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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Assessment and Collection of)
Regulatory Fees For Fiscal)
Year 1995)

MD Docket No. 95-3

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 submits these comments in response to the Notice of Proposed Rulemaking in MD Docket No. 95-3 ("Notice").¹

The Notice continues the process of implementing Section 9 of the Communications Act, which authorizes the Commission to assess and collect annual regulatory fees to recover costs incurred in carrying out its enforcement, policy and rulemaking, user information, and international activities.² Specifically, the Notice proposes to revise the Commission's Schedule of Regulatory Fees to recover the \$116,400,000 that Congress, pursuant to Section 9 of the Act, has required it to collect for Fiscal Year 1995. In

¹ Assessment and Collection of Regulatory Fees for Fiscal Year 1995, MD Docket No. 95-3, FCC 95-14, 60 Fed. Reg. 3807 (1995).

² 47 U.S.C. § 159(a); Notice, ¶ 2.

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addition, the Notice proposes to expand the Fee Schedule to assess regulatory fees on licensees not currently required to pay them and to revise the method of assessing fees for certain services currently in the Schedule.³

AT&T urges the Commission to replace the current fee multiplier for IXCs -- presubscribed lines -- with a multiplier based on each carrier's relative share of total IXC gross interstate revenues for the preceding calendar

³ Notice, ¶ 2. The Commission has appropriately proposed (Notice, ¶¶ 54-56) to extend its fee assessment to a wide range of interstate service providers, including resellers, who are subject to the Commission's jurisdiction and "directly benefit[] from [its] regulation of the interstate network" Notice, ¶ 56. By broadening the categories of licensees subject to regulatory fees, the Commission will ensure that its costs are recovered equitably and without competitive distortions.

However, the Commission's reference to telephone numbers or call signs as a fee allocator for mobile services does not logically apply to commercial air-to-ground services, for which a licensee is assigned a single call sign. To be consistent with the treatment of other Part 22 licensees, the Commission should assess the fee for commercial aviation services based on the number of operational transceivers aboard aircraft. See Notice, ¶¶ 43-44. This is appropriate because the maximum possible usage in an aircraft at any one time is determined not by the number of available handsets, but rather by the number of transceivers on the aircraft. With regard to general aviation aircraft, where an air-to-ground licensee provides service to private aircraft, the fee should be assessed based on the number of airplanes served by the licensee, consistent with the fact that the licensee is providing service to a single subscriber.

year.⁴ A revenue-based allocator, as compared to presubscribed lines, would result in a more equitable distribution of the fees among entities within a given industry (as Congress intended), would be consistent with Commission policy as well as actions in analogous proceedings, and can be administered without imposing additional administrative burdens on the Commission or carriers.

A revenue-based allocator is also preferable to a minutes-of-use ("MOUs") allocator, the alternative to presubscribed lines that the Commission proposes for consideration in the Notice (§ 60). A revenue-based allocation, as compared to MOUs, will permit the Commission to assess fees in as competitively neutral a fashion as possible and will readily capture bulk-billed services (for example, high capacity and broadband) without having to rely on assumptions or projections.⁵

⁴ This is consistent with the position that AT&T advocated last year. See AT&T Comments, filed April 7, 1994, in MD Docket No. 94-19. Although the Commission did not modify Section 9(g) of the Act's assessment of regulatory fees from IXCs on a subscriber basis for fiscal year ("FY") 1994, it did indicate that "AT&T may submit its views concerning the appropriate method of assessing fees from IXCs in our proceeding to establish regulatory fees for FY 1995." Implementation of Section 9 of the Communications Act, MD Docket No. 94-19, 9 FCC Rcd. 5333, 5367 (§ 97) (1994).

