions of Special Access lines. That category does not include any line that connects an interexchange carrier or an enhanced service provider with the local exchange switch. The Customer OSP lines in use will, of course, be assigned to the Common Line, Pay Telephone, Dedicated Access Line or Special Access elements. An equivalent line apportionment will be used to apportion the unused voice grade lines among those elements.

270. The present separations formula includes common lines and WATS access lines in the same category for purposes of determining interstate investment. If we elect to retain that approach in the separations proceeding, an adjustment will be necessary in the apportionment between the Dedicated Access Line and Common Line elements in order to assign an amount to the Dedicated Access Line element that reflects unseparated investment in interstate WATS access lines. The access charge rules describe such a contingent adjustment.

271. OSP that is not classified as Customer OSP must be apportioned between access elements and the interexchange category. The MFJ demarcation points will be used for that purpose in order to produce traffic sensitive access elements for the independent telephone companies and the undivested BOCs that will be comparable to the access elements of the divested BOCs.

272. The remaining OSP will be apportioned between Special Access and the Transport elements. Special Access not only includes the portion of lines or trunks used for special services such as telex

and video that are not located on the customer side of the end office, but also includes comparable portions of lines or trunks that are used for the "Dedicated Access Line" services. We have used this demarcation in order to produce charges for a Dedicated Access Line element that are comparable to the NTS common line charges.

273. The Transport elements encompass the trunks between the end office and the interexchange facility. These may include exchange trunks between Class 5 offices or Class 5 offices and tandem offices. The assignment to Dedicated Transport or Common Transport is, of course, determined by the definition of those elements that is described in Part IV. If the line or trunk is used exclusively for interexchange services of a particular interexchange carrier it is assigned to Dedicated Transport. Other lines or trunks that are classified as Transport facilities are assigned to the Common Transport element.

274. The description of traffic sensitive elements in Part IV of this *Report and Order* necessarily determines the apportionment of Central Office Equipment that is included in COE Categories 1 and 6 in the present *Separations Manual*. COE 1 equipment will be apportioned among the Intercept, Information and Operator Assistance elements. COE 6 equipment will be apportioned between the Line Termination and Local Switching elements.

275. Inasmuch as the Transport elements encompass facilities between the end office switch and the interexchange switch, tandem switch investment (COE Category 2) and any portion of COE Category 3 investment that is classified as exchange investment for purposes of the MFJ will be included in the Common Transport element. We are not, however, assigning any COE 6 investment to Common Transport when an interexchange transmission is routed through more than one local dial switch at the originating or terminating end. The apportionment formula for COE 6 investment has been designed to take such usage into account.

276. The *Separations Manual* classifies Automatic Message Recording Equipment as COE Category 4. Inasmuch as information recorded by such equipment is used primarily for billing purposes that investment will be assigned to the Billing and Collection element.

277. Although COE Category 5 is described as Other Toll Dial Switching Equipment, it includes equipment "used primarily for operator dialed toll . . . traffic." Any Category 5 equipment that may be classified as exchange for MFJ purposes will accordingly be assigned to the Operator Assistance element. Category 5 equipment that is not exchange equipment for MFJ purposes will, of course, be assigned to the interexchange category.

278. COE Category 7 includes the type of switching equipment that is used for services we have described as Special Access. Such

investment will accordingly be assigned to Special Access unless it would be classified as interexchange for MFJ purposes.

279. The circuit equipment that is included in the COE 8 category will be assigned or allocated in the same manner as the associated OSP.

280. The *Second Supplemental Notice* proposed to use factors in the 1978 AT&T FDC 7 Central Submission for purposes of apportioning indirect investment and expenses. 77 FCC 2d at 243. Upon further reflection we have concluded that we should not use those factors for this purpose. Those factors were developed for an analogous but somewhat different allocation purpose and would accordingly have to be modified to fit our access charge plan.[106] Even if each factor could be adapted, it would not be desirable to use a cost allocation methodology that employs such a large number of different factors. Both BOC and independent telephone company data must be used to compute access charges. Some limitation must be placed upon the number of different categories that are used in order to enable independents to develop or provide data for the computation of access charges and the computation of distributions from any access charge revenue pools. We have accordingly used indirect investment and expense categories that are more aggregated than either the 1978 Central Submission categories or the categories described in the appendix to the AT&T *Second Supplemental Notice* comments.

281. Land and building investment represents the bulk of the indirect investment. We have accordingly concluded that we can strike an appropriate balance between excessive disaggregation and excessive aggregation by apportioning subcategories of Land and Building investment in a particularized manner and apportioning all other indirect investment on the basis of the apportionment of combined direct investment and land and building investment.

282. We have decided to use the space categories in the *Separations Manual* for purposes of apportioning building investment. This should not impose an undue burden on the carriers because such investment has already been assigned to those categories in order to identify the interstate investment. Many of the space categories are closely related to equipment categories that we are using for purposes of apportioning the direct investment.

283. The *Separations Manual* divides Space Category 1 (Operating Room and Central Office Equipment Space) into three subcategories - Manual Switchboard, Circuit equipment, and Dial switching - that do correspond with identifiable equipment categories. Each of those categories will be apportioned in the same proportions as the

[106] Categories and factors that were subsequently adopted in the *ICAM* would also have to be adapted because they were designed for four service categories that are quite different from the functional access categories described in this *Report and Order*.

associated COE. Space Categories 2 and 3 also consist primarily of operator space and will be apportioned in the same proportions as manual switchboard investment.

284. Space Categories 4, 6 and 9 (Commercial Office, Revenue Accounting and General Office) are associated with major expense categories and will be apportioned in the same manner as combined expense in each such category.

285. Space Categories 5, 8 and 11 describe investment that is not related to any access service. Such investment will accordingly be assigned to the interexchange category.

286. Space Category 7 includes garage and storeroom space. Inasmuch as equipment that would be contained in such space is likely to be used primarily for OSP installation and repair that investment will be apportioned in the same proportions as combined OSP investment.

287. Space Category 10 investment (Antenna Support) will necessarily be apportioned in the same proportions as the antenna supported.

288. Most land investment can and will be apportioned in the same manner as the buildings that occupy the land. Storage space is likely to be used in the same manner as garage and storage space in buildings and will accordingly be apportioned in accordance with the same formula. Land other than storage space that is not occupied by a building obviously cannot be related to any particular category. Such investment will be apportioned in the same proportions as combined land investment in the other land categories.

D. *Apportionment of Expenses*

289. Expenses can also be classified as direct or indirect expenses. Certain expenses such as depreciation and maintenance can be directly associated with particular tangible investments in buildings, facilities and equipment. Such expense will be apportioned in the same manner as the associated investment. Property taxes can also be associated with a particular investment and will be apportioned in the same manner.

290. We have concluded that rental payments for the use of a switch or a building, etc., should be apportioned in the same manner that investment would have been apportioned if the carrier owned the equipment or the facility. Therefore, we are also describing such rental payments as direct expense.

291. Indirect expense includes taxes and certain hypothetical taxes that are treated as expenses for ratemaking purposes as well as the expenses in the 600 series of accounts. We have departed somewhat from the separations methodology for apportioning income taxes because that methodology includes some steps that

appear to be unnecessary when charges for almost all the relevant categories are to be targeted to earn the same rate of return.[107] Inasmuch as the income taxes are taxes upon profits and the profits will be directly related to net investment, such tax expense will be apportioned upon the basis of relative net investment.

292. Hypothetical tax expenses, such as expense related to investment tax credits that are claimed for tax purposes, are associated with particular investments. Such expenses and related credits will accordingly be attributed to the associated investment and apportioned in the same manner as such associated investment.

293. Traffic expenses consist primarily of operator activities and will accordingly be apportioned among the three operator elements in the same proportions as the COE 1 investment.

294. A substantial portion of Commercial Expenses are generated by sales and advertising activities that should be excluded from access charges because there is no reason to anticipate that the local exchange carriers will have any reason to advertise exchange access services. We have accordingly assigned expenses in Accounts 642 and 643 to the interexchange category.

295. Commercial expense also includes Connecting Company Relations, Local Commercial expense, Public Telephone Commissions, Directory expenses and other commercial expenses. The public telephone commissions are obviously attributable to the Pay Telephone element and the directory expenses are obviously attributable to the Information element. Local Commercial expense consists primarily of billing and collection activities and will accordingly be assigned to the Billing and Collection element.

296. At the present time a substantial portion of Connecting Company Relations expense is attributable to the administration of the settlements process. That process will be replaced in large part by access charges. Companies will still incur expenses in connection with the computation of access charges and the computation of distributions from access charge revenue pools. We have, however, decided to classify the access charge expenses as revenue accounting expenses for purposes of this expense apportionment. Inasmuch as most of the expenses that will remain in the Connecting Company Relations category will be attributable to interexchange settlements, the Connecting Company Relations expense will be assigned to the interexchange category.

297. The remaining commercial expenses cannot readily be attributed to any category or element. Those expenses will be apportioned in the same proportions as the combined commercial

[107] The separations methodology computes taxable income separately for interstate and intrastate services and uses that ratio to apportion tax expense. That step appears to be necessary for separations purposes because state and federal regulators authorize different returns.

expenses that have been directly assigned to an access element or the interexchange category.

298. Revenue accounting expenses that are not attributable to access charges will be assigned to the Billing and Collection element because such expenses are generated primarily by such activities. We have also established a formula for the allocation of access charge revenue accounting expenses among access charge elements. Most of those expenses will be allocated to end user access elements because the billing and collection of end user charges is likely to generate greater expense.

299. The Big 4 Wage Factor from the *Separations Manual* will be used to apportion certain expenses such as social security taxes and pensions that are closely related to wage expenses. The Big 4 Wage Factor is based upon the wage portion of maintenance, traffic, commercial and revenue accounting expenses.

300. The *Separations Manual* also uses the Big 4 Wage Factor to apportion general office expenses other than engineering expenses. We have concluded that it would be appropriate to use the same factor or this purpose. Inasmuch as engineering expense is related to the equipment and facilities that are used in telephone operations, we have decided to apportion that expense on the basis of the apportionment of the combined direct investment.

301. Although the existing license contracts between AT&T and the BOCs will be terminated before access charges become effective, it will still be necessary to apportion this type of expense because some independents have similar arrangements and the BOC central organization will probably perform some services that AT&T General Departments have performed in the past. We believe expenses for services that are performed by an affiliated company should be apportioned in the same manner as expenses for services that a company performs for itself. We are accordingly requiring that license contract expense be apportioned in that manner.

302. Expenses and income charges and credits that are not included in one of the specific categories described in the rules will be apportioned on an aggregate basis. The Other Investment factor for indirect investment that is not land and building investment will be used for that purpose.

VI. *LEVELS OF AGGREGATION*

A. *Prior Proposals*

303. The tentative plan described in the *Second Supplemental Notice* proposed nationally averaged carrier's carrier access charges and the creation of an access charge revenue pool. Uniform charges necessarily require revenue pooling because different exchange carriers have different costs. Some carriers would be overcompensated and others would be deprived of a compensatory return if each

carrier kept the proceeds from access charges that are computed to reflect the average costs of all carriers.

304. The *Second Supplemental Notice* said that distributions from an access charge revenue pool would reallocate total access charge revenues "among the exchange carriers in order to enable each exchange carrier to receive its interstate exchange plant costs and a share of the residue that reflects its pro rata share of the interstate exchange plant investment." 77 FCC 2d at 233.

305. Some comments that were filed in response to the *Second Supplemental Notice* observed that we did not specify whether distributions taken from a pool would be based upon the authorized or the achieved rate of return. We always contemplated that any pool distributions would be based upon an achieved return although the charges would, of course, be designed to produce revenues that are equal to the authorized revenue requirement.

306. The *Fourth Supplemental Notice* invited comments upon the desirability and feasibility of some alternatives to nationwide uniform charges. One of those alternatives—separate access charges on a state-by-state basis—would have required revenue pooling. The other two alternatives—a separate schedule for a limited number of classes of exchange carriers or a separate schedule for a limited number of classes of exchanges—would not require revenue pooling.

307. All four alternatives were based upon the assumption that all exchange carriers would be participating in common tariff arrangements. We assumed that this would be the case because none of the telephone company comments that were filed in response to the *Second Supplemental Notice* expressed a desire to opt out of such arrangements. Inasmuch as some telephone company comments that were filed in response to the *Fourth Supplemental Notice* do express such a desire, the advantages or disadvantages of the alternatives described in that *Notice* may be academic unless we conclude that we can and should compel unwilling carriers to participate in common tariff arrangements.

B. *Compulsory Common Tariffs*

308. Most comments that discuss the advantages and disadvantages of common tariff arrangements apparently assume that this Commission does have discretion to require averaging or deaveraging, but a few participants have raised questions with respect to the scope of our discretion. Some carriers who do not desire to join in common tariff arrangements apparently believe that any carrier has an absolute right to establish its own rates based on its own costs.[108] Other participants who state that averaging is essential to achieve Communications Act goals contend, or at least imply, that it would

[108] *See* especially Rochester Telephone Corporation Reply, p. 14.

be unlawful for us to permit any carrier to withdraw from averaged common tariff arrangements.

309. No provision of the Communications Act explicitly supports either position. That Act does not expressly require averaged rates and it does not confer any express right to deaverage. Neither this Commission nor the courts have been required to determine whether a carrier has a right to establish separate charges because no carrier has ever attempted to withdraw completely from the uniform MTS rate structure.[109]

310. We believe that our general powers under Section 4(i) of the Act, 47 U.S.C. §154(i), are sufficient to enable this Commission to compel carriers to participate in common tariff arrangements if we find that such arrangements are necessary to accomplish Communications Act goals. Section 4(i) provides:

> The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.[110]

311. A rule that requires a common tariff arrangement would not conflict with any express provision of the Act. A rule that makes participation in such arrangements voluntary also would not conflict with any express provision of the Act. Therefore, we do have discretion to compel, or to refrain from compelling, participation in a common tariff arrangement.

312. We believe that our power to compel participation in such arrangements should be used sparingly. A carrier should not be prohibited from pursuing a course that its management believes to be in its best interests unless the public interest requires such a prohibition. A carrier obviously should not be precluded from filing separate access charge tariffs that reflect the costs of that carrier if such a prohibition would produce results that are less consistent with Communications Act goals than results that the filing of a separate tariff would produce.

313. In view of these conclusions we have decided that the advantages and disadvantages of mandatory common tariff arrangements should be examined separately for different groups of access

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[109] Rochester Telephone cites *American Telephone and Telegraph Company v. FCC*, 487 F.2d 864 (2d Cir. 1973) and *MCI Telecommunications Corp. v. FCC*, 561 F.2d 365, 375 (D.C. Cir.), *cert. denied*, 434 U.S. 1040 (1977), to support its claim that it has an absolute right to file its own tariffs. Neither case involved any question with respect to separate or common tariffs. Moreover, the general language with respect to carrier's rights related to revisions of carrier-initiated tariffs that had never been found to be unlawful. Those courts were not describing the scope of the remedial powers we may exercise after we have found that the entire telephone industry has been maintaining an unlawful rate structure.

[110] Those powers have been construed very broadly in the past. *See, e.g., U.S. v. Southwest Cable Co.*, 392 U.S. 197 (1968); *National Broadcasting Co. v. U.S.*, 319 U.S. 190 (1943).

elements. We have reached different conclusions for different groups.

314. The Carrier Common Line element was designed in part to mitigate the effects that unlimited deaveraging would produce. Therefore, we believe it is essential to recover those charges through interexchange carrier assessments that are computed on a uniform nationwide basis and to create a pool arrangement for the distribution of such revenues. Our purpose would be frustrated if some exchange carriers recovered the carrier's carrier portion of the Common Line revenue requirement directly from the interexchange carrier. Such a practice could lead to a deaveraging of MTS and other switched service rates that would reflect cost differences among carriers. This would impose burdens upon the customer of high cost or high SPF carriers that the Carrier Common Line charge was designed to avoid.

315. A common tariff arrangement is also necessary at this time because a large portion of the Carrier Common Line revenue requirement will be recovered through the premium access assessment during the early years of the transition. Differences in the quality of interconnection will vary from place to place and from month to month during the transition period. Any effort to measure premium value in a particular exchange in a particular month would create significant administrative burdens for all carriers and for this Commission. We have decided that it would be preferable to compute an annual premium on a national basis that reflects our best estimate of the premium access that will exist during a particular year. It may be impossible to compute a premium access charge in any other manner.

316. The considerations that require a uniform nationwide charge for the carrier's carrier portion do not apply to the end user portion of the Common Line revenue requirement. Premium access is not a factor and separate tariffs for the end user portion need not impose hardships in high cost or high SPF areas.[111] There is accordingly no reason to preclude a carrier from devising its own charges if it wishes to do so.

317. Moreover, a compulsory common tariff arrangement for that element would not only be unnecessary, but would also be undesirable. We have designed transitional rules for End User Common Line charges that give carriers considerable discretion in designing a transition to flat rates for all end users. Flexibility is desirable because different approaches are likely to be appropriate for different carriers in different areas.

318. Our effort to achieve parity among services would be frustrated if a carrier filed a tariff for one or two end user elements

[111] Universal Service Factor costs and transitional SPF costs will, of course, be assigned to the carrier's carrier portion. *See* Subparts III.B and III.C, *supra*.

that reflected its own costs and joined a common tariff for other end user elements that reflected average costs of a group of carriers. Some restriction upon the filing of separate end user tariffs is accordingly necessary in order to achieve the primary objective of this phase of this proceeding. Section 69.3 of our Rules permits a carrier to file a separate tariff for an end user access element if, but only if, that carrier files a separate tariff for all end user access elements.[112]

319. We do not perceive any significant advantage from requiring a common tariff for the other carrier's carrier elements that we have described as traffic sensitive. Any deaveraging of the access charges will not, of course, automatically lead to a deaveraging of the interexchange carrier's end user rates. Even if that result did occur, it appears doubtful that the differentials would be large enough to impose a significant hardship upon end users in particular areas. Present and proposed separations methods for the apportionment of traffic sensitive plant do not create the same kind of discrepancies that are or may be reflected in interstate NTS costs. Therefore, we will not preclude separate tariffs for the traffic sensitive elements.

320. We will, however, preclude a carrier from filing a separate tariff for any traffic sensitive element if the carrier does not file a separate tariff for all traffic sensitive elements. Many of these elements are closely interrelated and a combination of separate and common tariffs for the same carrier could produce anomalous results that are inconsistent with the goals and requirements of the Communications Act.

321. The existence of multi-carrier extended area arrangements also requires a further restriction upon the filing of separate tariffs for traffic sensitive elements. If an extended area arrangement exists an interexchange carrier that interconnects with any local exchange carrier in the extended area necessarily obtains access to the entire extended area. The local exchange carriers are essentially providing a joint access service. Therefore, we will not permit any local exchange carrier to file separate traffic sensitive tariffs for a portion of an extended area. We will permit carriers in an extended area to file a joint tariff for traffic sensitive elements that differs from any national common tariff if all of the participating carriers concur in the rate and agree upon an apportionment of the revenues. Such a joint tariff must, of course, reflect the combined costs of all participating carriers.

322. If carriers in an extended area cannot agree upon a rate for a particular area, common tariff arrangements that have been established nationally will have to be used for that purpose. Such a requirement is necessary to assure that some access charge will be

[112] All of the restrictions upon separate tariffs and deaveraging are described in Section 69.3.

effective in all areas even if the participating exchange carriers cannot agree upon rates or the division of revenues.

C. *Deaveraging By A Carrier*

323. A separate tariff for end user or traffic sensitive elements might be computed to reflect the average costs of a particular carrier or group of carriers. A tariff could also be devised to reflect greater disaggregation. The comments indicate that a few carriers may wish to file separate tariffs that are highly disaggregated.

324. Our discussion of deaveraging in the *Third Supplemental Notice* noted that past efforts to devise deaveraged rates for a particular carrier or group of carriers have not produced lawful rates. We also concluded that our past decisions have established a policy that precludes selective deaveraging by a carrier in the absence of a showing that such deaveraged rates reasonably approximate actual cost differences. 81 FCC 2d at 194. We said that we would continue to enforce that policy and we noted that Central Submission data submitted by AT&T indicates that AT&T did not have the data that would be necessary to justify a deaveraged rate schedule. 81 FCC 2d at 195.

325. We have not received any information in or out of this record during the intervening two years that would indicate that any carrier is presently in a position to devise highly disaggregated access tariffs that will not create new forms of discrimination. We have, therefore, concluded that unlimited deaveraging within tariffs of a particular carrier or group of carriers should not be permitted at this time.

326. Data that are collected on a study area basis may, however, be sufficient to enable a carrier to justify rate differentials among different study areas. We will, therefore, permit a carrier to file access tariffs with different rates in different study areas if it chooses to do so. Our decision to permit such filings does not, of course, relieve such a carrier of its duty to submit cost support data that will justify any such differentials.

D. *Voluntary Common Tariffs*

327. Most participants in this proceeding agree that exchange carriers who wish to enter into a voluntary common tariff arrangements and a voluntary revenue pool should be permitted to do so. Some participants have, however, observed that any averaging and pooling arrangement has some disadvantages. Some have said that such arrangements do not create incentives for users or carriers that promote economic efficiency.

328. AT&T observed (Comments, p. 71): "Because rate averaging separates prices from local costs, averaging encourages the overuse of the more costly but underpriced facilities and the underuse of the less costly but overpriced facilities."

329. Voluntary common tariff arrangements for access elements other than the Carrier Common Line element would not be likely to produce significant distortions because the lowest cost carriers are likely to withdraw from such pooling arrangements in due course. An access plan that includes such arrangements will probably ultimately produce common tariffs and revenue pools for a large number of relatively small companies that do in fact have comparable costs.

330. Some comments have observed that pooling does not create efficiency incentives for carriers that participate in a pool. For example, Rochester Telephone said (Comments, p. 34):

> If the pooled revenues are distributed according to each carrier's costs, as presumably they would have to be, there is little or no economic incentive to reduce the cost of access under this system. Indeed, an exchange carrier that reduces its costs becomes relatively more disadvantaged, for it receives from the pool a smaller proportion of the interstate revenues contributed by its subscribers to the pool.

331. The present partnership settlements arrangement for BOCs and independent telephone companies that are described as "cost study" companies essentially provides cost plus compensation for each carrier. This method of compensation does appear to create little or no incentive to improve efficiency. Many participants do believe, however, that any access charge revenue pool should be designed to provide a uniform return for all pool participants.[113]

332. Although a uniform common tariff arrangement necessarily requires a revenue pool, it does not inevitably require pool distributions that are based upon the settlements partnership model. It may be possible to create greater efficiency incentives by devising a pool distribution formula that does not guarantee a uniform return for all participants. Since such questions apply to involuntary as well as voluntary pools, we believe this possibility warrants further study. We do not, however, have sufficient information at this time to devise pool distribution rules that differ from the settlements model. The public interest would not be served by delaying initial access charges to devise such an alternative. We have accordingly decided to adopt distribution rules that do follow the settlements model.[114]

333. Rochester Telephone also asserts (Comments, p. 39) that companies that participate voluntarily in a common tariff and pooling arrangement "would run the risk of antitrust liability under the Sherman Act." It appears doubtful that common tariff and

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[113] *See* GTE, p. 23; United Telephone System, Inc., p. 2; Ketchikan Public Utilities, p. 7, Curtis M. Bushnell, p. 21.

[114] The distribution of revenues to carriers that are not average schedule companies is described in Sections 69.607–69.610 of the Rules.

revenue pooling arrangements that are limited to access services could provide a basis for a colorable antitrust claim. The Sherman Act does not prohibit concerted activities, it merely prohibits concerted activities that are likely to produce an unreasonable restraint of trade.

334. We observed in the *Second Supplemental Notice* that such arrangements are unlikely to produce anticompetitive effects. That *Notice* said (77 FCC 2d 235):

> Local exchange facilities are presently provided exclusively on a monopoly basis and carriers providing such service do not compete with each other in the provision of that service. We recognize that this situation may change with time as improving technology (*e.g.*, direct satellite, cellular radio) makes exchange competition more economically feasible. However, these changes will not occur in the short run. (footnote omitted).

335. Access service competition between the carriers that are likely to participate in a pool is not likely to occur even in the more distant future. Alternative access that bypasses wireline facilities of a local exchange carrier is likely to be offered in conjunction with an interexchange service. Therefore, a local exchange carrier is not likely to be providing bypass in the franchise area of another local exchange carrier if that carrier is not providing interexchange services. The MFJ bars the divested BOCs from the interexchange market and most smaller independents do not have the means to enter that market. One can imagine large independents offering bypass services in BOC exchanges, but the BOCs are not likely to remain in any pools by the time that becomes a realistic possibility. Therefore, any common tariff and pooling arrangements that we are mandating or permitting cannot be viewed as price-fixing or profit-pooling by actual or potential competitors in an access service market.

336. The Justice Department apparently shares our perception of the competitive implications of voluntary access pools. The Justice Department comments do not oppose voluntary common tariffs or voluntary pools as such.

