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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

DEC 11 1995

In the Matter of:	)	
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
	)	
Treatment of Operator Services Under Price Cap Regulation	)	CC Docket No. 93-124
	)	
	)	
Revisions to Price Cap Rules for AT&T	)	CC Docket No. 93-197

COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION

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SUMMARY

The Commission should adopt the adaptive price cap regulatory framework proposed by USTA in these comments. Regulatory impediments to competition in access services must be eliminated in order to provide the maximum benefits of competition to consumers. In fact, the baseline changes recommended herein ideally should have been adopted before competition reached present levels to ensure that entrants and incumbents made efficient entry and exit decisions. There is no need for a competitive showing.

USTA recommends that the Part 69 waiver process be modified to allow all new rate elements and subelements associated with the introduction of new services to be filed without a waiver. The current waiver process forces exchange carriers to bear the burden of proving that a new service is in the public interest and does not require the Commission to act within any specified time frame. The current process forces the Commission to attempt to fit new services into an outdated rate structure. This makes it difficult for exchange carriers to provide new services in a timely manner, results in uncertainty for customers and places exchange carriers at a competitive disadvantage. New services should be presumed to be in the public interest. In those instances where the Commission determines a waiver must be filed and has previously granted such a waiver, current and future offerings involving similar rate elements filed by other exchange carriers should b allowed to be introduced under an expedited fourteen day waiver process. However, waivers should never be required to add new switched transport elements if the elements or services are preexisting tariffed special access services. Further, all new services should be treated just as the Commission proposes to treat Track 2 new services. A single, uniform fourteen day notice period should be adopted for the introduction of restructured services.

USTA also recommends, under baseline regulation, that APPs, including volume and term discounts, be permitted subject to minimal regulatory requirements. These offerings are a prevalent feature of both regulated and unregulated markets and enable providers to reflect economies of scale in the price of their services. They increase the range of service options available to customers. Volume and term discounts will also reduce the current distortion in access prices that provides an incentive to customers to leave the switched network. Exchange carriers should also be allowed to offer services under contract in response to a RFP. Contract-based pricing will enhance competition by ensuring that customers receive competitive prices for customized services. The Commission's proposals to limit ICB tariff offerings are inconsistent with the current access marketplace.

These modifications are necessary to allow exchange carriers to compete effectively, thereby facilitating more efficient pricing and providing more choices for customers.

Finally, USTA proposes additional opportunities for much-needed pricing flexibility. The lower service band index limits should be eliminated in order to promote economic efficiency and reduce prices. No additional constraints on price increases should be adopted. Zone density pricing should be expanded to Local Switching, CCL, Transport and the Interconnection Charge. Exchange carriers should have the option to further restructure Local Switching, CCL and the Interconnection Charge based on customer size.

The price cap basket structure should be simplified with services grouped according to functionality. This will permit greater simplification and better alignment with major service functionalities. USTA's proposal also allows zone pricing of all services within all service categories where costs vary as a function of traffic density. An optional basket structure based on customer size should also be available.

Streamlined regulation should be available when the relevant market is competitive as determined by supply responsiveness and demand responsiveness. The relevant access market should be defined by a combination of geography, service and customer. The geographic dimension should identify the geographic area over which suppliers compete for the same customers. (The existing transport zones are not suitable to define the geographic dimension). The service dimension should determine logical service groupings based on service substitutability. The customer dimension should be based on customer choices in the marketplace. Streamlined regulation should allow exchange carriers to remove services from price cap regulation. Current Part 69 rate structure requirements should not be applied. All tariff filings should be on fourteen day's notice and no cost support material should be required. Exchange carriers should also be permitted to engage in contract carriage with customers.