⁵ Indeed, in the Commission's current proceeding regarding the Universal Service Fund ("USF"), a revenue-based allocation methodology received broad spectrum support, from interexchange carriers ("IXCs"), local exchange

First, as AT&T has repeatedly demonstrated in other proceedings, allocation mechanisms based on presubscribed lines do not accurately reflect the various IXCs' share of switched services and thus do not equitably allocate costs among switched service providers.⁶ The Commission has often held that charges imposed upon IXCs

(footnote continued from previous page)

carriers ("LECs"), competitive access providers ("CAPs"), and state regulators alike. See AT&T Reply Comments, filed December 2, 1994, in Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, pp. 5-9 (citing other parties' Comments) ("AT&T USF Reply Comments"). See also Reply Comments, filed December 2, 1994, in CC Docket 80-286, by NYNEX, pp. 9-7; Rochester, pp. 5-6; Citizens Utilities, pp. 2-3; Pacific, p. 24; Colorado PUC, pp. 3-4; NECA, p. 31; General Communication, Inc., p. 8; Microwave Telecommunications Corp., p. 12.

Moreover, the Commission has previously rejected use of projections and complex preliminaries in favor of objectively quantifiable data. See, e.g., Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Further Notice of Proposed Rulemaking, 3 FCC Rcd. 3195, 3377, 3435 (1988) ("Further Notice"); Report and Order, 4 FCC Rcd. 2873, 2912, 2964, 3026-27 (1989) ("Price Cap Order"); Second Report and Order, 5 FCC Rcd. 6786, 6857 (1990) ("Second Report"), recon. denied, 6 FCC Rcd. 2637, 2711-12 (1991) ("Reconsideration Order"), petition for review pending sub nom., D.C. Pub. Serv. Comm'n v. FCC, No. 91-1279 (D.C. Cir. filed June 14, 1991). Adoption of a revenue-based allocator for IXC regulatory fee assessment would be consistent with those sound regulatory decisions.

⁶ See AT&T USF Reply Comments, pp. 5-9; AT&T Comments, filed October 28, 1994, CC Docket No. 80-286, pp. 6-7, 13-16 ("AT&T USF Comments"); Petition of AT&T, CC Docket Nos 78-72, 80-286, filed November 24, 1993 ("AT&T USF Petition").

must "not unduly favor some IXCs at the expense of others."⁷ The current presubscribed line-based regulatory fee allocation mechanism fails this fundamental requirement of nondiscrimination among competing IXCs. Many presubscribed lines generate little or no interstate calling. AT&T's competitors have targeted their marketing toward more profitable high volume customers. Because of AT&T's anomalous position as the "carrier of last resort" for low volume users, its customers average significantly less usage and revenue per line than customers of other IXCs.⁸ According to the most recent data available, AT&T has 70.52% of presubscribed lines, but its share of toll service revenues is only 59.6% and of toll minutes only 57.8%.⁹ The flat-rate, per-line regulatory fee contained in the current schedule thus results in AT&T's customers paying a disproportionate share of the total revenue requirement.

⁷ See Petitions for Waiver of Various Sections of Part 69 of the Commission's Rules, Memorandum Opinion and Order, 104 F.C.C.2d 1132, 1180, ¶ 95 (1986) ("Alternative Access Charge Order").

⁸ Using the Commission's most recent market share report (see note 9, *infra*), AT&T estimates that the average usage per AT&T-presubscribed line is only 183 access minutes per month, generating average revenues of \$29.27 per month, as compared with 299 minutes and \$52.32 per month for AT&T's competitors.

⁹ Long Distance Market Shares, Third Quarter 1994, Industry Analysis Division, FCC, January 1995, pp. 8, 11, 14.

Second, an allocation mechanism based on presubscribed lines violates Commission policy for another, independent reason: because it forces IXCs to pay annual lump-sum charges for every presubscribed line, such a mechanism artificially discourages IXCs from seeking out and serving low volume users. Indeed, in its Alternative Access Charge Order, the Commission rejected a presubscribed line-based cost allocator precisely because it would have created an artificial disincentive to serve low volume users.¹⁰

In order to equitably distribute regulatory fee assessments among all IXCs, the Commission should adopt an allocator based on "each interstate provider's relative share of gross interstate revenues" -- the methodology it recently and correctly adopted for Telecommunications Relay Services ("TRS") fund assessments.¹¹ A revenue-based allocator would result in a fair allocation of costs among switched service providers, and it could be administered easily -- based on the same data already collected for TRS assessments. Moreover, a revenue-based allocator would directly capture non-switched (private line) services, which

¹⁰ Alternative Access Charge Order, 104 F.C.C.2d at 1182-83, ¶ 99. See also AT&T USF Reply Comments, pp. 5-9; AT&T USF Comments, pp. 13-16; AT&T USF Petition, pp. 10-11.

