first proposed in 1993.[37] Sufficient safeguards exist which mitigate the need for a codified rate structure. These safeguards include: the tariff review process under Section 203 of the Communications Act, the authority to investigate and suspend under Section 204 of the Act and the authority to handle complaints in Section 208 of the Act. These safeguards provide adequate opportunity for oversight of new services and technologies as well as any rate structure changes exchange carriers may propose to respond to competition. Given the changes in the market, technology and customer demand, the rate structure is unnecessary.

The Commission notes that it will not consider making comprehensive or substantial revisions to Part 69 in this proceeding.[38] USTA proposes the following guidelines for the introduction of new services under the current structure until a comprehensive proceeding to revise Part 69 is completed.

The Commission should permit all new rate elements and subelements associated with the introduction of new services to be filed without a waiver.[39] This would permit the

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[37]Reform of the Interstate Access Charge Rules, USTA Petition for Rulemaking, RM-8356, filed September 17, 1993. See, also USTA Comments filed May 9, 1995 and Schmalensee and Taylor at p.6.

[38]2nd FNPRM at ¶ 31.

[39]In those few instances where a waiver of Part 69 is required, such as to restructure an existing codified rate element or where the Commission determines that a waiver is necessary, the Commission must streamline the waiver process in order to better serve the public interest. Once a waiver has been filed, Sections 1.45(a) and 1.45(b) of the Commission's rules should be relied upon. The Commission should not exceed the filing periods specified within these sections and should act on the wavier within 45 days of filing.

In those instances where an exchange carrier previously has been granted a waiver, current and future offerings involving similar rate elements should be allowed to be introduced under an expedited fourteen day waiver process, not unlike the current "me too" process permitted under the Open Network Architecture rules. Furthermore, waivers should not be

Commission to follow the statutory mandate. Given that, by the Commission's own definition, new services "add to the range of options already available to customers",[40] no public interest concerns should arise. If the element or subelement associated with the introduction of a new service does not fit within the existing structure, the burden of making a public interest showing would not fall on the exchange carrier seeking to introduce the service. As required by the Act, the new service is presumed to be in the public interest. The burden to demonstrate that the service is not in the public interest should rest upon those opposing the new service. The opposing party should be required to demonstrate that the introduction of the new service will result in consumer harm.

USTA opposes the Commission's proposal to require a public interest certification. Such a requirement is contrary to the Act and would only serve to further delay the introduction of new services. If the Commission determines it is necessary to establish an additional regulatory checkpoint, the presumption should be that the new service is in the public interest and the burden of showing harm to the public interest should be placed on those opposing the new service. Exchange carriers should be permitted to file a "Notice of Intent to File" with the Commission on ten days notice which includes a general description of the service. Absent opposition, exchange carriers would file the new service tariff without a waiver or petition. Opposing parties would be required to demonstrate the new service would not serve the public

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required to add new switched transport elements if the elements or services are preexisting tariffed special access services.

[40]Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, 5 FCC Rcd 6786 (1990), recon. 6 FCC Rcd 2637 (1991), aff'd sub.nom., National Rural Telecom Assoc v. FCC, 988 F.2d 174 (DC Cir. 1993).

interest (e.g. that the new service offering was unreasonably discriminatory, patently unlawful or that consumers would be adversely impacted). Exchange carriers would be permitted to reply to oppositions within five days. The Commission should be required to act, based on the comments and replies, within thirty days. In the event the Commission sustains the oppositions, exchange carriers would be permitted to remedy any deficiency and refile with the same presumption or file a petition with a comment cycle to be completed within 45 days, similar to the Commission' proposal in ¶71 of the 2nd FNPRM.

In summary, USTA proposes that the Commission permit the expeditious introduction of new services beyond those that fit the existing codified structure. This procedural modification is in concert with the Act's presumption that all new services are in the public interest.