USTA has proposed a conservative measure of competition that focuses on the proportion of demand in a relevant market that is addressable by alternative providers. Addressability is preferable to market share because it measures forward-looking pressure on price in the market rather than historical pressure: it can reduce the measurement bias from self-supply; it avoids the disincentives to lose customers in the short term; and it alleviates the risk of a pricing umbrella by gauging the ability of a provider to serve. The measure of addressability is based on observable fact, the physical presence of alternative providers with the capacity and coverage to provide a viable alternative. In order to validate this measure, all interstate access providers must report to the Commission the description of the area in which they make their services generally available to the public.

An exchange carrier could demonstrate supply responsiveness by showing that 25 percent of the access demand in the relevant market have choices available from another provider or

providers. Exchange carriers would submit evidence to demonstrate that customers regard the services used to demonstrate addressability are acceptable substitutes for exchange carrier services.

Nondominant status should be available when the relevant market is determined to be competitive such that a service provider cannot exert market power. A nondominant showing could be made for the same relevant markets described for streamlining. Exchange carriers could show that fifty percent of the demand has an alternative supply and full compliance with state requirements to open the local telecommunications markets. Once a relevant market area is determined to be nondominant, exchange carriers should be permitted to file tariffs on one day's notice. Any other flexibilities which apply to other nondominant carriers should also apply to exchange carriers.

Finally, the Commission should require all interexchange carriers to flow through reductions in access charges on a dollar-for-dollar basis.

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COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association (USTA) respectfully submits its comments in the above-referenced proceeding. USTA is the principal trade association of the exchange carrier industry. Its members provide over 98 percent of the exchange carrier-provided access lines in the U.S.

I. CHANGES TO INTERSTATE ACCESS PRICE REGULATION TO RESPOND TO THE EXISTING MARKET MUST BE ADOPTED NOW.

The Second Further Notice of Proposed Rulemaking (2nd FNPRM) released by the Commission in the above-referenced proceeding provides the Commission with an appropriate regulatory framework to craft price cap rules that adapt to the degree of competition in a

particular market.[1] Previously in this docket, USTA provided the Commission with comprehensive changes to the price cap rules that would promote the development of fair and effective competition in the interstate access markets, encourage the introduction of new services, permit economic pricing and guide efficient investment in the National Information Infrastructure. USTA urged the Commission to adopt its proposals and establish the ground rules for interstate access competition so that these public interest benefits could be achieved. Regulatory impediments to competition in access services need to be eliminated in order to provide the maximum benefits of competition to consumers. "Over-regulation is not benign, and uncertainty in its application should be judged in favor of less, rather than more."[2] The 2nd FNPRM provides the Commission with the opportunity to find that the public interest will best be served by the adoption of an adaptive price cap framework.

USTA has already demonstrated the need for adaptive price cap regulation and, indeed, the changes to baseline regulation recommended herein ideally should have been adopted before

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[1]In the Matter of Price Cap Performance Review for Local Exchange Carriers, Treatment of Operator Services Under Price Cap Regulation, Revisions to Price Cap Rules for AT&T, Second Further Notice of Proposed Rulemaking In CC Docket No. 94-1, Further Notice of Proposed Rulemaking in CC Docket No. 93-124, and Second Further Notice of Proposed Rulemaking in CC Docket No. 93-197, released September 20, 1995.

[2]Schmalensee, Richard and Taylor, William, Pricing Flexibility for Interstate Carrier Access Services, December 11, 1995, at p. 34. ["Economists are careful to note that continued regulation has very real costs in telecommunications markets, and if an error must be made, it should be made in favor of premature deregulation rather than continued unnecessary regulation. An example of such regulation might be the tariff filing requirements that pertained to AT&T as a dominant carrier and the inadvertent effect of those requirements to facilitate tacit price coordination among the large IXCs". (at p. 33)]. [Schmalensee and Taylor]. (Attachment 1).

competition reached present levels.[3] The Commission acknowledges that it has been removing regulatory barriers to entry to foster the development of competition in various markets, including the interexchange market for over two decades. It has also taken steps to remove AT&T from the constraints of regulation even though interexchange competition has developed relatively slowly.[4] The Commission also has recognized that there are significant differences between the conditions prevailing while interexchange competition was developing and those that exist in the special access and switched transport markets. Taken together, the differences indicated to the Commission that special access and switched transport competition could develop much more rapidly than interexchange competition did.