¹¹ See Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, Third Report and Order, 8 FCC Rcd. 5300, 5303, ¶ 16 (1993) (rejecting allocation mechanism based on providers' relative shares of switched services because it "would not account adequately for services that utilize dedicated facilities").

also result in the Commission incurring costs for regulatory functions such as rulemaking and enforcement.¹² Although the instant Notice (¶ 59) recognizes the need to capture non-switched services and proposes to do so based on voice grade equivalent capacity provided, that method would require calculations and extrapolations that could be avoided altogether if a much simpler to administer, straightforward revenue-based allocator were adopted. For all these reasons, the Commission should modify the schedule for IXCs by replacing the line-based mechanism with a revenue-based mechanism.

If the Commission does not adopt a revenue-based allocator for IXC regulatory fee assessments, it should adopt the MOUs-based allocator alternatively proposed in the Notice (¶ 60). MOUs, unlike presubscribed lines, would result in IXCs being assessed regulatory fees based on their proportionate share of switched services usage and would not create disincentives to serve low volume users. At the same time, however, an allocator based on MOUs would be more complex to administer than one based on revenues, because it would require crossover assumptions in order to capture services that are not billed based on timed-usage.¹³

¹² An allocation methodology based solely on presubscribed lines would not adequately distribute fees among all services because it completely fails to account for services that use dedicated facilities.

¹³ Cf. Notice, ¶ 60.

Moreover, if the Commission were to adopt the proposed MOUs allocator, it should first correct an error in the rate calculation, which appears to be based on substantially understated demand.¹⁴ Had the correct level of demand been used, the regulatory fee would be \$.042 per 1000 minutes (rather than the proposed fee of \$.08 per 1000).¹⁵

¹⁴ AT&T believes that the proposed fee of \$.08 per 1000 minutes would result in a collection of approximately \$74,000,000 from IXCs, LECs, CAPs and other providers, which is nearly double the required amount of \$39,000,000. See Notice, ¶ 58. This is because the 413 billion minutes (common carrier lines access minutes including resale) used by the Commission to derive the \$.08 rate appear to be understated by 50%. Each minute of use will be counted both by LECs and interstate toll carriers; therefore each minute of use should be counted twice in the computation of the fee rate (just as the Commission had doubled the number of presubscribed lines in its computation of the line-based allocator (see Notice, n.21)). Dividing the \$39,000,000 cost allocation by 921 billion minutes (413 billion minutes for common carrier and resale times 2 plus 95 billion minutes for non-switched interstate services) results in a fee of \$.042 per 1000 minutes, not the fee of \$.08 per 1000 minutes proposed in the Notice (¶ 60 and n.22).

¹⁵ The rate calculation for international bearer circuits also appears to be based on understated demand and should be corrected. The Commission calculated that a \$5.00 annual fee would be required to recover its \$310,000 cost allocation to this category, based on an estimated 62,000 active 64 kbps or equivalent circuits (Notice, ¶ 53 and Appendix G). However, AT&T alone reported 76,372 international bearer circuits in its payment of fiscal year 1994 regulatory fees, and it expects to report a similar level for 1995. If the Commission does not adjust its fee level for this category, it would recover from AT&T alone over \$380,000, far in excess of the \$310,000 cost allocation to the entire category.

CONCLUSION

AT&T urges the Commission to allocate the costs it incurs in regulating IXCs based on each carrier's share of gross interstate IXC revenues, as opposed to presubscribed lines. A revenue-based system will avoid anticompetitive discrimination among IXCs because it accurately reflects market shares in the industry, and will thus ensure that each IXC pays its "fair share." Such a system will likewise avoid exacerbating the current disincentives to serve low volume customers. Finally, a revenue-based system can be administered without imposing additional burdens on the Commission or carriers, because the Commission can use for this purpose the same data it compiles in the process of assessing the revenue-based fees it collects for Telecommunications Relay Services. Alternatively, the Commission should adopt an MOUs-based allocator, which although more complex to administer (and hence less

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desirable) than a revenue-based allocator, would result in a more equitable distribution of regulatory fees among IXCs than one based on presubscribed lines.

Respectfully submitted,

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