



**United States Telephone Association**

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March 23, 1993

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Donna Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W. - Room 222  
Washington, D.C. 20554

**RE: Ex Parte Meeting**  
**CC Docket No. 92-135**

Dear Ms. Searcy:

On March 23, 1993 Larry Keller, Dave Cohen and R.T. Gregg, representing the United States Telephone Association (USTA) met with Mary Brown, Greg Vogt and Andy Mulitz of the Common Carrier Bureau regarding the above-referenced docket.

The attached document, Suggested Resolution of Issues in CC Docket No. 92-135, was distributed and discussed. This document was prepared at the request of the Common Carrier Bureau staff and provides suggestions to resolve all issues and tentative conclusions raised in this docket. The suggestions are consistent with USTA's previous filings.

The original and a copy of this ex parte notice are being filed in the Office of the Secretary on March 23, 1993.

Respectfully submitted,

Linda Kent  
Associate General Counsel

Attachment  
cc w/o attachments: Mary Brown  
Greg Vogt  
Andy Mulitz

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***SUGGESTED RESOLUTION OF ISSUES***

***IN CC DOCKET NO. 92-135*** RECEIVED

MAR 23 1993

FEDERAL COMMUNICATIONS COMMISSION

**SUGGESTED RESOLUTION OF ISSUES IN CC DOCKET NO. 92-135,  
REGULATORY REFORM OF LOCAL EXCHANGE CARRIERS  
SUBJECT TO RATE OF RETURN REGULATION**

Pursuant to the request of the staff of the Common Carrier Bureau, the United States Telephone Association (USTA) is submitting this Suggested Resolution of Issues following discussions among several parties on the issues raised by the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket No. 92-135, FCC 92-258, released July 17, 1992. For the Commission's convenience, this submission summarizes USTA's suggested resolution of all issues and tentative conclusions raised by the NPRM, or raised independently by parties' comments, whether or not such issues were contested or subject to discussion.

**A. General**

**1. Regulatory Continuum**

**Issue:** The Commission tentatively concludes that the preferred approach for regulatory reform for small and mid-sized LECs is a continuum of increasingly incentive based approaches that would permit companies to choose a plan which best fits their circumstances. (NPRM, ¶ 3)

**Positions:** No party objected to this conclusion, but several parties suggested that the Commission's proposals did not provide the intended "continuum", particularly for the NECA

pools and companies under baseline rate of return regulation. See, e.g., USTA, p. 31;<sup>1</sup> John Staurulakis, Inc. (JSI), p. 2.

Resolution: Adopt a range of regulatory alternatives which recognizes that the majority of LECs will remain on baseline rate of return regulation, and that these LECs require continuation of annual filings based on prospective data.

**B. Optional Incentive Regulation**

**2. Tariff Filing Periods**

Issue: The Commission tentatively concludes that requiring tariff filings every two years under optional incentive regulation will substantially reduce regulatory burdens, simplify the tariff process, and still permit the Commission to meet its statutory obligations. (NPRM, ¶ 10)

Positions: Virtually all parties commenting on this issue support the Commission's tentative conclusion. See, e.g., ALLTEL, p. 4, Cincinnati Bell, p. 11; MCI, p.3; but see NARUC Comments, 5.

Resolution: Adopt the proposed biennial filing period for optional incentive regulation.

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<sup>1</sup> Unless otherwise noted, reference is made to the initial comments filed by parties in this proceeding.

### 3. Mid-Course Filings

**Issue:** The Commission seeks comment on whether companies electing the incentive plan should retain the option of filing tariff revisions within the two-year period. The Commission suggests that a company making mid-term revisions must bear a "heavy burden" of proving that current rates are unreasonable. (NPRM, ¶ 10)

**Positions:** All parties commenting on this issue agree that LECs should be allowed to make mid-course tariff revisions under optional incentive regulation. See, e.g., USTA, p. 21; ALLTEL, p. 4; JSI, p. 3. Several parties, however, oppose the suggestion that LECs be required to meet a heavy burden when making such revisions. See, e.g., USTA, p. 21; Cincinnati Bell, p. 13; Small Business Administration (SBA), p. 11.

