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February 2, 1995

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: Ex Parte Presentation
[CC Docket 94-120]

Dear Mr. Caton:

On Thursday, February 2, 1995, I provided the attached material to Mr. Richard Welch, Mr. James Casserly, Mr. James Coltharp, Ms. Karen Brinkmann, and Ms. Lauren Belvin.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206(a)(1) of the Commission's rules.

Sincerely,

EE Estay /sws

Attachments

cc: **Mr. Richard Welch**
Mr. James Casserly
Mr. James Coltharp
Ms. Karen Brinkmann
Ms. Lauren Belvin

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February 2, 1995

Karen Brinkmann
Special Assistant
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Federal Communications Commission
1919 M Street, NW, Room 814
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Dear Karen:

This letter addresses the relationship between AT&T's pending tariff Transmittal No. 6788 and the Commission's Supplemental Notice of Proposed Rulemaking regarding the Local Exchange Carrier (LEC) split billing option. Attached are AT&T's comments filed yesterday in that proceeding (CC Docket No. 91-213). AT&T supports the split billing option that would allow IXCs or end users to share the use of LEC high-capacity access facilities. This option would also allow Feature Group A/B end users who do not want to use AT&T's resold access service, i.e., the Feature Group Connection, to obtain this access from the LEC using LEC Facilities.

However, the split billing option for LEC services should not preclude AT&T and others from reselling LEC access and is not appropriate for Feature Group A/B services using AT&T's high capacity facilities (see pp. 12-13). This option, in the context of its applicability to AT&T-subscribed entrance and direct-trunked facilities, does not adequately compensate AT&T for the use of its facilities. It contemplates the LEC using a fraction of an AT&T facility, billing the end user and crediting AT&T for a fractional use of the AT&T facility such as 1/24 of the DS-1 facility rate. This allows the LEC to have access facilities available while escaping any responsibility for unused spare capacity and other added expenses associated with this arrangement. In addition, under the Southwestern Bell option, AT&T would still be held liable for payment if the end user fails to pay (see p. 14).

In all events, AT&T's tariff should be allowed to take effect no matter what the resolution of the SNPRM because the split billing option, even if ordered by the Commission, will not be in place for quite some time.

Sincerely,

A handwritten signature in black ink, appearing to read "E. E. Estey".

Attachment

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

| | | |
|--------------------------|---|----------------------|
| In the Matter of |) | |
| |) | |
| Transport Rate Structure |) | CC Docket No. 91-213 |
| and Pricing |) | |
| |) | |

AT&T COMMENTS

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SUMMARY

AT&T supports the Commission's initiative to require LECs to offer a split billing option for the flat-rated elements of switched transport, namely, entrance facilities and direct-trunked transport services. A split billing option would enable access customers to share such facilities and "thereby maximize efficiency gains from the transport restructure."

As shown in Section I, AT&T believes that access customers (whether a group of IXCs or end users), who wish to "share" the use of LEC high capacity access facilities, should be provided with a split billing option, because they could then employ higher capacity facilities than their individual usage requirements would justify. The LEC should bill each sharing customer its pro rata portion of the overall cost of the high capacity access facility, so that in total the LEC would recover its overall price, including the costs of unused capacity, associated multiplexing, rendering of multiple bills, and administering the arrangement. Each access customer should be primarily and solely liable for its pro rata charges.

As demonstrated in Section II, the availability of a LEC split billing option should not preclude IXCs or others from reselling the LECs' access services. Indeed, a fundamental tenet of the Commission's Transport Orders and longstanding policy, is to promote the reselling of non-competitive services in order to encourage competition and

cost-based rates, and increase customer choice in the marketplace. For example, AT&T's pending tariff revisions to resell the flat-rated components of Feature Group A and B access service further these important objectives. Moreover, allowing AT&T to resell these components is essential to permit AT&T to recover its costs, given that after the transport restructure the LECs began billing AT&T for the full price of these high capacity flat-rated access components, yet at present (i) AT&T has no ability to recover those costs from the cost causer customer, and (ii) LEC ratcheting under current split billing arrangements is wholly inadequate to cover the added expenses that the LECs' change in billing practices has imposed on AT&T.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

| | | |
|--------------------------|---|----------------------|
| In the Matter of |) | |
| Transport Rate Structure |) | CC Docket No. 91-213 |
| and Pricing |) | |