337. Such voluntary arrangements not only do not have disadvantages that would warrant a prohibition, but also have important advantages. The telephone industry is composed of a limited number of large companies that serve over 90% of the local exchange subscribers and a very large number of small companies that serve the remaining subscribers. Most of these smaller companies have never filed any tariff of any kind with this Commission. It would be totally unrealistic to expect such companies to prepare and justify separate tariffs in accordance with the rules we are adopting in this *Report and Order*. It would also be unrealistic to suppose that this Commission could review 1500 access tariffs in a meaningful manner if they did choose to do so. A common tariff arrangement that most

of the exchange carriers can use is clearly necessary to make any access charge rules work. Such arrangements would, therefore, presumably be immune from antitrust sanctions because they are necessary to make the regulatory scheme work even if this Commission did not mandate or sponsor such arrangements. *See Silver v. New York Stock Exchange*, 373 U.S. 341 (1963).

338. The involuntary arrangements for universal service charges should not, of course, present any antitrust question because participation in those arrangements would be the product of regulatory coercion.[115]

E. *Creation of the Association*

339. A voluntary or involuntary common tariff arrangement necessarily requires that some entity compute the charges and prepare and justify the tariffs on behalf of all the participating carriers. A revenue pool requires that some entity compute the distributions that each participant is entitled to receive from the pool.

340. In the past AT&T has acted as a tariff filing agent for the entire industry and has also performed most of the administrative functions in connection with the settlements pooling arrangement. The AT&T role as a tariff filing agent is implicitly recognized in Section 203(a) of the Act. Section 203 requires every common carrier "except connecting carriers" to file tariffs with this Commission for interstate and international services. It also requires that the tariffs describe charges between points on the carrier's system and between points on the carrier's system and "points on the system of its connecting carriers." This essentially relieved a "connecting carrier" of the burden of filing its own tariffs with this Commission and imposed that burden upon the carrier that is not described as a "connecting carrier." The term "connecting carrier" encompasses most independent telephone companies and probably encompassed almost all non-Bell companies when the Act was adopted. Thus, Congress effectively made AT&T a tariff filing agent for the entire industry.

341. The *Fourth Supplemental Notice* invited comment on a proposal to create a new intra-industry entity to perform the tariff filing and pool distribution functions because such an AT&T role in the post-divestiture environment would appear to conflict with the spirit, and possibly the letter, of the then proposed consent decree. Most comments from participants who do not oppose any common tariff or pooling arrangement have endorsed the industry association concept.

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[115] The decision in *Cantor v. Detroit Edison Co.*, 428 U.S. 579 (1976), would not be analogous because the regulatory coercion in the rules we are adopting does not have the same *pro forma* character as the actions of the Michigan Commission.

342. A few comments have questioned the desirability or legality of Commission action to mandate the creation of such an association. Such participants apparently believe that we should allow institutional arrangements for common tariffs and pools to emerge spontaneously. We do not believe that would be a feasible option if an access charge system is to be in place by the beginning of 1984. Such an association must have a functioning organization by the time the divestiture occurs. We necessarily must mandate the creation of an exchange carrier association and adopt some rules with respect to its organization and functions in order to ensure that an access charge system will work.[116]

343. Rochester Telephone has questioned our authority to mandate the creation of such an association and has described such an action as a delegation of powers to a private organization. Comments, p. 39; Reply, p. 13. We do not believe it would be appropriate to describe our action as a "delegation" because the preparation of tariffs and the administration of revenue pools is not a governmental function. It would probably be more accurate to describe our action as an exercise of our Section 203(b)(2) power to modify the requirements of Section 203 by creating a new entity to perform functions that Section 203(a) assigned to AT&T. If we failed to exercise our power to transfer such functions from AT&T to a new entity we would be creating an unnecessary conflict between the regulatory scheme and the MFJ. Moreover, as previously noted, the creation of such an association is essential to the success of an access charge system and is accordingly within our Section 4(i) power to issue orders that are necessary to the performance of our statutory functions.

344. Although the Justice Department did not oppose common tariffs or voluntary pooling of access charge revenues, the Department has expressed the view that this Commission should not sponsor a carrier association. That view may reflect a concern that a Commission-sponsored association could become a vehicle for other concerted activities that might have anti-competitive implications. We feel that such activities are unlikely. Nevertheless, we have decided that we should impose some restrictions upon the scope of the association's activities. We will preclude the association from engaging in activities that are not directly related to the preparation of access charge tariffs or the distribution of access charge revenues unless such additional activities are expressly authorized by this Commission. We will, of course, expect the association to seek prior approval for any additional association activities.

F. *Organization of the Association*

345. We have concluded that membership in the association

[116] Those rules are set forth in Subpart G.

should be limited to exchange carriers that participate in access charge revenue pools that are administered by the association and that the governing board should be composed exclusively of exchange carrier representatives. Although the *Fourth Supplemental Notice* invited comment upon the advisability of including a Commission representative on the association board, further reflection leads us to conclude that it would be unwise to do so. This Commission will be obliged to review the tariffs that the association files and to determine the merits of any petitions to investigate, suspend or reject such tariffs. An appearance of a conflict of interest might be created if a Commission representative participated in the association decisions that might be challenged in such proceedings. We have also decided not to accept suggestions that state commissions, interexchange carriers or consumers be represented on the governing board of the association. As we stated in the *Fourth Supplemental Notice*, "the Communications Act already provides safeguards adequate to protect the interests of these groups in the fair, evenhanded implementation of any access charge plan we might adopt." 90 FCC 2d at 150.

346. We have concluded that we should adopt a rule describing the membership of the governing board in order to establish appropriate representation for different classes of carriers. We are not, however, adopting that rule at this time. We will issue a supplemental order in this docket adopting such a rule and prescribing some organizational steps after the notice period expires for carriers that may choose not to participate in common tariffs for 1984.[117]

347. We do not plan to adopt rules that would restrict the association's discretion in acquiring staff or borrowing staff from its members or contracting with accounting firms, banks or others to perform some of the association's tasks. The observation in the *Fourth Supplemental Notice* that the BOC central organization might continue to perform many tariff preparation and pool distribution functions that have traditionally been performed by AT&T personnel was presented as a possible solution to staffing problems the association may encounter. We do not believe, and have never believed, that it would be necessary or desirable for this Commission to prescribe the staffing arrangements the association would be required to adopt.

348. The association will be responsible for filing the Carrier

[117] We do not plan to invite further supplemental comments before we issue that supplemental order.

Common Line tariffs and common tariffs for every other access element for those carriers that choose to join in association tariff[118] In general, carriers may choose to participate in common tariffs for the end user elements or the traffic sensitive carrier's carrier elements or both. In order to enable the association to adjust its tariffs to reflect the costs of carriers that do choose to participate in common tariffs, we shall require that any exchange carrier that does not desire to participate in a common tariff provide ample advance notice that it has chosen to file a separate tariff.

349. The costs of managing the pooling and distribution, along with the costs of actually filing tariffs, are to be included among costs recovered through association charges.

G. *AT&T Role in Preparation of Initial Tariffs*

350. It appears doubtful that the association could have an organization in place in sufficient time to prepare the initial access service tariffs that must be filed by October 3, 1983. We have accordingly decided that AT&T should continue to perform its traditional role in the preparation of tariffs for the telephone industry until the initial access charge tariff is ready for filing.[119] AT&T should, of course, respond to policy directives from the association directors when a governing board has been selected.

351. AT&T participation in the preparation of the initial access charge tariffs would probably be necessary even if the association could create a functioning organization immediately. AT&T will necessarily be required to file new end user tariffs for interstate and international services in order to reflect the effect of the access charges. In view of the magnitude of the changes that the implementation of initial access charges will produce, access charges and new end user charges for interexchange services should become effective simultaneously. We could not responsibly permit massive changes in end user rates to become effective upon less than 90 days notice and it appears doubtful that we could require more than 90 days notice for access tariff filings. In these circumstances, coordination in the development of access charge tariffs and new end user tariffs for AT&T services is essential to ensure a smooth transition.[120]

352. Such coordination problems should not be as significant in subsequent years because the changes in access charges probably

[118] This will, of course, take the form of a single tariff with multiple elements. We will permit carriers who do not join some elements to cross-reference the association tariff for elements such carriers join.

[119] Inasmuch as the association will be relieving AT&T of burdens imposed by Section 203, we expect that AT&T will lend funds to the association to permit it to function until it receives a disbursement from access charge revenues.

[120] End user rates of other interexchange carriers will undoubtedly also be changed to reflect access charges. We do not, however, expect to require 90 days notice from those carriers.

will not be significant enough to require simultaneous changes in end user rates. It should be possible to achieve a smooth transition by mandating an AT&T role in the preparation of common tariffs for access charges that ends when the initial access charges are filed. We do not envision, mandate or sanction any AT&T role in the preparation of access charge tariffs or the distribution of access charge revenues after divestiture of the BOCs occurs.

353. The Justice Department comments indicate that the Department does not object to a pre-divestiture AT&T role in the preparation of access charge tariffs. We accordingly assume that the procedure we envision will not conflict with the letter or the spirit of the MFJ.

354. The preparation of the initial access charge tariffs will undoubtedly be a difficult task. In order to enable AT&T to begin collecting the necessary data, we are making this *Order* effective on the day after the date of publication in the *Federal Register*. We have decided to require exchange carriers that choose to file any separate tariffs for 1984 to notify AT&T of their decision within 40 days after the release of this *Report and Order*. We are also requiring that AT&T notify all the affected carriers that this notice requirement exists within 10 days of the release of this *Report and Order*.

355. It is vitally important that acceptable access tariffs become effective by the day on which divestiture of the BOCs occurs. We therefore feel compelled to monitor the progress of access charge preparation. To this end, we require AT&T to file progress reports until the initial access charges have been filed. The first report will be filed 8 weeks after the release of this *Report and Order* and subsequent reports will be filed at 6-week intervals.

356. We also expect that AT&T and any carrier that may choose to file a separate tariff will file petitions for waiver if shortcuts must be used to adapt readily available data to the methods we are prescribing for the computation and assessment of access charges. We recognize that some carriers will not be able to provide all of the data that would be required and that some kind of sample procedure will be necessary to develop data for average schedule companies. The filing of such waiver petitions will provide an additional opportunity to monitor the progress of access charge preparation.[121]

357. We believe the procedures we are adopting will achieve the purposes of this proceeding without imposing undue burdens upon any carrier or creating administrative burdens that exceed the capabilities of our staff.[122]

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[121] The Chief of the Common Carrier Bureau will, of course, act upon any waiver petitions that do not present fundamental policy questions that require a Commission decision.

[122] We have necessarily been obliged to impose some restrictions upon the options of carriers that do not choose to join in common tariffs in order to prevent the filing

H. *Regulatory Flexibility Certification*

358. For the following reasons, we certify that the Regulatory Flexibility Act is not applicable to the rules we are adopting in this proceeding.

359. A few of the comments have questioned the adequacy of the initial regulatory flexibility analysis in the *Fourth Supplemental Notice.*[123] The Regulatory Flexibility Act is not literally applicable to this proceeding. That Act was apparently designed for the protection of small businesses that are directly subject to administrative rules rather than businesses that are indirectly affected by the results that any rules will produce. The access charge rules are, of course, imposed upon the local exchange carriers that will be required to compute and collect access charges in accordance with those rules. Those carriers are accordingly the only businesses that might be entitled to claim some protection under that Act.

360. Although some local exchange carriers are very small, no telephone company appears to fall within the Regulatory Flexibility Act's very special definition of a "small entity." That Act incorporates the definition of a "small business" in Section 3 of the Small Business Act as a definition of a "small entity." The latter definition excludes any business that is dominant in its field of operation. Exchange carriers, even small ones, enjoy a dominant monopoly position in their local service area. This Commission has found all exchange carriers to be dominant in the *Competitive Carrier Rulemaking*, 85 FCC 1, 23–24 (1980). Indeed the smallest exchange carriers are probably even more dominant than the large ones because bypass competition is very unlikely to develop in the areas they serve.

361. Although the Regulatory Flexibility Act is not applicable to this proceeding, Congress did express essentially the same policy objective in the Communications Act. Sections 2(b) and 203(a) of the 1934 Act were designed to relieve most small telephone companies from many reporting and other burdens that the Act imposed upon AT&T.

362. We recognize that we cannot and should not expect a telephone company with eight employees to do everything that Pacific Telephone is expected to do. We have designed the access charge rules to minimize the administrative burdens that are imposed upon smaller companies. We have mandated the creation of an association that will perform tariff preparation and pool distribution functions and we have designed requirements for those func-

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of tariffs that could not be adequately reviewed. For example, the rules we are adopting preclude tariffs that are disaggregated within a study area. We may relax such restrictions in the future after we have acquired more experience with access service tariffs.

[123] *See* especially Small Business Administration comments.

tions that will adapt the existing average schedule settlements procedures to an access charge system. We believe that we have complied fully with the requirements of the Communications Act and the spirit of the Regulatory Flexibility Act.

VII. *CONCLUSION*

363. We emphasize how difficult and how important has been the task of devising an access charge plan. In this proceeding, we have focused on the present and the future rather than the past. The monopoly telecommunications environment of the past has ended. The approaches taken in the past to balance the four goals of universal service, non-discriminatory, cost-based prices and a viable, efficient telecommunications network—goals which we believe have been the aim of the Communications Act since its passage—are no longer appropriate. These past approaches have essentially been nothing more than the development of special, discriminatory rates for different customers making identical use of access plant in interstate service. It is readily apparent that in an era of facilities-based competition and resale such approaches are not viable. Any attempt to insure continued support for local telephone service through the prohibition of bypass systems would lead to a stifling of innovation and, quite probably, to the transformation of the nation's telephone system—currently the best in the world—into an outmoded and technically inefficient system. Such a system would almost certainly be unable to attract sufficient capital to maintain, much less upgrade, the system.

364. In our *Fourth Supplemental Notice* we put forth for comment four differing approaches to the resolution of the principal question in the access charge docket. These were not presented as specific plans subject to a vote of the parties. Rather they were propounded as examples of the types of plans which could be developed. In issuing that *Notice* we hoped that participants would propose methods to combine or improve upon the simplistic approaches we described. Our hope was well justified. The comments filed by participants in this proceeding have, in overwhelming measure, been constructive and of tremendous value to us in fulfilling our task. Our task, we state once again, is to devise that access charge plan which best balances the many objectives of the Communications Act.

365. The plan we adopt today is largely based upon those comments. It recognizes both the need for some national averaging and the clear advantages of disaggregation when such disaggregation is desired by the carriers and is in the public interest. It clearly recognizes the need for a smooth transition from the existing system of discriminatory but largely usage based carrier charges to a new system relying chiefly upon flat customer charges. Such a movement is, in our opinion, necessary to serve the public interest and to insure

the maintenance of our nationwide network of telephone service. Despite this we have, through our plan, insured that universal service will not be eliminated. The inclusion of a permanent, nationally averaged, carrier's pool to direct revenues to high cost areas is a central feature of this plan. We have not been limited by the traditional division between "traffic sensitive" and "non-traffic sensitive" costs in determining which costs should ultimately be placed upon individual customers. Rather, we have attempted to differentiate network functions, which may appropriately be recovered through carrier's carrier charges, from end user service, which can only be ordered by end users, which is dedicated to individual end users, and which must, in our opinion, be recovered from those end users.

366. We have directed the Common Carrier Bureau to develop a monitoring function to insure that the changes that will result from this *Report and Order* do not impair universal service. Such a monitoring function must and will be in place before the institution of access charges. Along with our transition plan, this will insure that, should unforeseen circumstances arise, we have an ample opportunity to act before irreparable harm to the universal character of telephone service takes place. We now commit ourselves to taking such action should, contrary to our expectations, it be necessary. Such actions might include adjusting end user flat charges, adjusting the Universal Service Fund, adjusting the degree of nationwide pooling, or requiring that certain transitional benchmarks be met.

367. Finally, we have provided a two-year period after individual phone companies are responsible for collecting most dedicated NTS costs from their subscribers before equal flat customer access charges will be required. We recognize that during the transition period some telephone companies may develop mechanisms for recovering those costs from their customers which will better balance the four goals of the Communications Act than can a single national plan. We will conduct a further notice and comment phase of this proceeding in the fifth year and will evaluate nationwide and local effects of the transition before proceeding with the final steps in the transition plan. We recognize that a plan that may be ideal for most of the country may not be ideal for all of the country. This *Report and Order* recognizes that individual carrier flexibility is fully consistent with the Communications Act. We expect to work with State regulatory commissions, and State legislatures, during the transition period to continue to seek better ways to reconcile the need for an efficient, cost-based recovery scheme with the need for a universal telephone system and to harmonize our efforts so as not to frustrate the achievement of our policies and objectives.

368. The task we have faced in designing our access charge plan has been, perhaps, the most difficult ever to come before the

Commission. It is also, quite probably, the most important to have come before us. The correct resolution of this phase of this docket is an essential prerequisite for the development of meaningful competition in interstate telecommunications, for the assurance that common carrier telecommunications can play the central role in our nation's economy and, indeed, in the world economy that is warranted by its value to citizens and by its unique characteristic of being substitutable for a wide variety of goods and services. No one, and no commission, can predict the future of telecommunications with any degree of certainty. Our access charge plan is, in our opinion, the best plan for the present and immediate future that can be devised based upon our present level of knowledge. We remain committed to careful monitoring of developments in the field of common carrier telecommunications and to making any adjustments that may be warranted, based upon these future developments, to serve the public interest.

VIII. *ORDERING CLAUSES*

369. Accordingly, IT IS HEREBY ORDERED, That pursuant to 47 U.S.C. §§154(i) and (j), 201, 202, 203, 205, 218 and 403 and 5 U.S.C. §553, Part 69 IS ADDED to the Rules of this Commission as set forth in the attached Appendix A, effective on the date following publication in the *Federal Register*.

370. IT IS FURTHER ORDERED, That each revenue requirement that is computed in accordance with such rules shall be based upon a 12.75% return until further order of this Commission.

371. IT IS FURTHER ORDERED, That in accordance with the rules in Appendix A and the directives of this *Report and Order*, AT&T shall prepare the initial tariffs for interstate access services provided by members of telephone company association and shall file these tariffs no later than October 3, 1983.

372. IT IS FURTHER ORDERED, That AT&T file reports describing its progress in preparing these initial access tariffs with the Chief, Common Carrier Bureau. These reports shall continue until AT&T has filed the initial access tariffs. The first report shall be filed eight (8) weeks after the release of this *Report and Order*. Subsequent reports shall be filed thereafter at six (6) week intervals.

373. IT IS FURTHER ORDERED, That within ten (10) days of the release of this *Report and Order* AT&T shall notify each telephone company that has participated in the division of revenues or settlements process that the company is required to decide whether to file any tariffs separate from those filed by the association and to notify AT&T of its decision.

374. IT IS FURTHER ORDERED, That each telephone company that has participated in the division of revenues or settlements process shall notify AT&T of its decision to file any separate tariffs within forty (40) days of the release of this *Report and Order*.

375. IT IS FURTHER ORDERED, That the Petition for Evidentiary Hearing of the United States Transmission Systems, Inc. filed on June 26, 1980, IS DENIED.

376. IT IS FURTHER ORDERED, That the Motions for Leave to File Late Comments filed by the Federal Executive Agencies and the Council on Wage and Price Stability ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION*
WILLIAM J. TRICARICO *Secretary*

NOTE: Appendices B, C, D, E, F, G and attachments are available for public inspection in FCC Dockets Branch, Room 239 and FCC Library, Room 639, 1919 M Street, N.W., Washington, D.C. 20554.

APPENDIX A

Part 69 is added to Chapter I of Title 47 of the Code of Federal Regulations to read as follows:

Part 69. Access Charges

Subpart A: - General

Sec. 69.1. Application of access charges.

Sec. 69.2. Definitions.

Sec. 69.3. Filing of access service tariffs.

Sec. 69.4. Charges to be filed.

Subpart B: - Computation of Charges

Sec. 69.101. General.

Sec. 69.102. Dedicated Access Line.

Sec. 69.103. Pay Telephone.

Sec. 69.104. End User Common Line.

Sec. 69.105. Carrier Common Line.

Sec. 69.106. Line Termination.

Sec. 69.107. Local Switching.

Sec. 69.108. Intercept.

Sec. 69.109. Information.

Sec. 69.110. Operator Assistance.

Sec. 69.111. Common Transport.

Sec. 69.112. Dedicated Transport.

Sec. 69.113. Special Access.

Sec. 69.114. Billing and Collection.

Subpart C - Computation of Transition Charges

Sec. 69.201. General.

Sec. 69.202. End User Common Line charges.

Sec. 69.203. Minimum charges.

Sec. 69.204. Usage charges.

Sec. 69.205. Maximum charges.

Sec. 69.206. Transitional surcharges.

Sec. 69.207. Premium Access.

Sec. 69.208. Transitional Carrier Common Line.

Subpart D - Apportionment of Net Investment

Sec. 69.301. General.

Sec. 69.302. Net investment.

Sec. 69.303. Station equipment.

Sec. 69.304. Customer OSP.

Sec. 69.305. Carrier OSP.

Sec. 69.306. Central office equipment.

Sec. 69.307. Buildings.

Sec. 69.308. Land.

Sec. 69.309. Other investment.

Subpart E - Apportionment of Expenses

Sec. 69.401. Direct expenses.

Sec. 69.402. Current taxes.

Sec. 69.403. Deferred tax expenses.

Sec. 69.404. Traffic expenses.

Sec. 69.405. Commercial expenses.

Sec. 69.406. Revenue Accounting expenses.

Sec. 69.407. General Office expenses.

Sec. 69.408. Relief and Pensions.

Sec. 69.409. License Contract expenses.

Sec. 69.410. Other expenses.

Subpart F - Segregation of Common Line Element Revenue Requirement

Sec. 69.501. General.

Sec. 69.502. Base factor apportionment.

Sec. 69.503. Apportionment of transitional portion.

Subpart G - Exchange Carrier Association

Sec. 69.601. Exchange carrier association.

Sec. 69.602. Board of directors.

Sec. 69.603. Association functions.

Sec. 69.604. Billing and collection of access charges.

Sec. 69.605. Distribution of Carrier Common Line revenues.

Sec. 69.606. Computation of average schedule company payments.

Sec. 69.607. Disbursement of Carrier Common Line residue.

Sec. 69.608. Carrier Common Line hypothetical net balance.

Sec. 69.609. End User Common Line hypothetical net balances.

Sec. 69.610. Other hypothetical net balances.

AUTHORITY: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

69.1. Application of access charges.

(a) This Part establishes rules for access charges for interstate or foreign access services provided by telephone companies on or after January 1, 1984.

(b) Charges for such access services shall be computed, assessed and collected and revenues from such charges shall be distributed as provided in this Part. Access service tariffs shall be filed and supported as provided under Part 61 of this chapter, except as modified herein.

