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Before the
FEDERAL COMMUNICATIONS
COMMISSION

DEC 11 1995

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 AD HOC TELECOMMUNICATIONS USERS GROUP

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SUMMARY

When the LEC markets are effectively competitive, the Federal Communications Commission ("Commission" or "FCC") should get out of the way. Within the bounds of the law, the Commission should let the marketplace forces rule. But LEC markets are not yet effectively competitive. The LECs may face some niche competition -- competition for some services in some limited geographic markets. For the most part, the LECs possess market power. Their relentless lobbying and public relations efforts cannot change this fact.

The LECs lobbying and public relations efforts, however, have had some effect. The Commission has proposed a variety of measures to give the LECs added pricing flexibility without regard to the level of competition that they face in relevant markets. These proposals, characterized as the first gradation of regulatory relief, are with one exception ill-advised. The Commission's proposals for "new" services, restructures, and Alternative Pricing Plans ("APPs"), would variously expose LEC customers and emerging competitors to LEC pricing and practices that could be unreasonable and anticompetitive. Moreover, the First Gradation proposals would not be easy to administer or reduce disputes over the lawfulness of LEC pricing and practices.

Ad Hoc, however, supports the Commission's proposal to allow LECs to price services below the relevant Service Band Index lower limit. The Committee supports this proposal because the Commission has linked it to proposed stricter limits on subsequent rate increases and cross subsidization.

Absent these safeguards, short term gains for Committee members would come at the price of subsequent rate increases and jeopardizing future competition -- hardly a wise bargain for large users.

The mere elimination of barriers to competition, through implementation of a so-called "competitive checklist" is not sufficient justification for relaxed regulation of LEC access services. Implementation of such a well-conceived "competitive checklist" may well be necessary to facilitate the development of access service competition, but is insufficient in itself to justify significant regulatory relief. Experience to date with the Rochester Plan provides no basis for confidence that merely implementing a competitive checklist will result in a meaningful growth in competition.

Further steps toward less regulation of the LECs should depend on finding relevant geographic and product markets effectively competitive. In evaluating LEC markets, the Commission must understand that because the LECs use common plants to provide virtually all of their services, LECs will have the opportunity to cross-subsidize services for which regulation may be relaxed from revenues derived from other services that use common plants. Price cap regulation will not prevent such cross-subsidization.

Ad Hoc supports the Commission's proposal to consider market share, supply elasticities and demand elasticities in evaluating the competitiveness of LEC markets. Using those measures, until the relevant LEC markets show signs of significant competition, it is premature for the Commission

to seek comment on the standards that might warrant streamlined regulation of LEC interstate access services.

When LEC markets are competitive, the Committee will strongly support proposals for the Commission to relax its regulation of LEC access services. Until that time comes, the Commission must continue to provide regulatory protection for customers of LEC services. Commission policies should facilitate, not endanger, the emergence of competition in LEC markets -- just as they were in the evolution of the long distance services market. The LEC Pricing Flexibility NPRM goes too far too fast.

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COMMENTS

The Ad Hoc Telecommunications Users Committee ("Committee" or "Ad Hoc") hereby comments on issues raised and proposals advanced in the *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,* FCC 95-393, released September 20, 1995 ("*LEC Pricing Flexibility NPRM" or "NPRM*").

I. FIRST GRADATION PROPOSALS: THE COMMISSION IS TRYING TOO HARD TO GRANT LECs ADDITIONAL PRICING FLEXIBILITY.

The first gradation of regulatory relief on which the Commission seeks comment would modify the price cap rules by: (1) simplifying treatment of new services, including APPs; (2) granting the LECs additional pricing flexibility, including the offering of APPs such as volume and term discounts, and eliminating the lower Service Band Index limits; and (3) possibly changing the

price cap service basket and category structure.[1] These changes would be implemented without regard to the level of competition because the Commission tentatively believes that the first gradation changes would lead to more efficient pricing by the LECs, facilitate the introduction of new services and remove incentives for inefficient entry.[2] Alternatively, the Commission might require that the LECs demonstrate that barriers to competition have been removed before implementing the first gradation proposals.[3] In considering possible changes, the Commission professes not to want to

> [R]elax regulation so much that consumers will be harmed by monopoly pricing or allow LECs so much pricing flexibility that they could recoup foregone revenues from more competitive services with revenues from less competitive services, or engage in predatory pricing, unlawful discrimination, or other anticompetitive practices.[4]

A. The Commission Should Relax The Regulatory Requirements Applicable To New Services When Competitive Conditions So Warrant.