2. New Services Need Not Be Divided Into Separate Tracks.

There is no need to divide new services into separate tracks as proposed in the 2nd FNPRM (¶ 45). New services should not be divided into tracks. All new services should be treated just as the Commission proposes to treat Track 2 services. Any attempt to create two classes of services would be arbitrary and, given the rapid convergence and evolution of markets, competitors and technologies, meaningless. Codifying such a distinction likely would result in the same problems which are inherent in the current structure in that the definitions would become outdated and a new wavier process would be required to accommodate certain service offerings.[41]

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[41]However, should the Commission adopt two Tracks, the definitions of Track 1 and Track 2 services must be specific so that it is clear how the service will be treated before it is

3. Notice Requirements for Restructured Services Should Be Reduced.

A single, uniform fourteen day notice period is sufficient for restructured services. Restructured services must adhere to the price cap rules, thus sufficient regulatory safeguards are already in place. Therefore, there is no need for a lengthy notice period. As the Commission observes, the filing support requirements for restructured services are minimal and should remain the same.

4. Alternative Pricing Plans (APPs) Should Be Encouraged.

As the Commission observes, APPs are distinct from both new and restructured services. Exchange carriers should be encouraged to introduce APPs as these types of offerings improve the efficiency of access pricing, encourage the development of new service options for customers and promote full competition by permitting exchange carriers to respond quickly to market demands. The Commission should permit promotional and optional discounted service offerings, in addition to term and volume discounts, subject to minimal regulatory requirements, without regard to the level of competition.

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offered. The Commission can create a clear distinction between the two classes of service by treating new services as Track 2, presumed lawful and filed on fourteen day's notice based on a direct cost showing. Track 1 status should only be conferred on Commission-mandated services or based on a specific rulemaking proceeding where the record clearly establishes that Track 1 status is justified. Again, the Commission's proposal to distinguish Track 1 and 2 services will add administrative and regulatory burdens just as the current rules do. This could result in delaying the introduction of new services, just as the current rules do. And, as technology evolves, any "bright line" test will become obsolete. At the minimum, the Commission's criteria to determine the Tracks should not be adopted.

APPs, including volume and term discounts, are a prevalent feature of both regulated and unregulated markets. "Both technical and allocative efficiency can be enhanced by permitting regulated firms to set the same types of tariffed rates, generally involving volume and term discounts, that we observe unregulated firms setting in other markets."[42] They enable exchange carriers to reflect economies of scale in the price of their services. The Commission has recognized the value of this type of flexibility in permitting exchange carriers to offer volume and term discounts for transport services.[43] It is warranted now for switched services, such as the Local Switching rate element.

Volume and term discounts for switched access services will reduce the current distortion in access prices that provides an incentive to customers to leave the switched network. As the Commission has acknowledged, above cost pricing for switched access services can cause high volume and even moderate volume business customers to substitute exchange carrier dedicated facilities for the switched services or facilities of an alternative provider.

Interexchange carriers will avoid an exchange carrier's higher priced switched access services (e.g., common transport) by substituting exchange carrier dedicated facilities, facilities from alternate providers or their own facilities. They may recommend that their high volume

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[42]Schmalensee and Taylor at p. 10.

[43]Expanded Interconnection with Local Telephone Company Facilities, Second Report and Order and Third Notice of Proposed Rulemaking, CC Docket No. 91-141, Phase I, September 2, 1993 at ¶ 90. ["The rules governing the pricing of transport services, even for price cap LECs, do not allow the LECs sufficient ability to respond to growing access competition, particularly in light of our expanded interconnection policies...Retention of this blanket prohibition [against volume or term discounts, even when cost-justified] would unduly restrict LEC responses to competition."]

business customers change to a lower priced alternative local switched service provider. These types of substitutions occur even when it is not economically efficient, such as when the actual cost of the exchange carrier's switched access service is lower than the cost incurred by the interexchange carrier or business customer for the alternative service arrangements.

The distortion in switched access rates is due in large part to rate regulation, with its explicit and implicit subsidies and its requirements for averaged rates that do not permit exchange carriers the flexibility to reflect economies of scale in their rates. By permitting exchange carriers to offer volume and term discounts that reflect rates that are closer to costs for switched access services, the Commission will facilitate economic efficiency and provide benefits to customers.

Such flexibilities will not harm competition, but are an appropriate tool for exchange carriers to utilize to ensure economic pricing and to address current levels of competition. As the Commission has recognized, above cost pricing encourages inefficient service providers to enter the market. Switched access prices that are closer to their true cost will encourage market entry by efficient service providers. This will foster the development of true competition in the interstate access market.