69.2. Definitions.

For purposes of this Part:

(a) "Access Service" includes services and facilities provided for the origination or termination of any interstate or foreign telecommunication that is subject to regulation pursuant to Title II of the Communications Act or provided for the origination or termination of any interstate or foreign enhanced service that is exempt from tariff regulation pursuant to Subpart G of Part 64 of this chapter;

(b) "Annual revenue requirement" means the sum of the return component and the expense component;

(c) "Association" means the telephone company association described in Subpart G of this Part;

(d) "Big 4 Wage Factor" means that ratio of combined wage expense except building maintenance wage expense attributable to general office space in the following expense categories:

(1) Maintenance;

(2) Traffic;

(3) Commercial; and

(4) Revenue Accounting;

(e) "Buildings" includes investment that is described as building investment in the *Separations Manual*;

(f) "Carrier Outside Plant" or "Carrier OSP" means all outside plant that is not Customer OSP;

(g) "Central Office Equipment" or "COE" includes all equipment or facilities that are described as Central Office Equipment in the *Separations Manual*;

(h) "Commercial Expenses" includes all expenses that are described as Commercial Expenses in the *Separations Manual*, except for any expense incurred in computing, billing or collecting access charges which shall be deemed to be Revenue Accounting expense;

(i) "Current taxes" includes taxes other than property taxes that are actually accrued during the relevant period less credits attributable to past deferrals and does not include hypothetical taxes that are allowable expenses for ratemaking purposes or taxes assessed upon end users;

(j) "Customer Outside Plant" or "Customer OSP" means all lines or trunks on the customer side of a Class 5 or end office switch, including lines or trunks that do not terminate in such a switch, except lines or trunks that connect an interexchange carrier or enhanced service provider facility with such a switch;

(k) "Dedicated access line" means a WATS access line or a private line that does not terminate in customer premises equipment that is used exclusively for a particular interexchange service;

(1) "Direct Expense" means expenses that are attributable to a particular category of tangible investment described in Subpart D of this Part and includes:

(1) Maintenance;

(2) Depreciation and amortization;

(3) Rental payments for buildings, facilities or equipment; and

(4) Property taxes;

(m) "End user" means any customer of an interstate or foreign telecommunications service or enhanced service that is not a carrier or enhanced service provider except that a carrier other than a telephone company or an enhanced service provider shall be deemed to be an "end user" when such carrier or enhanced service provider uses a telecommunication service for administrative purposes and a person or entity that offers telecommunications services exclusively as a reseller shall be deemed to be an "end user" if all resale transmissions offered by such reseller originate on the premises of such reseller;

(n) "Entry switch" means the telephone company switch in which a dedicated transport line or trunk terminates;

(o) "Expense component" means the total expenses and income charges for an annual period that are attributable to a particular element or category;

(p) "Expenses" include allowable expenses in the 600 series of the Uniform System of Accounts apportioned to interstate or international services pursuant to the *Separations Manual* and allowable income charges apportioned to interstate and international services pursuant to the *Separations Manual*;

(q) "General Office Expenses" includes Executive (Account 661) expense, Treasury (Account 663) expense, Law (Account 664) expense, Other General (Account 665) expense and the portion of Accounting (Account 662) expense that is not Revenue Accounting expense;

(r) "Interexchange" or the "interexchange category" includes services or facilities provided as an integral part of an interstate or foreign telecommunications or an

interstate or foreign enhanced service that is not described as "access service" for purposes of this Part;

(s) "License contract" means an agreement to reimburse an entity that is jointly owned by telephone companies or companies that own telephone companies or an entity that directly or indirectly controls or is controlled by, or is under direct or indirect control with, a telephone company, for services, facilities, patents or other know-how;

(t) "Line" or "trunk" includes transmission facilities such as microwave towers, satellites, earth stations, etc. as well as wire and cable;

(u) "Net investment" means allowable original cost investment in Accounts 100.1–100.4 and 122 that has been apportioned to interstate and foreign services pursuant to the *Separations Manual* from which depreciation, amortization and other reserves attributable to such investment that has been apportioned to interstate and foreign services pursuant to the *Separations Manual* have been subtracted and to which working capital that is attributable to interstate and foreign services has been added;

(v) "Origination" of a service that is switched in a Class 4 switch or an interexchange switch that performs an equivalent function ends when the transmission enters such switch and "termination" of such a service begins when the transmission leaves such a switch, except that:

(1) Switching in a Class 4 switch or transmission between Class 4 switches that is not deemed to be interexchange for purposes of the Modified Final Judgment entered August 24, 1982, in *United States v. Western Electric Co.*, D.C. Civil Action No. 82–0192, will be "origination" or "termination" for purposes of this Part, and;

(2) "Origination" and "termination" does not include the use of any part of a line, trunk or switch that is not owned or leased by a telephone company;

(w) "Origination" of any service other than a service that is switched in a Class 4 switch or a switch that performs an equivalent function ends and "termination" of any such service begins at a point of demarcation that corresponds with the point of demarcation that is used for a service that is switched in a Class 4 switch or a switch that performs an equivalent function;

(x) "Outside Plant" or "OSP" includes all equipment or facilities that are described as outside plant in the *Separations Manual*;

(y) "Private line" means a line that is used exclusively for an interexchange service other than MTS or WATS, including a line that is used at the closed end of an FX or CCSA service or any service that is substantially equivalent to a CCSA service;

(z) "Return component" means net investment attributable to a particular element or category multiplied by the authorized annual rate of return;

(aa) "Revenue Accounting Expenses" includes all expenses that are described as Revenue Accounting Expenses in the *Separations Manual* and expenses associated with the preparation of access charge tariffs and the distribution of access charge revenues;

(bb) "Station equipment" includes all equipment or facilities that are described as station equipment in the *Separations Manual* except station equipment that is used by telephone companies in their own operations;

(cc) "Telephone company" means a carrier that provides telephone exchange service as defined in Section 3(r) of the Communications Act of 1934;

(dd) "Traffic Expenses" includes all expenses that are described as traffic expenses in the *Separations Manual*;

(ee) "Unit of capacity" means the capability to transmit one conversation; and

(ff) "WATS access line" means a line or trunk that is used exclusively for WATS service.

69.3. Filing of access service tariffs.

(a) A tariff for access service shall be filed with this Commission for an annual period. Such tariffs shall be filed so as to provide a minimum of 90 days notice, with a scheduled effective date of January 1.

(b) The requirement imposed by paragraph (a) of this Section shall not preclude the filing of revisions to those annual tariffs that will become effective on dates other than January 1.

(c) Any access service tariff filing, the filing of any petitions for rejection, investigation or suspension and the filing of any responses to such petitions shall comply with the applicable rules of this Commission relating to tariff filings.

(d) The association shall file a tariff as agent for all telephone companies that participate in an association tariff.

(e) A telephone company or group of telephone companies may file a tariff that is not an association tariff. Such a tariff may cross-reference the association tariff for some access elements and include separately computed charges of such company or companies for other elements. Any such tariff must comply with the requirements hereinafter provided:

(1) Such a tariff must cross-reference association charges for the Carrier Common Line element or elements if such company or companies participate in the distribution of revenues from such elements;

(2) Such a tariff that cross-references an association charge for any end user access element or the transitional surcharge must cross-reference association charges for all end user access elements and the transitional surcharge;

(3) Such a tariff that cross-references an association charge for any carrier's carrier access element other than the Carrier Common Line element or elements and the transitional surcharge must cross-reference association charges for all carrier's carrier access charges other than the Carrier Common Line element or elements and the transitional surcharge;

(4) Any charge in such a tariff that is not an association charge must be computed to reflect the combined investment and expenses of all companies that participate in such a charge;

(5) A telephone company or companies that elect to file such a tariff for 1984 access charges shall notify AT&T on or before the 40th day after the release of the Commission order adopting this Part;

(6) A telephone company or companies that elect to file such a tariff for any year subsequent to 1984 shall notify the association not later than June 30 of the preceding year if such company or companies did not file such a tariff in such preceding year or cross-referenced association charges in such preceding year that will not be cross-referenced in the new tariff;

(7) Such a tariff shall not contain charges for any access elements that are disaggregated or deaveraged within a study area that is used for purposes of jurisdictional separations;

(8) Such a tariff for a company that provides extended area local exchange telephone service shall not establish any charge for a carrier's carrier access element that does not apply to the entire extended area; and

(9) Such a tariff shall not include a charge other than an association charge for an extended area that is served by two or more telephone companies without the concurrence of all telephone companies that serve such extended area.

69.4. Charges to be filed.

(a) The end user charges for access service filed with this Commission shall include charges for each of the following elements:

(1) Dedicated Access Line;

(2) Pay Telephone; and

(3) End User Common Line.

(b) Except as provided in Subpart C of this Part, the carrier's carrier charges for access service filed with this Commission shall include charges for each of the following elements:

(1) Carrier Common Line;

(2) Line Termination;

(3) Local Switching;

(4) Intercept;

(5) Information;

(6) Operator Assistance;

(7) Common Transport;

(8) Dedicated Transport; and

(9) Special Access.

(c) The carrier's carrier charges for carriers that offer a billing and collection or billing information service shall also include a Billing and Collection element.

Subpart B: Computation of Charges

69.101. General.

Except as provided in Subpart C of this Part, charges for each access element shall be computed and assessed as provided in this Subpart.

69.102. Dedicated Access Line.

(a) A charge that is expressed in dollars and cents per line per month shall be assessed upon end users for each interstate or foreign dedicated access line.

(b) Such charge will be computed by dividing one-twelfth of the projected annual revenue requirement for the Dedicated Access Line element by the projected average number of interstate or foreign dedicated access lines in use during such annual period.

69.103. Pay Telephone.

(a) A charge that is expressed in dollars and cents per call shall be assessed upon end users for each interstate or foreign call that is placed from a pay telephone, except that collect or third number billing calls will not be assessed.

(b) Such charge shall be computed by dividing the projected annual revenue requirement for the Pay Telephone element by the projected annual number of calls that are subject to assessment.

69.104. End User Common Line.

(a) A charge that is expressed in dollars and cents per line per month shall be assessed upon end users that subscribe to local exchange telephone service. Such charge shall be assessed for each line between the premises of an end user and a Class 5 office that is or may be used for local exchange service transmissions.

(b) Charges to multi-line subscribers shall be computed by multiplying a single line rate by the number of lines used by such subscriber.

(c) Charges to party line subscribers shall be computed by dividing a single line rate by the number of users that share such line.

(d) The single line rate or charge shall be computed by dividing one-twelfth of the projected annual revenue requirement for the End User Common Line element by the projected average number of local exchange service subscriber lines in use during such annual period.

69.105. Carrier Common Line.

(a) A charge that is expressed in dollars and cents per conversation minute shall be assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services.

(b) A per minute charge shall be computed by dividing the projected annual revenue requirement for the Carrier Common Line element by the projected annual conversation minutes for all interstate or international services that use local exchange switching facilities. Each minute of use of any local exchange switch by such services shall be counted for purposes of computing and assessing this charge.

69.106. Line Termination.

(a) A charge that is expressed in dollars and cents per conversation minute shall be assessed upon all interexchange carriers that use local exchange facilities for the provision of interstate or foreign telecommunications services.

(b) A per minute charge shall be computed by dividing the projected annual revenue requirement for the Line Termination element by the projected annual conversation minutes for all interstate or foreign services that use local exchange switching facilities. Each minute of use of any termination in a local exchange switch by such services shall be counted for purposes of computing and assessing this charge.

69.107. Local Switching.

(a) Charges that are expressed in dollars and cents per conversation minute shall be assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign services.

(b) Separate charges shall be established for two categories of service. The first category, or LS 1, shall consist of local dial switching for services other than MTS or WATS that is provided through a line side termination in a Class 5 switch or through a termination in a local tandem switch. The second category, or LS 2, shall consist of local dial switching for MTS and WATS and local dial switching for a service other than MTS or WATS that is provided through a trunk side termination in a Class 5 switch.

(c) The projected annual revenue requirement for Local Switching shall be apportioned between LS 1 and LS 2 on the basis of weighted relative usage. LS 1 dial equipment minutes shall be counted as one. LS 2 dial equipment minutes shall be

multiplied by the Toll Weighting Factor or TWF that is used for jurisdictional separations purposes to allocate investment in a particular type of switch.

(d) A per minute charge for the LS 1 category shall be computed by dividing the LS 1 portion of the annual revenue requirement by the projected annual LS 1 conversation minutes.

(e) A per minute charge for the LS 2 category shall be computed by dividing the LS 2 portion of the projected annual revenue requirement by the projected annual LS 2 conversation minutes.

(f) If end users of an interstate or foreign service that uses local switching facilities pay message unit charges for such calls in a particular exchange, a credit shall be deducted from the Local Switching element charges to such carrier for access service in such exchange. The per minute credit for each such exchange shall be multiplied by the monthly conversation minutes for such service to compute the monthly credit to such a carrier.

(g) If all local exchange subscribers in such exchange pay message unit charges, the per minute credit described in paragraph (f) of this Section shall be computed by dividing total message unit charges to all subscribers in a particular exchange in a representative month by the total minutes of use that were measured for purposes of computing message unit charges in such month.

(h) If some local exchange subscribers pay message unit charges and some do not, a per minute credit described in paragraph (f) of this Section shall be computed by multiplying a credit computed pursuant to paragraph (g) of this Section by a factor that is equal to total minutes measured in such month for purposes of computing message unit charges divided by the total local exchange minutes in such month.

69.108. Intercept.

(a) A charge that is expressed in dollars and cents per conversation minute shall be assessed upon all interexchange carriers that use local exchange facilities for the provision of interstate or foreign telecommunication services.

(b) A per minute charge shall be computed by dividing the projected annual revenue requirement for the Intercept element by the projected annual conversation minutes for all interstate or foreign services that use local exchange switching facilities.

69.109. Information.

(a) A charge shall be assessed upon all interexchange carriers that are connected to assistance boards through interexchange directory assistance trunks.

(b) If such connections are maintained exclusively by carriers that offer MTS, the projected annual revenue requirement for the Information element shall be divided by 12 to compute the monthly assessment to such carriers.

(c) If such connections are provided to additional carriers, charges shall be established that reflect the relative use of such directory assistance service by such interexchange carriers.

69.110. Operator Assistance.

(a) A charge shall be assessed upon all interexchange carriers that offer an operator-assisted service that uses local exchange switching facilities and uses the services of telephone company operators.

(b) If such service is provided exclusively to the carriers that offer MTS, the projected annual revenue requirement for the Operator Assistance element shall be divided by 12 to compute the monthly assessment to such carriers.

(c) If such a service is provided to additional carriers a charge that is expressed in dollars and cents per call shall be assessed upon each carrier that receives such a service.

(d) Such a per call charge shall be computed by dividing the projected annual revenue requirement for the Operator Assistance revenue requirement by the projected annual number of operator-assisted calls.

69.111. Common Transport.

(a) A charge that is expressed in dollars and cents per conversation minute shall be assessed upon all interexchange carriers that use switching or transmission facilities that are apportioned to the Common Transport element for purposes of apportioning net investment.

(b) The per minute charge shall be weighted by a distance factor that reflects the airline distance between the Class 5 or end office switch that serves an end user and the entry switch.

(c) Charges shall be designed to produce annual revenue that is equal to the projected annual revenue requirement for the Common Transport element.

69.112. Dedicated Transport.

(a) The projected annual revenue requirement for Dedicated Transport shall be divided into three parts. The revenue requirement shall be apportioned on the basis of relative net investment in the following investment categories:

(1) interface arrangements;

(2) voice grade transmission facilities; and

(3) conditioning arrangements.

(b) Appropriate subelements shall be established for the use of interface arrangements. Charges for such subelements shall be assessed and computed as follows:

(1) Such charges shall be assessed upon all interexchange carriers for the interface arrangements they use to provide interstate or foreign services;

(2) Charges for all such subelements shall be designed to produce total annual revenues that are equal to the portion of the projected annual revenue requirement for Dedicated Transport that has been apportioned to the interface arrangements subelements; and

(3) Charges for individual subelements shall be designed to reflect cost differences among such subelements in a manner that complies with applicable Commission rules or decisions.

(c) A charge for the use of voice grade transmission facilities shall be assessed upon interexchange carriers that use such facilities to provide interstate or foreign services. Such charges shall be expressed in dollars and cents per unit of capacity. Total units of capacity provided to an interexchange carrier shall be measured by ascertaining the number of conversations that could be transmitted simultaneously without producing blocking in the dedicated transport facilities. The capacity unit charge for carriers that offer MTS shall be weighted by a distance factor that reflects the airline distance between the entry switch and the interexchange facility. The capacity unit charge for other carriers shall be weighted by a distance factor that reflects the lesser or least of the airline distance between the entry switch and such carrier's interexchange facility or the airline distance between the entry switch and any interexchange facility of carriers that offer MTS that is located within 5 miles of such carrier's interexchange facility.

(d) Appropriate subelements shall be established for the use of conditioning arrangements. Charges for such subelements shall be assessed and computed as follows:

(1) Such charges shall be assessed upon all interexchange carriers that use conditioning arrangements in their provision of interstate or foreign services;

(2) Charges for all such subelements shall be designed to produce total annual revenues that are equal to the portion of the projected annual revenue requirement for Dedicated Transport that has been apportioned to the conditioning arrangements subelements; and

(3) Charges for individual subelements shall be designed to reflect cost differences among such subelements in a manner that complies with applicable Commission rules or decisions.

69.113. Special Access.

(a) Appropriate subelements shall be established for the use of equipment or facilities that are assigned to the Special Access element for purposes of apportioning net investment.

(b) Charges for all subelements shall be designed to produce total annual revenue that is equal to the projected annual revenue requirement for the Special Access element.

(c) Charges for an individual subelement shall be assessed upon all interexchange carriers or enhanced service providers that use the equipment or facilities that are included within such subelement.

(d) Charges for individual subelements shall be designed to reflect cost differences among subelements in a manner that complies with applicable Commission rules or decisions.

69.114. Billing and Collection.

(a) Billing and collection service shall be offered to all interexchange carriers if such a service is offered to any interexchange carrier. Charges shall be assessed upon all interexchange carriers that elect to use such services.

(b) Any difference in charges for such service or for a billing information service shall reasonably approximate cost differences in the service provided.

Subpart C: Computation of

Transition Charges

69.201. General.

Notwithstanding sections 69.4, 69.104 and 69.105, charges for the access elements described in this subpart shall be computed in the manner described in this subpart for the period commencing January 1, 1984 and ending December 31, 1990.

69.202. End User Common Line charges.

(a) Common line charges shall consist of a minimum charge that is expressed in dollars and cents per line per month, a maximum charge that is expressed in dollars and cents per line per month, and a usage charge that is expressed in dollars and cents per conversation minute or dollars and cents per call. Except as provided for in Section 69.206, all End User Common Line charges shall be assessed upon end users.

(b) The transitional End User Common Line charges shall be computed as provided in Sections 69.203–69.205.

69.203. Minimum charges.

(a) A minimum charge shall be assessed upon each local exchange service subscriber that does not pay the maximum charge. A minimum charge may be established at any level that does not exceed the charge that would have been computed pursuant to section 69.104(d) for the year in question, provided that the minimum charge for a single line residential or party line subscriber shall not be less than $2 and the minimum charge for a single-line business local exchange service customer shall be not be less than $4 or more than 200% of the residential minimum charge.

(b) The minimum for a multi-line local exchange service subscriber shall be computed by multiplying the applicable single line rate by the number of local exchange subscriber lines such subscriber uses.

(c) For purposes of this section, a line shall be deemed to be a residential line if the subscriber pays a rate for such line that is described as a residential rate in the local exchange service tariff. All other lines shall be deemed to be business lines.

69.204. Usage charges.

(a) A usage charge shall be assessed for each originating conversation minute or originating call except originating minutes or calls for a collect MTS call, an In-WATS call or an open end FX, CCSA or CCSA equivalent call until the combined minimum and usage charges equal or exceed the maximum charge in a particular month. Third party billing calls shall be assessed to the line billed. Usage charges for a multiline local exchange service subscriber shall be attributed equally to each line for purposes of determining whether such a subscriber shall pay the maximum charge for any line in any month.

(b) The usage charge shall be computed by subtracting projected annual revenues from maximum and minimum charges and the surcharges described in Section 69.206 from the projected End User Common Line annual revenue requirement. That residual revenue requirement shall either be divided by the projected annual conversation minutes of end users that do not pay the maximum charge to compute a per minute charge or divided by the projected annual number of calls by such end users to compute a per call charge.

69.205. Maximum charges.

(a) A maximum charge may be established at any level that is not less than the charge that would have been computed pursuant to section 69.104(d) for the year in question, provided that the maximum shall not be more than the charges described in paragraph (b) of this section unless a charge described in paragraph (b) of this section is less than the applicable section 69.104(d) charge.

(b) The maximum for each transition year shall be as follows:

(1) 1984- the Dedicated Access Line per line rate;

(2) 1985- 90% of the 1985 Dedicated Access Line per line rate;

(3) 1986- 80% of the 1986 Dedicated Access Line per line rate;

(4) 1987- 60% of the 1987 Dedicated Access Line per line rate; and

(5) 1988–1990 - 50% of the 1988 Dedicated Access Line per line rate.

69.206. Transitional surcharges.

(a) During the period that a usage charge is assessed upon end users, a surcharge shall be assessed upon interexchange carriers that offer MTS, In-WATS, FX, CCSA or CCSA equivalent service as a surrogate for usage charges upon an end user that

originates a collect MTS call or originates an In-WATS call or an FX, CCSA or CCSA equivalent call that originates at the open end.

(b) If usage charges are assessed upon a per minute basis, the transitional surcharge shall be computed by multiplying the conversation minutes of such originating calls transmitted to a particular interexchange carrier by a per minute charge that is computed by multiplying the end user per minute usage charge by a factor that is equal to projected annual non-collect MTS conversation minutes of end users that do not pay maximum charges divided by total projected annual non-collect MTS conversation minutes.

(c) If usage charges are assessed upon a per call basis, the transitional surcharge shall be computed by multiplying such originating calls transmitted to a particular interexchange carrier by a per call charge that is computed by multiplying the end user per call usage charge by a factor that is equal to projected annual non-collect MTS calls of end users that do not pay maximum charges divided by total projected annual non-collect MTS calls.

69.207. Premium Access.

(a) Until the Commission determines that equivalent access arrangements are being offered to all interexchange carriers in all or almost all exchanges a portion of the Carrier Common Line revenue requirement shall be designated by Commission order as premium access. Such premium access shall be assessed to the carriers that offer MTS and WATS and shall be billed in equal monthly installments.

(b) In the absence of a Commission order designating the premium access portion, the premium access portion shall be equal to a projected annual revenue requirement for CPE other than Category 2 CPE or any surrogate for CPE costs that may be assigned to interstate and foreign services, but in no event shall premium access exceed the total annual Carrier Common Line revenue requirement.

69.208. Transitional Carrier Common Line.

Premium access revenues shall be deducted from the projected Carrier Common Line annual revenue requirement to determine the Transitional Carrier Common Line annual revenue requirement. Charges for the Transitional Carrier Common Line element shall be assessed and computed in the same manner as the post-transition Carrier Common Line element.

Subpart D: Apportionment of Net Investment

69.301. General.

(a) For purposes of computing annual revenue requirements for access elements net investment shall be apportioned among the interexchange category and access elements as provided in this subpart and expenses shall be apportioned as provided in Subpart E of this Part.

(b) The End User Common Line and Carrier Common Line elements shall be combined for purposes of this subpart and Subpart E of this Part. Those elements shall be described collectively as the Common Line element. The Common Line element revenue requirement shall be segregated in accordance with Subpart F of this Part.

69.302. Net investment.

(a) Investment in Accounts 100.1 and 122 shall be apportioned among the interexchange category and appropriate access elements as provided in Sections 69.303-69.309.

(b) Investment in Accounts 100.2-100.4 shall be apportioned in the following manner:

(1) COE investment shall be apportioned among the interexchange category and appropriate access elements in the same proportions as total Account 100.1 COE investment;

(2) OSP investment shall be apportioned among the interexchange category and appropriate access elements in the same proportions as total Account 100.1 OSP investment;

(3) Buildings investment shall be apportioned among the interexchange category and appropriate access elements in the same proportions as total Account 100.1 Buildings investment; and

(4) Investment that is not COE, OSP or Buildings investment shall be apportioned among the interexchange category and appropriate access elements in the same proportions as total Account 100.1 investment that is not COE, OSP or Buildings investment.

69.303. Station equipment.

(a) Investment in station equipment that is included in Separations Category 2 shall be assigned to the Special Access element.

(b) Investment in pay telephones and appurtenances shall be assigned to the Pay Telephone element.

(c) Investment in all other station equipment shall be apportioned between the Dedicated Access Line and Common Line elements on the basis of the relative number of equivalent lines in use. Each interstate or foreign dedicated access line shall be counted as one Dedicated Access Line. Local exchange subscriber lines shall be multiplied by the applicable interstate separations factor to determine the number of equivalent local exchange subscriber lines attributable to the Common Line element.

(d) Any investment that is apportioned to interstate and foreign services as a surrogate for customer premises equipment shall be apportioned between the Dedicated Access Line and Common Line elements in the same manner as investment apportioned pursuant to paragraph (c) of this section.

69.304. Customer OSP.

(a) Interstate and foreign private lines that are described as dedicated access lines in this Part shall be assigned to the Dedicated Access Line element. All other private lines shall be assigned to the Special Access element.

(b) Interstate WATS access lines shall be assigned to the Dedicated Access Line element. In the event that a portion of investment in interstate WATS access lines is allocated to intrastate services and a portion of intrastate WATS access lines is allocated to interstate services, the total unseparated investment in interstate WATS access lines that are described as dedicated access lines shall be assigned to the Dedicated Access Line element and investment apportioned to the Common Line element shall be adjusted to reflect the difference between unseparated interstate WATS access line investment and the WATS access line investment apportioned to interstate services pursuant to the *Separations Manual*.

(c) Investment in pay telephone lines shall be assigned to the Pay Telephone element.

(d) Investment in local exchange subscriber lines shall be assigned to the Common Line element.

(e) Investment in voice grade lines that are not in use shall be apportioned among the Dedicated Access Line, Pay Telephone, Common Line and Special Access elements on the basis of the relative number of equivalent voices grade lines in use. Each

interstate or foreign dedicated access line shall be counted as one line. Pay telephone lines and local exchange subscriber lines shall be multiplied by the applicable interstate separations factor to determine the number of equivalent pay telephone or local exchange subscriber lines.

(f) Investment in unused lines that are not voice grade shall be assigned to the Special Access element.

69.305. Carrier OSP.

(a) Carrier OSP that is not used for "origination" or "termination" as defined in sections 69.2 (v) and 69.2 (w) shall be assigned to the interexchange category.

(b) Carrier OSP other than WATS access lines not assigned pursuant to paragraph (a) of this section that is used for interexchange services that use switching facilities that are also used for local exchange telephone service shall be apportioned between the Dedicated Transport and Common Transport elements. Such OSP shall be assigned to the Dedicated Transport element if it is used exclusively for the interexchange services of a particular carrier.

(c) All Carrier OSP that is not apportioned pursuant to paragraphs (a) and (b) of this section shall be assigned to the Special Access element.

69.306. Central office equipment.

(a) The *Separations Manual* categories shall be used for purposes of apportioning investment in such equipment except that any Central Office Equipment attributable to a Dedicated Transport subelement shall be assigned to the Dedicated Transport element.