**Resolution:** Permit LECs to make mid-course tariff revisions under the incentive plan, but do not require a uniquely heavy burden for justifying revised rates.

### 4. Earnings Band

**Issue:** The Commission tentatively concludes that an earnings band approach similar to the price cap plan is appropriate for optional incentive regulation. (NPRM, ¶ 11) The Commission also tentatively concludes that an appropriate earnings zone for the incentive plan would extend from 100

basis points below the authorized rate of return, to 100

basis points above the authorized return (100 - 12) = 88

(supports "sharing" in the form of direct payment to the IXC); but see Lincoln Telephone, p. 5; Centel Telephone (Centel), p. 5.

Resolution: Adopt an earnings band for optional incentive regulation of 100 basis points below to 200 basis points

Resolution: Exclude known and measurable costs from the optional incentive plan.

6. Exogenous Costs

Issue: The Commission tentatively concludes that consideration of exogenous cost changes, as defined under price caps, should be factored into the rates of LECs participating in the proposed incentive plan. (NPRM, ¶ 14)

Positions: Parties commenting on this issue support the Commission's tentative conclusion. See, e.g., ALLTEL, p. 5; GVNW, p. 3; NECA, pp. 14-15 (comments specifically on exogenous treatment of LEC Long Term Support obligations).

Resolution: Include an exogenous cost adjustment, as defined under price caps, in the optional incentive plan.

7. New Service Introduction

Issue: The Commission proposes to permit a LEC subject to the incentive plan to introduce a new service with a presumption of lawfulness if the anticipated earnings are de minimis and do not exceed the rate charged by the geographically closest price cap regulated LEC offering the same or similar service. At the end of 12 months, the LEC would calculate rates for the new service based upon the historical costs for the service. The Commission tentatively concludes that

2% or less of a non-price cap company's total annual operating revenues is de minimis for purposes of the introduction of new services. (NPRM, ¶ 16)

**Positions:** While there was general consensus that new services should be introduced under a de minimis standard, see, e.g., USTA, pp. 19-20 (threshold should be 2% of revenues or \$200,000, whichever is more); ALLTEL, p. 6; PRTC, p. 8; Centel, p. 8; there was considerable disagreement among the parties as to what should be the new service price benchmark. See, e.g., USTA, p. 20 (any rate on file for a comparable service offered by a price cap LEC); Cincinnati Bell, p. 14 (any rate on file); Centel, p. 8 (Commission's proposal); SBA, pp. 17-18 (FCC should choose another benchmark); ITAG, p. 7 (rate based on embedded or current cost); MCI Reply Comments, p. 12 (rate below the tariffed industry average). There was also disagreement over the Commission's proposal to require cost based filings after 12 months. See, e.g., USTA, p. 19 (no cost based filing necessary if the LEC continues to meet the de minimis revenue standard); PRTC, p.8 (same as USTA); MCI Reply Comments, pp. 10-11 (FCC's proposal appears reasonable).

**Resolution:** Adopt proposed de minimis standard. While there is a lack of consensus as to the appropriate new service price benchmark, it would appear that no party would object to a reasonable benchmark established by the Commission.

## 8. Pricing Flexibility

**Issue:** The Commission proposes to incorporate a pricing flexibility element into the incentive plan that would include a "basket" and "service category" system similar to that of price caps. Within each two-year tariff period, aggregate rates for each basket would remain unchanged or lowered. However, LECs could adjust rates within each service category by no more than 10% up or down during the two-year tariff period. Filings within the proposed limits would be permitted on 14 days' notice, with a presumption of lawfulness if accompanied by a showing of revenue neutrality. (NPRM, ¶ 18)

**Positions:** LECs generally support the Commission's pricing flexibility proposal although they do not believe that a pricing floor is necessary. See, e.g., USTA pp. 17-18; ALLTEL, p. 6. MCI recommends that LECs' pricing flexibility be limited to 5% per year with a cumulative impact up to a maximum of 10% over the two year filing period. MCI, p. 4.