AT&T COMMENTS

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, AT&T Corp. ("AT&T") hereby comments on the Commission's SNPRM in this proceeding,¹ which proposes to require local exchange carriers ("LECs") to offer a split billing option for their transport services.² AT&T supports the Commission's proposal as a

¹ Transport Rate Structure and Pricing, CC Docket No. 91-213, Third Memorandum Opinion and Order on Reconsideration and Supplemental Notice of Proposed Rulemaking, FCC 94-325, ¶ 127-47 (December 22, 1994) (hereinafter, Third Report and SNPRM, respectively).

² Transport Rate Structure and Pricing, CC Docket No. 91-213, Report and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd. 7006 (1992) (hereinafter, Transport Order and FNPRM), recon., First Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd. 5370 (1993) (First Reconsideration Order), further recon., Second Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd. 6233 (1993) (Second Reconsideration Order), pets. for recon. pending, appeal dismissed sub nom. New England Tel. and Tel. Co. v. FCC, No. 93-1494 (D.C. Cir. Sept. 7, 1993), pet. for review pending sub nom. Full Service Computing Corp. v. FCC, No. 93-1670 (D.C. Cir., filed Oct. 4,

(footnote continued on following page)

means of permitting sharing of the flat-rated components of switched transport. It can also serve to increase customer choice in obtaining Feature Group A and B access services from the LECs. However, a split billing option is not necessary to resolve AT&T's current untenable predicament -- in which it is being charged by the LECs for Feature Group A and B components, yet has no mechanism to recover these costs from end user customers.

BACKGROUND

As the SNPRM observes, "[p]rior to the implementation of the local transport restructure, all switched access was billed on a per minute of use basis. In general, LECs measured the usage for each access customer of record and rendered bills accordingly."³ Thus, even customers using dedicated facilities for their switched transport needs were charged on a usage-sensitive basis. In

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1993); Second Report and Order, 9 FCC Rcd. 615 (1994) (Second Transport Order). Transport is a component of interstate switched access, which LECs provide to enable interexchange carriers ("IXCs") and other customers to originate and terminate interstate switched telecommunications traffic. Transport constitutes the local transmission between customer points-of-presence ("POPs") and LEC end offices, where local switching occurs. The new switched transport rate elements established by the Transport Order are summarized in the Third Report, ¶¶ 5-6, 9-10, 18-19.

³ SNPRM, ¶ 130.

the Transport Order, the Commission concluded that because this rate structure does not reflect the manner in which LECs incurred transport costs, it has "promoted significant inefficient use of local exchange carrier (LEC) networks" and has "significant negative implications for both [efficiency] . . . and the possibility of local access competition."⁴

In moving toward more cost-causative rates, the Commission adopted an interim transport rate structure that includes flat-rated elements for the dedicated components of switched transport, namely (i) entrance facilities (which connect the LEC serving wire center and IXC POP) and (ii) direct-trunked transport (the services which connect the LEC end office or tandem to the LEC serving wire center).⁵ The LEC thus had to identify a customer of record for the billing of the flat-rated charges for these transport facilities. As the SNPRM notes, however, "[i]n those cases where multiple customers receive transport

⁴ Transport Order, 7 FCC Rcd. at 7007, 7012, ¶¶ 1, 12.

⁵ Third Report, ¶ 9 (citations omitted). The Commission also created a new "trunking" price cap basket which includes these flat-rated switched transport services as well as special access services, and it grouped the flat-rated DS3, DS1 and voice-grade transport services into the same service categories and subcategories as comparable special access services within that basket. Third Report, ¶ 19; Second Transport Order, 9 FCC Rcd. at 623-27, ¶¶ 16-25.

service from a single LEC provider over flat-rated transport facilities that they share, there are no established access billing arrangements to provide separate bills for . . . portions of such flat-rated facilities."⁶

In the Third Report, the Commission affirmed the interim transport rate structure and related pricing rules and denied the pending petitions for reconsideration.⁷ At the same time, it instituted the SNPRM to determine whether the LECs should be required to offer a "split billing" option for the dedicated components of switched transport services, which would make more feasible the sharing of high capacity flat-rated transport facilities by multiple IXCs. As AT&T had earlier observed and as the Commission found, "smaller IXCs can reduce their access costs by reselling the

⁶ SNPRM, ¶ 130.