(b) Category 1 COE (Manual Switchboards) shall be apportioned among the interexchange category and the Intercept, Information and Operator Assistance access elements. COE 1 of a telephone company that is not required to transfer assets pursuant to the Modified Final Judgment in *United States v. Western Electric Co.*shall be assigned to the interexchange category if such equipment would have been transferred to an interexchange carrier pursuant to that Modified Final Judgment. COE 1 that is used for intercept services shall be assigned to the Intercept element. COE 1 that is used for directory assistance service shall be assigned to the Information element. COE 1 that is not assigned to the interexchange category or the Intercept and Information elements shall be assigned to the Operator Assistance element.

(c) Category 2 COE (Tandem Switches) shall be assigned to the Common Transport element.

(d) Category 3 COE (Intertoll Dial Switching Equipment) that is deemed to be exchange equipment for purposes of the Modified Final Judgment in *Unites States v. Western Electric Co.*shall be assigned to the Common Transport element. All other COE 3 shall be assigned to the interexchange category.

(e) Category 4 COE (Automatic Message Recording Equipment) shall be assigned to the Billing and Collection element.

(f) Category 5 COE (Other Toll Dial Switching Equipment) that is deemed to be exchange equipment for purposes of the Modified Final Judgment in *United States v. Western Electric Co.shall be assigned to the Operator Assistance element. All other COE 5 shall be assigned to the interexchange category.*

(g) Category 6 COE (Local Dial Switching) that is classified as non-traffic sensitive for purposes of jurisdictional separations shall be assigned to the Line Termination element except as provided in paragraph (a) of this section. COE 6 that is classified as traffic sensitive for jurisdictional separations purposes shall be assigned to the Local

Switching element. In the event that any COE 6 is not used for local dial switching, such equipment shall be deemed to be Category 7 equipment for purposes of this Part.

(h) Category 7 COE (Special Services Switching) that is deemed to be exchange equipment for purposes of the Modified Final Judgment in *United States v. Western Electric Co.*shall be assigned to the Special Access element. All other COE 7 shall be assigned to the interexchange category.

(i) Category 8 COE (Circuit Equipment) shall be apportioned among the interexchange category and the Dedicated Access Line, Pay Telephone, Common Line, Dedicated Transport, Common Transport and Special Access elements. COE 8 shall be apportioned in the same proportions as the associated OSP except as provided in paragraph (a) of this Section.

69.307. Buildings.

(a) The *Separations Manual* space categories and subcategories shall be used for purposes of apportioning Buildings investment.

(b) Category 1A space investment (Manual Switchboard) shall be apportioned among the interexchange category and the Intercept, Information and Operator Assistance elements. Such investment shall be apportioned in the same proportions as COE 1 investment.

(c) Category 1B space investment (Circuit Equipment) shall be apportioned among the interexchange category and the Dedicated Access Line, Pay Telephone, Common Line, Dedicated Transport, Common Transport and Special Access elements. Such investment shall be apportioned in the same proportions as COE 8 investment.

(d) Category 1C space investment (Dial Switching) shall be apportioned among the interexchange category and the Line Termination, Local Switching, Operator Assistance, Common Transport and Special Access elements. Such investment shall be apportioned in the same proportions as combined investment in COE categories 2, 3, 5, 6 and 7.

(e) Category 2 space investment (Operator Quarters) and Category 3 space investment (General Traffic Supervision) shall be apportioned among the interexchange category and the Intercept, Information and Operator Assistance elements. Such investment shall be apportioned in the same proportions as COE 1 investment.

(f) Category 4 space investment (Commercial Office) shall be apportioned among the interexchange category and the Pay Telephone, Information and Billing and Collection elements. Such investment shall be apportioned in the same proportions as combined commercial expenses.

(g) Category 5 space investment (Used Interstate by Another Company) and Category 11 space investment (Constructed for Another Company for interstate use) shall be assigned to the interexchange category.

(h) Category 6 space investment (Revenue Accounting) shall be apportioned among the interexchange category and all access elements in the same proportions as combined revenue accounting expenses.

(i) Category 7 space investment (Garages and Storerooms) shall be apportioned among the interexchange category and the Dedicated Access Line, Pay Telephone, Common Line, Dedicated Transport, Common Transport and Special access elements. Such investment shall be apportioned in the same manner as combined OSP investment.

(j) Category 8 space investment (Rented to others) shall be assigned to the interexchange category.

(k) Category 9 space investment (General Office) shall be apportioned among the interexchange category and all access elements in the same proportions as combined General Office expenses.

(l) Category 10 space investment (Antenna Support) shall be apportioned among the interexchange category and the appropriate access elements in the same manner as the antenna supported.

69.308. Land.

(a) Investment in land other than storage space that is occupied by a building or buildings or a building or buildings under construction shall be apportioned among the interexchange category and the appropriate access elements in the same manner as the buildings on such land.

(b) Investment in parcels of land other than storage space that are contiguous with a parcel described in paragraph (a) of this section shall be apportioned in the same proportions as investment in such contiguous parcel.

(c) Investment in storage space shall be apportioned among the interexchange category and the Dedicated Access Line, Pay Telephone, Common Line, Dedicated Transport, Common Transport and Special Access elements. Such investment shall be apportioned in the same proportions as combined OSP investment.

(d) Investment in land that is not apportioned pursuant to paragraphs (a), (b) and (c) of this section shall be apportioned among the interexchange category and all access elements in the same proportions as the combined land investment that is apportioned pursuant to paragraphs (a), (b) and (c) of this section.

69.309. Other investment.

Investment that is not apportioned pursuant to Sections 69.303–69.308 shall be apportioned among the interexchange category and all access elements in the same proportions as the combined investment that is apportioned pursuant to Sections 69.303–69.308.

Subpart E: Apportionment of Expenses

69.401. Direct expenses.

(a) Direct expense shall be assigned to the appropriate investment category and shall be apportioned among the interexchange category and appropriate access elements in the same proportions as the associated investment.

(b) Amortization of embedded inside wiring investment and installation of new inside wiring and any maintenance or depreciation expense that is apportioned to interstate and foreign services as a surrogate for CPE maintenance or depreciation shall be deemed to be associated with section 69.303(c) other station equipment investment for purposes of the apportionment described in paragraph (a) of this section.

69.402. Current taxes.

(a) State income taxes and state gross receipts or gross earnings taxes that are collected in lieu of a corporate income tax shall be apportioned among the interexchange category and all access elements in the same proportions as the combined Station Equipment, OSP, COE, Buildings and Land investment attributable to property that is located within the state that imposed the tax.

(b) Social Security taxes shall be apportioned among the interexchange category and all access elements in accordance with the Big 4 Wage Factor.

(c) All other current taxes including federal income taxes shall be apportioned

among the interexchange category and all access elements in the same manner as Section 69.309 Other Investment.

69.403. Deferred tax expenses.

(a) Account 304 investment tax credits shall be assigned to the investment category that produced the tax credit. Credits from amortization of past investment tax credits shall be deducted from the balance for the relevant investment category. The net balance shall be apportioned among the interexchange category and appropriate access elements in the same proportions as the associated investment.

(b) Other deferred tax expenses, including Account 308.1 and 308.2 expenses and comparable expenses in Account 307, shall be assigned to the investment category that produced the hypothetical tax. Such expense shall be apportioned among the interexchange category and appropriate access elements in the same proportions as the associated investment.

69.404. Traffic expenses.

Traffic expenses shall be apportioned among the interexchange category and the Intercept, Information and Operation Assistance elements in the same proportions as COE 1 investment.

69.405. Commercial expenses.

(a) Sales, Advertising and Connecting Company Relations expenses (Accounts 642, 643 and 644) shall be assigned to the interexchange category.

(b) Local Commercial expenses (Account 645) shall be assigned to the Billing and Collection element.

(c) Public Telephone Commissions expense (Account 648) shall be assigned to the Pay Telephone element.

(d) Directory expenses (Account 649) shall be assigned to the Information element.

(e) All other Commercial Expenses shall be apportioned among the interexchange category and the Pay Telephone, Information and Billing and Collection elements in the same proportions as the combined expense apportioned pursuant to paragraphs (a)-(d) of this section.

69.406. Revenue Accounting expenses.

(a) Revenue Accounting Expenses that are attributable to End User access billings shall be apportioned among the Dedicated Access Line, Pay Telephone and Common Line elements. Such expense shall be apportioned on the basis of relative investment other than revenue accounting space investment apportioned to each such element.

(b) Revenue Accounting Expenses that are attributable to carrier's carrier access billings shall be apportioned among all carrier's carrier access elements except the Common Line element. Such expenses shall be apportioned on the basis of relative investment other than revenue accounting space investment apportioned to each such element.

(c) All other Revenue Accounting Expenses shall be assigned to the Billing and Collection element.

69.407. General Office expenses.

(a) The portion of Account 665 expense that is attributable to engineering expenses shall be apportioned among the interexchange category and all access elements in the same proportions as the combined investment in Station Equipment, OSP and COE.

(b) All other General Office Expenses shall be apportioned among the interexchange category and all access elements in accordance with the Big 4 Wage Factor.

69.408. Relief and Pensions.

Relief and pensions expense shall be apportioned among the interexchange category and all access elements in accordance with the Big 4 Wage Factor.

69.409. License Contract expenses.

License contract expenses shall be assigned to expense categories in the same manner as expenses that are incurred directly by the telephone company and shall be apportioned in the same manner as such directly incurred expenses.

69.410. Other expenses.

Expenses that are not apportioned pursuant to Sections 69.401 - 69.409 shall be apportioned among the interexchange category and all access elements in the same manner as Section 69.309 Other Investment.

Subpart F: Segregation of Common Line Element Revenue Requirement

69.501. General.

(a) Any portion of the Common Line element annual revenue requirement that is attributable to the application of a jurisdictional separations factor that is described as a High Cost Factor or a Universal Service Factor shall be assigned to the Carrier Common Line element or elements.

(b) Any portion of the Common Line element annual revenue requirement that is attributable to CPE investment or expense or surrogate CPE investment or expense shall be assigned to the Carrier Common Line element or elements.

(c) Any portion of the Common Line element annual revenue requirement that is attributable to inside wiring investment or expense shall be assigned to the Carrier Common Line element or elements.

(d) Any portion of the Common Line element revenue requirement that is not assigned to Carrier Common Line elements pursuant to paragraphs (a), (b) and (c) of this section shall be apportioned between End User Common Line and Carrier Common Line pursuant to Sections 69.502 and 69.503. Such portion of the Common Line element annual revenue requirement shall be described as the base factor portion for purposes of this Subpart.

69.502. Base factor apportionment.

(a) The base factor portion shall be divided by the projected average number of subscriber local exchange lines in use during the relevant year in order to determine a base factor per line annual revenue requirement.

(b) If the base factor per line annual revenue requirement is $48 or less per year the base factor portion shall be assigned to the End User Common Line element.

(c) If the base factor per line revenue requirement is more than $48 per year -

(1) an amount that equals $48 multiplied by the projected average number of local exchange subscriber lines in use during the relevant year shall be assigned to the End User Common Line element; and

(2) the remainder of the base factor portion or transitional portion shall be apportioned in accordance with Section 69.503.

69.503. Apportionment of transitional portion.

(a) The transitional portion shall be assigned to the Carrier Common Line elements in 1984 access charges.

(b) In 1985 access charges 80% of the transitional portion shall be assigned to the Carrier Common Line elements. The residue shall be assigned to the End User Common Line element.

(c) In 1986 access charges 60% of the transitional portion shall be assigned to the Carrier Common Line elements. The residue shall be assigned to the End User Common Line element.

(d) In 1987 access charges 40% of the transitional portion shall be assigned to the Carrier Common Line elements. The residue shall be assigned to the End User Common Line element.

(e) In 1988 access charges 20% of the transitional portion shall be assigned to the Carrier Common Line elements. The residue shall be assigned to the End User Common Line element.

(g) The transitional portion shall be assigned to the End User Common Line element in access charges for 1989 and subsequent years.

Subpart G: Exchange Carrier Association

69.601. Exchange carrier association.

(a) An association shall be established in order to prepare and file access charge tariffs on behalf of all telephone companies that do not file separate tariffs or concur in a joint access tariff of another telephone company for all access elements.

(b) All telephone companies that participate in the distribution of Carrier Common Line revenues collected by the association shall be deemed to be members of such association.

69.602. Board of directors.
[reserved]

69.603. Association functions.

(a) The association shall not engage in any activity that is not related to the preparation of access charge tariffs or the collection and distribution of access charge revenues unless such additional activity is expressly authorized by order of the Commission.

(b) Participation in Commission or court proceedings relating to access charge tariffs, the billing and collection of access charges, or the distribution of access charge revenues shall be deemed to be authorized association activities.

69.604. Billing and collection of access charges.

(a) The association shall bill and collect all Carrier Common Line access charges including any premium access assessment.

(b) Telephone companies shall bill and collect all other End User or Carrier's Carrier access charges.

(c) All access charges shall be billed monthly.

69.605. Distribution of Carrier Common Line revenues.

(a) Carrier Common Line revenues received by the association shall be distributed monthly in accordance with this Subpart.

(b) Association expenses incurred during the month that are allowable access charge expenses shall be reimbursed before any other funds are disbursed.

(c) Except as provided in paragraph (b) of this section, payments to average schedule companies that are computed in accordance with Section 69.606 shall be disbursed before any other funds are disbursed. For purposes of this Part, a telephone company that was participating in average schedule settlements on December 1, 1982, shall be deemed to be an average schedule company except that:

(1) Any company that directly or indirectly controls, is directly or indirectly controlled by, is under direct or indirect control with, or merges with a telephone company that did not participate in average schedule settlements on December 1, 1982, shall not be deemed to be an average schedule company; and

(2) Any company that does not join in association tariffs for all access elements shall not be deemed to be an average schedule company.

(d) The residue shall be disbursed to telephone companies that are not average schedule companies in accordance with Sections 69.607–69.610.

69.606. Computation of average schedule company payments.

(a) Payments shall be made in accordance with a formula approved or modified by the Commission. Such formula shall be designed to produce disbursements to an average schedule company that simulate the disbursements that would be received pursuant to Section 69.607 by a company that is representative of average schedule companies.

(b) AT&T shall submit a proposed 1984 formula to the Commission on or before June 30, 1983. The association shall submit a proposed revision of the formula for each year after 1984 or certify that a majority of the directors of the association believe that no revisions are warranted for such year on or before June 30 of the preceding year.

69.607. Disbursement of Carrier Common Line residue.

(a) The association shall compute a monthly net balance for each member telephone company that is not an average schedule company. If such a company has a negative net balance, the association shall bill that amount to such company. If such a company has a positive net balance, the association shall disburse that amount to such company.

(b) The net balance for such a company shall be computed by multiplying a hypothetical net balance for such a company by a factor that is computed by dividing the Carrier Common Line residue by the sum of the hypothetical net balances for such companies.

(c) The hypothetical net balance for each company shall be the sum of the hypothetical net balances for each access element except the Billing and Collection element. All Carrier Common Line elements shall be deemed to be one element and all End User Common Line elements including transitional surcharges assessed to interexchange carriers shall be deemed to be one element for purposes of computing such hypothetical net balances. Such hypothetical net balances shall be computed in accordance with Sections 69.608–69.610.

69.608. Carrier Common Line hypothetical net balance.

The hypothetical net balance shall be equal to a Carrier Common Line revenue requirement for each such company that is computed in accordance with Subpart F of this Part.

69.609. End User Common Line hypothetical net balances.

(a) If the company does not participate in the association tariff for such element, the hypothetical net balance shall be zero.

(b) If the company does participate in the association tariff for such element, the hypothetical net balance shall be computed by multiplying an amount that is computed by deducting access revenues collected by such company for such element from an End User Common Line revenue requirement for such company that is computed in accordance with Subpart F of this Part by a factor that is computed by dividing access revenues collected by all such companies for such element by an End User Common Line revenue requirement for all such companies that is computed in accordance with Subpart F of this Part.

69.610. Other hypothetical net balances.

(a) The hypothetical net balance for an access element other than Billing and Collection or a Common Line element shall be computed as provided in this section.

(b) If the company does not participate in the association tariff for such element, the hypothetical net balance shall be zero.

(c) If the company does participate in the association tariff for such element, the hypothetical net balance shall be computed by deducting access revenues collected for such element from the sum of expense attributable to such element and the element residue apportioned to such company. The element residue shall be apportioned among such companies in the same proportions as the net investment attributable to such element.

(d) The element residue shall be computed by deducting expenses of all participating companies attributable to such element from revenues collected by all participating companies for such element.

Statement of
FCC Commissioner James H. Quello

In Re: Report and Order in CC Docket No. 78–72, Phase 1, In the Matter of MTS and WATS Market Structure

To state that this was a difficult decision would be to carry the use of understatement to its extreme. The decision was difficult because of its complexity, to be sure, but it was made even more difficult because it is so far-reaching. It's difficult to imagine that any American will be untouched by the action the Commission has taken today.

It would have been easy to resist taking any action at this time, merely postponing action until it was forced upon us. But delay would not serve the public, the telecommunications industry nor would it serve the Commission itself. The die was cast long ago and we are rapidly moving into a new era of telecommunications in this country and throughout the world. Moving toward competition and away from monopoly requires that the industry move toward cost-based pricing. Equal access to the network has been mandated by both this Commission and by the Court in its approval of the Modified Final Judgment. It is also mandated by competition and by technology. We cannot turn back the clock.

This decision was bounded by two very strong considerations. The first is the abiding concern of this Commission and the Congress that the concept of universal service not be sacrificed. In my mind, this is the overriding concern as we attempt to fashion a new rate structure. It bears very heavily upon our second constraint; i.e., the threat that the local exchange will be bypassed by large users. Bypass, while not widely understood and appreciated, provides perhaps a greater threat to universal service

than do increased local rates of a magnitude far above those implied by our action today. For example, AT&T has claimed that 5 percent of its customers generate 63 percent of its revenues. By ignoring the threat of bypass, we could only encourage more and more of those large users to leave the local exchanges across the country leaving those exchanges with most of their present costs but without present revenues. Bypass is a phenomenon which feeds upon itself. As more large users leave the exchange, those which remain must bear a larger share of the costs, encouraging more bypass and even higher costs. Clearly, we do not want to encourage such a scenario.

The Report and Order, in my view, is a measured, carefully considered step along a path which will lead to an even better telecommunications service in the future without destroying what we must rely upon in the present. Is it a perfect approach to this very complex problem?

In the words of Voltaire:

Perfection is attained by slow degrees; it requires the hand of time.

SEPARATE STATEMENT OF COMMISSIONER JOSEPH R. FOGARTY

In Re: MTS and WATS Market Structure, CC Docket No. 78–72, Phase I

The adoption by the Federal Communications Commission of this Access Charge Order is of historic importance. This decision marks the culmination of a long and tortuous inquiry into a proper access charge structure.[1] Because this Order prescribes the manner of compensation that all exchange carriers will receive for the origination and termination of all interstate and international telecommunications or enhanced service, every ratepayer in this country will be affected. In the first year alone, the access charge plan will require the restructuring of rates for 11 to 13 billion dollars in non-traffic sensitive (NTS) and traffic sensitive (TS) plant.

Given the magnitude of our decision, I believe that I am correct in asserting that the *MTS and WATS Market Structure* rulemaking is one of the most important proceedings which has come before the Commission during my tenure, if not during the entire history of the Commission. The issues before the Commission in Phase I were not only technically complex, but also raised several important and competing policy considerations. In adopting this access charge plan, the Commission has succeeded admirably in balancing these competing values. The Commission has resisted the Siren-song lure of theoretical purity, recognizing the reality of the need for reasonable rates and maintenance of universal service. In the process, we have

[1] *See MTS and WATS Market Structure*, CC Docket No. 78–72, Notice of Inquiry and Proposed Rulemaking, 67 FCC 2d 757 (1978); Supplemental Notice of Inquiry and Proposed Rulemaking, 73 FCC 2d 222 (1979), Second Supplemental Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 224 (1980); Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking, 81 FCC 2d 177 (1980); and Fourth Supplemental Notice of Inquiry and Proposed Rulemaking, 90 FCC 2d 135 (1982).

developed a plan which advances the overall public interest and is the best solution that could be fashioned under the circumstances. I wholeheartedly support this decision.

Section 1 of the Communications Act mandates that this Commission regulate "so as to make available, so far as possible, to all the people of the United States a rapid, efficient. . . communications service with adequate facilities at reasonable charges." In my judgment, the most critical factor in this proceeding has been the need to structure an access charge plan which would protect this principle and value of universal service. While local exchange service is not so elastic as toll service, it certainly is not inelastic.[2] In the monopoly environment of the past, the FCC and the State commissions made deliberate compromises in favor of the immediate, pragmatic objective of universal service at the expense of more theoretical objectives, such as economic efficiency. The dilemma created by technological progress and competition is that such compromises have become increasingly difficult to forge, implement, and maintain. No longer are regulators free to increase the load of NTS costs on long distance users in order to keep local residential rates low. Technological advance now affords major toll users the option of bypassing the public network altogether to avoid uneconomic charges. This phenomenon of bypass, with its negative revenue consequences, must still be weighed, however, against the harm that the direct assignment of all NTS costs to end users might cause. Even though bypass would be discouraged, such a strategy of total direct assignment could result in an unacceptable loss in the subscriber base as rural users, the poor and the elderly would be put to a hard choice between essentials.

The access charge structure adopted by the Commission meets this concern by striking an appropriate balance between the need to encourage efficiency and the need to preserve universal service. Under this structure, uneconomic bypass should be discouraged while at the same time there should be no substantial service dislocations. Universal service in rural, high cost areas will be protected by the universal service factor element of the carrier common line charge. Similarly, service discontinuance by those too poor to absorb large rate increases will be discouraged by the implementation of a reasonable maximum end user charge based upon the anticipated Joint Board recommendation in Docket 80-286.[3]

In achieving this balance, the access charge plan affords both

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[2] *See generally*, Appendix G.

[3] The alternative of a government-sponsored "phone stamps" program is not viable. Among the many problems with such a plan are the fact that the program would be difficult to target and the fact that it would call for increased government expenditures at a time when such expenditures are not feasible.

protection to ratepayers and flexibility to telephone companies. The transition period is structured so that the increase in the end user charge to its maximum cost will be gradual, starting with a $4 per month average revenue requirement. Heavy toll users will be protected by a cap on the amount that they may be charged for NTS costs. Telephone companies will be afforded the flexibility to determine how customer charges will be collected during the transition through a combination of usage and flat charges. As a consequence, those low-cost companies facing significant bypass problems and little threat of subscriber loss may move quickly to their full end user charge, while those companies with less significant bypass problems may move more slowly. In addition, the Exchange Carriers Association will allow companies the option to pool their costs in a manner somewhat reminiscent of current practice. This is crucial because for many small carriers developing and administering access charges would present an impossible burden.

Flexibility is also granted to the States as this decision permits them to recover intrastate NTS costs in any fashion they desire. This is important because the amount of NTS plant in the intrastate jurisdiction dwarfs the amount of interstate NTS plant. Further, the circumstances differ between the States, and it may be impossible to develop uniform Federal rules for the access charge treatment of intrastate NTS costs.[4] Leaving this discretion with the States will promote the regulatory flexibility and experimentation which has proved so beneficial in the past.

Of even more importance is the fact that there will be a monitoring system, in place by January 1, 1984, designed to ensure that any unforeseen developments that threaten universal service are discovered in time for corrective action to be taken. This built-in flexibility is critical because of the uncertainties involved. In addition, the requirements of periodic staff reports to the Commission and further Commission action before continuing the plan beyond the fifth year will ensure the fulfilment of our statutory mandate.

In addition to striking a realistic balance between the new imperative of economic efficiency and the continuing mandate of universal service, this decision takes the long overdue step of ending what has been an intolerable discrimination between MTS/WATS and ENFIA. Under the rules we have adopted, the OCCs will finally pay the full cost of interconnection—even during the transition. There will be no more discounts. Further, open-end Private Line and FX will also contribute fully for the first time to the recovery of

[4] We face a very different situation here on access charges than that which we recently confronted on depreciation policy. *See Amendment of of Part 31*, on reconsideration, — FCC 2d — (1985).

common costs. This is only fair. For too long MTS and WATS ratepayers have been picking up costs which should have been borne by ENFIA and open-end Private Line and FX users.[5] Although during transition AT&T will pay a premium access charge theoretically based on its superior interconnection, the differential will be smaller than the current ENFIA discount and will end at approximately the same time as the OCCs are afforded equal access under the divestiture decree.[6]

In conclusion, I believe that the Commission has succeeded in developing the best possible access charge plan—a plan which carefully balances competing policy values and recognizes a continuing need for surveillance and possible adjustment in the public interest.

SEPARATE STATEMENT
OF
COMMISSIONER ANNE P. JONES
CONCURRING AND DISSENTING IN PART

In Re: MTS and WATS Market Structure, CC Docket 78–72, Phase I

The FCC's decision in this proceeding is undoubtedly the most significant one that the agency will make during my tenure as a Commissioner. I believe it is vitally important that the FCC's access charge plan (ACP) be clear, practical and carefully crafted to support the pro-competitive policies this agency has adopted for the telecommunications industry. From a public policy perspective, competition in the telecommunications industry is simply a means to an end, namely, a form of economic discipline that encourages telecommunications suppliers to provide consumers a broad choice of products and services at the least possible cost. The Commission's encouragement of telecommunications competition is intended, therefore, to improve the welfare of consumers of telecommunications products and services. While I believe that the basic thrust of the Commission's access charge plan is a step in the right direction, I fear that the specific plan adopted is improperly focused, needlessly complex, and not fully committed to the goal of promoting vigorous competition in the telecommunications industry. As I explain herein, I would prefer a simpler, more comprehensive approach that would encourage the rapid development of telecommunications competition and the early realization of its benefits for consumers.