APPs and volume and term discounts will also increase the range of service options available to customers. Interexchange carriers today compete with one another by offering volume and term packages of switched interexchange service to their end-user customers. However, their ability to do this is limited by the fact that no corresponding volume and term offerings are available for switched access. This means that interexchange carriers must structure their higher-volume switched offerings using special access direct connections. If exchange

carriers are allowed to offer APPs, interexchange carriers will have new opportunities to structure attractive offerings for their own customers using switched access. End users will then have a wider range of service choices, and will be able to choose the service arrangement, using switched or special access, that best serves their needs.

Service options that include volume and term discounts are widely available in the telecommunications industry today for virtually every service except switched access. The current Part 69 rules have discouraged the offering of switched access discounts. The unavailability of these discounts has repressed the demand for switched access and has artificially encouraged the use of alternatives such as special access and CAP services. It has also discouraged the introduction of new services in the switched network infrastructure, since switched access cannot be priced to be attractive to large business users, who naturally seek new telecommunications services. These users instead have been incented to adopt new technology in the form of private networks.

The benefits APPs provide in terms of efficiency and customer choice will be realized regardless of whether the access market is competitive. Analogous changes in the regulation of AT&T permitting the introduction of services such as Reach-Out, Pro-WATS, SDN and Megacom, were all made before the Commission adopted price cap regulation for AT&T. Commission approval of optional calling plans for AT&T explicitly noted that AT&T retained market power for the services in question.[44] In essence, these were changes to "baseline" regulation for AT&T.

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[44]Guidelines for Dominant Carriers' MTS Rates and Rate Structure Plans, Memorandum Opinion and Order, CC Docket No. 84-1235, 59 Rad. Reg. 2d (P&F) 70 (1985).

While APPs will benefit customers even in the absence of competition, it is also true that the proposed price cap revisions are being considered in an environment of increasing access competition, just as the Commission's earlier decisions regarding AT&T were made in an environment of developing interexchange competition. As was true in the interexchange market, allowing the incumbent exchange carrier to set more efficient prices in the baseline will help competition to develop in access markets on a sound economic basis because it will send more rational price signals to prospective entrants.[45]

In order to capture these benefits, temporary, promotional offerings effective for ninety days or less, should be provided outside the price cap plan, effective on fourteen days notice with no cost support and no Part 69 or public interest certification so long as the original non-discounted offering remains available to the public. In addition, exchange carriers should be permitted to file permanent APPs and to convert a promotional offering to a permanent offering after ninety days under price caps on fourteen day's notice with no waiver requirements.

5. Exchange Carriers Should Be Permitted To Offer Services Under Contracts In Response to a Request for Proposal (RFP) in Baseline Regulation.

The Commission seeks comment on whether it should allow individually negotiated contracts for services subject to streamlined regulation. Exchange carriers should be able to offer any services under individual contracts in response to a RFP in baseline regulation without a competitive showing. In fact, the filing standards for contract based filings proposed by the

[45] 2nd FNPRM at ¶25.

Commission appear to be reasonable so long as they are applied to all service providers. If contract based services are being offered on a common carrier basis, they must also be made available to similarly situated customers under the same terms and conditions. All common carriers should comply with these provisions.

Allowing contract carriage in response to a RFP as part of baseline regulation would provide substantial consumer benefit. Currently, exchange carriers are precluded from offering interstate services pursuant to a contract-based price.[46] Exchange carrier competitors can simply price their services at a lower rate than the exchange carrier's tariffed rate. As a result, customers do not receive competitive prices.[47] Introduction of contract-based pricing would rectify this problem and provide additional consumer benefits. First, because contract offerings are customer specific arrangements, they can be tailored to meet specific needs. Second, because contract services are not based on averaged costs, but rather on specific costs, exchange carriers are better able to reflect cost. Third, knowledge that an exchange carrier can effectively bid on a service will incent other carriers to make their best offers. Thus, a more truly competitive

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[46]In fact, many states permit contract-based pricing and it has worked well to stimulate competition. "I think that if there were *true* competition, and not merely allowing competitive access providers to come in and charge a rate that is a fixed discount below the RBOCs, the prices would go down comparably with the decreases that we have seen in the interexchange carrier costs." Haring and Shooshan at p. 10. For example, California has allowed exchange carriers to provide intrastate access under contracts instead of tariffs since 1987. Guidelines for contract-based pricing were established by the Public Utilities Commission and the exchange carriers.