⁷ AT&T and others had challenged the interim transport rate structure on the basis that it inappropriately insulated smaller IXCs from cost-based transport rates, primarily because under the interim structure, a usage-sensitive residual interconnection charge (rather than facilities-related charges) would continue to account for approximately 80 percent of the LECs' transport revenues. See AT&T Petition for Reconsideration, filed December 21, 1992, at pp. 2-9; see also Petitions for Reconsideration filed by USTA, pp. 2-7; BellSouth, pp. 6-8; Pacific, pp. 9-12; U S WEST, pp. 4-7. On the other hand, smaller carriers had also challenged the interim structure alleging that it would substantially harm interexchange competition by increasing the transport charges that they would have to pay. See Third Report, ¶¶ 28-29 (citations omitted).

services of other IXCs or by utilizing network sharing arrangements with other carriers to terminate interstate calls."⁸

Moreover, a split billing option could give end user customers an additional option of procuring the flat-rated portions of Feature Group A and B access service from LECs. Prior to the local transport restructure, LECs billed the end user customer of record for any Feature Group A or B access that the LEC provided. With their restructured transport tariffs, the LECs altered their billing arrangements for Feature Group A and B access service and unilaterally substituted AT&T (in place of the end user) as the customer of record and the billed party for high capacity flat-rated entrance and direct-trunked transport facilities used to connect the LEC Feature Group A or B dial tone office serving a particular end user to AT&T's POP.

Over AT&T's objection, the Commission declined to require the LECs to modify their transport tariffs, and as a result, end user customers in general are no longer billed by the LEC for the flat-rated portion of Feature Group A or B access services they obtain.⁹ AT&T has filed tariff

⁸ Transport Order, 7 FCC Rcd. at 7086 (Appendix C); SNPRM, ¶ 127.

⁹ But see, pp. 14-16, infra (regarding potential double billing situations). Southwestern Bell offers an Interim Split Billing Option that it can use to bill the end user for the flat-rated portions of Feature

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revisions to resell to Feature Group A and B end user customers the access services now billed to AT&T, but AT&T's tariff has been suspended and investigated and is now scheduled to take effect on February 12, 1995.¹⁰

In addition to permitting sharing of high capacity facilities by multiple smaller IXC's, AT&T believes that a properly designed split billing option would permit those end user customers (who may not wish to obtain AT&T's resold service) to obtain the flat-rated portions of Feature Group A and B access from LECs, without unfairly imposing on AT&T (i) the costs of unused capacity and multiplexing (which would occur when the LEC ratchets an AT&T facility to provide Feature Group A access to a LEC customer), as well as (ii) the risk of nonpayment of access charges.

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Group A or B access provided over high capacity facilities. See n.22, infra. Although NYNEX also offers a Shared Billing Arrangement that is a form of limited split billing, it cannot be used for Feature Group A or B service because the option only applies to access transport beyond the point of multiplexing, and AT&T, the host customer, would still be billed in total for the higher capacity switched access service between its POP and the multiplexer. See NYNEX Transmittal No. 242, (Tariff F.C.C. No. 1, § 6.7.14), filed November 12, 1993.

¹⁰ See AT&T Communications Tariff F.C.C. Nos. 9 and 11, CC Docket No. 94-120, Transmittal No. 6788, DA 94-1118 (October 7, 1994) (Order Designating Issues for Investigation). See also AT&T Transmittal No. 8022, filed January 10, 1995.