> First, once CAPs are interconnected to the central offices that handle heavy traffic, they can gain a significant share of the access market by selling their services to the three largest IXCs. In contrast to this, the new IXCs (other common carriers or OCCs) had to market their interexchange services to thousands of individual customers to capture the market shares they now hold. Second, unequal access hindered the development of interexchange competition for many years...By contrast, the interconnection received by the CAPs, under either virtual or physical collocation, would be technically comparable to that used by the LECs. Finally, it is not clear that access traffic will grow rapidly enough to offset LEC traffic losses to the new entrants. In the case of interexchange competition, the growth of interstate toll traffic was stimulated substantially by the access charge reductions accompanying implementation of SLCs and separations changes.[5]

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[3]See, USTA Comments filed May 9, 1994.

[4]Expanded Interconnection with Local Telephone Company Facilities and Amendment of the Part 69 Allocation of General Support Facility Costs, CC Docket Nos. 91-141 and 92-222, Report and order and Notice of Proposed Rulemaking, released October 19, 1992 at ¶115.

[5]Id.

The Commission is aware that the current regulatory framework is inadequate. As Chairman Hundt recently stated,

> Our current federal access charge system both builds barriers to competition and promotes cream skimming. It builds barriers to competition by discouraging competitive entry to serve residential and especially low-volume users because the price that recovers the fixed costs of serving such customers is capped at a low level and the balance of the fixed costs must be recovered from usage charges.
>
> At the same time, the current system encourages new entrants to engage in cream skimming seeking only lucrative high-volume customers. Because the incumbent LECs are required to recover from these customers some of the costs of serving low-volume customers, a new entrant may be able to offer high-volume toll customers a lower price even if it is actually more costly for the entrant than the incumbent to serve those customers. These rules invite competitors to enter--but do not necessarily promote efficient competition.[6]

Competition in access services continues to emerge at a phenomenal rate. AT&T reportedly is readying itself to provide local telephone service by reorganizing into regional entities in order to better compete with the regional Bell Operating Companies. AT&T aims to "offer consumers and businesses a new kind of communication service that would use a simplified pricing setup--perhaps one flat rate, regardless of the type of call--and bundle together local, long distance and wireless services."[7] It was recently reported that competitive local exchange carriers (CLECs) have over 500 networks operational or under construction, serve more than 600 communities, will have total 1995 revenues exceeding $1.2 billion and expect to

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[6]Speech by Reed Hundt, Chairman, Federal Communications Commission, Deloitte & Touche Consulting Group, Telecompetition '95, Washington, D.C., December 5, 1995.

[7]AT&T Targets Home Markets of Baby Bells, Wall Street Journal, December 5, 1995, p. A3.

have more than 100 competitive switches in operation by the first quarter of 1996.[8] Based on predictions of a "revenue explosion" in switched services in 1998, their revenues are projected to increase 16-fold to $20.3 billion by that year.[9] This growth is confirmed in the attached table which updates USTA's previous comments listing operational competitive provider networks as of April 1994.[10] In less than a year, exchange carriers have been able to demonstrate a dramatic increase in competitive networks in additional communities across the country.

Further, since collocation was adopted in 1993, at least 333 central offices have implemented collocation. These offices service at least forty-five percent of the industry's access traffic. NYNEX has provided a recent update of the access traffic at risk due to competition. Competitive access providers (CAPs)/CLECs are currently collocated in sixteen wire centers in New York LATA 132. These sixteen wire centers provide service to 1.7 million access lines, one million of which are multi-line business. This represents over 50 percent of the total multi-line business access lines in LATA 132.[11]

In addition, there are approximately 2300 DS-1s providing special access and Flexpath services installed and connected to the collocated CAP/CLECs in the LATA. There are also approximately 1200 DS-1s in these offices providing switched transport facilities. Another 500 switched DS-1s are pending for switched transport service. These 1700 DS-1s represent nearly

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[8]"ALTS Members Plan for Massive Growth; Focus Shifts to Marketing, Partnering Opportunities," Telecommunications Reports, Volume 61, No. 44, November 6, 1995 at p. 1.