[47]"We have priced access nationwide from competitive access providers for our private-line network. CAPs would be able to provide approximately one-third of the 150 private lines that we are buying in the Bell Atlantic region. For that one-third, their pricing is almost universally, *exactly* 10 percent below the Bell Atlantic price..We want prices based on true competition among all suppliers...". Haring and Shooshan at iii.

environment can be realized and customers can receive lower prices, higher quality and better service.

Exchange carrier competitors are not restricted to zones and are allowed to utilize contract pricing, to provide promotional offerings, and to bundle additional services without cost support information and tariff filing delays. MFS has over 1300 contracts filed in its interstate tariff. Zone pricing makes little difference when competitors are operating without any pricing restrictions.

Since, by definition, the RFP process is competitive, any concern regarding unreasonable discrimination will not be realized.[48] Customers who do not like the rates charged will switch providers to select the vendor which best meets their pricing and service needs. While ultimately the market will determine the price, the average tariff price will effectively serve as a cap thereby precluding supracompetitive pricing and mitigating any concern regarding unreasonable discrimination. The Commission could also require that exchange carriers demonstrate that at least one other party responded to the RFP to ensure that the responses truly reflect competition. However, any such requirement would not be necessary once the initial showing, as described in Section III, is made in a relevant market area. The contract offering itself would be outside price cap regulation.

Given the increasing use of RFPs by customers and the proliferation of contract pricing by exchange carrier competitors, restricting exchange carrier provision of contract pricing does not make sense. There is no reason to prevent exchange carriers from offering common carrier

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[48]See, Tariff Filing Requirements for Nondominant Common Carriers, CC Docket No. 93-36, Order, released September 27, 1995.

services subject to baseline price cap regulation under contract. The RFP process is an established and tested process which business customers have used to acquire goods and services. With increasing frequency, these customers are choosing to acquire telecommunications services in the same manner. Exchange carriers should be permitted to respond to RFPs through a contract-based offering in baseline regulation.

6. The Proposed Limits on Individual Case Basis Tariffs are Inconsistent with the Access Marketplace.

The Commission also seeks comment on the conditions under which exchange carriers should be allowed to ICB price common carrier services. The Commission proposes stringent requirements regarding the number of ICBs allowed and the length of time exchange carriers would be allowed to offer a service on an ICB basis. Such restrictions are inconsistent with the access marketplace and will significantly handicap exchange carriers by limiting their ability to respond to customer requests for services. Exchange carrier utilitization of ICB pricing makes the marketplace more, not less, competitive and produces efficient prices in less competitive areas. This is consistent with the Commission's objectives in this proceeding. Exchange carriers should be permitted to offer ICBs.

The Commission's proposed requirement that exchange carriers must demonstrate that an ICB offering is so unlike existing services that averaged rates cannot be developed is burdensome and is inconsistent with statutory requirements. The Communications Act of 1934 requires only that the rates not be unreasonably discriminatory. The Act does not preclude different rates for like services and does not require that the service be unlike any other offering. The Commission's proposal that an ICB offered for six months must be followed by an average

tariff filing is unreasonably burdensome. Many ICB offerings, because they are customized, may never be repeated. Most such offerings are for longer than six months. The Commission's proposal would force exchange carriers to create averaged service offerings for which there is no demand. Customers desire ICB pricing and exchange carrier competitors utilize ICB pricing to satisfy this demand. In addition, customers want to utilize the RFP process to obtain telecommunications services. The Commission should not impose undue burdens on exchange carriers' ability to utilize either ICB or contract-based offerings to compete. Restrictions such as those described in the 2nd FNPRM, are unreasonable and unnecessary, do not promote competition and will not benefit customers. If these restrictions are adopted and the current prohibitions maintained, customers with alternative sources will not derive the benefits of competition as they should and customers without alternative sources will not receive the most efficient prices.

7. Lower Band Limits Should Be Eliminated.

The Commission is correct in seeking opportunities to provide exchange carriers with additional pricing flexibility that is commensurate with the current and increasing level of competition. Restrictions on access pricing flexibility only serve to impede customer benefits because they prevent customers from taking full advantage of competition to realize reduced prices.