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[5] *See* Dissenting Statement of Commissioner Joseph R. Fogarty, *Extension of ENFIA Agreement*, 90 FCC 2d 6, 20–21 (1982).

[6] *See* Modified Final Judgment, *United States v. Western Electric Co.*, Civil Action No. 82–0192 (D.D.C., entered August 24, 1982).

This proceeding was initiated as a market structure inquiry. Following the court's directions in *Execunet I*,[1] the Commission set out to determine whether MTS and WATS services should be offered on a sole source or competitive basis. *Notice of Inquiry and Proposed Rulemaking*, 67 FCC 2d 757 (1978). As part of that inquiry, the Commission specified that it would reexamine the separations process. *Id.* at 759. Finding it "necessary to formulate policy in this area," the Commission proposed to determine what reimbursement interstate services should make to local operating companies for the use of local plant, on a cost causational basis; what additional charges, if any, should be levied on interstate services to support local exchange services; and whether and how these charges can be equitably imposed on all interstate services.

Id.

Following the ENFIA negotiations,[2] the Commission seemed to lose sight of this resolve. Instead of addressing the broader concern of reforming the separations process and moving toward cost causational pricing of network access, the Commission narrowed its focus merely to adjusting prices so that it could eliminate discriminations in current access arrangements for MTS, WATS, and certain private line services and in the interstate rates for these services. Thus, rather than beginning its analysis of access charges from the perspective of establishing economically-efficient network access prices, the Commission framed the issue as a "discrimination problem" when it proposed an access charge plan in the *Second Supplemental Notice of Inquiry and Proposed Rulemaking*, 77 FCC 2d 224 (1980). This orientation is still evident in the current access charge plan. (*See e.g.*, p. 30 description of various plans as "Alternative Strategies for Reducing Discrimination.") I now believe this change in perspective was unwise.

By reorienting the focus of the access charge issue as a rate discrimination problem, the Commission diverted its attention from causes to symptoms of anomalous pricing of both local exchange access and interstate switched network services. The fundamental problem is *not* that interstate MTS and WATS rates are discriminatory compared with interstate private line rates. Rather, the basic problem is that neither the current compensation mechanism for local exchange access for interstate telecommunications services nor rates for MTS and WATS are priced on a cost causational basis.[3] By neglecting the goal of cost causation in favor of treating the symptoms of non-cost-based rates, the Commission's access charge

[1] *MCI Telecommunications Corp. v. FCC*, 651 F.2d 365 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 1040 (1978).

[2] See *Exchange Network Facilities*, 71 FCC 2d 440 (1979).

[3] *MTS and WATS Market Structure*, 67 FCC 2d 759 (1978).

plan has introduced new distortions in the pricing of private line services and, paradoxically, has created new rate discriminations in the pricing of local exchange access lines.

The shift in emphasis from close adherence to the principle of cost causation to "alternative strategies for reducing discrimination" is more than a semantic difference or a subtlety with no substantive impact. Encouraging non-discriminatory access to local exchange facilities at cost-based rates is essential to the realization of the Commission's goal of fostering a competitive MTS and WATS market. By assigning a higher priority to achieving "equitable access" to local exchange facilities than to encouraging efficient, cost-based pricing of the usage of local telephone plant, the Commission may have adopted an access charge plan that will discourage new entry into the MTS and WATS market, slow considerably the growth rate of the other common carriers (OCCs), and provide the basis for continuing dominance of AT&T in the MTS and WATS market.

The following discussion will outline the specific reasons why I feel that the access charge plan adopted by the Commission may severely frustrate the realization of the open entry policy for the MTS and WATS market adopted by the Commission in this proceeding. I also propose a more comprehensive alternative plan that is fully consistent with the goal of an open entry, competitive MTS and WATS market.

The Access Charge Plan and Its Impact on Economic Efficiency and Competition in the MTS and WATS Market

Much of my concern over the ACP centers on the treatment of non-traffic sensitive (NTS) costs during the transition period. The ACP correctly recognizes the need to shift the recovery of interstate NTS local exchange costs from interexchange carriers to local exchange end users as a flat charge rather than on a usage-sensitive basis.[4]

Given this recognition of where we need to go, I find it both unfortunate and ironic that usage-sensitive recovery of NTS costs remains such a major component of the Commission's transition plan. To a limited extent, usage-sensitive charges may be sensible expedients for the recovery of NTS costs that the Commission has ordered phased out, or may decide to phase out of the interstate jurisdiction, such as customer premises equipment (CPE) or inside

[4] This principle of cost causation is fundamental to *any* access charge plan, a point that I have emphasized in earlier phases of this docket. See "Statement of Commissioner Anne P. Jones in which Commissioners Mimi W. Dawson, Henry M. Rivera and Abbott Washburn Join *In Re*: MTS and WATS Market Structure, CC Jones," Session on *Separation Changes and the Joint Board in Light of the AT&T Divestiture*, Twenty-First Annual Iowa State Regulatory Conference, Ames, Iowa, May 20, 1982.

wiring. There is little point in building transitional costs into flat charges that will be reduced following the transition period. Rather, it is important that users clearly perceive the direction and magnitude of the significant change in the pricing and cost recovery policy that the Commission's ACP represents. Consequently, usage-sensitive recovery of CPE and inside wiring costs through a carrier's-carrier charge is a reasonable mechanism for recovering transitional costs. By adopting this transitional mechanism, the flat-rate recovery of NTS costs provides an accurate signal concerning the direction and magnitude of NTS cost recovery on a going-forward basis.

By contrast, the combination of an end-user flat fee and interstate usage fee ("mover") permitted by the ACP during the transition period appears discriminatory, needlessly complex, confusing, and highly accelerated in its first year revenue impact. The transition plan establishes different minimum end-user flat charges for residence and business customers (two and four dollars, respectively) with no empirical evidence that cost-justifies the differential.[5] It also requires that an exchange carrier that attempts to design an end-user usage charge for recovering the difference between the maximum and minimum interstate revenue requirement per line estimate, somehow, the price elasticity of demand for end-user access to an intercity carrier. It is not clear that the "pricing flexibility" provided by the transitional, usage-based mechanism for recovering NTS costs will provide a local exchange carrier much certainty concerning recovery of its interstate NTS revenue requirements, given the maximum charge and the unknown price elasticity of demand for interstate access. Thus, the risk of a revenue requirements short-fall appears substantial.

In addition, the combination of flat fee and mover charge introduces a billing complexity that many consumers may find difficult to understand. Also, large users that quickly reach the maximum monthly charge or "cap" may appear to receive a discriminatory "volume discount" unrelated to any economies of bulk usage. Low and moderate volume users will find their relative proportion of NTS costs sharply increased as compared with high-volume users. Since the ACP moves nearly one-half the interstate NTS revenue requirement onto end users in just the first year, local exchange carriers may have a reduced incentive to move steadily toward full flat rate recovery of end user NTS costs. In effect, the Commission has delegated to the local exchange carrier the responsibility for timing the implementation of its policy for assigning interstate NTS costs to end users.

The complexities and peculiar incentives induced by the "mover"

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[5] Paragraph 177 alludes to the ". . . higher interstate revenue requirement generated by business lines as compared to residential lines" but does not indicate whether the prescribed differences in the transitional flat rate charges closely tracks actual differences in cost between these two user classifications.

and "cap" transitional cost recovery mechanism could be completely avoided by simply phasing in the end-user flat charge on a straightline basis over the transition period with no usage charges. In other words, the flat-rate end-user charge would simply increase in equal dollar increments per year until the end of the transition period where the flat rate would just equal the average interstate NTS revenue requirement per line. All end-user lines would be subject to the same flat rate with no discrimination in pricing between business and residential users. Over the transition period, all end-user NTS costs not recovered in the flat-rate line charge would be recovered by a carrier's-carrier charge. This approach narrowly circumscribes the use of a traffic-sensitive mechanism for recovering NTS costs and places both carriers and customers on a predictable path toward eventual full flat-rate recovery of end-user interstate NTS local exchange costs.

It is also unfortunate that the "Universal Service Fund" (USF) established by the ACP will be funded through a usage-sensitive carrier's-carrier charge. Unlike the end-user mover charge, a usage-sensitive mechanism is employed on a permanent rather than transitional basis to help recover the NTS costs in "high cost" exchanges. A more efficient alternative would be the imposition of a uniform surcharge or "tax" on every local exchange access line.[6] As Appendix G of the *Third Report and Order* suggests, the demand for access tends to be inelastic. A tax imposed on a good or service having an inelastic demand will minimize the loss in consumer welfare compared with a tax on a good or service with more elastic demand.[7]

Given the growing availability of alternative local distribution technologies, the demand for local exchange access by intercity carriers will probably become more elastic over time. Imposing such a surcharge will decrease the quantity demanded for access at the margin and impose a loss in economic welfare depending on the price elasticity of demand. This potential loss in economic efficiency induced by usage-sensitive recovery of NTS costs could be completely avoided through imposition of a line surcharge. Ironically, by funding the USF through a carrier's-carrier charge, interstate MTS and WATS rates must then recover the carrier's-carrier USF charge. Of course, this method is equivalent to present practice, except that the amount of subsidy embedded in MTS and WATS rates would be reduced given the phase-in of end-user line charges.

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[6] For example, if the annual subsidy necessary to fund the USF were $410,000,000 annually, then the estimated uniform surcharge per line per month would be 36!. See "Separate Statement of Commissioner Mimi Weyforth Dawson re: MTS and WATS Market Structure," Figure II.

[7] See Agnar Sandmo, "Optimal Taxation: An Introduction to the Literature," *Journal of Public Economics* 6 (1976): 37–54.

Apart from the economic inefficiency induced by funding the USF through usage-sensitive carrier's-carrier charges, I have serious reservations about the concept of the USF as developed in the ACP. While nominally intended to maintain "universal service," the USF is targeted toward the subsidy of "high cost" telephone companies, *not* consumers who might abandon telephone service at some higher but *unknown* level of telephone rates. Putting the matter plainly, the USF is first and foremost a mechanism for protecting telephone companies. This protectionist mechanism may produce "trickle down" benefits to local subscribers, although the potential subsidization of *all* users is a highly inefficient way to achieve a "universal service" goal.[8] Possibly the protection of "high cost" telephone companies is a worthy goal of public policy. If so, it should be addressed forthrightly and on its own merits and not treated as if it were equivalent to helping *targeted* consumers pay the costs of accessing the local telephone exchange.

Regulatory Cost Allocation. Essential to the design of nondiscriminatory rates for network access is avoiding the pitfalls of regulatory cost allocation.[9] By stressing equitable rather than cost-based access charges, the ACP ignores the history and lessons of the Commission's previous experience with regulatory cost allocation. This experience suggests that cost allocation procedures as prescribed by the Commission may result in rates filed by carriers that bear little relationship to the underlying economic costs of providing telecommunications services. As a result, regulatory cost allocation methodologies that result in "allocated costs" that depart from economic costs or regulatory cost allocation rules that grant dominant firms considerable discretion in implementing the regulatory costing methodology may encourage inefficient market entry or repel innovative competitors. In either case, regulatory cost allocation is both a controversial and a highly problematical regulatory tool for promoting competition in the telecommunications industry.

The ACP is a regulatory cost allocation methodology, not a pricing mechanism based on marginal cost or on general principles of efficient rate structure design. Since the ACP reflects little familiarity with the hazards of a regulatory costing methodology, I feel that some review of the Commission's experience with cost allocation in markets subject to competitive entry is essential to the further

[8] For further discussion of this point, see Bridger M. Mitchell, "Pricing Subscriber Access to the Telephone Network," *The Rand Paper Series #P-6815*, October, 1982.

[9] The term "regulatory cost allocation" refers to various costing procedures or rules that a regulatory agency prescribes for computing the costs of individual services provided by a regulated carrier. Regulatory cost allocation is distinguished from the Uniform System of Accounts that determines the level of total revenue requirements of a carrier but not the disaggregated costs attributable to any given service.

discussion of my reservations with the ACP. This discussion also helps to explain why my alternative approach, which largely eschews regulatory cost allocation, offers important advantages.

Regulatory cost allocation apportions both the operating expenses and the return on net depreciated assets of a regulated carrier among various "service" categories. The perceived regulatory need for cost allocation in interstate telecommunications was a direct byproduct of the Commission's *Above 890* decision in 1959 which permitted users to build their own private microwave transmission facilities.[10] To discourage large private line customers from building their own facilities, AT&T introduced its TELPAK bulk rate private line tariff that offered substantial discounts to large users of private line circuits. For the next fifteen years, the Commission attempted to determine in multiple dockets whether such rate adjustments by AT&T were simply a lawful pricing response to competition or pricing behavior intended to eliminate competition. The development of regulatory cost allocation procedures emerged as a focal point of such deliberations.

The relative merits of "long run incremental cost" (LRIC) versus "fully distributed cost" (FDC) were hotly debated before the Commission during the 1970s. Finally, in 1976, the Commission decided in Docket 18128 that FDC "Method 7" based on the principle of "historical cost causation" would provide the basis for the development of lawful tariffs for AT&T's interstate services.[11] Despite the potential loss in economic efficiency that a FDC pricing standard may induce, the Commission believed that only a FDC standard would ensure that AT&T was "accountable" for its ratemaking practices.[12]

Apart from the controversy over FDC versus LRIC as the appropriate regulatory cost standard, another fundamental difficulty in any regulatory costing methodology is the troublesome concept of a "service." Once the carrier has defined its service offering, the Commission has required the carrier to "cost-justify" the rates for the defined service.[13] Granting the carrier broad discretion in defining services creates incentives for the carrier to

[10] A review of the Commission's experience with regulatory cost allocation in various dockets is reviewed by Walter G. Bolter, "The FCC's Selection of a 'Proper' Costing Standard after Fifteen Years—What Can We Learn from Docket 18128?" in *Assessing New Pricing Concepts in Public Utilities*, ed. Harry M. Trebing (East Lansing, Michigan: Michigan State University, 1978), pp. 333–372.

[11] *Revision of Tariff FCC No. 260 Private Line Services*, 61 FCC 2d 587 (1976).

[12] A contemporary discussion of the carrier "accountability" standard is provided by William H. Melody, "Interservice Subsidy: Regulatory Standards and Applied Economics" in *Essays on Public Utility Pricing and Regulation*, ed. Harry M. Trebing (East Lansing, Michigan: Michigan State University, 1971), pp. 167–210.

[13] The Commission's requirements for cost justification are prescribed in Part 61.38 of the Commission's Rules.

implement regulatory cost allocation rules to achieve corporate objectives that may conflict with public interest goals, including that of encouraging competitive telecommunications markets. In other words, regulatory cost allocation can be used strategically by the regulated dominant firm to achieve corporate objectives and influence its market environment.[14] As Alfred Kahn has observed, " . . . what constitutes a separate product or service depends in a sense on what it pays the businessman to price or cost separately."[15]

By exercising its discretion in the definition of tariffed services, the regulated dominant firm can pursue some of the profit strategies of an unregulated monopolist. For example, an unregulated monopolist can implement a profit-enhancing price discrimination strategy by segmenting its market in accordance with perceived differences in the elasticity of demand and charging different profit-maximizing prices in each market.[16] Successful implementation of this pricing strategy, however, requires some mechanism to prevent resale and arbitrage between the high and low price market. A regulated dominant firm can implement a similar strategy by designing a tariff that "creates" separate services that, for all practical purposes, simply segments users in terms of differing elasticities of demand.[17] Tariff restrictions that prohibit resale or shared use can effectively segment the market to permit successful implementation of the price discrimination strategy.[18] Not all price discrimination schemes

[14] For further discussion of the incentives of a regulated dominant firm, see Jerry B. Duvall, "Emerging Rate Structures in Interstate Telecommunications," paper presented at the *Michigan State University Institute of Public Utilities Fourteenth Annual Conference* "Adjusting to Regulatory, Pricing, and Marketing Realities," Williamsburg, Virginia, December 14, 1982. A theoretical analysis of such incentives is developed in Gerald W. Brock, *The Telecommunications Industry: The Dynamics of Market Structure* (Cambridge, Massachusetts: Harvard University Press, 1981).

[15] Alfred E. Kahn, *The Economics of Regulation: Principles and Institutions*, v. 1 (New York: John Wiley & Sons, Inc., 1970), p. 78.

[16] A clear discussion of this price discrimination strategy is provided by James M. Henderson and Richard E. Quandt, *Microeconomic Theory: A Mathematical Approach*, 3d ed. (New York: McGraw-Hill, 1980), pp. 181–184.

[17] Interstate MTS and WATS are possible examples of this market segmentation strategy. Large-volume users of switched message service are likely to have a more elastic demand for MTS than small-volume users, given the availability of both private and public alternative, high-volume transmission facilities. By constructing highly dissimilar rate structures for MTS and WATS, AT&T has been able to segment effectively the market for public switched network service to exploit the differences in the price elasticity of demand for small and large-volume users.

[18] To the extent rate of return regulation is binding, the regulated dominant firm is constrained from earning excess profits that an unregulated monopolist might obtain by implementing a market segmentation and price discrimination strategy. Of course, the regulated firm may still earn excess profits through a similar pricing strategy, although it may camouflage such earnings through "organizational slack" or operating inefficiencies. Perhaps more troublesome than the possibility that a regulated firm may evade regulation and earn excess

implemented by a regulated dominant firm are necessarily harmful to consumers. For example, price discrimination embedded in a volume-sensitive, nonlinear rate structure or a self-selecting, two-part tariff provides a mechanism for reconciling conflicting regulatory objectives such as wide subscribership to telephone service versus the pricing of usage to high-volume users at marginal cost.[19] Such rate structures, however, should be designed pursuant to regulatory rate structure guidelines to insure that the resulting price discrimination is welfare-enhancing rather than harmful to consumers and competitors. I propose this type of efficient price discrimination subject to federal regulatory guidelines as an aspect of my alternative access charge plan presented later in the statement.

In general, given the distorted pricing incentives that rate-base regulation may induce, including the entry of a regulated firm into competitive markets at rates below cost,[20] regulators should be especially sensitive to inefficient, discriminatory rate structures and to the definition of services proposed by regulated carriers. As Roger Sherman and Michael Visscher have observed,

> Price structures may not portray for consumers the full range of opportunities available. The consumer simply is not asked to make some choices, and by that fact alone the range of consumer choice is cut. This is so because the shape of the service can be seriously affected by the aspects of choice in which it is expressed and offered to consumers. Any failure of regulation to deal with the question of price structure is important, then, not simply because prices may be set at levels that are not optimal but also because the elements of products or services that are priced may not be the best ones. *So products and services can be defined inadequately for ideal pricing, before the pricing task itself is even undertaken.*[21]

To the extent a regulated carrier defines a service in order to segment the market and implement a price discrimination scheme,

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profits through price discrimination is the possibility that a regulated dominant firm will define services and implement price discrimination schemes in order to accentuate the growth of its rate base or attempt to discourage the entry of competing suppliers. In short, price discrimination as a pricing strategy utilized by a regulated dominant firm may result in substantial economic inefficiency in the use of resources and may have a potential anticompetitive effect.

[19] For further discussion of these and other rate structure options, see Edward E. Zajac, *Fairness or Efficiency: An Introduction to Public Utility Pricing* (Cambridge, Massachusetts: Ballinger Publishing Company, 1978), Chapter 4. Also see the references cited in footnote 35.

[20] See Harvey Averch and Leland Johnson, "Behavior of the Firm Under Regulatory Constraint," *American Economic Review* 52 December 1962): 1053–69.

[21] Roger Sherman and Michael L. Visscher, "Rate-of-Return Regulation and Price Structure" in *Problems in Public Utility Economics and Regulation*, ed. Michael A. Crew (Lexington, Massachusetts: Lexington Books, D. C. Heath and Co., 1979), p. 129. (Emphasis added.)

it is highly probable that a substantial proportion of the "allocated costs" of the service will appear as "common costs" shared by other "services". This outcome is not surprising if the new service uses to a considerable extent the *same* facilities as existing services. Moreover, the regulatory rule which distributes the shared or common costs among the carrier's services may become itself a strategic variable that the carrier can vary to achieve corporate objectives. For example, the regulated firm can lower or raise its service-specific costs by increasing or decreasing total shared costs of production and by varying the ratio of direct to common costs for any given service.[22] Since the definition of services and implementation of regulatory cost allocation procedures by a regulated dominant firm may be driven by incentives such as keeping costs low on services facing competitive entry, it should not be surprising that the resulting "allocated costs" may bear little relationship to the underlying facility costs used to provide tariffed "services".

In recent years, the Commission has become aware of some of the pitfalls of regulatory cost allocation as a regulatory tool. In CC Docket 79-245, the Commission revised the fully distributed cost methodology prescribed in Docket 18128.[23] In this decision, cost allocation procedures were simplified and the number of "service categories" was reduced. In CC Docket 79-246, the Commission has begun to recognize the inevitable problems which result when a carrier is given broad discretion in defining services and designing tariffs for such services.[24]

From the Commission's experience with regulatory cost allocation in recent years, it is becoming increasingly apparent that the definition of "services" should closely track the underlying facilities used to transport and switch electronic information. Technical parameters rather than market segmentation strategies should provide the guiding principle for designing a tariff. In other words, the actual facilities used in providing a network service should drive the definition of the service. This principle implies that the pricing of the "rental services" of a telecommunications facility, either on a

[22] For a recent theoretical analysis of such incentives, see David Sappington and William G. Shepherd, "Sustainability, Entry Restriction, and Induced Technical Bias," *Quarterly Review of Economics and Business* 22 (Winter 1982): 43-52. Also see Roger G. Noll and Lewis A. Rivlin, "Regulating Prices in Competitive Markets," *Yale Law Journal* 82 (June 1973): 1426-1434, Ronald R. Braeutigam, "An Analysis of Fully Distributed Cost Pricing in Regulated Industries," *Bell Journal of Economics* (Spring 1980): 182-96, and Jerry B. Duvall and Michael D. Pelcovits, "Reforming Regulatory Policy for Private Line Telecommunications Services: Implications for Market Performance," FCC Office of Plans and Policy *Working Paper* #4, December, 1980.

[23] *Report and Order in CC. Docket No. 79-245*, 84 FCC 2d 384, *recon. denied*, 86 FCC 3d 667 (1981), *aff'd. sub nom MCI Telecommunications Corp.* v. *FCC*, 675 F.2d 408 (D.C. Cir. 1982).

[24] *Private Line Rate Structure and Volume Discount Practices*, 74 FCC 2d 226 (1979).

dedicated or demand basis, should be indifferent to both the *identity* of the user and the *purpose* of the user's traffic placed on the network, unless a clear causal relationship exists between the purpose of the communications traffic and network operating costs. Of course, certain overhead costs in addition to directly-attributable labor expense must still be assigned to a service defined in terms of actual facilities used to provide the service. However, a facilities-driven concept of a tariffed service should more closely approximate the relevant opportunity costs that a user will consider when choosing between the rental of common carrier telecommunications facilities or the building of private communications systems.

This approach to the tariffing of network services simply replicates the reality of the contemporary telecommunications industry. If a large telecommunications user decides to build its own private communications network, it does not build "switched network services" or "dedicated private line services." Rather, it buys switching and transmission *facilities* with given technical parameters. It is the capital cost of these facilities together with their operating and maintenance expenses that provide the baseline comparison between the tariffed "services" of a common carrier and the decision to deploy private bypass facilities.[25] If the tariffed service does not bear a close relationship to the underlying facility costs, then uneconomic bypass may be encouraged.

Regulatory Cost Allocation and the Access Charge Plan. Despite some progress in recent years in recognizing and avoiding some of the pitfalls in the application of regulatory cost allocation, the Commission appears to have ignored this progress in its ACP. How the ACP prices the usage of access lines to the local exchange is especially troublesome in this respect. Rather than define access lines consistently in terms of the actual, physical facilities used to originate and terminate calls, the ACP defines categories of "access service" based on the kind of traffic and the identity of the user. Thus, end users may access the local switch through "common lines," "dedicated access lines," or "special access" arrangements. Interexchange carriers, however, must access the local switch through "dedicated transport" access lines. In some instances, both end users and interexchange carriers will access local exchange plant using *identical* facilities and use such facilities the same way, e.g., line-side terminations on the local switch.