**Resolution:** Adopt a pricing flexibility feature for the incentive plan that permits a 10% increase in rates, within the prescribed baskets and service categories, over each two year tariff period. LECs should be permitted to decrease rates without limit.

9. Service Quality Reporting

Issue: The Commission tentatively concludes that LECs under the incentive plan should file the quarterly service quality information reports required of all price cap carriers. (NPRM, ¶ 21)

Positions: Most LECs oppose quarterly service quality reporting. Suggested changes to the Commission's proposal range from annual reporting, see, e.g., USTA, pp. 23-24 (recommends certain differences between price cap and incentive plan reporting), JSI, p. 9; to biennial reporting, see GVNW, p. 4; to no service quality reporting. See Centel, p. 9. Among other parties, the SBA (pp. 13-14) states that service quality reports should be less than quarterly, while MCI urges annual filings. MCI Reply, p. 13.

Resolution: Because the LECs likely to elect the optional incentive plan are generally smaller than the price cap LECs, the Commission should adopt annual service quality reporting requirements with the changes suggested by USTA.

10. Infrastructure Reporting

Issue: The Commission proposes that incentive plan LECs file the information contained in the annual infrastructure reports filed by LECs for which price caps are mandatory. (NPRM, ¶ 21)

**Positions:** While few parties commented on this issue, Cincinnati Bell points out that LECs electing the incentive plan should not be subject to an infrastructure reporting requirement when no such requirement is placed on LECs which participate under price caps on a voluntary basis. Cincinnati Bell, p. 15.

**Resolution:** Do not require infrastructure reporting for LECs under the incentive plan.

#### 11. Bifurcated Election

**Issue:** The Commission proposes that LECs may participate under optional incentive regulation only if they participate in no NECA pool, i.e., a company's total interstate operations must be subject to the plan. (NPRM, ¶¶ 22, 24) The Commission recognizes, however, that such an "all-or-nothing" approach could dissuade smaller LECs from participating in the plan. (Id., at ¶ 24)

**Positions:** LECs commenting on this issue urge the Commission to allow incentive plan election by LECs which have exited the NECA traffic sensitive (TS) pool, but remain in the NECA common line pool. (Such election would be for only the LECs' TS rates.) See, e.g., USTA, pp. 5-11; ALLTEL, p. 2; PRTC, pp. 2-4; JSI, p. 9. Among non-LEC parties, both the SBA and AT&T support bifurcated election of optional incentive regulation. See SBA, p. 10; AT&T Reply Comments,

pp. 5-6. MCI is alone among the parties in supporting the Commission's initial tentative conclusion on this issue.

See MCI Reply, pp. 2-4.

**Resolution:** Allow LECs to participate under the incentive plan for their TS rates only if they have exited the TS pool, but not the common line pool. LECs that have exited both pools must elect to participate for both their TS and common line rates.

## 12. Optionality

**Issue:** The Commission tentatively concludes that any incentive plan designed for rate of return carriers should be optional. (NPRM, ¶ 23)

**Positions:** Parties commenting on this issue stressed that the incentive plan must be optional. See, e.g., NTCA, pp. 6-7; OPASTCO, pp. 7-8; SBA, p. 8.

**Resolution:** Adopt tentative conclusion that the incentive plan should be optional for rate of return LECs.

## 13. Average Schedule Inclusion

**Issue:** The Commission proposes that cost studies be required for LECs that wish to include average schedule study areas in the incentive plan. (NPRM, ¶ 25)

Positions: Ronan Telephone Company advocates incentive regulation for average schedule companies. Ronan, pp. 2-4.

Resolution: Adopt the Commission's proposal.

14. Plan Exit/Re-entry

Issue: The Commission proposes that carriers electing incentive regulation must remain in the plan for no less than two years, and if a company subsequently elects not to participate in the plan, it would not be eligible to return to the plan until the fourth year after it ceased participation. (NPRM, ¶ 26)

Positions: The two and four year periods proposed by the Commission for plan participation and reentry respectively, received little comment.