The lower service band index limits should be eliminated in conjunction with the simplified basket structures proposed herein in order to promote economic efficiency and reduce prices. As the Commission itself points out, the current price cap plan "may inhibit a LEC from

lowering its prices to cost in certain instances, because of the administrative burden and length of time it can take for below-band filings to be approved. In those instances, inefficient entry may be encouraged and new or existing LEC competitors have no incentive to price their services at cost."[49] Elimination of the lower service band limit would enhance competition and provide an opportunity for prices to move toward cost. The Commission should adopt this proposal.

The Commission also seeks comment on whether additional constraints on price increases should be imposed on exchange carriers who decrease prices in the event the lower pricing limits are removed. The Commission should not adopt such limitations and no new constraints should be placed on the upper service band limit. The Commission's proposal to establish a new upper service band limit of one percent on subsequent upward pricing flexibility after a price has been reduced, should be rejected.[50] While removal of the lower service band limits would improve the efficiency of the price cap plan, creating a new upper service band limit would have the exact opposite effect and result in pricing parameters which are less efficient than in the current plan. In fact, the exchange carrier which elects to utilize the additional downward pricing flexibility described in the 2nd FNPRM is actually penalized if a one percent upper limit is also imposed. Also, new constraints on the upper service band limit would prevent rates from

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[49]2nd FNPRM at ¶83.

[50]As the Service Band Index Flexibility Analysis contained in Attachment 4 demonstrates, the imposition of a one percent upper limit can penalize an exchange carrier in a subsequent year when the exchange carrier makes a significant rate reduction this year. In the example, with a one percent upper limit and an unlimited lower limit, the exchange carrier making a twelve percent rate reduction in Year 1 is required to make a rate reduction in Year 2 of two percent when the PCI decreases by three percent. Compare this result to the same exchange carrier in the example with the current +5/-10 percent limits, choosing to reduce rates in Year 1 by only ten percent and in Year 2 being within limits with a PCI change of three percent.

moving toward cost by ignoring the fact that costs vary over time. Such constraints are also inconsistent with zone pricing which promotes the Commission's goal to ensure that prices better reflect costs. In fact, new constraints on the upper bands could provide a disincentive for exchange carriers to reduce prices, which would adversely impact consumers.

Adoption of such a proposal would entail the adoption of a whole new regulatory framework to handle the instances when the new one percent upper limit would be applied. For example, if the one percent upper limit would only apply to those instances in which an exchange carrier decreases prices by more than the current limit (e.g., ten to fifteen percent depending upon the category, subcategory or zone), a monitoring process would have to be established to determine when the one percent limit was triggered. Without such a process, it would be impossible to determine that the necessary rate reductions were in fact made. The Commission would also have to determine how long this new limit would be effective, for it would not be reasonable to make the limit permanent. Overall, this requirement presents an unnecessary regulatory burden and should not be adopted.

In addition, there is nothing in the record in this proceeding which demonstrates that the current five percent upper limit has not been effective in protecting consumers. As noted in the 2nd FNPRM, the Commission itself retains substantial means to inhibit anticompetitive pricing. Under Section 205 of the Communications Act, the Commission has the power to investigate on its own motion any suspect pricing behaviors. Moreover, Section 208 continues to afford third parties the means to challenge any price filed by an exchange carrier through the formal complaint process. These mechanisms provide sufficient regulatory safeguards and are more consistent with the goals of price regulation than any constraints placed on price changes.

8. Additional Pricing Flexibility Should Be Permitted as Part of Baseline Regulation.

There are, however, additional opportunities for pricing flexibility that would facilitate cost-based pricing and which should be adopted in this proceeding.

First, the Commission should expand zone density pricing to Local Switching, CCL and the Interconnection Charge to further move price towards cost.[51] This is consistent with the Commission's decision to permit NYNEX to deaverage the Interconnection Charge in New York City and to establish different charges in each density pricing zone.[52] In fact, the Commission stated in its Order granting NYNEX's request that "...this limited waiver should facilitate interstate access pricing by NYNEX that more closely reflects its actual costs of providing service, thus creating more accurate incentives for shaping the investment decisions of competing telecommunications providers. This, in turn, should ensure more efficient allocation of resources."[53] Given the benefits of the proposal, USTA recommends that zone density pricing for Local Switching, CCL, Transport and the Interconnection Charge be available for all price cap carriers.