In effect, the Commission, not unlike a regulated carrier, has

[25] It is important to emphasize that the difficult regulatory problem of allocating shared costs to various "services" is minimized if a facilities-orientation to regulatory cost allocation is adopted. After all, a large user which buys its own communications facilities will find few common costs to allocate among "services," since the notion of a "service" for its purposes becomes perfectly transparent, i.e., a regulatory fiction that may bear little relationship to the economic costs of the underlying network facilities.

defined a group of "access services" in the ACP in order to implement a price discrimination scheme based *both* on the identity of the user and the intended use of the access service. For example, Part 69.303(a) of the ACP Rules requires that investment in station equipment included in Separations Category 2 (station equipment provided for private line services) be assigned to the "special access" rate element. However, if the identical voice-grade channel is provided as a "dedicated access line" or "common line," then Part 69.303(d) of the ACP Rules requires that any investment apportioned to interstate and foreign services as a surrogate for customer premises equipment (pursuant to the "Poponoe Plan") be allocated between dedicated access line and common line elements on the basis of the relative number of "equivalent lines" in use. If the same voice-grade channel is provided to an interexchange carrier as "dedicated transport," then no investment in station equipment is directly allocated to the dedicated transport rate element. Instead, transitional station equipment costs will be recovered from interexchange carriers through the usage-sensitive carrier's-carrier charge. Thus, the ACP as a regulatory cost allocation mechanism derives three different "costs" for the same voice-grade channel depending on the identity of the user and the purpose of network access.

Not only do the allocated costs of the same voice-grade channel differ by classification of access service, but also the pricing of the same facility differs from one type of access service to another. For example, after the costs of an end-user common line are jurisdictionally separated, the interstate allocation of costs will be recovered during the transition period by end-user flat rate and mover charges and the carrier's-carrier charge. If the same voice-grade channel is provided as dedicated transport to an interexchange carrier, the facility will be priced on a "per unit of capacity" basis with separate rate elements for interface and conditioning arrangements per Part 69.112 of the ACP Rules. If the same voice-grade channel is provided as special access, it is unclear how the facility will be priced, since Part 69.113 gives the exchange carrier considerable discretion in setting rates for this classification of access service.

The inefficient price discrimination embedded in the Commission's ACP is the inevitable consequence of four controversial assumptions, viz., the need to maintain the current mechanism for the jurisdictional allocation of NTS costs; the need to subsidize high cost telephone companies rather than consumers who may require subsidized access to telephone service to remain on the network at cost-based prices; the need to fund the subsidy of high cost telephone companies indirectly from end users through a carrier's-carrier charge rather than directly through a surcharge on end-user access lines; and the need to compensate for AT&T's competitive advantage as the major incumbent interexchange carrier. I question the validity of the first three assumptions, a position that I fully explain

in my proposed alternative plan. I agree with the validity of the last assumption, but I believe the Commission's ACP does not adequately address this issue.

It is not surprising that the Commission's ACP prescribes discriminatory, non-cost-based rates for network access given the four underlying assumptions of the plan. Clearly, if one group of users of network access, viz., interexchange carriers, must be singled out for purposes of "regulatory taxation," then the criteria for discriminatory treatment must be unabiguous and easily enforceable. Since it will be difficult for an interexchange carrier to pass itself off as an ordinary business line customer, it should be easy to enforce the discriminatory rate classifications of end users and interexchange carriers. Moreover, so long as the Commission's ACP prices out the entire allocated cost of some facilities (e.g., interstate dedicated access lines) but only portions of others (e.g., the interstate portion of common lines), then separate but discriminatory classifications of access service must be maintained to preserve the economically-irrational jurisdictional separation of NTS local exchange costs.

This outcome is truly paradoxical. Rather than adopting a plan fully supportive of its MTS and WATS open entry policy established earlier in this proceeding, the Commission has instead adopted a plan more supportive of the status quo, including jurisdictional cross-subsidies and discriminatory, non-cost-based prices for network access. Equally paradoxically, the Commission's ACP embodies the very pitfalls of regulatory cost allocation that the Commission in other dockets has attempted to correct. I object to these inconsistencies and hope that the Commission will closely examine them on reconsideration of this decision.

The Transition to Equivalent Network Access. The FCC's open entry decision in this proceeding is necessary for competition in the MTS and WATS market but alone is not sufficient. Over the years, AT&T engineered its local exchange facilities and long haul network as an integrated whole. As a result, competing interexchange carriers have been unable to access local exchange facilities in the same way as AT&T Long Lines. The OCCs generally have accessed the local exchange via line-side terminations on the local switch rather than the trunk-side terminations provided to AT&T Long Lines. An essential aspect of the Modified Final Judgment (MFJ) is the provision that requires the divested Bell Operating Companies (BOCs) to make available "premium" access to all interexchange carriers, not just AT&T Long Lines, by the conclusion of a prescribed transition period. Once equivalent access is made available to all interexchange carriers, the sufficient condition for intercity transmission competition will be satisfied, and all interexchange carriers will be able to compete on an equivalent basis of local exchange interconnection.

Until equal interconnection is available to all interexchange carriers, AT&T Long Lines receives a competitive advantage by virtue of its incumbency as the former monopoly interexchange carrier. This advantage exists even though new digital switches may be able to provide trunk-side access features as cheaply as line-side access. From an economic perspective, however, the implicit demand for premium access has increased with the entry of the OCCs, although the short run supply of premium access as provided by the BOCs is essentially fixed. Thus, the "opportunity cost" of premium access has increased. Efficient pricing of premium access during this short run transitional period requires that AT&T pay a "quasi-rent" per unit of premium access until the BOCs can increase the supply of premium access to accommodate more than a single intercity carrier.[26]

There are two aspects of the transitional pricing of premium access, viz. the pricing of the actual trunk-side connection to the local switch and the high-capacity transport facilities (trunks) that carry AT&T Long Lines' traffic from its toll office to the local switch. In my view, the Commission's ACP deals inadequately with both aspects of the transitional pricing of premium access as received by AT&T Long Lines.

The conceptual approach in the Commission's ACP for pricing the actual trunk-side connection to the local switch is correct. The ACP realistically acknowledges the practical difficulties in estimating the opportunity cost of premium access as provided to AT&T Long Lines. Linking the amount of the premium access charge, however, to interstate CPE costs or surrogate CPE costs as specified in paragraph 165 of the order is both arbitrary and nonsensical. Given the practical impossibility of "auctioning" premium access to the highest bidder, a better approach would simply begin with the proposition that AT&T should pay a premium access charge such that an "appropriate" differential is maintained between the price of line-side and premium interconnection that reflects the short term scarcity value of the superior interconnection that the BOCs provide AT&T. How large should the "appropriate" differential be? A reasonable answer to me is that the amount of the *initial* premium access charge paid by AT&T should be sufficient to maintain the existing *percentage* differential between the ENFIA per minute charge (SEP amount) paid by the OCCs and the effective per minute charge paid by AT&T for premium interconnection through separations and settlement. This differential could then be phased down to zero as premium access becomes available to all interexchange carriers.

[26] This point is more fully discussed in Jerry B. Duvall, "Telephone Rates and Rate Structures: A Regulatory Perspective," paper presented at the *Workshop on Local Access: Strategies for Public Policy*, St. Louis, Missouri, September 16, 1982.

This approach to determining the amount of AT&T's premium access charge starts at the status quo and reflects a price differential that the Commission found to be in the public interest in its recent ENFIA decisions. Whether this differential accurately measures the quality differences between line-side and premium network interconnection is, of course, problematic. Nevertheless, I believe that the Commission, having found that competition in the MTS and WATS market is in the public interest, should err on the side of encouraging, *not* discouraging, entry. After all, new competitors enter the MTS and WATS market at their own risk and with private capital. Whether these entrants succeed or fail when the differential disappears following the transition period is a problem only for the competitors, not for a regulatory agency. The Commission's objective should be the support and maintenance of competition in the industry. As this competition develops, the Commission can begin to reduce and eventually eliminate the regulation of all participants in the MTS and WATS market and thereby reduce the social cost implied by such regulation.

By setting the initial amount of premium access at only $1.4 billion, the Commission's ACP adopts the view that the effective percentage differential paid by the OCCs and AT&T should narrow considerably effective January 1, 1984.[27] The ACP provides no rationale whatsoever for this important public policy decision, and I respectfully dissent from this part of the Commission's ACP.

The transitional pricing of the high volume transport facilities used by AT&T Long Lines to terminate its traffic on the local switch raises a problem analogous to the pricing of premium interconnection. By virtue of its large share of all interexchange traffic resulting from its former status as the monopoly interexchange supplier, AT&T in most cases transports traffic from its toll offices to the local switch via direct, high-volume, dedicated trunks, rather than intervening tandem switches. Such trunks provide AT&T with substantial economies of scale in transporting traffic to end offices. Lacking AT&T's market share advantage derived solely from AT&T's former monopoly status, the OCCs cannot as yet efficiently utilize high capacity dedicated trunks and in many cases must use common trunk capacity with tandem switching for transporting traffic from the OCC's point of presence to the local switch. As a result, the unit cost of transport for an OCC is probably higher than for AT&T and consequently provides AT&T with a competitive advantage that is unrelated to any "survival test" in the MTS and WATS market.

The Modified Final Judgment explicitly recognized this transitional problem and mandated that the BOCs provide exchange access on an unbundled, tariffed basis that is "equal in type, quality, and

[27] See "Separate Statement of Commissioner Mimi Weyforth Dawson re: MTS and WATS Market Structure," p. 12.

price to that provided to AT&T and its affiliates." The basic idea is to average the costs of transport over low and high capacity facilities to even out AT&T's cost advantage during the transition to equivalent interconnection and to give the BOCs an opportunity to reconfigure their exchange facilities to accommodate multiple interexchange carriers. The approach prescribed by the MFJ is certainly one way to deal with this transitional problem. I am not sure, however, that it is the best approach or whether the Department of Justice in fact has the authority to prescribe a pricing methodology for network access. In my opinion, this matter clearly falls within the purview of the Commission. Nevertheless, the problem is real, and the MFJ offers one possible solution.

As an alternative approach, the ACP Rules prescribing the computation of common and dedicated transport access charges could be amended to levy a "premium transport" charge on AT&T to reflect its competitive advantage during the transition to equivalent interconnection and reconfigured transport facilities. This approach would at least keep the rates for common and dedicated transport somewhat closer to cost for interexchange carriers other than AT&T in contrast to the MFJ approach where cost averaging insures that no transport rates will reflect costs for any interexchange carrier. Whatever the approach, it is not clear to me that the Commission's ACP adequately addresses this problem, especially if AT&T's current trunking capacity is defined by the ACP Rules in Part 69.112 as mostly "dedicated transport" while the OCCs' equivalent facilities are classified as mostly "common transport." The difficulty with assessing the significance of this particular problem is the lack of illustrative data in the decision that might have provided some sense of the quantitative impact of applying the Commission's ACP Rules. Lacking such data, it is impossible for me to evaluate the possible deleterious effect of this aspect of the ACP on competition in the MTS and WATS market. I believe, however, that this matter should be given a careful look by the Commission on reconsideration of the ACP decision.

The Effect of Surrogate Charges on Competition. During the phase-in period of end-user flat charges for network access, Part 69.206 of the ACP Rules prescribes that a surcharge be levied on all interexchange carriers that offer MTS, In-WATS, FX, CCSA or CCSA equivalent service as a surrogate for usage charges upon an end user that originates a collect MTS or In-WATS call or originates an FX, CCSA or CCSA-equivalent call at the open end. This rule will be costly to implement, will introduce needless temporary distortions in the pricing of private line services, and may have an anticompetitive effect.

It must be emphasized that this costly rule is needed only to compensate for a defect in the end-user mover charge mechanism. Rather than eliminate the mover charge mechanism and the

inefficiencies it creates (as already discussed), the ACP prescribes yet *another* distortionary rule to "patch up" the defects of the first. Together, the end-user mover charge mechanism and the surrogate charge rule create pointless complexity and economic waste that could be completely avoided. These two aspects of the ACP alone provide a clear example of needless social cost induced solely by regulation.

As a result of the surrogate charge rule, the total user cost of using interstate private line services such as FX lines will now include *two* types of interstate usage-sensitive charges during the transition period, viz., the surrogate charge and the interexchange carrier's-carrier charge. Although the surrogate charge is only a temporary phenomenom, it is unfortunate that the only category of interstate transmission service that has been priced efficiently in terms of its rate structure will now be priced inefficiently.

Taken by itself, the temporary distortion in the pricing of private line service may appear inconsequential. The cumulative effect, however, of other distortions in the ACP on private line services may have a significant effect on their "allocated" cost. For example, an ordinary business (non-carrier) subscriber to FX service will access the local exchange via a dedicated access line. As noted previously, Part 69.303(c) of the ACP Rules allocates a pro rata share of station equipment costs to the dedicated access line rate element. These costs are in addition to the actual costs of the facility itself. Consequently, the ACP requires that this component of FX service depart from its economic cost. Part 69.206 requires that the interexchange carrier providing the interexchange portion of FX service, i.e., an interstate private line, be assessed a carrier's-carrier charge on all calls plus a surrogate charge for all calls to an FX subscriber that originate at an FX open end. Presumably, the interexchange carrier will recover the carrier's-carrier and surrogate charges from the FX subscriber, possibly on a usage basis. However the interexchange carrier chooses to recover its carrier's-carrier and surrogate charges, the FX subscriber will ultimately have to absorb not only these charges but also the costs associated with the billing of surrogate charges.

An interexchange carrier that subscribes to the *identical* FX facility just described (e.g., for use as part of its public switched service) will pay different "allocated" costs under the ACP. The carrier will access the local exchange via dedicated transport facilities as prescribed in Part 69.112 of the ACP Rules. This facility may be exactly the same facility used by the ordinary business customer. Nevertheless, the allocated costs of the facility will differ given the different regulatory cost allocation rules for the various categories of access service. Among other differences, no station equipment investment is directly assigned to the dedicated transport rate element. By virtue of its status as an interexchange carrier, the

carrier will be subject to carrier's-carrier charges when using the leased FX facility in addition to any surrogate charges resulting from incoming open end FX usage. The effective cost of FX facilities to interexchange carriers is difficult to estimate, given the unknown effects of carrier's-carrier and surrogate charges. It seems clear, however, that the allocated costs of FX service will depart sharply from the economic costs of the underlying private line facilities. Thus, to achieve price "parity" or "equity" between interstate switched and private line services, the ACP has mandated substantial economic inefficiency for a transition period. Since telecommunications is both a final and intermediate good, the economic waste generated by such inefficient pricing will be incorporated into the pricing of virtually every good or service that requires telecommunications as an input to production and distribution. The conscious generation of such economic waste by a regulatory agency seems difficult to justify.

The ACP properly acknowledges in paragraphs 190 and 191 the technical problem that a local exchange carrier will have in measuring interstate usage of common lines for subscribers who use an OCC for their interstate long distance calling.[28] A local exchange carrier may find it very difficult to apply accurately the end-user mover charges for customers of interexchange carriers using ENFIA A line-side terminations to originate and terminate their long haul traffic. The ACP purports to deal with this problem by requiring all local exchange carriers to offer billing services to all interexchange carriers if they offer billing services to any. The ACP anticipates in paragraph 191 that the OCCs will in fact take advantage of this exchange carrier service that will make possible the accurate billing of end-user mover charges generated by OCC customers. As an alternative to having exchange carriers provide the OCCs with billing services, footnote 63 in the ACP allows exchange carriers to file waiver petitions to permit them to impose surrogate ENFIA A charges on the OCCs if the local exchange carrier can demonstrate that it is not otherwise feasible to collect the mover charges directly from end users who are OCC customers.

Given the costs that a local exchange carrier would have to incur in order to monitor the interstate usage of common lines by OCC customers for just a transition period, two factors suggest that exercise of the waiver option by exchange carriers is highly probable. First, local exchange carriers may not want to invest in line measurement equipment that may have little value following the end of the transition period. Second, the OCCs may have a major incentive to do their own billing rather than have the local exchange

[28] The difficulties involved in assessing the end-user mover charge for local exchange subscribers that use an OCC for long distance calling are essentially the same as those difficulties involved in estimating the same charges for incoming calls on an FX open end.

carrier do it for them. It must be recognized that the BOCs will in many cases be competing with the OCCs for intraLATA toll business. It is not obvious that an OCC would eagerly turn over its traffic data to its major intraLATA competitor for billing purposes.

Moreover, the billing services provided by the local exchange carriers will be unregulated. Thus, the local exchange carriers through strategic pricing of their billing services will be able to discriminate between high and low volume interexchange carriers and consequently be able to influence the OCCs' internal tradeoff between cost-effective billing services and the value of not releasing sensitive billing data to potential or actual intraLATA competitors.[29] For example, the BOCs could price their billing services above the OCCs' stand-alone billing costs and thereby discourage the OCCs from using BOC-provided billing service. The BOCs could then seek a waiver per footnote 63 and impose a surcharge on the OCCs. The OCCs would then have to collect the surrogate charges from their customers. Once the costs of this billing complexity are passed on to OCC customers, the OCCs may be competitively disadvantaged vis a vis other interLATA carriers that have premium network access that provides less costly measurement of end-user mover charges triggered by interstate toll calling. It is possible that the combination of the initial reduction in the differential in price between line-side and premium access plus the surrogate charges on ENFIA A lines may be sufficient to eliminate almost entirely the difference in price paid by the OCCs and AT&T for network access. Whatever the net impact on competition, the ACP is completely silent concerning the potential competitive problems that collection of mover charges might imply.

Implications of Pooling and ACP Administration. As the previous discussion has shown, the Commission's ACP is not closely linked to the principle of cost causation. Consequently, the ACP introduces a new set of inefficient, discriminatory rates for network access that presumably will reduce the discriminatory rate differentials between interstate MTS/WATS and private line service. Various provisions of the ACP that establish procedures for implementing and administering the plan exacerbate the deviation from cost-based pricing and increase the possibility of collusive, anticompetitive conduct among exchange carriers.

The funding of the Universal Service Fund and the recovery of transitional "carrier common line" costs through a carrier's-carrier charge not only creates economic inefficiency in the pricing of network access but also requires mandatory pooling of certain rate

[29] As local exchange carriers are increasingly subject to the threat of actual or potential entry of competitors that offer alternative local distribution services, the conduct of the incumbent exchange carriers will most likely resemble the strategic behavior of any dominant firm that desires to maintain its market position.

elements of the carrier's-carrier charges. Of course, no pooling arrangement would be necessary for purposes of the USF if a "tax" were imposed on all access lines with the proceeds collected by the telephone company and forwarded to an existing local public body for direct distribution to qualified telephone subscribers requiring financial support. Part 69.105 of the ACP Rules prescribes a uniform, nationwide charge per conversation minute for all interexchange carriers to recover the carrier common line charges. Since the costs of local exchange service will differ from one study area to another and even from one wire center to another, some pooling arrangement is necessary. Again, if local carriers were permitted to "bill and keep" such transitional charges to fund the carrier common line revenue requirement specific to a given study area, no pooling would be required.

The ACP notes in paragraph 314 that pooling of carrier common line charges is necessary to mitigate in part the effects that unlimited rate deaveraging might produce. This concern is puzzling, since the end-user mover charge will effectively result in the deaveraging of the rates of interexchange carriers as a function of the end user's geographic location and volume of interstate calling. Since interexchange rates are effectively deaveraged anyway through operation of the transition plan, there seems little point in incurring both the direct costs of administering a pooling arrangement and the social costs of the inefficient pricing of network access through transitional and permanent carrier's-carrier charges.

Notwithstanding the needless out-of-pocket and social costs generated by pooling, the ACP prescribes additional access charge inefficiencies by placing a severe constraint on the extent of disaggregation that an exchange carrier may use in deriving the allocated costs for access rate elements that are not pooled. The ACP Rules currently prohibit access tariffs that are disaggregated within a study area. Such a restriction is arbitrary and represents yet another instance where the ACP will drive the price of network access away from cost. Administrative convenience for tariff review purposes seems the only logical rationale for such a restriction. As an alternative, the extent of cost disaggregation could be left to the discretion of the state PUCs. If access charge tariffs were filed with state PUCs rather than the FCC, the administrative burden on the FCC could be lightened and access tariffs could move closer to the actual costs of local exchange access at the discretion of the state PUCs.

Paragraphs 321 and 322 of the ACP also place further restrictions on the ability of local exchange carriers to move toward cost-based access tariffs for traffic-sensitive costs. Any carrier that is part of an extended area service (EAS) agreement with other local exchange carriers must reach agreement with all participating carriers before a separate tariff for the traffic-sensitive rate elements of the access

tariff can be filed in lieu of the national common tariff. The necessity for such agreement among all EAS partners means that a high-cost EAS partner can effectively prevent a low-cost EAS partner from disaggregating its EAS costs and attempting to bring its traffic-sensitive access charge rate elements closer to cost for some portion of an extended service area. This restriction effectively nullifies any potential competition between EAS partners for providing access to interexchange carriers. Of course, the existence of EAS agreements complicates the design and administration of access tariffs. Such complexity, however, provides little justification for preventing competition among EAS partners for the access business of interexchange carriers. This restriction is both inefficient and anticompetitive in nature.

The Exchange Carrier Association (ECA) established by the Commission's ACP is necessitated by the pooling requirements of the plan. I object to the creation of the ECA and question the Commission's authority to mandate the existence of such an organization. As a matter of public policy, the ECA is unnecessary since pooling is unnecessary. Nevertheless, given the reality of the ECA, its organization and membership should not be an obstacle to the further competitive development of the telecommunications industry. I fear, however, that the ECA organization contemplated by the Commission's ACP will prove a hazard to telecommunications competition. Paragraph 345 of the ACP limits membership in the association to exchange carriers that participate in access charge revenue pools administered by the ECA. Moreover, the governing board will be composed exclusively of exchange carrier representatives.

It must be emphasized that the membership of the ECA will consist entirely of competitors in the market for network access, terminal equipment, and other communications services that will cross jurisdictional boundaries. Taking a narrow view of the extent of actual or potential competition among the membership, i.e., a view that perceives ECA members only as local monopoly suppliers of exchange access, completely overlooks the other dimensions of potential rivalry among the ECA membership. Thus, the ECA and the BOC central organization as prescribed by the MFJ will provide an opportunity for collusive behavior among local exchange carriers. This possible outcome is totally inconsistent with the Commission's general support of competition in the telecommunications industry.

Local Dial Switching Investment and the Rate of Return. Paragraphs 91 and 214 in the Commission's ACP prescribe the allocation of NTS central office equipment on a usage-sensitive basis. The explanation provided in footnote 75 to rationalize this departure from the *Separations Manual* is unpersuasive. The current Joint Board in CC Docket 80–286 may ultimately adopt this change in the classification of central office equipment. Until the Joint Board

makes this determination, however, it is inappropriate for the ACP to prescribe this change. If the intent of the ACP is to minimize the amount of NTS investment to be recovered through end-user flat charges, the ACP should be candid on this point and not attempt to anticipate the findings of the Joint Board.

Paragraph 254 of the ACP prescribes the exchange carriers target their access tariffs to earn AT&T's authorized rate of return on its interstate services, presently set at 12.75%. This rate of return prescription may create an incentive for exchange carriers to bias the assignment of expenses and investment toward access services if the rate of return authorized by the ACP exceeds the allowed rate of return on intrastate plant set by individual state PUCs. This incentive may be especially acute in areas where bypass of the exchange carrier is not a significant short term threat. A rule that simply requires an exchange carrier to target its access tariffs to recover the same rate of return as its intrastate operations would have avoided this incentive to misallocate resources.

Universal Service. A further objection that I have to this order rests in its discussion of the "universal service objective" of the Communications Act. *Access Order*, paragraphs 80–84. Although I agree with my fellow Commissioners that we should consider the impact that our rate decisions may have on telephone subscribers and, if possible, avoid decisions that might result in a large number of disconnects, I fear that the discussion of "universal service" contained in this order goes too far. This order concludes that "universal service" is an objective of the Communications Act and implies that any FCC action that might cause telephone subscribership to drop below its current level would be contrary to the Act. I do not believe that this is what Congress intended.

Section I of the Communications Act directs the Commission to make service "available, so far as possible, . . . at reasonable charges." 47 U.S.C. 151. Nothing in that language suggests that the Commission is restricted from making decisions that might cause a decrease in telephone subscribership, so long as service is "available" and the charges for that service are "reasonable." I fear that the discussion at paragraphs 80–84 of this order will encourage objectors to argue that the Commission has determined that any substantial change in rates for basic telephone service is contrary to the Communications Act. I believe that this is likely to make it more difficult for the Commission to maintain its competitive policies and enforce cost-based pricing. I therefore dissent from this portion of the order.

Conclusion. The Commission's ACP is a *reaction* to the emergence of competition in the telecommunications industry, not a forward-looking plan designed to accommodate new competitive entry into the industry consistent with the Commission's policy decision made earlier in this proceeding. Other than initiating the transition of

interstate NTS local exchange costs toward end-user flat charges, the ACP seems otherwise firmly committed to supporting, even defending, the status quo. As a result, the ACP has a strong protectionist flavor. Under the guise of "universal service," the ACP seeks to protect local exchange carriers from the vagaries of rapid technological change and to preserve those regulatory practices that have successfully suppressed competition in the past and have permitted the pricing of telecommunications services that is little related to the economic costs of production. As a result, it is not suprising that the old industry "partnership" with its settlements procedures intact (paragraph 332) has resurfaced as the Exchange Carrier Association. Moreover, discriminatory rate structures, a prominent feature of telecommunications pricing since Theodore Vail, remain firmly in place. Even the shifting of interstate NTS local exchange costs from interstate switched services to local exchange carriers is largely justified in the ACP by the real and present threat of local exchange bypass, not the $1.6 billion potential improvement in consumer welfare that cost-based pricing of telecommunications services will bring to the American public. It is both curious and odd that a federal regulatory agency charged with the welfare of interstate ratepayers has adopted a plan that seems less concerned with promoting and protecting their interests than with safeguarding the economic viability of local telephone companies.

