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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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

COMMENTS OF BELLSOUTH TELECOMMUNICATIONS, INC.

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COMMENTS OF BELLSOUTH TELECOMMUNICATIONS, INC.

BellSouth Telecommunications, Inc. ("BellSouth") hereby submits the following Comments in connection with the Commission's further notices of proposed rulemaking in the above-captioned dockets.[1]

I. INTRODUCTION AND EXECUTIVE SUMMARY

In this follow-up proceeding to last year's performance review of the LEC price cap plan, the Commission has proposed to rely more heavily on market forces to achieve its public policy goals with respect to interstate access price regulation, and has proposed a variety of changes to respond to the dynamic changes and emerging competition in the market for such services. In particular, the Second Notice proposes an ambitious, but

1. 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 Sept. 20, 1995) ("Second Notice").

necessary, competitive framework featuring three gradations of regulation that ultimately is designed to transition price cap LECs out of regulation altogether.[2]

At the first level, the Commission proposes to make a number of baseline changes within the price cap plan -- e.g. clarifying and simplifying the treatment of new and innovative tariff offerings for price cap LECs, allowing more downward pricing flexibility, and changing the structure of service categories and baskets -- which would be implemented regardless of the current level of LEC competition. At the second level, the Commission would allow LECs to be come subject to much more streamlined regulation upon a demonstration of "substantial competition" for particular services within a geographic market. At the third level, once a price cap LEC can demonstrate an absence of market power for particular services in a geographic market, the LEC would qualify for nondominant regulation as to those services in that market.[3]

BellSouth supports the overall approach that the Commission has taken in the Second Notice. Although the Commission has initiated several proceedings to examine the inner workings and details of the LEC price cap plan, the Commission also recognizes that a properly designed system of price regulation should "facilitate the transition to competition in local and interstate telecommunications markets by offering incentives for incumbents to foster competitive markets for particular services."[4] In the Second Notice, the Commission

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2. See id. at ¶ 1.

3. Id. at ¶¶ 2-3. The Commission recently declared AT&T to be nondominant in the provision of interexchange services. See In the Matter of Motion of AT&T to be Reclassified as a Non-Dominant Carrier, FCC 95-427, Order (released Oct. 23, 1995) ("AT&T Non-Dominance Order").

4. Second Notice at ¶ 7.

has offered many sensible proposals that focus not only on making its system of LEC price regulation more efficient, but also encourage the development of competitive conditions in both the interstate access and local exchange markets, and reduce regulation accordingly as barriers to entry are lowered and competition increases. BellSouth agrees that there are straightforward and simple changes to the price cap plan, and minor alterations to the Part 69 access charge rules, that can set a framework for transitioning the LECs out of regulation, even while they set the stage for a number of other broad reforms the Commission will initiate.

In the Comments below, supported by the attached statement of Dr. Jerry Hausman of MIT,[5] BellSouth tracks the organization of and responds to the specific issues raised in the Second Notice. BellSouth proposes a modified version of the Commission's "three-phase" approach to price regulation and transition issues, which is summarized as follows:

Level One: Baseline Changes --

As the Commission has suggested, there are a number of baseline modifications to the price cap rules that will improve the efficiency and performance of the LEC plan, and that should be implemented *regardless* of the actual level of competition in the access or local exchange markets. These changes would be made because they more accurately tailor the regulatory process to the competitive model, allow LECs to move prices closer to economic costs and facilitate LEC response to customer demand more quickly in

5. Statement of Professor Jerry A. Hausman (Dec. 6, 1995) ("Hausman Statement"). The Hausman Statement is found at Attachment 1 hereto.

the deployment of new services. BellSouth believes that specific baseline changes should include:

- **Modification of rules governing the introduction of new services**
- **Modification of the Part 69 waiver process**
- **Revisions to the LEC Price Cap basket and banding structure and the elimination of lower pricing limits**
- **Extension of zone density pricing to all baskets and service categories, including switching and carrier common line**

Most of the above baseline changes are simply variations of changes proposed in the Second Notice. Although BellSouth disagrees with certain details of the Commission's proposals, BellSouth also believes that the Commission is on the right track in refining and improving its price cap plan in a manner that does not depend on any demonstration of actual competition. BellSouth's proposed baseline improvements will enhance considerably the performance and efficiency of the price cap plan, and will better achieve the Commission's price cap policy goals, including the realization of increased efficiency, reasonable nondiscriminatory rates, and minimal regulation.[6]