To facilitate LEC introduction of new services, the Commission proposes to allow LECs to introduce "certain new services" on shorter notice and with less cost support than the rules currently require.[5] The Commission

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1 NPRM at ¶ 33.

2 *Id.* at ¶ 34.

3 *Id.*

4 *Id.* at ¶ 37.

5 *Id.* at ¶ 45.

suggests dividing new services into two categories: Track 1 and Track 2 services. Track 1 services would be subject to the same regulatory requirements that apply today. The Commission proposes to reduce the public notice and cost support requirements for services that it would classify as Track 2 services.[6]

The Commission suggests two entirely different approaches for classifying LEC new services as Track 1 or Track 2 services. The first approach would treat all new services in a relevant market as Track 1 services until the LEC has demonstrated that "competitive conditions warrant relaxed Track 2" treatment.[7] The second approach would be definitional. If a service qualifies for Track 2 treatment, the level of competition in the relevant market would be an irrelevant consideration.

The Commission suggests several definitional criteria. Any service that the Commission requires LECs to offer would be a Track 1 service.[8] Additionally, services that are essential to LECs competitors and services that are not a close substitute for an existing service or group of existing services would be Track 1 services.[9] The Commission invites parties to propose alternative definitions, but cautions parties that any definition should be easy to

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6 *Id.*

7 *Id.* at ¶ 46.

8 *Id.* at ¶ 47.

9 *Id.*

administer and should provide a bright line test for distinguishing Track 1 and Track 2 services.[10]

The definitional approach outlined in the LEC Pricing Flexibility NPRM will not be easy to administer and will not pass the bright line test. Moreover, the discussion of this approach in the LEC Pricing Flexibility NPRM implies that the Commission considers end user requirements less important than the service needs of LEC competitors.[11]

Services that LECs are required to offer certainly should be categorized as Track 1 services. If the Commission proposes not to consider whether the market for such services is effectively competitive, it cannot be confident that marketplace forces will assure that the rates, terms and conditions under which such services are made available are just and reasonable. Because these services are imbued with the public interest (otherwise the Commission would not require LECs to offer these services), the Commission must assure that LECs offer these services at just and reasonable rates, terms and conditions. At a minimum, the currently effective cost support and public notice periods should be maintained for services that the Commission requires LECs to offer.

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[10] *Id.*

[11] Page 2 of these comments quotes a portion of the NPRM wherein the Commission stated that it does not wish to, "[R]elax regulation so much that consumers will be harmed by monopoly pricing...."

Similarly, services that are essential to the LECs competitors or that are not close substitutes for an existing service or group of services should be classified as Track 1 services. If an LEC service is essential to LEC competitors, it is because the LEC competitors cannot practically provide the service themselves and cannot obtain the service from alternative suppliers. Assuming that the Commission wants the local exchange and/or interstate access service markets to become effectively competitive, it must assure that the LECs provide such services to competitors pursuant to just and reasonable rates, terms and conditions. For these services also, the Commission should retain the currently effective cost support and public notice periods.

The LEC Pricing Flexibility NPRM is not clear whether the "close substitute" test is a refinement of the "essential services" test that applies only services that are essential to LEC competitors. If the Commission intends that the "close substitute test" merely apply to LEC services that are essential to LEC competitors, the Commission would expose users of LEC services, other than entities that would compete with the LECs in the local exchange and access service markets, to an environment in which they could not rely upon marketplace forces to assure the availability of needed services at just and reasonable rates, terms and conditions, but yet would not have the Commission's processes available to them in a realistic sense.[12] All users of

[12] Some may argue that aggrieved parties can use the Commission's complaint process if they believe that the LECs have imposed rates, terms or conditions that are not just and reasonable. The Communications Act reflects a different approach and different Congressional intent. The complaint process is intended to be in addition to, not in lieu of meaningful pre-

LEC services have a right to petition the Commission to require LECs to provide services that are essential to the users. This right is not dependent upon an LEC customer being an LEC competitor. The Communications Act certainly does not provide LEC competitors with greater access to the Commission's processes or with a greater degree of substantive protection than is available to other users of LEC services. The "essential services" test and the "close substitute" tests should apply to new LEC services regardless of whether the new services would be used by LEC competitors or any other customer of LEC interstate services.