ARGUMENT

I. The Commission Should Require LECs To Offer A Split Billing Option For Their Flat-Rated Switched Transport Services.

AT&T supports the Commission's proposal to require LECs to provide "split billing" for their transport services, "so that multiple customers of record could be billed by the LEC for . . . shares of a high-capacity facility."¹¹ As the Commission has found,

"[t]his billing option would allow an access customer to share or resell portions of such facilities and thereby maximize efficiency gains from the transport restructure. For example, split billing could enable several small IXC's that share a POP to share entrance facilities and/or direct-trunked transport at a higher capacity than any of them could justify acting alone."¹²

As the Commission explained, "resale and sharing are important means by which IXC's and end users can make more efficient use of the LEC networks and obtain cost-effective service for their own requirements."¹³ Indeed, the "Transport Order expressly contemplated that 'smaller IXC's may choose to aggregate their traffic together and share transmission facilities,' and observed that 'IXC's may be

¹¹ SNPRM, ¶ 131.

¹² SNPRM, ¶ 131 (citations omitted).

¹³ Local Exchange Carrier Switched Local Transport Restructure Tariffs, 9 FCC Rcd. 400, 426 (¶ 71) (1993).

able to share a DS3 facility to transport either their originating or terminating traffic, allocating the individual circuits among themselves."¹⁴

However, as the SNPRM explains, the Commission "did not mandate the means by which the LECs could implement such resale and sharing arrangements through either their tariffed transport offerings or their access billing systems."¹⁵ Although the Common Carrier Bureau referred the split billing issue to the Ordering and Billing Forum (OBF), the OBF has not reached a resolution of the issues.¹⁶ Only two LECs (Southwestern Bell and NYNEX) have made available any form of split billing arrangements for their transport services, and those arrangements have not proven to be fully satisfactory either as to the needs of small IXCs or as to Feature Group A and B access.¹⁷ Accordingly, the Commission has appropriately instituted the SNPRM to address the need for split billing of LEC switched transport services.

¹⁴ SNPRM, ¶ 128, citing Transport Order, 7 FCC Rcd. at 7086 (Appendix C).

¹⁵ SNPRM, ¶ 129.

¹⁶ SNPRM, ¶¶ 135-36.

¹⁷ See SNPRM, ¶¶ 132-133; AT&T Direct Case in CC Docket No. 94-120, filed October 28, 1994, pp. 12-14 and Attachment 1, pp. 16-17; see also n.9, supra, and n.22 & n.23, infra.

AT&T believes that access customers (whether a group of IXCs or end users), who wish to "share" the use of LEC high capacity access facilities, should be provided with a split billing option. For example, split billing would be useful to smaller IXCs (and also to end user customers who wish to procure Feature Group A and B access from LECs), because they could share higher capacity facilities than their own individual usage requirements would justify.¹⁸

In accordance with the Commission's definition of "sharing," on any shared facility, the LEC should bill each sharing customer its pro rata share of the overall cost of the high capacity access facility.¹⁹ In aggregate, the

¹⁸ In this context, "sharing" (consistent with the Commission's pre-existing definition) should be understood to mean "a non-profit arrangement in which several users, perhaps having no community of interest other than to communicate between the same two geographic points or to communicate with each other, collectively use communications services and facilities obtained from an underlying carrier . . . with each user paying the communications related costs associated with subscription to and collective use of the communications services and facilities according to its pro rata usage of such communications services and facilities." Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, 60 F.C.C.2d 261, 316 (1976) (Resale and Shared Use Order), amended on recon., 62 F.C.C.2d 588 (1977), aff'd sub nom. American Telephone and Telegraph Co. v. FCC, 572 F.2d 17 (2d Cir.), cert. denied, 439 U.S. 875 (1978).

¹⁹ Implicit in the notion of sharing is that the customers involved purchase the entire high capacity facility, including any unused capacity thereon. As the Commission noted, "IXCs that purchase a DS3 facility

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total charges for a particular high capacity facility should be set to recover its overall cost, including that of any unused capacity in the facility, any associated multiplexing costs, as well as the costs of rendering multiple bills and administering the arrangement. A failure to include each of these cost components in the shared use charges could lead to inefficiencies in the utilization of those facilities.