Levels Two and Three: Adaptive Price Regulation --

As opposed to the pricing flexibility reforms outlined above, the Second Notice proposes that the second phase of regulatory relief for price cap LECs would be triggered by a more stringent showing of "substantial competition" that focuses on reduced

6. See id. at ¶ 40.

barriers to entry in access and local exchange markets.[7] Here, BellSouth proposes that streamlined regulation would be implemented in cases where LECs can demonstrate that either a competitive access provider ("CAP") (for transport) or another competitive local exchange provider (for switching and common line as well as transport) is present and operational in a particular geographic area. The key criteria for streamlining would depend upon evidence of supply elasticity. Specifically, the price cap LEC would:

(1) Provide evidence that such a CAP or local exchange provider has been certified for operation in the geographic area;

(2) Provide evidence that such a CAP or local exchange provider has become operational; and

(3) Provide evidence demonstrating the deployment of CAP or competitive local exchange facilities.

Like the Second Notice's streamlining proposal, BellSouth would have this showing trigger various further forms of regulatory relief:

- **Streamlined services would be removed from price cap and Part 69 regulation**
- **Contract carriage pricing would be permitted**
- **New service tariffs would be filed on 14 days notice with no cost support**
- **Tariffs would be presumed lawful**

Finally, a price cap LEC would be declared completely "non-dominant" upon a showing that it lacked market power. As suggested by Dr. Hausman, this showing would be based upon demand conditions, supply (cost) conditions and competitive conditions.[8] A

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7. See Second Notice at ¶ 127; see Hausman Statement at ¶ 41.

8. Hausman Statement at ¶¶ 9, 47 - 56.

finding of non-dominance would not be based on a minimum market share held by competitors. A Commission finding of non-dominance would trigger the elimination of regulation to the maximum extent permissible by law.

II. REVISIONS TO THE PRICE CAP PLAN

A. New Services and Restructures.

Issue 1a

> *Should we relax the regulatory requirements relating to new services for some or all new services? Will there be any anticompetitive or other negative effects as a result of such modifications to the plan? If a relaxed treatment is appropriate for only certain new services, how should we distinguish between the services eligible for the simplified treatment and those which are not? What are some examples of the services that would fall into each category? How would this distinction be administered? What cost showings, notice, and other regulatory requirements are necessary with respect to the various types of new services to provide the appropriate level of regulatory oversight without hindering the efficient introduction of new services?*

The Second Notice proposes to modify the price cap treatment of new services and to relax the regulatory requirements relating to new service introduction. Such a step is long overdue. Price cap regulation is intended to create incentives for carriers to become more efficient and to operate in a manner that corresponds to a competitive market. One of the most critical components to increased LEC efficiency is the ability to innovate and the Commission should attempt to provide every incentive for such innovation -- in the form of new service development -- to occur. As Dr. Hausman observes, new service introduction "creates probably the greatest gains in consumers surplus and economic efficiency of any actions of telecommunications providers".[9] Yet, as acknowledged in the Second Notice, the

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9. Id. at ¶ 26.

current rules hinder the introduction of new services and "are harmful to customers and competition."[10]

Under the Commission's current rules, a new service must be filed on at least 45 days notice and must be accompanied by detailed cost support. A LEC may add a level of overhead costs to support the price of a new service, but it must justify its methodology for determining overhead loadings and any deviations from the methodology.[11]

The Commission's current new service rules inhibit the introduction of new services and, hence, realization of the benefits of price caps. They reflect a regulatory view that is neither necessary nor desirable. The LEC industry today is well beyond the initial circumstance of defining core access services. The vast majority of new services will focus on discretionary applications that meet customer expectations and demand. In these circumstances, the Commission should not determine the new service winners and losers merely on the basis of how well a LEC navigates the regulatory obstacles created by the Commission's current rules. Instead, the Commission should allow the marketplace to dictate new service successes and failures.