[9]Id. at p.2.

[10]See, Attachment 2.

[11]Of the 170 offices in LATA 132, the sixteen offices with collocation represent over 32 percent of the total usage in the LATA.

all (90 to 100 percent) of the total switched transport of two of the major interexchange carriers in these offices.[12]

The limited pricing flexibility which the Commission has permitted to date, zone density pricing for some transport services, does not permit exchange carriers to adequately address current competitive entry which has already occurred. Zone density pricing simply provides an opportunity to offer averaged prices over a smaller geographic area. Zone density pricing is only available when collocation is operational. This is not a sufficient tool to ensure economic pricing or to respond to the current market.[13] For example, as explained by Pacific Bell,

> The geographic concentration of revenues in California, and the relative ease with which entrants can reach them creates an environment ripe for new entrants to enter, gain a foothold and skim these areas of concentration with little worry of a meaningful [local exchange carrier] LEC response. The current rules don't permit it. Real competition in Redding, CA for HICAP services, where demand is weak, and unit costs are high, is negligible; competition in the dense, relatively low cost urban areas of Los Angeles, San Francisco, San Diego and Sacramento is anything but. Fifty-nine percent of Pacific Bell's interstate HICAP circuits are in just 16 wire centers. As of the date of this report, we have received orders for collocation in 14 of them.[14]

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[12]NYNEX Ex parte Presentation, DA 93-1537, April 20, 1995. See, also, Pacific Bell Ex Parte Presentation, CC Docket No. 94-1, October 20, 1994 and Bell Atlantic Petition for Regulation as a Nondominant Provider of Interstate InterLATA Corridor Service, DA 95-1666, July 7, 1995.

[13]In Dallas, Southwestern Bell has already lost 37.1 percent of its high capacity market without collocation. In Houston, Southwestern Bell has lost 30.5 percent of the high capacity market without collocation. See, In the Matter of Southwestern Bell Telephone Company Tariff F.C.C. No. 73, Transmittal Nos. 2433 and 2499, CC Docket No. 95-140, Direct Case of Southwestern Bell Telephone Company, September 11, 1995 at pp. 14-15.

[14]Pacific Bell Ex Parte Presentation, CC Docket No. 94-1, October 20, 1994.

Legislative and regulatory policies at both the state and federal levels continue to push the edge of the competitive envelope and require corresponding changes in price cap regulation. It was recently reported that when California decided to open the local market to competition, sixty-six companies filed requests for certification [15] Currently, thirty-one states permit local competition. In fifteen states and the District of Columbia rules and/or legislation to permit local competition are pending.[16] Commission Chairman Reed Hundt recently stated that the Commission must "do much more to permit interexchange carriers to compete in every local exchange market."[17]

The current price cap rules must be changed to reflect the current environment and an adaptive structure implemented to allow a quicker response as competition increases. Exchange carriers must be permitted to adjust their prices and products as soon as economic conditions warrant. As a market becomes addressable by alternative providers, exchange carriers should be subject to streamlined regulatory treatment. In markets where addressability reaches a greater level, exchange carriers should be afforded non-dominant status. This is consistent with the framework proposed by the Commission and should be adopted as specified in these comments. Otherwise, exchange carriers will continue to hold a price umbrella over certain market areas and customers will not receive the full benefits of competition. In addition, competitors will receive false economic signals and make incorrect decisions about their ability to supply services in these

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[15] Telecommunications Reports, at p.1.

[16] See, Attachment 3.