The definitional approach, if properly applied, will result in disputes over LEC practices and pricing being differently characterized. Presumably all current switched and special access services would be considered services that the LECs must offer. If that is not the case, then the Commission certainly would expose end users and enhanced service providers to monopolistic pricing and practices under the definitional approach. Moreover, if the "essential service" and "close substitute" tests are applied to LEC services regardless of the class of customer requesting or using the new service, the definitional approach will be no easier to apply than the current standards. Disputes over rates, terms and conditions pursuant to which the LECs offer new services would center on whether the new services are "essential" or "close substitutes" for existing

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effectiveness review of carrier tariff filings when there is no reasonable basis for concluding that the marketplace will provide protection against abusive carrier pricing and practices.

services. If the new services are found to be "essential" or not "close substitutes" for existing services no change in regulatory treatment would apply.

The Track 1/Track 2 definitional approach for new services fails to pass the very tests that the Commission stated would apply to definitional approaches suggested by parties. It will not be easy to administer and will not provide a "bright line" test. If the Commission were to apply the definitional approach that it has suggested, parties would be free to urge the Commission to add services to the list of services that LECs must offer. Certainly, the "must offer" list of services is not a static list. Prime candidates for addition to such a list would be any service that is essential to any LEC customer, not just LEC competitors, and services that are not close substitutes for existing services. Controversy over whether a new service is "essential" or not a "close substitute" should not be unexpected. Parties also may point to other factors that might be relevant to whether the Commission should require LECs to offer a new service.

Ad Hoc favors the first option suggested by the Commission for granting regulatory relief for LEC new services: relaxed regulatory treatment should depend on competitive conditions. All LEC new services should be treated as Track 1 services until the LECs can demonstrate that competitive conditions in the relevant market warrant relaxed regulatory treatment. Ad Hoc has no reason to object to relaxed regulation of LEC new services when circumstances so warrant; the Committee does not favor use of the regulatory process to delay the introduction of new services. New, market-responsive

services should be available as soon as possible. But the LECs' perception of the rates, terms and conditions under which such services should be offered may not square with the views of the LECs' customers. The Commission need only remind itself of the unresolved controversy over the reasonableness of the LECs' rates for their 800 database basic service and optional services.[13] The Communications Act protects customers of carriers from unjust carrier rates and practices. End users, as well as emerging competitors of the LECs, are entitled to this protection. The NPRM's "new" services proposal could deny end users the protection mandated by the Communications Act.

B. The Commission Should Not Further Relax The Regulatory Requirements Applicable To Tariff Filings That Would Restructure LEC Offerings.

The Commission has proposed retaining the cost support requirements currently applicable to tariff restructures. The current requirements are minimal, and, therefore, do not raise, in the Commission's view, the same potential for "chilling innovation or hindering responsiveness to the marketplace."[14]

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[13] *800 Data Base Access Tariffs and the 800 Service Management System Tariff,* Order Designating Issues for Investigation, CC Docket No. 93-129, 8 FCC Rcd 5132 (1993).

[14] NPRM at ¶ 50. The quoted language seems to imply the regulatory requirements currently applicable to "new services" have the potential to chill innovation or hinder the introduction of new services. The LEC Pricing Flexibility NPRM offers no citations or other evidence to support such an implication. Ad Hoc's experience is that the Commission's rules have not unduly hindered the availability of "new services." Certainly, there have been disputes over LEC rate restructure proposals. Indeed, Ad Hoc believes that there have been more disputes over rate restructure proposals than there have been over LECs tariffing "new services."

