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November 9, 1995

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VIA HAND DELIVERY
Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Mail Stop 1170
Washington, D.C. 20554

Re: CC Docket No. 94-97: Comments on LEC Direct Cases.

Dear Mr. Caton:

Transmitted herewith, on behalf of ICG Access Services, Inc. ("ICG"), are an original and seven copies of its Comments on the Direct Cases of U S West Communications, Inc., BellSouth Telecommunications, Inc., Ameritech & Cincinnati Bell Telephone in the above-referenced proceeding. The Commission's Order, DA 95-2185, dated October 17, 1995, extended the filing deadline for comments on the LEC direct cases to November 9, 1995.

In accordance with the Commission's Public Notice dated September 19, 1995, ICG has also provided a copy of its Comments to the Tariff Division and International Transcription Service.

An electronic reproduction of the original Comments containing the facsimile signature of counsel for ICG is being filed pursuant to Section 1.52 of the Rules. Counsel will retain the original until the Commission's decision in this proceeding is final and no longer subject to review.

Please acknowledge receipt of these Comments by date-stamping the enclosed copy marked "Stamp & Return" and returning it to our courier. Please direct questions and copies of all correspondence to the undersigned counsel.

Very truly yours,

Harsha Krishnan

Enclosure
cc: ICG Access Services, Inc.
Chief, Tariff Division
International Transcription Service

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

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In the Matter of	
Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection through Virtual Collocation for Special Access and Switched Transport	CC Docket 94-97, Phase II

COMMENTS OF ICG ACCESS SERVICES, INC. ON DIRECT CASES OF

U S WEST COMMUNICATIONS, INC.

BELLSOUTH TELECOMMUNICATIONS, INC.

AMERITECH &

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November 9, 1995

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection through Virtual Collocation for Special Access and Switched Transport	CC Docket 94-97, Phase II

COMMENTS ON DIRECT CASES

ICG Access Services, Inc. ("ICG"), by its attorneys, hereby submits its Comments on the direct cases submitted by U S West Communications, Inc. ("USWC"), BellSouth Telecommunications, Inc. ("BellSouth"), Ameritech ("Ameritech") and Cincinnati Bell Telephone ("CBT") (collectively "LECs") in response to the Commission's Order Designating Issues for Investigation ("*Order*") in CC Docket 94-97 Phase II, adopted on September 18, 1995, and released on September 19, 1995. The *Order* required the LECs to justify certain features of their rates, terms and conditions for their tariffed offerings of Virtual Collocation ("VC"). In response to the LECs' direct cases, ICG respectfully states:

I. Introduction

ICG is an interstate competitive access provider ("CAP"). CAPs, including ICG, offer their customers an alternative to the local exchange carriers' ("LECs") for a variety of telecommunications services. Thus, ICG operates competitive access networks serving over 32 markets, including those served by the LECs, and now serves more Tier II and Tier III markets (cities with a population between 250,000 and 2,000,000) than any other CAP in the United States. ICG has 13 high capacity digital switches installed throughout its networks that enable ICG to offer interstate transport and switched access services. However, efficient

and competitive provision of such services requires the use of certain facilities and services of the basic local exchanges operated by the LECs. The proposed virtual collocation tariffs inflict unnecessarily high non-recurring costs on ICG and CAPs that discourage interconnection and thereby impede competition, which the Commission seeks to foster by its expanded interconnection and collocation policies. Moreover, ICG primarily serves Tier II and Tier II markets, which have smaller traffic volumes, so its costs of service and, therefore, its competitiveness are especially sensitive to the virtual collocation rates charged by the LECs. ICG has reviewed the direct cases submitted by USWC, BellSouth, Ameritech and CBT in response to the *Order* and contends that these LECs have not adequately justified their rates in several respects. These tariffs should, therefore, be declared unlawful.

II. General Considerations

Since the fall of 1992, the Commission has recognized that expanded interconnection and collocation was necessary for the development of a competitive telecommunications services market. Expanded interconnection is necessary because CAPs and other interconnectors ("ICs"), in order to compete effectively, must utilize certain facilities and services of the basic local exchanges operated by the LECs. This interconnection need derives from the current architecture of the local exchange network developed by the governmentally protected LEC monopoly. Moreover, interconnection must be available on an unbundled basis at just and reasonable rates; otherwise, CAPs and ICs must purchase unnecessary services or pay inflated rates, which artificially increases their costs of services and thereby decreases competition to the LECs' services. The Commission's expanded interconnection obligation was placed on the LECs accompanied by a grant of pricing flexibility to the LECs' special and switched access services.