[17] Speech by Chairman Reed Hundt, Fall Business Conference, Competitive Telecommunications Association, New Orleans, Louisiana, October 10, 1995.

areas.[18] Successful public policies must be responsive to current and expected industry growth. Current regulation is an obstacle to fair competition, economic pricing and new service offerings.

USTA has already demonstrated the benefits of adapting price cap regulation to competition, including optimizing economic investment in the public network.[19] Greater pricing flexibility and improved risk-reward factors provide incentives for exchange carriers to accelerate investment and thereby improve service quality at a faster pace. In response, businesses and households adopt enhanced telecommunications services sooner, yielding a faster rate of innovation. The acceleration in enhanced telecommunications technology deployment and service quality result in an increased use of telecommunications services by all sectors of the economy, leading to further increases in technological change and customer choice. In essence, new investment and technology are the natural response to market-based pricing.

The Commission should not be timid in its approach. Just as it took a bold step in finding AT&T to be non-dominant,[20] despite the fact that the interexchange market is not open to all potential competitors, the Commission should take the steps described in these comments and adjust its rules to provide a forward-looking approach to price cap regulation in order to accommodate interstate access competition. The greatest possible disadvantage to consumers would result from further delaying the implementation of adaptive regulation as will be proposed in these comments.

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[18]See, Schmalensee and Taylor at p. 8.

[19]USTA Comments filed May 9, 1994.

[20]Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, FCC 95-427, Order, released October 23, 1995.

II. REVISIONS TO THE CURRENT PRICE CAP PLAN FOR EXCHANGE CARRIERS DESCRIBED HEREIN ARE NECESSARY AND SHOULD BE ADOPTED WITHOUT A COMPETITIVE SHOWING.

The Commission has proposed a number of possible changes to the current price cap rules, including simplifying the treatment of new services, allowing alternative pricing plans (APPs), eliminating the lower SBI limits and changing the price cap service basket and category structure. These changes are a positive step toward sending the proper economic signals which further enhance competition.

Therefore, under baseline price cap regulation,[21] USTA recommends that the Part 69 waiver process be modified to allow all new rate elements and subelements associated with the introduction of new services to be filed without a waiver. In those instances where the Commission determines a waiver must be filed and has previously granted such a waiver, current and future offerings involving similar rate elements filed by other exchange carriers should be allowed to be introduced under an expedited fourteen day waiver process. However, waivers should never be required to add new switched transport elements if the elements or services are preexisting tariffed special access services. Further, all new services should be treated just as the Commission proposes to treat Track 2 new services. A single, uniform fourteen day notice period should be adopted for the introduction of restructured services.

USTA also recommends that APPs, including volume and term discounts, be permitted subject to minimal regulatory requirements. Exchange carriers should also be allowed to offer services under contracts in response to a Request for Proposal (RFP).

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[21]USTA refers to the changes contemplated for the current price cap plan as baseline regulation. See, Schmalensee and Taylor at p. 3.

Finally, USTA proposes additional opportunities for pricing flexibility. The lower service band index limits should be eliminated. Zone density pricing should be expanded to Local Switching, Carrier Common Line (CCL), Transport and the Interconnection Charge and exchange carriers should have the option to further restructure Local Switching, CCL and the Interconnection Charge based on customer size. The price cap basket structure should be simplified with services grouped according to functionality. An optional basket structure based on customer size should also be available. USTA will discuss these changes to the current price cap plan in detail.

A. Revisions to the Current Price Cap Plan for Exchange Carriers Should Be Initiated Without the Imposition of Competitive Criteria.

The Commission proposes that changes to the current price cap plan for exchange carriers be implemented without regard to the current level of competition. The Commission should modify its rules and implement the changes proposed for baseline price cap regulation, including relaxing the barriers to the introduction of new services and providing greater opportunities for pricing flexibility, without requiring exchange carriers to meet any further competitive criteria.