Second, the Commission should also permit additional flexibility by allowing exchange carriers the option to further restructure Local Switching, CCL and the Interconnection Charge

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[51]USTA has stated that the Commission should implement an explicit universal service support mechanism which eliminates, to the extent possible, all implicit subsidies, including CCL and the Interconnection Charge. However, until such a mechanism is implemented, both should be zone priced.

[52]2nd FNPRM at ¶84.

[53]Transition Plan to Preserve Universal Service in a Competitive Environment, Memorandum Opinion and Order, 10 FCC Rcd 7445 (1995) at ¶29.

on a customer basis (e.g., small and large customers).

Competition has naturally developed first in the market for high volume business customers and other high volume users, just as it did in the interexchange market. Therefore, exchange carriers will require further pricing flexibility for services offered to high volume business customers earlier than for services offered to residential and single line business customers. In order to enable targeted pricing flexibility for high volume business customers, exchange carriers should be allowed an option to configure the price cap baskets to reflect customer segments. This will be further discussed pursuant to the revised basket structure.

9. The Commission Should Revise The Price Cap Baskets To Facilitate Pricing Flexibility.

As the Commission suggests, the current price cap basket structure is based on the existing Part 69 services categories. USTA has already discussed the flaws inherent in the existing service categories. USTA has recommended that the current structure be replaced with revised baskets that would allow the grouping of rates for equivalent functions, facilitate pricing flexibility and readily accommodate new services in a comprehensive access reform proceeding. In order to better match the stages for the revision of price cap regulation proposed in the 2nd FNPRM, USTA is proposing a revised basket structure suitable for baseline regulation and an option which may be more readily applicable in markets with even greater competition. The baseline proposal merely simplifies the current structure. The optional structure, which would conform to the relevant markets to be proposed by USTA, would facilitate the process of streamlining price cap regulation by making it easier for exchange carriers to remove groups of services or subcategories from price caps.

Under the baseline proposal, as illustrated in Attachment 5, the proposed baskets include:

Common Line

- End User Common Line Charge
- Carrier Common Line Charge

Switching

- Local Switching
- Information, which includes Billing Name and Address, Directory Assistance, Directory Assistance Call Completion
- Data Base, which includes 800 Data Base, 800 Vertical Services, Line Information Data Base (LIDB)

Transport

- Analog, which includes Voice Grade, Audio, Video and Wideband
- Digital, which includes DDS, DS1, DS3
- Tandem, which includes Tandem Switching and Tandem Transport
- Interconnection Charge

Interexchange

- Interstate MTS, which includes Call Completion Surcharge, End User Directory Assistance

Video Dialtone

This structure is largely unchanged from the current structure. For example, it maintains Tandem and Interconnection Charge service categories under the Transport basket until the comprehensive access reform proceeding which deals with these issues is completed. It does not require modifications to current data collection requirements.

Yet, the proposed structure has several advantages over the current structure which will permit some much-needed simplification. It merges existing service categories where services share similar functional and market characteristics. By restructuring the Traffic Sensitive basket and creating a Switching basket, the baskets will be better aligned with major service functionalities: loop (common line), switching and transport. The proposed structure permits those exchange carriers that may want to make a competitive showing for large customer switching and common line traffic with transport to do so without requiring it of all exchange carriers.

The proposal also permits zone pricing of all services within all service categories where costs vary as a function of traffic density. Service band indexes are not necessary at the service category level for those service categories that are zone priced. The zone band index acts as an adequate safeguard to limit price changes between zones within a service category and will minimize revenue shifting between service categories. The Interconnection Charge service category will have a +0 SBI to prevent any opportunity for revenue shifting.

The baseline proposal sets forth a basket structure which will simplify the current structure, permit pricing flexibility which is suitable for the current level of competition and meet the Commission's goals in this proceeding.

At Attachment 6, USTA proposes another price cap basket structure that would match the price cap baskets and service categories more closely with the relevant markets which will be described below. This optional price cap basket structure establishes baskets for Transport, Large Customer, Small Customer, Interexchange and Video Dialtone. Price cap exchange carriers should have the option of recasting their demand and prices into this alternative basket

structure.

The optional structure would further facilitate the streamlining process by making it easier for exchange carriers to remove groups of service subcategories from price cap regulation. These subcategories would reflect the market areas for which exchange carriers may choose to make showings in order to obtain streamlined regulation. The optional structure also focuses price cap protection separately for each market segment. For example, the prices for services provided to small customers would be capped independently of the prices for services provided to large customers.[54] The Commission adopted a similar basket structure for AT&T, grouping the services provided to residence and small business customers into one basket and those provided to larger businesses in another basket.