I think the Commission must begin to realize that it can no longer have it both ways, i.e., pro-competition on some policy issues while "business as usual," monopoly-world regulation on others. The recent action by the Joint Board in CC Docket 80–286 is a dramatic case in point. The four "principles" which the Joint Board majority approved, and I dissented from, ignore completely the reality of telecommunications competition by failing even to mention it and by stressing the importance of protecting telephone companies by the "permanent protection of universal service." The reality is that monopoly-type regulation is fundamentally inconsistent with competition in the telecommunications industry. Pretending otherwise by clinging to the past will benefit neither consumers nor the industry as telecommunications emerges as the foundation of the information economy. Courageous regulatory leadership that peers beyond the past and present is needed now to rationalize pricing in this vital sector of the American economy.

As I have attempted to show in some detail, many of the complexities of the Commission's ACP are wholly unnecessary and do not result from any unique complexities inherent in the pricing of network access. A far simpler but comprehensive plan keyed to the future of the industry rather than its past offers major advantages to consumers.

The Pricing of Local Exchange Access: A Federalist Approach[30]

My approach to the pricing of local exchange access is straightforward and administratively simple. Moreover, it reflects a modern view of the appropriate role of government intervention in monopoly markets, namely, assuring nondiscriminatory access to facilities that represent substantial "sunk cost" barriers to entry and *exit.*[31] Clearly, local telephone facilities involve substantial sunk costs that make market entry by competing telephone companies exceedingly costly, even if such entry were lawful. Therefore, rules which prescribe the terms and conditions of access to local exchange facilities will promote efficient use of such facilities and will permit the further development of intercity transmission competition.

Federal Jurisdiction Over All NTS Costs. The first step in my access charge plan is the assertion of federal jurisdiction by the FCC over all non-traffic sensitive (NTS) and appropriate traffic-sensitive (TS) costs involved in accessing local exchange facilities for originating and terminating long haul traffic. It is time to accept and deal with the simple truth that an arbitrary allocation of NTS costs between the intrastate and interstate jurisdiction has no economic or technological reality. An access charge plan that maintains this legal dichotomy (and economic fiction) leads inevitably to at least three network access classifications, viz., "interstate toll access," "intrastate toll access," and "local service access." If the actual physical connection to the local exchange is a line-side termination, then the same, identical facility may be tariffed at three different rates under three different rate structures. Wholly arbitrary cost allocations are then necessary to implement "cost-based" pricing of such "service categories," since the defined services are regulatory fictions—they simply do not exist in a technological sense.

These arbitrary allocations create significant social cost since regulators have to exert a major effort to enforce the regulatory distinctions. Unless the rates and rate structures are nearly the same for each classification of access service, there is a strong incentive for interexchange carriers to arbitrage the differences in rates by configuring their networks to "look like" interstate or intrastate facilities depending on the relative price of interstate vs. intrastate access. Multipart, jurisdictional classification and pricing

[30] The following discussion is based in substantial part on my paper entitled "Contemporary Issues in Telecommunications Pricing" presented at the *Ninth Annual Rate Symposium on Present and Future Pricing Issues in Electric, Gas, and Telecommunications Industries*, Kansas City, Missouri, February 7, 1983.

[31] See Elizabeth E. Bailey, "Contestability and the Design of Regulatory and Antitrust Policy," *American Economic Review* 71 (May 1981):178–183. More generally, see William J. Baumol, John C. Panzar, and Robert D. Willig, *Contestable Markets and The Theory of Industry Structure* (New York: Harcourt Brace Jovanovich, Inc., 1982).

of local exchange access is, in reality, a scheme of price discrimination where the costs of local exchange access are apportioned and recovered in access tariffs on the basis of the *identity* of the class of users, i.e., local service end users, intrastate interexchange carriers, or interstate interexchange carriers. The cost allocations among these user classes must be arbitrary, since these access service categories are regulatory fictions and not based on cost causation.

This regulatory morass with its discriminatory rate structures, tariffing complexity, incentives for arbitrage, and regulatory enforcement costs can be completely avoided by assertion of federal jurisdiction by the FCC over all NTS and TS costs of local exchange access. I recognize that this proposal represents a significant change from current regulation and is likely to draw legal fire. I submit that the Commission can legally adopt this proposal, however, for the following reasons.

The FCC's authority to assert jurisdiction over access costs and require unified access tariffs derives from the Communications Act mandate that the Commission "make available . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities at reasonable charges." 47 U.S.C. 151. To fulfill this mandate, the Commission occasionally is required to reexamine and rethink existing regulatory policy to ensure that it is consistent with the statute's objectives. See generally, *Geller* v. *FCC*, 610 F.2d 973 (D.C. Cir. 1979). And, when it appears that changes in the industry warrant changes in the Commission's regulatory efforts, the Commission is empowered to make adjustments and thus "avoid the necessity of repetitive legislation." *National Association of Theatre Owners* v. *FCC*, 420 F.2d 194 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 922 (1970). See also *General Telephone Co. of California* v. *FCC*, 413 F.2d 390 (D.C. Cir.) *cert. denied* 396 U.S. 888 (1969). In fact, the Commission, with judicial approval, has radically altered much of its regulatory policy in recent years to accommodate the modern telecommunications environment. *E.g. Computer and Communications Industry Association* v. *FCC*, 693 F.2d 198 (D.C. Cir. 1982), *petitions for cert. filed*, U.S.L.W.—(U.S. February 9 and 10, 1983) (Nos. 82–1331 and 82–1352) (*Computer II*).

Unified treatment of access costs is both desirable and necessary in today's telecommunications environment. It will facilitate open entry into the industry and thus produce the public benefits that competition fosters. It will eliminate the need for arbitrary cost allocations and subsidy schemes that encourage uneconomic bypass of the network. And, it will conform regulation of access charges to the reality of the post-divestiture telecommunications industry structure. These goals cannot be accomplished if the current system of split regulation of access costs continues. So long as there is a pretense that there is a difference between interstate access and intrastate access and an arbitrary allocation of costs to accommodate

that pretense, there will be an incentive for irrational regulation that is inimical to development of a rapid, efficient telecommunications system in which access charges are cost-based and non-discriminatory.

Challenges to the legality of my proposal are likely to center upon two main themes: first, that unification of access charges is contrary to the Supreme Court's decision in *Smith* v. *Illinois Bell Telephone Company*, 282 U.S. 133 (1930); and second, that unification under the federal jurisdiction works an impermissible preemption of state authority to set local rates. Neither argument is insurmountable.

With regard to *Smith*, it seems entirely reasonable to conclude that the Supreme Court's analysis in that case cannot prevent the FCC from finding that an arbitrary allocation of access costs between the interstate and intrastate jurisdictions is no longer consistent with the goals of the Communications Act. *Smith* was decided in 1930. This was before Congress created the FCC and gave it the "comprehensive mandate" with "expansive powers" that the courts have recognized for many years. See *National Broadcasting Co.* v. *FCC*, 319 U.S. 190, 219 (1943). See also *General Telephone of the Southwest* v. *FCC*, 449 F.2d 846, 853 (5th Cir. 1971). It also was before technological development eroded the foundations of the monopoly market structure that existed in 1930, making competitive entry into the interexchange market possible and viable. Finally, and perhaps most importantly, it was well before the announcement of AT&T's divestiture of the Bell Operating Companies, an event that will make the technical and economic distinction between local service and long distance service even clearer.

I submit that *Smith* need not be read as a Supreme Court order that costs associated with plant used for both interstate and intrastate service always must be divided between the two jurisdictions. Rather, I advocate a more limited reading of the case as a statement that, in an environment where monopolized end-to-end communications service and rate base regulation were the norm, a state rate prescription that failed to recognize federal jurisdiction over commonly used plant was unlawful. Viewed in this light, it is apparent that *Smith* is not a bar to the adoption of my proposal.[32]

[32] The validity of this conclusion is not diminished by the fact that the FCC and the states have cited *Smith* as the basis for jurisdictional separations of access costs for many years. In situations such as this, where recently changed circumstances warrant rethinking of a regulatory approach, the Commission is not bound by its past practice so long as it recognizes that it is implementing a change and explains it. See *Greater Boston TV Corp.* v. *FCC*, 444 F. 2d 841, 852 (D.C. Cir. 1970). See also *Chisolm* v. *FCC*, 538 F. 2d 345 (D.C. Cir.) *cert. denied*, 429 U.S. 890 (1976), FCC is not precluded from changing its mind as to the limits of its statutory authority.

Nor is the validity of this conclusion diminished by the legislative history of Section 410(c) of the Communications Act. There, in the course of enacting legislation that

The second likely argument against adoption of my proposal is that it would work an unwarranted interference with state ratemaking authority in violation of Section 2(b) of the Communications Act.[33] In assessing this argument, it is important to recognize the very limited degree of preemption inherent in my proposal. In effect, my proposal would remove certain NTS and TS costs from the intrastate rate base and make recovery of those costs subject to federal oversight necessary to maintain the effectiveness of our federal open entry policies. I do not propose that the Commission set the actual rates for access; this would be left to state discretion within federal guidelines.

Recent preemption caselaw indicates that this type of limited intrusion upon state ratemaking powers is permissible under 2(b). In *NCUC II*, for example, the Fourth Circuit Court of Appeals rejected an argument that the FCC's terminal equipment registration program (which facilitated customer ownership of such equipment, thus removing some of the costs of that equipment from the intrastate ratebase) was impermissible under 2(b) because it would reduce state ratemaking options. 552 F.2d at 1048. The court concluded that the FCC's jurisdiction over jointly-used plant was primary, and thus, action intended to promote federal policy could impose limits upon state regulatory authority. *Id.*

Similarly, in its recent decision in *Computer II*, the D. C. Circuit rejected arguments that FCC ordered detariffing of all CPE (entirely removing those costs from the intrastate ratebase) violated 2(b). In that case, the Court indicated that so long as the Commission "has neither attempted to set rates for intrastate communications services or facilities nor asserted jurisdiction over matters of state concern because of intrastate discrimination against interstate business," its actions are not contrary to the purpose of 2(b).[34]

Rate Structure Rules for Network Access Tariffs. I propose that

codified state participation in the jurisdictional separations process, Congress recognized *Smith* and its influence on telecommunications regulation. I submit that a fair reading of this history does not evidence a legislative intent to enshrine *Smith* or the jurisdictional separations process, but solely an intent to ensure state participation in the process so long as it existed.

[33] Section 2(b) was enacted in response to the Supreme Court's decision in the so called *Shreveport* case. *Houston, E. and W. Texas Ry.* v. *United States*, 234 U.S. 342 (1914). In that case, the Supreme Court held that the ICC could suspend rates set by a state regulatory agency in order to allow carriers to raise local rates to the level existing on similar federal routes. In enacting 2(b), Congress specifically indicated that it did not want the FCC to have such authority. See discussion *North Carolina Utilities Commission* v. *FCC*, (*NCUC I*), 537 F.2d 782, 793 (4th Cir.), *cert. denied*, 429 U.S. 1027 (1976); *North Carolina Utilities Commission* v. *FCC*, (*NCUC II*) 552 F. 2d 1036, 1047 (4th Cir.), *cert. denied*, 434 U.S. 874 (1977).

[34] 693 F.2d at 216. In fact, the FCC action that I propose is far less intrusive upon state ratemaking options than the decision to detariff CPE. In that situation, all CPE was removed from state rate regulation. Under my proposal, the states would retain significant ratemaking powers over access costs. See also *People of California* v. *FCC*, 567 F.2d 84 (D.C. Cir. 1976) *cert. denied*, 434 U.S. 1010 (1978).

the FCC prescribe general rate structure rules for recovering all NTS and TS costs involved in providing access to local exchange facilities. Such rules would grant state public utility commissions considerable discretion in setting rate *levels* for access tariff rate elements but impose general rules or "rate structure guidelines" for designing any network access tariffs. An example of such general rules would be the prohibition of inefficient price discrimination schemes based on arbitrary segmentations of customer groups. State PUCs would continue to review and approve a local carrier's revenue requirement and authorized rate of return on its rate base. The relevant rate base, however, would include all the costs associated with exchange access.

The FCC-prescribed rate structure rules would establish principles that local telephone companies must follow in designing "efficient rate structures," i.e., rate structures that track so far as possible the actual economic costs of exchange access and usage. Such guidelines might include self-selecting, two-part tariffs; nonlinear or "tapered" rate structures; premium flat rates; and other cost-based rate structures that would promote economically-efficient usage of local exchange facilities, facilitate nondiscriminatory access to local exchange plant by *all* users, and permit full recovery of all NTS and TS costs of local exchange access.[35] State PUCs would retain considerable discretion, however, in designing specific rate tapers or multi-part tariffs as prescribed by the FCC's general rate structure guidelines. Different *qualities* of local exchange access would be offered pursuant to tariffs which are separate but similar in structure to a generic, "line-side" access tariff.

Administratively, the access tariffs would be filed with the state PUCs, not the FCC. This procedure would not be burdensome, since a single tariff would replace many of the existing tariffs presently filed with state PUCs. The FCC would retain an oversight function and accept petitions that allege violations of the federal rate structure rules.

The assertion of federal jurisdiction over all costs of local exchange acces eliminates entirely the need to create artificial classifications of network access. All rate discrimination based solely

[35] Theoretical discussions of various rate structure options include Gerald R. Faulhaber and John C. Panzar, "Optimal Two-Part Tariffs With Self-Selection," Bell Laboratories *Economic Discussion Paper* #74, January 1977; K. W. S. Roberts, "Welfare Considerations of Nonlinear Pricing, "*Economic Journal* 84 (March 1979):66–83, R. D. Willig, "Pareto-Superior Nonlinear Outlay Schedules," *Bell Journal of Economics* 9 (Spring 1978):56–69, and Bridger M. Mitchell, "Alternative Measured-Service Structures for Local Telephone Service" in *Issues in Public-Utility Pricing and Regulation*, ed. Michael A. Crew (Lexington, Massachusetts: Lexington Books, D. C. Heath, 1980), pp. 107–123. A non-technical summary of some of the recent theoretical literature on efficient rate structures is provided by Duvall, "Telephone Rates and Rate Structures: A Regulatory Perspective."

on the class or identity of the user would be eliminated, since classifications of local exchange access drawn along arbitrary regulatory boundaries would no longer exist. For example, any telecommunications user accessing local exchange plant through "line-side" terminations at the central office would take such service pursuant to a uniform tariff. Thus, the current tariff classifications of residential, business, and interexchange carrier (ENFIA) would cease to exist. If such users subscribe to identical line-side access, they will be subject to the same tariff.

While this concept may appear revolutionary as applied to the pricing of telephone service that has traditionally reflected discriminatory, "value-of-service" pricing principles, it is, nonetheless, a commonplace reality in most unregulated markets. By analogy, this principle would bar a supermarket from attempting to segment its customers by sex and charging female customers one price for bread and males another. Since there is no cost difference in selling bread to males in comparison to females, such a personal price discrimination scheme—if it could be enforced—would be injurious to the sex forced to pay the higher price and would encourage an inefficient allocation of resources, i.e., the price of bread charged to the discriminated sex would not approximate marginal cost. Such an example of inefficient price discrimination seems almost ludicrous within the context of an unregulated market. But the long tradition of a similar type of inefficient price discrimination in the pricing of local exchange access—business vs. residential local loop service—has not been seen for what it is, i.e., a system of inefficient (possibly "unreasonable") price discrimination insofar as the customer classifications do not reflect significant cost differences.

The rate structure rules that I would propose would *not* prohibit price discrimination per se; only inefficient price discrimination based on the *identity* of the user would not be permitted. A tapered rate structure, for example, could include a "volume discount" such that high-volume users would pay a unit price just equal to the marginal cost of usage. At intermediate levels of usage, the unit price could be designed to exceed slightly the marginal cost of an additional minute, message, or other measure of telecommunications output. To prevent "unreasonable" volume-based price discrimination, my rules would ban any tariff restriction prohibiting resale or shared use. Of course, in a world where the transactions costs of arbitrage are zero, a volume-based price discrimination plan may be unsustainable; low and intermediate users could simply pool their network access requirements to take advantage of the high-volume discount. But organizing and managing an arbitrage arrangement *is* costly, so there does exist some flexibility to incorporate some volume discounts in the rate structure.

"Universal Service" as a State Responsibility. Permitting local telephone companies and state PUCs to include volume-based price

discrimination in their local exchange access tariffs provides a source of revenue to finance below-cost network access for certain subscribers who might otherwise discontinue telephone subscribership if required to pay its full cost. This application of welfare-enhancing price discrimination could be combined with statewide pooling or rate averaging as appropriate to deal with the problem of "high cost" exchanges within a given state.[36] Subsidies *between* and *among* states, however, would be eliminated.

The state PUCs could, at their option, require that the uniform rate structure include subsidized access to the local exchange. The state PUCs would accept, however, the responsibility for establishing eligibility criteria for telephone subscribers who should receive subsidized access. Such criteria (if any) would mirror the economic conditions and political importance of subsidized access in each individual state. Some states may place great emphasis on widely-available telephone subscribership while others may not. If either statewide pooling or welfare-enhancing price discrimination is inadequate to assure a high level of statewide telephone subscribership, then state legislatures should be encouraged to subsidize telephone service to targeted user groups that satisfy state-determined eligibility requirements. Moreover, each state PUC should develop its own transition plan found necessary to ameliorate only undesired rate impacts on consumers as the FCC-prescribed rate structure rules become effective. Some states will find that no transition plan is necessary and could implement the FCC rules with minimal impact on subscribers. As a general rule, I believe that the issue of subsidized access to the telephone network is ultimately a *local* issue and federal telecommunications policy should reflect this view.

A state-specific view of "universal service" may seem both radical and antithetical to the purpose of the Communications Act of 1934 ". . . to make available, so far as possible, to all the people of the United State a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities at reasonable charges. . .," but I do not believe it is. As I noted earlier, the concept of universal telephone service is not a well-defined social or economic objective mandated by the Communications Act of 1934. The Communications Act directs only that telephone service be provided at "reasonable charges." In my view, reasonable charges simply means "reasonable cost." Nowhere does the Act state that reasonable charges should be interpreted to require that local network

[36] Implementing jurisdictional subsidies through the separations mechanism typically focuses on subsidizing the *local exchange carrier* rather than the end user. However, the end user, *not* the carrier, is the proper target of public policy designed to maintain wide subscribership to telephone service. Neglecting this point may lead to protectionist policies toward local telephone companies rather than policies that will directly improve the economic welfare of end users.

access be provided *below* cost to some network subscribers. While a "network externalities" argument can be made that suggests that the private cost of network access may exceed its social cost and, therefore, an access subsidy may be good social policy for encouraging subscribership to a *new* or *developing* network, it does not follow that this economic argument mandates that one telecommunications service, say, interstate MTS, must subsidize another.[37] Indeed, a strict application of this economic argument would require the levy of a non-distorting tax and subsidy from the federal treasury, since the economic distortions introduced by inefficient pricing of telecommunications services used to finance the subsidy may lead to other economic distortions that *exceed* the social value of the access externalities.[38] Given the existing high level of nationwide telephone subscribership, I feel confident that this is precisely the case today, i.e., the social cost of the pricing distortions in the intercity transmission market probably exceeds the social value of the externalities of local exchange subscribership provided below cost.

While the Commission's ACP will begin to shift the source of local exchange subsidy from the price of interstate toll minutes to a carrier's-carrier charge, the concept of subsidized access to "high cost and rural areas" as a federal regulatory responsibility remains. I simply cannot accept the implicit logic of a regulatory policy that requires the ratepayers in New York state, for example, to subsidize telephone companies in Wyoming. Such federal regulatory policy is no different in my view from having the Federal Energy Regulatory Commission require electric power customers in Mississippi who enjoy relatively mild winters to subsidize the winter operating costs of electric power companies in Minnesota. If Congress, however, wants to provide *nationwide* subsidized access to the telephone network, it should do so explicitly and provide the necessary subsidy through general tax revenues. It should not simply impose a statutory requirement of subsidized network access to be funded by nationwide distortions in the pricing of telecommunications services.

Treating access to the telephone network as a state rather than federal regulatory responsibility would minimize and localize the distortions in network access pricing necessary to fund below-cost access. Both state regulators and the local telephone companies would be confronted with a binding constraint on the source of the

[37] A survey of some of the literature on the externalities of telephone service is provided by S. C. Littlechild, *Elements of Telecommunications Economics* (Stevenage, U. K.: Peter Peregrinus Ltd., 1979), Chapter 12.

[38] The National Telecommunications and Information Administration has estimated that telephone consumers in the aggregate would be better off economically by approximately $1.6 billion annually if local telephone rates fully recovered all NTS costs and MTS rates were permitted to fall following removal of local exchange NTS costs presently allocated to the interstate jurisdiction. See Comments of the National Telecommunications and Information Administration to the Federal-State Joint Board, CC Docket 80-286, Appendix D.

subsidy, viz., the difference between price and cost for intermediate volume users of network access. This constraint will force state regulators to take a hard—and perhaps uncomfortable—look at precisely *who* should receive subsidized local exchange access and on what terms. For example, should both telephone access *and* usage be subsidized? Should users with multiple access lines receive subsidized access for *each* access line or only the first? Should both the rich as well as the poor have the right to subscribe to subsidized "lifeline" service? So long as the subsidy continues to flow from the Universal Service Fund as prescribed by the FCC and funded by all connecting intercity carriers (or, more precisely, their customers), there will be no incentive at the local level for reducing dependence on this source of subsidy or reducing the cost of local exchange service in "high cost" areas. Moreover, there will be little incentive to target the receipt of subsidized access to users that each state PUC, legislature, or other local political body might find deserving of financial support.

It must be emphasized that major beneficiaries and proponents of the universal service shibboleth have been the regulated, local franchise monopoly telephone companies. As rate base regulated entities, local telephone companies have had a powerful incentive to invest in telephone plant when given favorable treatment by state and federal regulators. Moreover, the long-standing industry practice of flat rate pricing of local telephone service has encouraged uneconomic usage of local telephone service; has encouraged the growth of rate base by requiring the building of new plant to meet peak demand accentuated by flat-rate tariffs; and has provided inaccurate price signals regarding the cost of using local exchange facilities. The mandate of universal service has provided local telephone companies with a convenient and, for all practical purposes, a compelling political argument supporting the current status of jurisdictional separations and local monopoly supply of telephone service.

It is not clear to me that the concept of nationwide universal service that thrived in a monopoly telecommunications world will continue to be in the self-interest of local telephone companies as growing competition undermines the jurisdictional subsidy mechanism and technological changes make alternative local distribution networks increasingly cost-effective. If the local telephone companies cease to be a major constituency and beneficiaries of the universal service doctrine, then the political basis of universal service as a federal responsibility may narrow considerably in the future. Approaching universal service as a state rather than federal responsibility may, therefore, be an inevitable consequence of advancing technology and economic forces at work in the telephone industry rather than a discretionary shift in the direction of telecommunications policy.

Uneconomic Bypass of Local Exchange Facilities. A major consequence of non-cost based rates for intercity switched transmission services is the powerful economic incentive for large users to avoid payment of telecommunications rates that exceed cost. Both advancing technology and the FCC's open entry policies have made it possible for new intercity carriers and large private users to bypass both AT&T's long haul network and, more recently, local exchange facilities as well. Uneconomic bypass of telecommunications facilities is an inevitable consequence of non-cost based pricing and poses a serious threat to the economic viability of some local exchange carriers.

The threat of uneconomic local exchange bypass is by definition a local, regional, or statewide problem. Not all local telephone companies in the nation are or will be subject to the same bypass probability. Given the localized nature of the problem, the local exchange carriers and their state PUCs are uniquely qualified to assess the likelihood of bypass in their own service areas. Consequently, the local exchange carriers and the state PUCs should accept the responsibility for balancing the goals of statewide universal service and the potential for state-specific uneconomic bypass of local exchange facilities.

Approaching the pricing of network access from a unified, comprehensive perspective eliminates regulatory distinctions that cannot be sustained in a competitive environment, greatly simplifies the tariffing of network access, and recognizes the essential role of the states in resolving conflicting policy objectives. In short, my federalist approach recasts the problem of access charges as largely a state and local issue with the federal interest in interstate telecommunications competition protected by rate structure rules. Ultimately, both network subscribership and uneconomic bypass *are* a state and local concern, unlike the national defense which is clearly a federal responsibility. In my view, the federal interest can be maintained and protected by minimal federal intrusion in contrast to a complex web of rules that unnecessarily maintains a bifurcated jurisdictional responsibility for the pricing of network access.

SEPARATE STATEMENT OF COMMISSIONER MIMI WEYFORTH DAWSON
re:
MTS AND WATS MARKET STRUCTURE

The Commission initiated this proceeding five years ago to determine whether the public interest requires that interstate toll telephone service (MTS/WATS) should be provided on a sole source basis, free from direct competition. 67 FCC 2d 757. Of course, the Commission realized that, should competition be permitted, it would have "to determine what reimbursement interstate services should make to local operating companies for the use of local plant, on a cost causational basis; what additional charges, if any, should be levied

on interstate services to support local exchange services; and whether and how these charges can be equitably imposed on all interstate services." *Id.* at 759. Having subsequently determined that unfettered competition will best serve the public interest,[1] the Commission must now decide these very difficult policy issues.