> The first change in regulation is intended to send correct economic signals. This change must occur so that entrants and incumbents make efficient entry and exit decisions, some of which entail large investments and sunk costs. In particular, such flexible regulation should begin before there is any assurance that competitive forces can discipline the primary decisions. A considerable movement towards competitively-neutral regulation can be achieved by permitting downward price flexibility and promotional pricing and by removing such regulatory restrictions as (i) the requirement to charge geographically averaged rates, (ii) delays in tariff filings implementing new services and constructing new facilities due to the FCC's Part 69 rules, and (iii) cost support

requirements.[22]

New services offerings, restructured services, revisions to price cap baskets, zone pricing and alternative pricing plans are in the public interest. The proposed changes described herein will enhance the efficiency of baseline price cap regulation, regardless of the presence of competition, to benefit customers, exchange carriers, other interstate access providers and the Commission.

Price cap regulation was implemented in an effort to replicate a competitive marketplace in markets that are not yet competitive.[23] The proposed changes will allow baseline price cap regulation to produce an outcome that is closer to the outcome in a competitive market. For example, reduced barriers to the introduction of new services will allow all customers to benefit from additional service options. As Schmalensee and Taylor explain,

> ...[t]he FCC's rules should allow the incumbent LEC to establish prices for new services that reflect incremental costs. To do otherwise creates prices that are economically inefficient in three ways. First, since price would exceed the LEC's incremental cost for new services, allocative efficiency would be lost. Second, but, more significantly, higher-cost firms could enter and survive under the price umbrella, directly reducing first-order technical efficiency. Third, inefficient pricing would alter the LEC's expected gain from introducing a new service and thus distort its incentives to invest, reducing dynamic efficiency in the market.[24]

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[22]Schmalensee and Taylor at p.3.

[23]Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Report and Order and Second Further Notice of Proposed Rulemaking, 4 FCC Rcd 2873 (1989) at ¶36. [Price Cap Order].

[24]Schmalensee and Taylor at pp. 8-9.

In addition, greater opportunities for zone density pricing will accommodate differences in traffic density. Volume and term discounts will provide additional service options, will improve pricing efficiency by allowing the price customers pay for a service to be closer to the cost of that service and will reduce the current anomalies in customer choice between switched and special access exacerbated by the fact that discounts previously have been available only for special access. These examples represent benefits to customers that can and should be realized in all markets, regardless of the level of competition. As the Commission has observed, price cap regulation will protect customers from any possible anticompetitive behavior.[25]

The modifications described herein are necessary to allow exchange carriers to compete effectively, thereby facilitating more efficient pricing and providing more choices for customers. These changes will provide the flexibility needed to meet customer requirements. A recent survey confirms that customers regard the current industry structure in telecommunications as "artificial and primarily a construct of balkanizing regulation which divides markets amongst various suppliers, limits price competition and inhibits effective service integration. They view current state and federal regulations as inhibiting effective competition on the merits and consumer sovereignty."[26] As one large customer observed, "As I see it, there are two problems with the way the access market operates today: one problem is that the competition fixes their prices based on the level of Bell Atlantic's regulated rates rather than their own costs. The

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[25]Price Cap Order at ¶¶ 42 and 104.

[26]Haring, J. And Shooshan, H., Universal Competition in the Supply of Telecommunications Services: Eight Customer Perspectives, February 8, 1995 at 1. [Haring and Shooshan].

second problem is that Bell Atlantic can't respond competitively to their competition."[27]

Access customers often request new services and/or restructured services within a certain time frame. Often, exchange carriers cannot meet that time frame due to the delay in either the Part 69 waiver process or the tariff process. For example, based on an informal sample of price cap exchange carriers, over 100 new services have been delayed an average of 42 days past the proposed tariff effective date. Given that the tariff must be filed with a 45-day notice period, the delay nearly doubles the amount of time that customers must wait to receive new services from exchange carriers. That number does not include delays caused by the current Part 69 waiver process.