Resolution: Adopt the Commission's proposal.

15. Pool Re-entry

Issue: The Commission proposes that if a LEC leaves the incentive plan after a two-year period it must file rates pursuant to Section 61.38 on a company-specific basis, i.e., the carrier cannot reenter the NECA pools. (NPRM, ¶ 26)

Positions: There is strong support among the parties that

time, NECA's voluntary traffic sensitive pool. See, e.g.,  
USTA, p. 25; PRTC, pp. 4-5; ITAG, p. 8 (LECs leaving the  
incentive plan should also be able to file a Section 61.39  
tariff.) There is also support for allowing small carriers  
to reenter the common line pool. See USTA, p. 26; NECA, p.

17. Common Line Demand Adjustment (also applicable to optional incentive regulation)

**Issue:** The Commission proposes a demand adjustment for the common line rate elements whereby demand for the rate period would be determined by an extrapolation of base period demand increased by base period percent growth. (NPRM, ¶ 34)

**Positions:** LEC parties generally oppose the Commission's proposal on the grounds that it would result in ascribing the full benefit of growth in common line demand to the LECs' IXCs customers, and that the proposal is considerably more onerous than the price cap approach. The LECs offered several alternatives to the Commission's proposal. See, e.g., USTA, pp. 27-28; Taconic, p. 6; GVNW, p. 5; ITAG, pp. 8-9. AT&T supported the Commission's proposal. AT&T, p. 8. Following discussions, however, AT&T and USTA agreed that the common line demand adjustment for Section 61.39 and optional incentive regulation should be the same as the common line demand adjustment used by price cap carriers.

**Resolution:** Adopt the price cap common line demand adjustment for both Section 61.39 and optional incentive plan tariff filings.

18. Cost Support Information

Issue: The Commission proposes that Section 61.39 cost support need not be filed, but should be made available to IXC customers upon reasonable request. (NPRM, ¶ 34, n. 18)

Positions: USTA asked the Commission to make clear that a reasonable request by an IXC for cost support data is a request that is made during the applicable tariff review period. USTA, pp. 36-37.

Resolution: Adopt existing procedure whereby Section 61.39 data is made available to the Commission, but allow IXC customers to reasonably request the same data during the applicable tariff review period.

D. Section 61.38 - Baseline Regulation

19. Level of Detail

Issue: The Commission tentatively concludes that the level of detail required under baseline regulation is excessive. (NPRM, ¶ 42)

Positions: USTA agrees that the level of cost support detail is excessive and suggests that the proper solution is to modify the Commission's tariff review plan (TRP) requirements. See USTA, pp. 30-31.

Resolution: The Commission should state its intent to simplify TRP requirements in the next TRP order.

20. Option for Biennial Filings

Issue: The Commission proposes baseline tariff filings every other year, but carriers could file more frequently at their option. (NPRM, ¶ 43)

Positions: Most LECs support the use of a biennial filing option so long as they retain the ability to file annually. See, e.g., ALLTEL, p. 8; Cincinnati Bell, p. 10; PRTC p. 9 (must retain ability to file when necessary). NECA states that it must retain the ability to make annual filings. See NECA, p. 5. AT&T supports biennial filings. AT&T, p. 9; see also SBA, p. 19.

Resolution: Maintain current annual filings, but permit LECs and the NECA pools to file on a biennial basis at their option.

21. Baseline Cost Support

Issue: The Commission proposes that Section 61.38 filings be supported by simple extrapolations of historical costs and demand, and/or only historical costs for certain rate elements. (NPRM, ¶ 44)

Positions: LECs are united in opposing mandatory historical extrapolations or cost support for baseline filed rates.