The cornerstone of any Commission action, and this one is no exception, is Section 1 of the Communications Act, 47 U.S.C. 151. Section 1 provides that the Commission shall "make available, so far as possible, to all people of the United States a rapid, efficient, nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges. . ." Lest there be any confusion arising from the Order that elimination of discrimination between services is the overriding objective of this decision, it is not. The objective of this proceeding is to promote efficient communications service with adequate facilities at reasonable charges.

Nonetheless, the Commission has met conflicting objectives in this proceeding because promoting efficient communication service through cost-based rates could jeopardize the availability of adequate facilities to many households. The Commission has approached this apparent conflict by asserting, for the first time, that promoting "universal service" is one of the purposes of the Act. The Commission reaches this finding because it believes a dimunition of universal telephone service would impede the Commission in meeting its Section 1 mandate to make communication service available to all people of the United States and to ensure that safety of life and property is promoted through such service.

I am troubled by this finding. At the outset, I wish to make it clear that promoting universal service may be a laudable goal in Docket No. 78–72. However, the Commission has based its statutory finding, which appears to be a novel interpretation of an Act that is almost fifty years old, upon an insufficient analysis of the Communications Act and its legislative history, and prior Commission and judicial pronouncements in this area.[2] I am therefore not prepared to find, based on the present record, that promoting universal service is an

[1] Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking, 81 FCC 2d 177 (1980), and Second Report and Order in CC Docket No. 78–72, FCC No. 82–515, released November 30, 1982.

[2] See, *e.g.*, Specialized Common Carrier Services, 31 FCC 2d 1106. I am also not persuaded by the record in this proceeding that safety of life and property would be jeopardized absent universal service. Nor is it immediately obvious from my own experience that this would be the case. For example, at a recent Regional Hearing in Portland which I chaired, my staff asked the Secretary-Treasurer of the Southern Montana Telephone Company what she felt the effect of disconnects would be on the safety of life and property. She responded, "Probably would be none." Transcript from May 6, 1982, Portland Hearing (Docket No. 80–286) at 139. She explained that while large ranchers in Montana may choose to disconnect some of the main stations which they currently utilize on their property if rates increase, their telephone service would only be reduced thereby, not terminated.

absolute goal of the Act. The Commission has also failed, in my estimation, to demonstrate any reason to establish universal service as a statutorily mandated goal which the Commission is obliged to meet. The purposes of Docket No. 78–72 could be achieved just as effectively, and without compromising other important goals, were the Commission simply to exercise its Section 1 authority.

This brings me to the source of my greatest concern over the universal service finding. It threatens to restrict, in this proceeding and in others, the flexibility the Commission retains and requires under its broad Section 1 mandate to achieve its overriding policy objective: the promotion of efficient service with adequate facilities at reasonable charges. I need only point out in this regard the conflict that may exist between a goal of universal service and efforts to encourage efficient service through increased competition. In pursuit of the latter policy, the Commission is now considering deregulating carriers which are non-dominant (*i.e.*, those which are constrained by the market from pricing their services above cost).[3] However, in high cost areas the cost-based rates of these carriers, that might otherwise be found to be non-dominant, could nonetheless be considered unaffordable to some customers. The universal service mandate could be interpreted in these circumstances as necessitating the continued regulation of these competitive carriers in order to avoid disconnects.[4] In sum, I believe that it is fully within the Commission's jurisdiction, and a valid communications policy, to promote universal service, provided it does not unduly infringe upon promoting efficient communication service at reasonable charges.

Having said this, the question becomes what access charge structure will promote efficient communications service at reasonable charges. To begin that analysis, it is essential to realize that the Commission is dealing with the problem of deciding the appropriate price of access to local bottleneck facilities. Control of bottleneck facilities is present when a firm or group of firms has sufficient command over some essential commodity or facility in its industry or trade to be able to impede new entrants.[5] The Commission previously has determined that all exchange telephone operators control bottleneck facilities.[6]

Given this setting, economic and legal precedent teaches us that

[3] See Further Notice of Proposed Rulemaking (Competitive Carrier Rulemaking), 84 FCC 2d 445 (1981).

[4] It is also unclear whether the statutory interpretation adopted in this order would impose on the Commission an obligation to ensure the development of universal service among new services, such as cellular radio and Digital Termination System (DTS).

[5] See *e.g.*, A.D. Neale, the Antitrust Laws of the United States of America: A Study of Competition Enforced by Law (1968).

[6] First Report and Order in Competitive Carrier Rulemaking, 85 FCC 2d 1 (1980).

cost-based rates would best serve to promote efficient service and thereby maximize consumer welfare.[7] Moreover, costs should be assigned to the cost causer in order for society to best utilize its resources.[8] Finally, cost-based access charges will serve to promote the optimal market structure for competition in both the interstate and international toll telecommunications markets.

In the telephone business, the revenue requirements for local exchange plant are divided between interstate and intrastate jurisdictions pursuant to the Commission's Separations Manual. Of course, this proceeding does not address the question of the appropriate jurisdictional separation of exchange plant. However, we at the Commission are extremely aware of the potential problems that may arise from disparate regulatory treatment of exchange access charges.[9] I personally am looking forward to reviewing the recommendations of the Joint Board, and the comments upon those recommendations, in the Commission's jurisdictional separations proceeding in Docket 80–286.

The present proceeding, however, looks only to the allocation of costs which are attributed to the interstate jurisdiction. These costs include both traffic sensitive (i.e., variable) and non-traffic sensitive (i.e., fixed) costs. The fundamental finding of this Report and Order is that non-traffic sensitive (NTS) costs ultimately must be recovered on a flat basis and that traffic sensitive cost must be recovered on a usage basis—with virtually all costs being recovered from the cost causers.[10] This approach promotes efficient communications services at reasonable prices.[11]

Unfortunately, the present pricing structure does not follow this

[7] See *e.g.*, Alfred E. Kahn, The Economics of Regulation: Principles and Institutions (1970); and Permian Basin Area Rate Cases, 390 U.S. 747 (1968).

[8] See *e.g.*, J. Bonbright, Principles of Public Utilities Rates, 311–2 (1961).

[9] One immediate problem resulting from disparate interstate and intrastate access charges is the reporting and identification of toll minutes as either interstate or intrastate. However, perhaps even more disturbing than disparate regulatory policies is the potential for exchange carriers to discriminate between intra-LATA transport charges to toll carriers and direct charges to its subscribers for completion of intra-LATA toll calls. Such a scenario will be possible unless a uniform, coordinated regulatory approach is adopted for allocating exchange telecommunications revenue requirements. One guiding rule that state and federal regulators must keep in mind is that the carrier's rate structure should be transparent to the identity of the traffic that is being transported.

[10] One relatively minor exception in the Commission's plan in this regard is that NTS central office equipment will be recovered on a usage basis. The Commission concludes that, because NTS central office equipment is not dedicated to particular subscribers, it should be collected on the basis of usage. This particular conclusion and its rationale, in my opinion, is inapposite.

[11] For a discussion of the appropriate pricing methodology for recovering fixed and variable costs, see, for example, J. Hirshleifer, Price Theory and Applications, p. 355 (1980).

framework. Virtually all interstate costs, both traffic sensitive and non-traffic sensitive, are recovered on the basis of usage.[12] As such, the NTS costs are recovered inefficiently. I need not repeat here how such inefficiency can spur uneconomic bypass and hamper this economy's entry into the Information Age. However, in devising a plan to correct the current pricing anomalies, it is important to understand the magnitude of the problem we are dealing with. For example, in 1981, the annual interstate NTS revenue requirement was eight billion dollars, which is roughly equal to an average of $7 per access line per month.

In devising a plan to recover NTS costs on a flat basis, it is important to recognize that the Commission previously had addressed the regulatory treatment of both CPE and inside wiring in other proceedings. The interstate costs for CPE are smoothly being phased out over a five year transition pursuant to the Poponoe Plan. Therefore, it would be unnecessarily disruptive to impose these costs upon consumers in the form of flat subscriber charges because these flat charges would decrease as the costs were phased out. Similarly, in 1981 the Commission adopted a 10 year program for amortizing the capital costs associated with inside wiring. These costs essentially represent a one time expense as they are amortized, and therefore also will not be placed in a flat charge. With respect to the current expense attributable to inside wiring, the Commission must decide in Docket 79-105 whether to recoup these expenses on the basis of usage, switch to flat charges or deregulate entirely.

By excluding CPE and inside wiring from flat charge recovery, an average of only $4 per line per month in 1981 dollars must be recovered through flat charges. However, as depicted in Figure I, the distribution of costs on a study area basis is widely dispersed.[13] The numbers for some companies are so high as to suggest either a large number of disconnects if flat charges are imposed to recover NTS costs, or, in the extreme, the telephone operations will cease to exist.

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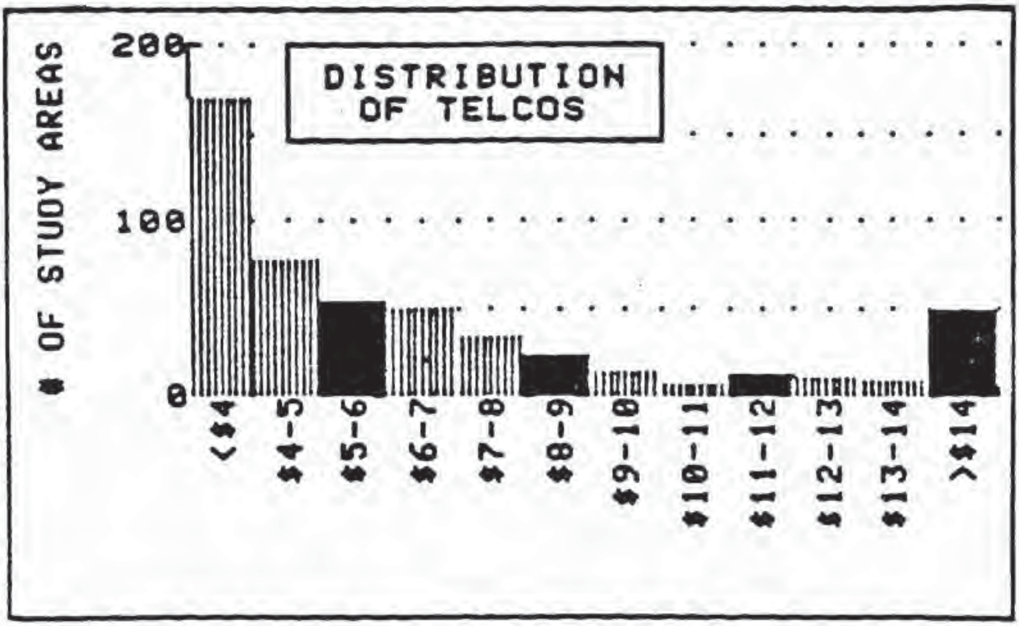
[12] The rate structure for interstate private line services does not follow the industry norm, but rather currently appears to follow generally accepted economic principles.

[13] Study areas generally coincide with state boundaries, with each individual company's costs being averaged or aggregated within the state. The estimates have been derived from data submitted in Docket No. 80-286. Observations have been reported for 506 study areas. In addition to these observations, there are roughly 800 average schedule companies that provide telephone service throughout the nation. However, the revenue requirements for these companies tend to be lower than average, and therefore the companies generally would not qualify for any subsidies.

Figure I.
DISTRIBUTION OF FLAT CHARGES BY STUDY AREA
(Excludes CPE and inside wiring but includes pay telephones and central office equipment)



The Commission has addressed this problem by adopting a Universal Service Fund to provide support to high cost areas. The magnitude of this fund will be determined by the Commission in Docket 80-286. However, this decision finds that the Universal Service Fund should be supported by access charges that are assessed upon interexchange carriers.

One approach to the problem of ensuring that adequate facilities are available, so far as possible, is to provide a subsidy to offset the costs which are deemed too high to be recovered through flat charges. Figure II specifies an estimate of the annual surcharge required to subsidize consumers at various rate levels. For example, if all households were to receive a subsidy for any costs above $6, the annual cost to society would be only $250 million.

Figure II.
STATISTICS REGARDING SUBSIDIES FOR HIGH COST AREAS
(assumes subsidy of all costs above specified dollar amount)
(access lines costs are computed for each company with the data used in Figure I)

MAXIMUM ACCESS CHARGE	ANNUAL SUBSIDY REQUIREMENT	ESTIMATE OF MONTHLY SURCHARGE PER LINE
$10.00	$ 63,500,000	$.06
9.00	70,000,000	.07
8.00	96,700,000	.08
7.00	152,000,000	.13
6.00	250,000,000	.22
5.00	410,000,000	.36
4.00	688,000,000	.60

As mentioned, the Commission has decided to recover the Universal Service Fund through usage sensitive charges assessed upon long distance communications carriers. However, these funds could be allocated directly from subscribers through flat charges as shown in Column 3. This approach may promote the public interest because the elasticity of demand is much less for "dial-tone" than for toll service. Therefore, there will be less of an output distortion if the surcharge is placed in the flat charge.[14] Another rationale for a flat surcharge may be that it will be clearly visible to all subscribers, carriers and regulators. Hence, it will not be subject to any large unforeseen growth, which has been the case with SPF. Because the Commission, to my knowledge, has not received any comment on which approach would better serve the public interest, I would hope it would maintain an open mind on this subject in Docket 80–286.

The remainder of the Commission's access charge plan is exceedingly complex. Additionally, the particular transition plan adopted by the Commission to implement its cost-based policies has not received public comment. Therefore, I would like to highlight what might be a few problems with the plan so that the carriers and the general public can carefully examine whether it is both workable and equitable.

First, the plan reallocates on January 1, 1984, $4 per line per month from the existing charges to interstate carriers for MTS/WATS services to direct charges to telephone subscribers by exchange carriers. Of this $4 per line, minimum flat charges of $2 to residences and $4 to businesses are mandated. The exchange carriers are given flexibility for recovering the $2 shortfall attributable to

[14] See, *e.g.*, R.A. Musgrave and P.B. Musgrave, Public Finance in Theory and Practice (1973).

residential households (i.e., \$4 - \$2). However, the business minimum charge cannot exceed 200% of the residential minimum charge, and no customer can be billed more than what the exchange carrier charges for dedicated facilities.

The major reason for this aspect of the plan is to give each carrier flexibility in recovering its NTS costs. Because economic circumstances vary throughout the country, the Commission believes that a standard nationwide plan would be appropriate. However, the flexibility afforded by the plan may turn out to be a double-edged sword. For example, the antitrust implications of an exchange carrier changing its pricing structure in the face of bypass are unclear. Similarly, it is unclear whether the \$2 per line shortfall attributable to residential households can be accurately recovered in the first year due to unexpected shifts in demand caused by rate structure changes. For the most part, the Commission expects these costs to be recovered either on a price per call or a price per minute basis. However, the prices to large volume users will be capped at roughly \$28 per line on average thereby requiring that revenues that are currently collected above the cap be recovered from another source. Since low volume users will make virtually no contribution, the bulk of the revenues will have to be derived from moderate users.

Another problem which highlights the difficulty the Commission will have in implementing its plan is that exchange carriers simply do not have the capability to determine which OCC customers have reached their maximum charge per line. Any attempt to rectify this problem will necessarily engender administrative and economic burdens. The Commission's discussion of having the exchange carriers either coordinate billing or establish surrogate charges for the OCCs only highlight the problems, but does not solve them.

The second major aspect of the plan is the method by which NTS costs are recovered from interstate services and carriers during the transition period. Currently, NTS costs are recovered from MTS/WATS services on a usage sensitive basis. AT&T pays about 7.2 cents per minute for premium interconnection and the OCCs pay about 3.3 cents per minute (at 4474 minutes per line) for standard line side interconnection. Private line services do not presently contribute to any common line NTS costs.

The Commission's access charge plan radically alters the relative NTS costs burden that these services share. Private line services that access the local exchange will, for the first time, contribute to NTS costs through a usage charge that is equivalent to that charged to MTS/WATS services. Additionally, the OCCs' contribution will be somewhat less than AT&T's because of the \$1.4 billion premium access charge that is assessed to AT&T.

My greatest concern with this aspect of the Commission's access charge plan is that it leaps into the unknown. For example, we do not have any information on the effect that changing the cost

allocation for private lines will have on individual subscribers' overall telephone bills. Placing a surcharge above costs upon private line users may prove to be highly inequitable to some consumers, especially in light of the fact that this surcharge will be phased out by the end of the transition. Moreover, any additional revenues that are generated may produce only very small decreases in MTS/WATS bills.

Perhaps even more troubling is the lack of analytical vigor employed by the Commission in developing the $1.4 billion premium access charge. Of course we are all aware that the correct answer to the problem of access for toll service providers is equivalent interconnection at equivalent cost-based prices. We also know that, as long as one carrier receives a premium interconnection, estimating the value or opportunity cost for that interconnection for purposes of allocating NTS costs among carriers will be highly speculative. Nevertheless, given that this proceeding was initiated to determine the appropriate "MTS and WATS Market Structure," it is crucial for the Commission to maintain a competitive environment that is suitable for new entry until equal interconnection is afforded to all.

Unfortunately, I cannot be certain that this is the case under the Commission's access charge plan. While the Commission believes that the $1.4 billion premium access charge is substantial, this charge in reality is only about $56 million because AT&T would pay about 96 percent of these costs if there were no price differential between AT&T and the OCCs. There are several ways to view the economic effect of the Commission's premium access charge plan. For example, the OCCs currently contribute roughly 60 percent less per minute than AT&T to NTS plant. Under the new access charge plan, when including an accurately billed usage charge in the end user common line rate structure, OCC customers (except for the larger customers who are "capped") will pay about 25 percent less per minute (35 percent for "capped" customers) than AT&T's MTS/WATS customers for NTS plant. Stated another way, the Commission's access charge plan will have the effect of more than doubling the OCCs' current ENFIA charges, while at the same time reducing the cost of access to AT&T.

What effect these changes will have on the market structure for MTS and WATS is unclear at this time. However, I am certain the Commission will carefully review any evidence which suggests that this part of the access charge plan will impede the development of competition in the interstate and international public switched voice markets.

In conclusion, the Commission has taken the extremely important step of bringing its costing methodologies in line with a competitive market structure. The access charge plan will promote efficient communications by adopting a cost-based approach for ratemaking,

while at the same time provide subsidies to high cost areas that otherwise would be threatened with the loss of adequate facilities to many households. As such, the plan is fully in accord with the Communications Act. However, as described herein, there may be unknown problems with certain aspects of the transition plan. Because of the critical importance of this decision and its extraordinary complexity, the Commission, no doubt, will be asked to review several aspects of its decision. I will pay particular attention to those petitions that attempt to demonstrate that the transition plan is either unworkable or produces unnecessary transitional dislocations.

SEPARATE STATEMENT OF COMMISSIONER HENRY M. RIVERA

In re: MTS and WATS Market Structure, CC Docket No. 78-72, Phase I (Access Charge)

I write separately to emphasize my concern that any access charge plan assure that universal service is maintained. Being from a state with a low population density, I am especially mindful of how necessary telephone communications are to the health and well-being of rural America. I am delighted that the Commission apparently shares my concerns.[1]

[1] The Commission has adopted a plan that recognizes that the national interest is best served if universal service is maintained. This plan accomplishes this objective by:

○ the contemplated *monitoring* program and commitment to take corrective action and to undertake a formal "*revisitation*" of this proceeding to ensure immediate, appropriate modifications should any unanticipated disruptive or deteriorating effects upon the nationwide telecommunications system or upon the continued maintenance of universal service develop (paras. 124, 195–196, 366–367);

○ the establishment of the *Universal Service Fund*, enabling high cost companies to maintain affordable local exchange rates that do not substantially exceed rates charged by other companies, and selective mandatory *pooling* requirements (and voluntary participation in common tariff and revenue pool arrangements) to assure continuation of universal service in rural America and other high cost areas (paras. 134–135, 308–338);

○ the provision for waivers to allow "*life line*" service (paras. 136–137);

○ our recognition of possible justified *local deviations* from a single national plan requiring all dedicated end user costs be recovered through flat and equal charges on all customers (para. 367);

○ a *transition* with a smooth and gradual, yet flexible, pace to allow a more "comfortable" adjustment to the new economic realities (para. 172);

○ the allowed rate structure *flexibility* for the exchange carrier to implement the transition in a manner, within reason, to fit its individual situation and requirements (paras. 132, 175, 182, 185); and

○ the careful balancing of conflicting objectives including the elimination of unlawful discrimination and preferences, and the promotion of competition, network economic and engineering efficiencies and, importantly, universal

No doubt should exist that the immediate, overriding policy concerns of the Commission for assurance of universal service and network preservation will set the future development and evolution of this plan.

SEPARATE STATEMENT OF COMMISSIONER STEPHEN A. SHARP

In the past, local telephone companies have been compensated in different ways when their plant has been used for the origination or termination of interstate or foreign communications. In general, local telephone companies receive the highest compensation when their plant is used in the provision of interstate MTS/WATS. The lowest rate of compensation is the so-called B-1 rate, which is the monthly rate, usually flat, that local telephone companies charge business customers for local exchange telephone service. Vast interstate private line networks have been created by connecting private lines to B-1 service in each area where the customer wishes to communicate; in some cases these networks rival the public switched telephone network in their coverage. Yet these networks pay only the B-1 rate for "access";[1] in part because the B-1 rate is in most instances considerably cheaper than the rate for access that is bundled into the cost of a MTS/WATS call,[2] the same telephone call often costs the customer less on a private line network than it does under MTS/WATS.

With the rise of competition, the other common carriers (OCCs) sought to utilize B-1 service for access. The established telephone industry naturally opposed this and sought to obtain compensation at the higher MTS/WATS rate. The result of this dispute was a compromise: the OCCs were charged the ENFIA rate for access,[3] which was higher than the B-1 rate but lower than that received by local telephone companies under MTS/WATS.[4]

The Commission seeks to resolve these rate disparities with a single federal access charge. While this is a laudable goal, I wish to point out that there are many services tariffed with the various states which can be and are being used for purposes of access. Some examples of these services are intrastate WATS and intrastate private line service. It is not always obvious or simple to determine

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service as mandated by Section 1 of the Communications Act (". . . to make available, so far as possible, to all the people of the United States a rapid efficient. Nation-wide. . .communications service with adequate

[1] The term "access" is used henceforth to denote the use of a local telephone company's plant for the origination and termination of interstate and foreign communication.

[2] AT&T has estimated that the rate for access in an MTS/WATS call is approximately 7¢ per minute in each local exchange.

[3] As the Commission has recognized, ENFIA service is local exchange (i.e., B-1) service at a rate different from that on file with local jurisdictions for that service. *See* AT&T, 89 FCC 2d 1000, 1001 n. 4 (1982).

[4] *See* ENFIA, 71 FCC 2d 440 (1979).

whether these services, tariffed with the states, are in fact being used for interstate and foreign communications. And to the extent that these services are priced lower than the federal access charge, users will attempt to substitute the former for the latter.[5]

If *all* rates including those tariffed with the states, were based upon the cost of providing the respective service, it would not be necessary to establish a federal access charge since users would be free to use *any* service, whether tariffed with this Commission or the states, for interstate or intrastate communications as they saw fit. Carriers would remain financially whole regardless of differences in the way the same service is *used*. There would be no incentives on the part of customers to substitute one service for another because of non-cost based rate disparities, and no need for either the Commission or the telephone companies to police the use to which various services were put in order to make the federal access charge workable.[6]

We know that local exchange service can be employed practically to interconnect any two points within that local calling area, including points at which access to interstate and intrastate toll can be obtained. In the long run, it appears neither reasonable nor practical to maintain differences in rates for the same service depending on the use to which local exchange service is put i.e., for interstate and foreign communication, intrastate toll communication, or local exchange communication.

It is true that different jurisdictions, in seeking to implement their own policies, may see fit to use different ratemaking approaches which can result in different charges for similar or identical products. From a practical point of view, however, as distinctions between jurisdictionally interstate and jurisdictionally intrastate communications become increasingly blurred and resale becomes more widespread, the desirability of cost-based local exchange rates for each local area will become increasingly apparent. In this way, users of telephone service will pay the same rates regardless of how they use their local service, thereby discouraging uneconomic bypass and eliminating opportunities for arbitrage based upon differing rates for the same service or services.

I hope that the Commission will keep this long term solution in

[5] In page 20 of Appendix F of the order, for example, the Commission notes that in its 1981 Annual Report, Aeronautical Radio, Inc., a large user of communications services, stated that it had replaced federally tariffed private lines in its private line intercity network with cheaper private lines obtained under state tariffs.

[6] If users were free to substitute other, cheaper services for the federal access charge, they would have no incentive to obtain service under federal access tariffs. Under these circumstances, either the Commission or the telephone companies would have to police how substitutable services were being used in order to prevent avoidance of the federal access charge.

mind when it revisits and reviews the progress in implementing access charges.