Contrary to what is required, price cap regulation for exchange carriers has become even more complex and restrictive since its adoption. This is particularly true with respect to the introduction and pricing of new services. As a result, regulatory requirements often delay the introduction of new services by exchange carriers for months, subjecting new service offerings to review by competitors and providing competitors with the opportunity to bring similar services to market before exchange carriers have obtained regulatory approval. The current rules must be changed to accommodate the access competition that exists in exchange carrier markets today.

While no demonstration of competition is required for markets subject to baseline price cap regulation, it is important to encourage efficient pricing so that the correct price signals will be sent to customers and to potential entrants. There is no risk of competitive harm in making sure that regulation sends the correct economic signals. In fact, customers believe that current

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[27] Id. at iii.

regulation prevents economic responses. "I don't think regulation is protecting us; I think it is imposing a variety of costs on how we do business...The point is, given regulation, we don't have any choice. I'd like the economic environment and the market to drive who we deal with and who we don't deal with."[28]

The Commission adopted analogous regulatory reforms for AT&T, including approval of contract tariffs, relaxed regulation of construction permits, introduction of optional calling plans and permission to file promotional and limited term pricing plans years before it made any determination regarding competition in AT&T's markets.[29] USTA has shown that competition in interstate access exists today and can be expected to increase at a faster pace as a result of the rapid convergence of technologies, changing customer demand and new regulatory/legislative initiatives.[30] For example, since this proceeding was initiated, competitive entry for interstate access has been encouraged by the Commission's decisions regarding expanded interconnection and local transport restructure and the introduction of local competition by the states such that further competitive criteria to implement needed changes in baseline regulation are unnecessary. As noted in Attachment 2, even in the past year, exchange carriers were able to report an increase in the number of competitive providers operating in communities across the country.

The modifications proposed herein increase pricing efficiency, make available additional options for customers, simplify the administration of price cap regulation and allow exchange

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[28]Haring and Shooshan at p.12.

[29]Schmalensee and Taylor at pp.6-7.

[30]USTA Comments filed May 9, 1994.

carriers to offer services in a manner that gives economic entry signals to competitors. These changes are required now and should not be dependent upon some additional competitive showing.

B. Implementation of Service Offerings and Rate Changes Should Reflect the Current Market.

The Commission is concerned that the current system may hinder the introduction of services, a result that is harmful to customers and competition. Accordingly, the Commission is proposing to modify the definitions of new services, restructured services and individual case basis (ICB) filings as well as the filing requirements relating to each type of service offering. The Commission also seeks comment on whether to introduce a new category of service offering, APPs, with separate filing requirements.

1. The Part 69 Waiver Process Must be Modified to Reflect Statutory Requirements.

The introduction of new services is in the public interest. As stated in the Communications Act of 1934, "It shall be the policy of the United States to encourage the provision of new technologies and services to the public. Any person or party (other than the Commission) who opposes a new technology or service proposed to be permitted under this Act shall have the burden to demonstrate that such proposal is inconsistent with the public interest."[31] As Commissioner Chong observed earlier this year, "our regulations must be flexible enough to keep up with technology. One of my most difficult tasks was to tell my former clients that they

[31] 47 U.S.C. 157(a).

could not implement innovative market plans or technology without time-consuming regulatory approval. It frustrated them; it frustrated me. Regulation should not frustrate entrepreneurial spirit. Rather, regulations must be flexible enough to keep up with market and technological changes."[32]

The Commission's proposal for modifying Part 69 should reflect its statutory mandate by encouraging the introduction of new services and placing the burden on those opposing the new service to justify why it should not be offered to the public. Regulation should not require that a waiver be requested, a special circumstance be shown or a change in the rules be adopted to introduce a new service.

The existing pricing and new service rules and the Part 69 access charge rate structure prevent adherence to the Act by limiting exchange carriers' ability to meet customer demand with new and innovative services and pricing plans. The current rules have two detrimental impacts. First, the waiver process forces exchange carriers to bear the burden of proving that a new service is in the public interest and does not require the Commission to act within any specified timeframe on the request, despite the fact that this is directly contrary to the Act. Second, the current rules force the Commission to attempt to determine where a new service fits within an antiquated rate structure. Of course, this latter problem is not addressed in this proceeding.