Moreover, to make shared use viable for customers, each access customer should be primarily and solely liable for its pro rata charges. This appears to be implicit in the SNPRM's proposal, which states that under split billing,

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bear the burden of utilizing the full capacity of the DS3." Third Report, ¶ 52. If customers who share a high capacity facility were not required to pay for unused capacity, they would not be purchasing the entire facility, and should instead be billed for individual channels (i.e., DS1 or DS0, as appropriate), rather than a fraction of the high capacity rate.

Moreover, if LECs failed to charge for unused capacity, there would be no incentive for sharing customers to utilize high capacity facilities efficiently, and "sharing" would be tantamount to "fractionalized DS3" or "fractionalized DS1" pricing. The Commission explicitly rejected such fractionalized pricing when it refused to raise the DS3/DS1 benchmark to levels in the range of 20-to-1 to 24-to-1, as suggested by CompTel, WilTel, and Sprint. Third Report, ¶ 51. As the Commission pointed out, the contentions of these parties did not properly account for relevant cost factors that differentiate these services from one another, such as multiplexing, unused capacity, engineering and administrative expenses. Third Report, ¶ 52.

"multiple customers of record could be billed by the LEC for fractionalized shares of a high-capacity facility."²⁰ The SNPRM defines "customer of record" as "an access customer that receives bills and is responsible for paying access charges to a LEC."²¹ An access customer should not be forced to guarantee another customer's nonpayment of charges, as is the case under Southwestern Bell's interim split billing option.²² Indeed, as CompTel has elsewhere pointed out, such an arrangement would make sharing infeasible for smaller IXCs.²³

II. The Availability Of A LEC Split Billing Option Should Not Preclude IXCs Or Others From Reselling The LECs' Access Services.

The requirement that LECs offer split billing options for their services should not preclude IXCs or

²⁰ SNPRM, ¶ 131.

²¹ SNPRM, ¶ 131 n.250 (emphasis added).

²² See Southwestern Bell, Transmittal No. 2305 (Tariff F.C.C. No. 73, § 6.8.15), filed November 15, 1993; AT&T Petition against Southwestern Bell's tariff, filed November 30, 1993, pp. 4-5; AT&T's Direct Case in CC Docket No. 94-120, filed October 28, 1994, p. 14 and Attachment 1, pp. 16-17.

²³ SNPRM, ¶ 132 (citations omitted); CompTel Comments, CC Docket No. 91-213, filed November 30, 1993, pp. 7-8; CompTel Petition to Reject, CC Docket No. 91-213, filed October 7, 1993, p. 36; see also p. 14, infra (Such an arrangement is also unfair to AT&T, when AT&T as the primary customer is forced to guarantee an end user's nonpayment of LEC charges).

others from reselling the LECs' access services. Indeed, a fundamental tenet of the Commission's Transport Orders and longstanding Commission policy, is to promote the reselling of non-competitive services in order to encourage competition and cost-based rates, and increase customer choice in the marketplace.²⁴

In contrast to "shared" use, "[r]esale is the subscription to communications services and facilities by one entity and the reoffering of communications services and facilities to the public (with or without 'adding value') for profit."²⁵ In a resale situation when one entity (e.g., AT&T) subscribes to a LEC high capacity transport facility, that subscriber assumes not only full payment for the price of the facility, but also connecting facility assignment control and the risk of unused or spare capacity. In turn, the subscribing entity (i.e., AT&T) would be the LEC's only customer of record for that facility and should be permitted to resell capacity on that facility to its own customers under tariff, as AT&T has proposed to do in its pending Feature Group A and B tariff revisions. Such resale furthers the Commission's pro-competitive policies and increases consumer choice.

²⁴ First Reconsideration Order, 8 FCC Rcd. 5370, 5381 (¶ 62); Resale and Shared Use Order, 60 F.C.C.2d at 283, 298-99.

²⁵ Resale and Shared Use Order, 60 F.C.C.2d at 263.