However, USTA recommends that this structure be optional as is represents a significant change, which should not be imposed on all exchange carriers as a condition to the election of price cap regulation. Many exchange carriers do not currently have the capability of measuring large and small end user demand separately, which would be necessary in order to implement the optional structure. Further, for those exchange carriers that choose to make their competitive showings on the basis of price cap service categories, the effort of changing to the optional structure may not be justified.

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[54]Rate reductions for large customers would not create any "headroom" which would allow the exchange carrier to raise rates to smaller customers, since those rates would be in a separate basket.

10. Price Cap Treatment Of Operator Services.

USTA has consistently opposed the creation of a new basket for operator services, as such a requirement would only add to the complexity of the current plan. The proposed basket structure described above includes the majority of operator services. This structure provides for the optimum treatment of operator services as it allows for the grouping of like services, simplifies the current structure and eliminates unnecessary banding requirements.

III. STREAMLINED REGULATION SHOULD BE PERMITTED WHEN THE RELEVANT MARKET IS ADDRESSABLE.

Streamlined regulation should be available when the relevant market is competitive as determined by supply responsiveness, demand responsiveness and, in certain cases, the presence of a certified, facilities based local exchange competitor.[55] These principles are virtually identical to those used by the Commission to streamline regulation of AT&T and, ultimately, to declare AT&T to be nondominant. For example, as the Commission determined that competition was sufficient in the interexchange market, it continued to reduce AT&T's regulatory requirements. In 1991 and 1993, AT&T's services for large business customers and 800 services were removed from price caps and subject to streamlined regulation. In January, 1995 regulation of AT&T's commercial services for small business customers was streamlined.[56]

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[55]Unbundled loop offerings currently available in many states provide an alternative means for competitors to offer interstate access services.

[56]Schmalensee and Taylor at p. 7. See, also, In the Matter of Waiver of the Commission's Rules Regulating Rates for Cable Services As Applied to Cable Systems Operating in Dover Township, Ocean County, New Jersey, CUID Nos. NJ0213 and NJ0160, Order Requesting Comments, released November 6, 1995 where the Commission proposed a waiver of its cable

Streamlined regulatory treatment should allow exchange carriers to remove services from price cap regulation. Under streamlined regulation, current Part 69 rate structure requirements should not be applied. All tariff filings should be on fourteen days notice and no cost support material should be required. Exchange carriers should also be permitted to engage in contract carriage with customers.

A. Determination of the Relevant Market Should Reflect Geography, Service and Customer Dimensions.

In the most simplistic terms, access services complete the exchange network end of interstate interexchange services. These interstate interexchange services include MTS, WATS, 800 Service and a variety of private line services. An exchange defines a specific geographic area which usually embraces a city, town or village and its environs. An exchange may be comprised of one or more wire centers. Large metropolitan areas will often encompass more than one exchange. The exchange network refers to the transmission and switching facilities necessary to reach customer premises as well as other ancillary functionalities used to process calls. Interstate access service prices pay for the interstate use of the exchange network.

Special access services are stand alone services comprised of transmission facilities that are dedicated to a customer's use. Switched access services rely upon a hybrid service architecture comprised of dedicated transmission facilities, tandem switching and shared transmission facilities when needed, and the use of local exchange services (loops) to reach customers premises. There are also other types of access services that provide for interstate use

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programming service tiers rate rules as soon as video dialtone service is available.

of unique call processing functionalities such as access to SS7 Signal Transfer Points (STPs) and access to centralized data bases such as Line Information Data Base (LIDB).

The relevant access market for purposes of measuring competition should be defined by a combination of a geographic dimension, a service dimension and a customer dimension. The geographic dimension should identify the geographic area over which suppliers compete for the same customers. The service dimension should determine logical service groupings based upon service substitutability. The customer dimension should be based on customer choices in the marketplace. Each dimension will be discussed in turn.