In an effort to achieve this goal, the Commission has proposed that LECs be allowed to introduce certain new services on shorter notice and with less cost support than the current rules require. Specifically, the Commission proposes that new services be divided into two categories. "Track 1" services would be subject to the current notice, cost support and other requirements. "Track 2" new services would be subject to reduced notice

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10. Second Notice at ¶ 38.

11. See id. at ¶ 41.

and cost support requirements.[12] The Commission initially would distinguish between new services that warrant higher scrutiny from those that warrant lower scrutiny based upon the nature of the services themselves by delegating to the Common Carrier Bureau the task of determining whether a particular new service should be classified definitionally as Track 1 or Track 2. Price cap LECs seeking Track 2 treatment for new services could submit petitions prior to their tariff filings explaining why Track 2 treatment is warranted.[13]

While there could be a new service that warrants a higher level of regulatory scrutiny, the difficulty with the Commission's proposal is that it continues to presume such situations to be the predominant case. With the laudable intent of making its new service rules more efficient, the Commission's proposal unfortunately would introduce yet another level of regulation that would require a LEC to endure a pre-filing regulatory review for proposed new services before it could avail itself of the moderated Track 2 requirements. In exchange for lesser scrutiny at the time of filing, in other words, the LEC must have its new service reviewed in a pre-filing proceeding.[14]

Clearly, no reform is accomplished under this approach, which does little to speed the deployment of new services. New service introduction should be as flexible and deregulated as possible, given its overwhelming importance in promoting continued LEC

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12. Id. at ¶ 49.

13. ¶¶ 46 - 48.

14. The Commission's alternative proposal to tie Track 2 relief to a showing of competitive circumstances, id. at ¶ 46, is even more problematic. New service introduction is essential to realization of the maximum consumer benefits associated with the price cap plan. It would be in appropriate and inconsistent with the goals of price regulation to hold LEC new service introduction hostage to some demonstration of competition, especially when it is new service introduction that is a primary stimulus to competition.

innovation and efficiency. The presumption should be that new services can be deployed quickly, with minimal intrusion by the Commission. The Commission's proposal, however, gets the presumption exactly backwards and only erects more regulatory barriers to innovation.

Although BellSouth strongly disagrees with the Commission's current proposal, BellSouth also believes that the Commission's two-track approach can be salvaged. The starting point should be that all new services should be presumed to be Track 2 services. Track 2 services would be filed on 14 days notice with a minimum of supporting cost information.[15]

Only a narrow class of new services would be designated as Track 1. Track 1 would be an exception category, containing only those services, identified by rulemaking, the Commission either requires LECs to offer, or has determined that there are other public policy reasons warranting Track 1 treatment. Such services would then be filed according to existing new service rules.

By having Track 1 requirements pertain only to specifically identified exception services, the Commission's new service rules can and will encourage the filing of new services by establishing an environment in which such services become effective with a minimum of disruption. Such an approach to new services will revitalize LEC interest in new service development and create a climate that rewards risk and encourages

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15. In no event should the supporting information include more than the aggregate direct costs of the service. The Commission's concern is whether the price of the new service is too low, i.e., below direct cost. Because new services will represent discretionary purchases by access customers, the marketplace will reject services whose prices are too high.

experimentation. Correspondingly, the Commission and the public will recapture the many benefits that vibrant new service introduction originally was intended to provide in the price cap plan.

Issue 1b

Should we modify the definition of new services to exclude APPs or otherwise?

In the Second Notice, the Commission proposes to exclude Alternative Pricing Plans (APPs) from the definition of new services.[16] APPs are defined as services that permit customers to "self-select" an optional discounted rate for a service which continues to be offered to customers. In the Commission's view, the benefit of excluding APPs from the definition of new services is that such offerings could avoid the more thorough regulatory review to which new services are subject.

While BellSouth supports efforts Commission to remove unnecessary regulatory oversight, carving out APPs as a special class of new services is not appropriate. Instead, the Commission should modify the new service rules along the lines suggested in response to Issue 1a. By so doing, there would be no need to treat APPs differently from any other new service. The creation of unnecessary new service classifications needlessly increases the administrative complexity of the price cap regulations without any corresponding benefits to the Commission, LECs or consumers.

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16. Second Notice at ¶ 52.

Issue 1c

Should we modify the definition of restructured services? What, if any, changes should be made with respect to the treatment of restructured services?