The Commission, however, does propose to shorten the public notice period applicable to restructures. The current public notice period is 45 days.[15] The LEC Pricing Flexibility NPRM suggests that a shorter public notice period would be appropriate, and proposes, as one possibility, 15 days public notice for restructures that would increase rates, and 7 days public notice for restructures that would reduce rates.[16] The reason given by the Commission for proposing to shorten the public notice period applicable to LEC rate restructures is, "As the competitive circumstances faced by LECs increase, unreasonably high restructured rates become less likely, and thus a notice period of less than 45 days would appear to be appropriate."[17]

If the focus of the NPRM is on contemporary market conditions, the reason given for shortening the public notice period applicable to rate restructures is inconsistent with relatively recent statements by the Commission about the level of competition in LEC markets.[18] If this part of the NPRM instead is focused on future conditions, the proposed change in the treatment of LEC restructures is premature and ill-advised.

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15 47 CFR § 61.58(c).

16 NPRM at ¶ 51.

17 *Id.*

18 *Price Cap Performance Review for Local Exchange Carriers,* CC Docket No. 94-1, FCC 95-132 (released April 7, 1995); and *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 Telephone Ass'n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993).

To the extent the NPRM implies that the LEC market is sufficiently competitive to rely on marketplace forces to prevent excessive LEC prices the NPRM is, bluntly put, factually wrong. It reflects an assumption that does not square with reality. If anyone in the end user community is in a position to benefit from competition, the members of the Committee are. Certainly, in a few niche markets, Ad Hoc members see limited competition. But such competition is not sufficiently developed or ubiquitous enough to prevent LEC rate restructures that could impose huge rate increases on some customers, such as the dramatically higher costs that call set-up charges would impose on customers whose usage is driven by short duration calling. Indeed, it seems at least anomalous that the LEC Pricing Flexibility NPRM seeks comment on how to define relevant markets and how to determine the level of competition in those markets,[19] but seems to assume sufficient competition in LEC markets to justify shortening the public notice period for LEC restructures.

The NPRM is internally inconsistent on the important issue of how to measure the competitiveness of LEC markets and whether those markets are now or soon will be effectively competitive. The market is, or is not, sufficiently competitive to warrant relaxation of regulatory requirements. If the relevant markets are not competitive enough to justify relaxing regulatory requirements for existing and new services, it is not competitive enough to warrant shortening the public notice period for LEC restructures. The LEC Pricing Flexibility NPRM

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[19] NPRM at ¶ 116.

offers no evidence that any LEC market is effectively competitive. While all, except perhaps the LECs, hope that competition develops and expands in LEC markets, hope should not be confused with reality. Indeed, there is not even justification for the assumption in the LEC Pricing Flexibility NPRM that, "...the competitive circumstances faced by the LECs [will] increase."[20]

Regulatory policy should match reality; it should not be the product of the LECs never ending efforts to persuade regulators that a tidal wave of competition is about to break-over the LECs. The Committee is left with the distinct impression that parts of the LEC Pricing Flexibility NPRM, certainly the proposal to shorten the public notice period applicable to LEC restructures, may reflect a judgment that the LECs have been so insistent in their claims, before the Commission and on Capitol Hill, about the imminence of competition that some relaxation of currently effective regulation is appropriate. When actual conditions warrant such relaxation, Ad Hoc will support elimination, not just relaxation, of regulatory requirements. The LECs' lobbying and public relations programs do not supply the factual basis that would warrant shortening the public notice period for LEC tariff restructure filings.

Because competition in LEC markets is not widespread and effective, Ad Hoc urges the Commission to increase the cost support that LECs must submit with their restructure proposals. Currently, the LECs need only demonstrate that the restructure is revenue neutral, *i.e.,* that the restructure will

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[20] NPRM at ¶ 51.

not increase or decrease LEC revenues.[21] The current cost support requirements do not yield enough cost support to determine whether proposed restructures are just and reasonable. Pending LEC proposals to establish call set-up charges would have an enormous adverse impact on some customers of LEC access services. Rather than relax regulatory requirements applicable to LEC restructures, the Commission should require that the LECs file a sufficient level of cost support with rate restructure proposals to allow the Commission to determine whether the restructured rates are just and reasonable, and not unlawfully discriminatory. Merely demonstrating that the restructured rates are revenue neutral does not come close to establishing the changed rates as just and reasonable and not unlawfully discriminatory.

C. The Commission Should Not Allow The LECs To Offer Alternative Pricing Plans Under Relaxed Regulation.

The Commission has invited parties to comment on whether the agency should allow the LECs regulatory flexibility to offer APPs in addition to the volume and term discounts that the Commission currently allows for certain transport services.[22] The Commission defines APPs as, "services that permit customers to 'self-select' an optional discounted rate plan for a service that currently exists."[23] APPs would be a separate service classification distinct from

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21 47 CFR § 61.3(ee).