See, e.g., USTA, pp. 31-33; Centel, p. 11; PRTC, p. 9; JSI, p. 13; ITAG, p. 10; NTCA, p. 12. NECA must retain the ability to file rates based on prospective revenue and demand. NECA, p. 5. Among the non-LEC parties, SBA recommends that carriers always retain the option of filing prospective rates. SBA, p. 21. MCI is concerned that LECs not be allowed to go back and forth between historical and prospective. MCI Reply Comment, pp. 13-24. Only AT&T supported historical costs for baseline rate development. AT&T, p. 9. After discussions with USTA, however, AT&T agreed to not impose any objection to retaining the current requirement of prospective support for baseline rates.

Resolution: Do not depart from the use of prospective cost and demand data for baseline rate development.

## 22. New Services

Issue: The Commission proposes to apply streamlined procedures, similar to that applicable to optional incentive regulation, to new LEC service offerings under rate of return regulation. (NPRM, ¶ 45)

Positions: Commenting parties generally support the Commission's proposal with the same suggested changes as applicable to new service introduction under optional incentive regulation. See, e.g., USTA, p. 20, n. 46; ALLTEL, p. 9; JSI, p. 13. NECA stated that with respect to its pools,

there should be a presumption of lawfulness for new services, provided that the projected revenues for the service would be less than 2% of the combined common line and TS pools' total interstate access revenue requirement. NECA, p. 10. NECA believes that the continued reliance on review at the Part 69 access category level, together with the de minimis nature of new service revenues, will assure that LECs will not receive windfalls through the use of streamlined new service procedures. In discussions, AT&T raised the question as to whether the de minimis standard should apply to total pool revenues, or to just the revenues of the NECA pool members introducing the new services.

**Resolution:** Recognize that the timely introduction of new services is as important to customers of pooling LECs as it is for customers of non-pooling companies. Although the issue of how the new service rule should be applied to the pools has not been fully resolved, such application should preserve pool neutrality.

**E. Incentives for the Pools**

**22. NECA Incentives**

**Issue:** The Commission sought comment on whether there are means of introducing incentive regulation into the pooling environment. (NPRM, ¶¶ 47, 48)

Positions: NECA supports the Commission's proposal for pool incentives, but cannot recommend at this time a specific pool incentive plan. NECA, instead, proposes a rule revision that will enable it to implement incentive option at some time in the future. NECA, pp. 16, 17. USTA supports NECA's request that NECA be given flexibility to develop an optional pool incentive plan. USTA, p. 21, n. 56.

Resolution: Allow NECA to submit future proposal to implement optional incentive regulation for the pools.

**F. Mergers and Acquisitions**

24. Merger/Acquisition of Non-incentive Plan LECs by Incentive Plan LECs

Issue: The Commission proposes that where an incentive plan carrier merges with, or acquires, a non-incentive plan carrier, the non-incentive carrier should be converted to the incentive plan. The Commission proposes an exception to this rule where a small, baseline regulated carrier acquires a few exchanges of a mid-size incentive regulated carrier. In such a case, the acquiring, or surviving company in a merger, would be required to petition the Commission to merge affected study areas. (NPRM, ¶ 50)

Positions: Commenting parties believe that there should not be any automatic requirement to convert the acquired company

to the incentive plan. Instead, treatment of mergers and acquisitions should be consistent with the pooling status rules adopted in CC Docket No. 89-2 which allows LECs involved in mergers and acquisitions to retain their pre-transaction pooling status. See, e.g., NTCA, pp. 15-16; USTA Reply Comments, pp. 21-22; ALLTEL, pp. 9-10.

**Resolution:** Allow merged or acquired companies to retain their pre-transaction status consistent with the rules adopted in CC Docket No. 89-2.

**G. Miscellaneous**

**26. Average Schedule Window**

**Issue:** NECA proposed that small LECs (less than 10,000 access lines) be able to elect average schedule status, effective July 1, 1993. See NECA, pp. 16-20.

**Positions:** USTA agrees with NECA's proposal. See USTA Reply Comments, pp. 20-21.

**Resolution:** Allow small cost companies to convert to average schedule status as proposed by NECA.