Despite the Commission's unequivocal mandate and the pricing flexibility incentive, the LECs have impeded the implementation of expanded interconnection by adopting unwieldy interconnection architectures. While the LECs can rationalize various costs incurred to implement their virtual collocation offerings, ICG observes that the LECs employ completely different methodologies when attributing interconnection costs to the LECs' comparable DS1 and DS3 services. Since such differences do not reflect economies of scope, it appears that the LECs themselves find the virtual collocation pricing methodologies undesirable. ICG is particularly concerned that the LECs' virtual collocation tariffs impose substantial non-recurring charges which increase ICG's costs and adversely affects its ability to compete with the LECs for special and switched access services. Such charges disadvantage ICs by inflicting high initial costs, while the LECs simultaneously implement zone density pricing and reduce DS1 and DS3 rates in the regions of probable competition.

III. Differing Pricing Methodologies

A significant concern is the LECs use of differing methodologies for determining virtual collocation charges and for attributing comparable interconnection costs to their DS1 and DS3 services. For example, the LECs identify a separate rate element for power utilization while purportedly recovering DS1/DS3 power utilization as part of other rate elements. *E.g., USWC Direct Case* at 17-19; *Ameritech Direct Case* at 9-10. The LECs argue against comparing the interconnection costs for DS1 and DS3 to their virtual collocation charges and contend that different pricing methodologies are necessary. The utilization of differing pricing methodologies, however, enables the LECs to assess unnecessary charges on ICG and other ICs without afflicting their own services. The use of differing pricing methodologies enables the LECs to exact higher charges and recover costs not incurred.

LECs have multiple incentives for over-estimating virtual collocation charges. Since LECs have monopoly control over bottleneck facilities, ICG and other ICs have no alternative but to interconnect with the LECs. Thus, ICG and other ICs must pay the charges demanded by the LECs, so excessive virtual collocation charges will increase LEC revenue. Higher virtual collocation charges increase ICs' costs, which results in higher rates to be charged by ICs. In turn, higher rates reduce the ICs' ability to compete against the LEC, give the LECs a competitive price advantage for their comparable services, and allow LECs to maintain higher profit margins on those comparable services. Furthermore, it is difficult for ICs, as well as the Commission, to ascertain the LECs' true costs for providing virtual collocation. Consequently, the LECs have strong economic reasons, with no deterrent, to exact excessive virtual collocation charges. By employing differing pricing methodologies, the LECs can effectuate these economic incentives and exact higher charges for virtual collocation.

A comparison of the virtual collocation charges to the interconnection costs attributed to the LECs' DS1 and DS3 services provides a practical procedure for evaluating whether the virtual collocation charges are just and reasonable under the Communications Act. The LECs' DS1 and DS3 services are comparable to the services provided by ICG and other ICs that will utilize virtual collocation; moreover, the LECs' DS1 and DS3 services utilize functionally equivalent facilities and services as those furnished ICG and ICs under the virtual collocation tariffs. Disparities between the interconnection costs of DS1 and DS3 services and the charges for virtual collocation signify unjust discrimination by the LECs. Where the LECs have monopoly control of essential facilities and strong incentives to discriminate against CAPs and other ICs, comparing virtual collocation charges to DS1/DS3 interconnection provides an appropriate standard for evaluating the fairness of the LECs'

virtual collocation tariff charges. This analysis is analogous to the Commission's Open Network Architecture ("ONA") concept, whereby the LECs must develop unbundled basic service elements for their networks, and impute the charges for such basic service elements into their own enhanced services rates. This approach is intended to reduce the LECs' incentive to impose unwarranted charges upon enhanced service providers.

The LECs, however, have employed different methodologies for determining charges for virtual collocation and the interconnection costs attributed to their comparable DS1 and DS3 services. The LECs claim that the virtual collocation architecture (designed by the LECs) does not permit utilization of the same cost allocation formulae used for the DS1 and DS3 services. The LECs also contend that the bundled nature of DS1 and DS3 service renders comparisons of between virtual collocation and DS1/DS3 inappropriate. Several LECs analogize to the difference between selling complete automobiles and individual car parts. *E.g., Direct Case of Ameritech* at 10; *Direct Case of BellSouth* at 6 n.10. Although automobile manufacturers might not provide the buyer with itemized costs for individual components of the automobile, the manufacturer certainly can determine its cost for individual components. Similarly, the LECs can identify the interconnection costs associated with their DS1 and DS3 services. However, the LECs' utilization of different pricing methodologies prevents comparison of virtual collocation charges with costs assessed to comparable LEC services.[1] Moreover, the LECs' refusal to attribute similar costs to their own competing services justifies strong skepticism about the reasonableness of the virtual collocation charges.