22 NPRM at ¶ 59.

23 *Id.*

either new services or restructures.[24] The rationale presented for relaxing regulation of APPs is that inasmuch as LEC customers can self-select an APP, customers would not be injured by giving the LECs more flexibility to offer APPs.[25]

While the Commission's APP proposal could in the short term benefit large users, such as the members of Ad Hoc, the proposal could harm the development of competition in the access service market. With respect to APPs, the Commission seems not concerned about the effect of its proposal on emerging LEC competitors. With respect to "new" services, however, the Commission appears primarily concerned about LEC competitors. Both users and LEC competitors are entitled to Commission protection with respect to LEC offerings of new services and LEC restructures.

Perhaps, the Commission should return to first principles. Rather than contorting itself to find ways to give the LECs more pricing flexibility, and in the process rendering illogical and unlawful decisions, the Commission should focus on defining relevant markets and measuring competition in the relevant markets. Until those markets are effectively competitive, the Commission should concentrate on satisfying its responsibilities under the Communications Act of 1934, as amended.

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24 *Id.*

25 *Id.* at ¶ 60.

Until the Commission concludes that the relevant markets are effectively competitive, it should require LECs to support APPs with the same level of cost support that would be required for out-of-band tariff filings under the price cap rules. There is no evidence that this requirement would unduly retard the availability of new services or market responsive pricing. On the other hand, if the Commission were to fail to require such justification for APPs, it could jeopardize the transition from the current *de facto* monopoly condition that characterizes virtually all LEC markets to a more competitive environment in the access service and local exchange service markets. Managing this transition is one of the most important and delicate tasks now facing the Commission. In this environment, the Commission should not create a pricing umbrella to protect emerging access service competitors, but at the same time cannot allow the LECs to cross-subsidize APPs.[26] Expeditious, but careful, Commission review of APPs is a responsibility that the Commission must accept. Definitional and structural approaches to LEC pricing will not solve important issues during the hoped for transition to an effectively competitive access service and local exchange service market.

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[26] Price caps rules, per se, do not prevent cross-subsidization of APPs. If the X-Factor applicable to a LEC is not high enough, the LEC can simply use its excess earnings to support APPs. Simply because an APP might not be profitable in the short-term would not deter a LEC from such conduct. It may well be good business practice to price APPs aggressively to deter long-term competition.

D. The Commission Should Not Allow LECs To Offer New Switched Access Services Prior To Obtaining A Waiver of Part 69 Of The Rules.

In addition to the Track 1/Track 2 categorization of "new" services, the Commission also proposes to eliminate the need for LECs to obtain waivers of Part 69 of the Rules to establish new rate elements for "new" switched access services. The Commission states that it wishes, "... not [to] retain any undue restrictions which might hinder LECs' ability to respond to the marketplace or to introduce new services."[27] Part 69 would be changed, if the Commission adopts its proposal, to allow a LEC to establish new rate elements for new switched access services if it shows that the public interest would be served by establishing such new rate elements. After grant of the first LEC's petition to establish a new rate element, subsequent LECs would be able to submit "me too" certification letters that would be automatically granted if the Commission did not act on the certification within a prescribed time.[28] The Commission also suggests permitting the first LEC proposing the new switched access service to provide less specificity in the description of the proposed rate structure than the Commission previously required.[29] Finally, the Commission would allow LECs to

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27 *Id.* at ¶ 69.

28 *Id.* at ¶ 71.

29 *Id.* at ¶ 72.

file one petition seeking Track 2 status and the requisite public interest determination.[30]

In some cases the public interest could be served by allowing LECs to offer a new switched access service through a new rate element based on a public interest determination. Ad Hoc, however, submits that the public interest showings that the LECs would be required to make and the public interest determinations that the Commission would need to reach are not essentially different from notice and comment rulemaking showings and judgments. The Commission would in both cases be required to afford interested parties a reasonable opportunity to comment on the LEC proposal. Moreover, in both cases the Commission's decision must be based on the record, must consider all relevant factors, and must be logical and consistent with the requirements of the Communications Act. Put differently, the requirements for reasoned decision-making would apply whether the Commission chooses to consider LEC proposals to offer new switched access services through LEC requests for a public interest determination or in a petition seeking change to Part 69 of the Commission's Rules.