In addition, the existing split billing options in the context of Feature Group A and B are simply inadequate to compensate AT&T for use of an AT&T-subscribed entrance or direct-trunked facility by the LECs' Feature Group A or B customer. The Common Carrier Bureau has generally described "split billing" in the context of Feature Group A or B access to mean that the LEC would bill the end user and credit AT&T, on a fractionalized basis, for that portion of the transport facility cost associated with the particular customer's share of the capacity of the facility.²⁶ For example, under Southwestern Bell's interim split billing option, if a LEC Feature Group A customer used one channel in an AT&T-subscribed DS1 entrance facility, the LEC would credit AT&T for 1/24 of the price of the DS1 through ratcheting.

Such ratcheting provides no real solution for AT&T to the LECs' change in Feature Group A and B billing practices for several reasons. For one, the LEC would escape its appropriate share of responsibility for spare or unused capacity on the AT&T-subscribed facility.²⁷ Whatever credit AT&T receives from the LEC would be insufficient to cover the added expenses that the LECs' change in billing

²⁶ AT&T Communication Tariff F.C.C. Nos. 9 and 11, Transmittal No. 6788, 9 FCC Rcd. 4480, 4482 (¶ 12) (1994) (Suspension Order).

²⁷ See SNPRM, ¶ 140.

practices has imposed. The Commission should thus reject ratcheting in this circumstance, for the same reasons that it rejected "fractionalized DS1" and "fractionalized DS3" pricing.²⁸

Further, under Southwestern Bell's interim split billing option, AT&T remains the guarantor of payment. If the end user does not pay the split bill issued by the LEC, the amount of non-payment of the flat-rated elements is simply imposed upon AT&T. This guarantees that AT&T would not, through a split billing arrangement alone, obtain revenues or credits from the LEC sufficient to cover the additional expense that their Feature Group A and B billing rearrangement has imposed on AT&T. Thus, if a LEC wants to use a portion of an AT&T-subscribed flat-rated entrance facility or direct-trunked transport to provide service to end users, it should be required to compensate AT&T at an appropriate rate.²⁹

The Commission seeks comment on "methods to ensure that Feature Group A and B users are not double-billed for their use of the same facilities." SNPRM, ¶ 144. The potential for double billing exists with respect to some current Feature Group A and B customers who are utilizing

²⁸ See n.19, supra.

²⁹ As an alternative to using capacity on AT&T-subscribed facilities, the LEC may prefer to use its own facilities for Feature Group A and B, and afford end user customers a sharing option with split billing.

LEC voice grade direct-trunked facilities between the LEC dial tone office and the serving wire center. If such a customer orders AT&T's Feature Group A or B access service and demonstrates to AT&T that it is being billed by the LEC for voice grade direct-trunked transport (and AT&T confirms that the customer's traffic is not "riding" on AT&T direct-trunked facilities), AT&T will remove the direct-trunked transport rate element from the customer's AT&T bill on a going-forward basis (and credit the customer for any past billing of that rate element) until the customer's service can be reprovisioned on AT&T high capacity facilities.

Double billing may also occur for some current Feature Group A and B customers who order AT&T's access service yet continue to be billed by the LEC for direct-trunked transport even though their Feature Group A or B traffic is being provisioned over AT&T-subscribed high capacity facilities. In these cases where a customer's direct-trunked transport is provided on AT&T high capacity facilities and the LEC is charging the customer for that transport, AT&T will notify both the customer and the LEC that the LEC should cease billing the customer for the direct-trunked transport link, because the customer has ordered and is using AT&T's Feature Group A or B access service.

AT&T will take the necessary steps to ensure that no double billing of access elements results in any other

circumstances. By identifying separate rates for the two resold LEC access services (namely, entrance facilities and direct-trunked transport) and notifying affected customers, any double billing would be easily detected by the end user. AT&T commits to work with the LECs to eliminate any multiple charge to the customer, or to provide credit on one bill or the other to guarantee that the customer does not pay twice for the same service.

CONCLUSION

For the reasons stated above, the Commission should require LECs to offer a split billing option for their flat-rated switched transport services. The availability of a LEC split billing option should not preclude IXCs or others from reselling the LECs' access services.

Respectfully submitted,

AT&T CORP.

By /s/ Judy Sello

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Its Attorneys

February 1, 1995

The attached letter and attachments were delivered to the following people.

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