[1] Since virtual collocation tariffs include more rate elements than those attributed to DS1 and DS3 services, the Commission should judge whether even lower overhead loadings than the LECs have presented in their tariffs are required for virtual collocation.

IV. Non-recurring Charges

ICG also contends that the LECs' utilization of non-recurring charges for virtual collocation are unjust, unreasonable and, indeed, anti-competitive. The virtual collocation rate structures impose non-recurring costs (that ICs must pay prior to the actual commencement of virtual collocation services) for equipment installation, cable installation and support, and provisioning. By contrast, LECs generally recover similar charges for DS1 and DS3 services through monthly recurring charges. Thus, ICs must pay substantial initial charges[2] to obtain service, while DS1 and DS3 customers may amortize those costs over the duration of service. This scheme erects financial obstacles to utilization of virtual collocation by ICs in competing with the LECs and discriminates against ICs.

The LECs attempt justify this disparate treatment because they contend DS1 and DS3 are offered pursuant to long-term contracts, whereas virtual collocation is a month-to-month service. *See, e.g., Direct Case of USWC* at 11 n.28, 14-15, 15 n.39. However, the unavailability of long-term contracts for virtual collocation is an unilateral decision by the LECs. In fact, utilization of recurring charges is more appropriate for virtual collocation than DS1 and DS3 for several reasons. First, the ICs must purchase the interconnection equipment used by the LEC. Thus, ICs have a significant capital investment and are thus less likely to abandon service than DS1/DS3 customers. Second, unlike DS1 and DS3 customers, ICs have no alternative provider of interconnection services. Third, since interconnection is essential, ICs must maintain some form of interconnection with the LECs' local exchange networks. If virtual collocation offerings truly constitute unbundled interconnection at just and

[2]In addition to these tariff charges, an IC must purchase interconnection equipment and essentially give it to the LEC for lease-back to the IC.

reasonable rates, ICs will elect virtual collocation over other interconnection alternatives. Therefore, ICs will continue purchasing virtual collocation services for the foreseeable future. These consideration essentially make virtual collocation a long-term service. Accordingly, the LECs should utilize recurring charges to recover some of the initial implementation charges, particularly when they apply such charges for DS1 and DS3 services.

Further, the assessment of non-recurring charges delays the utilization of virtual collocation. The unavailability and excessive cost of virtual collocation requires ICs to obtain interconnection by purchasing DS1, DS3, optical interconnect, or similar services, usually pursuant to long-term contracts. In order to convert to virtual collocation, ICs will incur termination charges on the previous contracts and then must pay significant installation charges to obtain virtual collocation. This result is incompatible with the Commission's policy of fostering competition in the special and switched access markets. In several instances, ICG has existing facilities connected to LEC central offices, and implementation of virtual collocation would merely require a single cross-connect or redirection of facilities; the virtual collocation tariffs filed by the LECs, however, would require ICG to have the LEC re-engineer each circuit connection, as a result of which ICG would pay attendant reengineering and re-installation charges. Such unnecessary non-recurring charges artificially inflate the ICs' cost, and only serve to reduce ICs competition to the LEC. This competitive disadvantage is further magnified because the LEC may institute zone density pricing when an IC actually takes virtual collocation services.

V. Conclusion

The LECs virtual collocation tariffs embody an anticompetitive rate structure that discriminates against interconnectors. The LECs' direct cases do not address the concerns

identified in the *Order*, and do not establish that the virtual collocation tariffs are just and reasonable under the Communications Act. Instead, the LECs employ different methodologies to identify costs for comparable services to evade a comparison of such costs. ICG Access Services, Inc., therefore requests the Commission to declare the LECs filed virtual collocation tariff rates unlawful and prescribe just and reasonable rates for virtual collocation and thereby facilitate the emergence of competition in interstate switched access services.

Respectfully submitted,

ICG ACCESS SERVICES, INC.

November 9, 1995

By: _____

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CERTIFICATE OF MAILING

I hereby certify that on November 9, 1995, a true and correct copy of the foregoing **COMMENTS ON DIRECT CASES** was deposited in the U.S. Mail, postage prepaid First Class, addressed to the following:

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