A determination that the public interest would be well served by authorizing LECs to offer new switched access services based on a public interest determination would not obviate the need for careful Commission review of the cost information that LECs submit to support their proposed rates for such

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[30] *Id.* at ¶ 73.

services. As explained at pages 4-8 above, Ad Hoc opposes the Track1/Track 2 structure proposed in the LEC Pricing Flexibility NPRM for several reasons, including the inadvisability of a regulatory structure that would allow LECs to offer new services with no effective Commission review of the rates, terms and conditions under which LECs offer such new services.

To assure that the rates for new switched access services are just and reasonable, the Commission should require LECs seeking to offer new switched access services to file with their applications for public interest determinations sample rates and cost support for those rates. Alternatively, the Commission should require that the LECs file the initial rates for new switched access service rate elements on 45 days public notice, as section 61.58(c)(v) of the Commission's Rules requires. A shorter public notice period would be too compressed to afford: (1) interested parties a reasonable opportunity to comment on proposed rates; and (2) the Commission sufficient time to analyze all relevant documentation and render a decision.

The Commission's auto-grant proposal for subsequent LECs proposing to offer the same new switched access service should not eliminate effective review of the rates, terms and conditions pursuant to which LECs offer such services. A wide variety of parties will be affected by the LECs offering of such services. In the absence of effective competition that would protect against monopolistic pricing and practices, the Commission should continue to review with care LEC tariff filings.

The LEC Pricing Flexibility NPRM seems to reflect a view that the public would be well served by allowing LECs to offer new services with little or no regulatory oversight of the rates, terms and conditions under which LECs offer such services, even though the market in which such services would be offered may not be effectively competitive. This approach holds great potential to harm end user customers of LEC services and emerging LEC competitors.[31]

E. The Commission Should Eliminate The Lower Boundary For Service Bands And Severely Limit Opportunities To Cross-Subsidize Rate Decreases.

The Commission proposes to eliminate the lower service band limits in the price cap plan because it believes that this change will result in more efficient pricing, enhance competition, and will not adversely affect ratepayers.[32] The Committee would oppose this proposal if the foregoing constituted the Commission's entire proposal for LEC rate reductions. The Commission, however, also has proposed measures that would restrict the LECs' ability to cross-subsidize rate reductions. Specifically, the Commission proposes that, "with respect to any service category or subcategory in which a LEC makes price reductions pursuant to the pricing flexibilities in this Second Further Notice, that the LEC be subject to a one percent upper SBI limit."[33]

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[31] Ad Hoc uses the expression "emerging LEC competitors" without intending to infer whether such entities will succeed or fail in the marketplace. The market will determine their fate. The LEC Pricing Flexibility NPRM offers no rational basis for a determination of LEC competitor success or failure.

[32] *Id.* at ¶ 75.

[33] *Id.* at ¶ 105.

Ad Hoc recommends slight modification of the Commission's proposal. Below band pricing should not create headroom that LECs could use to increase rates for other services within the relevant baskets and to avoid sharing and rate reduction requirements. Rather than entirely eliminating the lower SBI limits, the Commission should retain the lower limits, but allow the LECs to price below the limits. Rate decreases within the SBI limits could be offset by rate increases for other services in the same category up to the increases that would fit under the SBI upper limit. Rate decreases greater than those that would fall within the SBI lower limit should not be offset by rate increases for services within the same band, even if subsequent rate increases for the relevant category or subcategory can be no greater than one percent.

F. The Commission Should Not Modify The Current Basket Structure, or Consolidate Service Categories.

The Commission also seeks comment on, "whether the development of competition for particular services requires adjustment to the current basket structure and whether and how the basket structure should be changed as competition continues to emerge."[34] Additionally, the Commission solicits suggestions on whether service categories should be consolidated.[35]

As noted above, competition has not developed sufficiently to justify adjustment to the current basket structure, or consolidation of service categories. The competition that currently exists is niche competition in limited

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[34] *Id.* at ¶ 90.

[35] *Id.* at ¶ 94.