There are nineteen Part 69 waivers currently pending before the Commission, four of which have been pending for over a year and one which has been pending for more than two

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[32]Remarks of Commissioner Rachelle Chong to the Federal Communications Bar Association, Washington, DC, January 19, 1995.

years.[33] Under the waiver process, exchange carriers bear a heavy burden to justify introducing a new or restructured service just because it does not fit within a rate structure that was prescribed over ten years ago during a period marked by relatively slow technological advances and limited competition in access markets.[34] Even for approved waivers, the process took an average of six months to complete in the period since 1991, delaying the introduction of new switched services and impeding the ability of exchange carriers to meet their customer's needs. Contrast that with the introduction of new special access services, where no waiver is required, and almost sixty percent more new special access services have been introduced.

The overall impact of these rules is devastating. First, the current rules make it very difficult for exchange carriers to provide complex and customized services made possible by new technologies and demanded by increasingly sophisticated customers in a timely manner. Second, the uncertainty of the process results in uncertainty for customers. Even when a waiver request is filed, exchange carriers cannot assure their customers as to when a service will actually be available. This, too, places exchange carriers at a distinct competitive disadvantage.[35] Finally,

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[33]See, for example, In the Matter of the Bell Atlantic Telephone Companies, Waiver of Section 69.112 of the Commission's Rules to Offer Facilities Management Service, Petition for Waiver, April 4, 1994 and In the Matter of Petition of US WEST Communications, Inc. for Waiver of Part 69 of the Commission's Rules to Provide 555 Access Service, Petition for Waiver, December 6, 1994.

[34]Ameritech Operating Companies, 6 FCC Rcd at 747, quoting WAIT Radio v. FCC, 418 f.2d 1153, 1157 (DC Cir. 1969) ("[A]n applicant for waiver faces a high hurdle even at the starting gate.") This burden is inconsistent with the Act.

[35]"We asked Bell Atlantic to put together a bid for an alternative route into our systems control center here in Pittsburgh, but they had to go through an arduous 'special assembly' process to meet regulatory requirements. The result was the price was prohibitive. So we went to PennAccess. Their response was quite different. They were a lot more 'tell us what you want

because exchange carriers often cannot meet this demand under the existing rules and because the rules impede the timely introduction of new service offerings, the rate structure and pricing rules provide a disincentive for exchange carriers to innovate and invest in the network. These rules, created to provide for an orderly transition to access charges at a time when all exchange carriers were rate of return regulated, have outlived their regulatory purpose. The Commission never subjected AT&T's services to a codified structure. Such rules certainly should not be required for exchange carriers subject to price cap regulation.

As noted above, new technologies do not fit within the current rate structure. New technologies often span several of the current defined elements and cannot be readily identified within a particular rate structure. This is hardly surprising given that the rate structure was created in 1984. This outdated structure does not accommodate the variety of service arrangements presently available. It certainly cannot accommodate those services which will be developed in the future.[36]

Improving this process will not resolve the problems with the codified rate structure. Therefore, USTA continues to advocate the elimination of the Part 69 codified rate structure as it

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and we'll do it.' This is what we want. Come up with a solution and price it aggressively. Don't tell me you can't do it. Now, at least in part, I know Bell Atlantic couldn't respond this way because they are restricted in what they can offer us and in how they price." Haring and Shooshan at p. 11.

[36]See, Petition for Expedited Waiver of Part 69 of the Commission's Rules filed by Pacific Bell on June 19, 1995 and Petition for Expedited Waiver of Part 69 Rules filed by BellSouth on June 30, 1995 seeking waiver to offer Synchronous Optical Network service (SONET) which transport both switched and special access services. The Southern New England Telephone Company filed an expedited waiver of Part 69 to offer SONET service on October 6, 1995. Even though the waiver was uncontested, the Commission still has not granted it.