1. Geography.

The essential characteristic of the geographic dimension for the relevant access market is that it must be targeted to capture the geographic area over which suppliers compete for the same customers.[57] The geographic dimension must be targeted to ensure that access customers receive the full benefits of a competitive market in a timely manner. Suppliers should also be aware that when a geographic area is addressable, the pricing rules will change to match the competitiveness of that area. Advance knowledge of these pricing rules will provide clear signals to the marketplace and will permit efficient entry/exit decisions to be made.

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[57]This characteristic becomes ever more difficult to reflect as technology continues to reduce the relevance of geographic boundaries. For example, it was recently reported that WinStar Communications Inc. signed an agreement with MCImetro to provide WinStar's Wireless Fiber digital wireless links. WinStar provides Wireless Fiber local loop communications services using line-of-sight radio links. Wireless Fiber service can be used by CAPs to reach buildings not connected to their fiber optic networks, enabling them to serve more customers.

Another characteristic of the geographic dimension is that it should be administratively feasible. The relevance of this characteristic is tied to the impact the size of the geographic area has on the number of potential competitive showings. Obviously, the fewer the number of showings, the more administratively feasible the area may be perceived to be. A larger geographic area will result in a fewer number of competitive showings than a smaller geographic area.

A balance must be struck between the need for targeting and the administrative ease of the plan to move markets from baseline price cap regulation into streamlined regulation. Unless a balance is achieved, the geographic dimension could either produce a geographic area that is larger than the actual relevant access market or it could produce a geographic area that is comprised of a grouping of heterogenous geographic segments. Customers in a competitive access market may not receive the best price because the competitive characteristics of the overall geographic area do not permit it to be declared substantially competitive or competitive pricing may be permitted for geographic segments that may never be substantially competitive.

A geographic dimension which identifies the area over which competition is measured could be determined as follows. The geographic area in which multiple suppliers compete for the same customers within an exchange or metropolitan area should be identified. This geographic area will be referred to as the competitive footprint. The wire centers touched by the competitive footprint which are contiguous to each other should also be identified. The geographic area comprised of these wire centers represent the geographic area over which

competition should be measured. This area strikes the reasonable balance described above.[58]

The Commission has suggested using the transport zones associated with collocation as the geographic area over which interstate competition should be measured. Wire centers with similar traffic density characteristics can be assigned to zones when there is operational collocation in a study area. USTA disagrees with the Commission's intent to use zones for the following reasons.

First, in many instances zones are too large to target competition and to allow administrative ease. Even when the geographic area of a zone is small, the area is heterogenous because the wire centers often come from all different parts of the study area and have different degrees of competition. Second, the geographic area associated with a zone is comprised of numerous wire centers located within a state. Most of these wire centers are not contiguous and can be separated by large geographic areas. Third, zones were created to capture differences in traffic density. These zones do not necessarily capture differences in competition or in the substitutability of services. A wire center was the unit measured for traffic density. Fourth, competition does not enter the access markets on a zone basis. Alternative suppliers may provide service within several wire centers in the same metropolitan area, yet each of these wire centers may be assigned to a different zone.[59]

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[58]USTA would anticipate roughly 100 showings covering 1,000 wire centers out of a total of approximately 15,000 wire centers over the next two to three years.

[59]Attachment 7 provides an example of how existing zones are inappropriate.

2. Service.

The Commission seeks comment on whether the service categories within price cap baskets should be used as the relevant markets for the purposes of streamlined regulation.[60] The relevant market should have a service dimension and this dimension should be related to the price cap basket structure.

However, the current basket design is based on the current rate element structure mandated by Part 69 of the Commission's rules. As has been explained in this and many other proceedings, the current Part 69 rate structure is obsolete, overly prescriptive and should be eliminated. Further, since the price cap plan was adopted, subsequent Commission decisions have added new service categories to the price cap basket structure. In general, the current price cap service categories are too small to define unique relevant markets. In many cases, the services in one category will be cross-elastic with services in another category.

There are two ways the Commission can ensure that the service dimension will be adequately reflected in a relevant market area. First, the Commission should simplify the current price cap basket and adopt the baseline basket structure as proposed by USTA. Under the proposed baseline structure, there are fewer separate service categories. Price cap exchange carriers should have the option of making a showing for one or more of these service categories within a relevant market area.[61]

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[60]2nd FNPRM at ¶118.

[61]The Commission should also undertake a more comprehensive revision of the Part 69 rate structure as part of an access reform proceeding. This, in turn, could lead to further simplification of the price cap basket structure.