In concert with its desire to improve the performance of its new service rules, the Commission recognizes that similar price cap performance improvements may be attainable by modifying the price cap rules pertaining to "restructured" services, services that replace existing services without expanding the range of services available.[17] Under the current rules, restructured services must be filed on forty-five days notice, and the LEC must demonstrate that the restructured service falls within the relevant pricing band limits.[18]

The Commission's current definition of restructured services should be retained. Experience under the price cap rules demonstrates that it is well-understood and manageable. BellSouth does not believe that any price cap performance improvements would be gained by modifying the definition of restructured services. The opportunity for improving the performance of the price cap rules instead lies in reducing the notice period associated with restructured services.

Restructuring an existing service often reflects the facts that the marketplace demand for the service has changed, and that the existing service structure is not satisfying or meeting customer expectations. The essence of a restructure is a rate change. As long as the restructured service continues to satisfy the pricing constraints that the price cap rules

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17. Second Notice at ¶ 40.

18. For example, the LEC must demonstrate that with a restructured offering in effect, the relevant basket's API is at or below the basket's PCI and that the SBI, if applicable, remains between the upper and lower limit.

impose, there is no reason why restructured services should be subject to a notice period that is different from any other rate change.

Access customers are sophisticated purchasers of telecommunications services. As such, they have considerable impact on the marketplace as well as the success or failure of a particular LEC service. Extra Commission intervention is not necessary to protect these customers' interests when a service is restructured. The pricing rules provide an adequate constraint on LEC discretion.

Upon close scrutiny, the current forty-five day notice period only serves to delay the effectiveness of the restructure. This notice period, established under the original price cap rules, reflects the Commission's initial inexperience and uncertainty in implementing the price cap regime as a whole. It has never been a fundamental component of the price cap plan. The substantive test that applies to the restructure is whether the restructured service meets the pricing limitations of the price cap rules. Reducing the notice period will do nothing to alter this standard, nor will it inhibit the Commission's ability to determine whether the relevant price cap indices are within prescribed limits. In contrast, retaining the forty-five day notice period will only serve to delay the effective date of more efficient rate structures that have been demonstrated to comply with the substantive price cap rules. Thus, BellSouth urges that the notice period be reduced to fourteen days which is more in keeping with price cap goals.

B. Alternative Pricing Plans.

Issue 2a

Should we allow LECs to file APPs in addition to the volume and term discounts currently permitted? Under what terms and conditions? How should APPs be

defined? Would the introduction of APPs cause any anti-competitive effects? If we permit LECs to offer APPs, what notice, cost support, and other requirements should be applied to those tariff filings? Should the rules be different depending on the particular LEC service basket or services involved and, if so, how? How and when should APPs be integrated into the price cap plan?

In addition to the narrow issue of whether APPs should be excluded from the definition of new services, the Second Notice raises a series of general questions regarding APPs and the extent to which LECs should be permitted to offer them. At the outset, BellSouth observes that there is no basis upon which to preclude the LECs from offering APPs. If the purpose of price regulation is to emulate the competitive marketplace as closely as possible, then LECs ought to be afforded the same pricing flexibility that is found in competitive markets, irrespective of the level of competition for LEC services. In this regard, it makes no sense for the Commission to prevent LECs from using a type of pricing plan that is widely used in other segments of the telecommunications industry.[19]

BellSouth does not believe that APPs should be singled out for special treatment under the price cap rules. As the Commission recognizes, the definition of APPs would, for LECs, include volume and term pricing plans.[20] Many such plans are already in place, were filed pursuant to the existing new service rules and clearly benefit consumers. In fact, the approach the Commission should follow is to modify the new service rules as

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19. In part, the Commission's interest in how to treat APPs under the price cap rules stems from a variant to the price cap rules that AT&T was permitted to exercise. When AT&T filed APPs, it claimed that it was being denied "headroom" in its service baskets that it would otherwise obtain if APPs were immediately brought under the price cap. Headroom was a creation of AT&T, and was developed to offset the limiting effects of the residential basket index. Headroom" refers to the difference between the PCI and the API for any particular basket of price cap services. Second Notice at ¶ 56.

20. Second Notice at ¶ 55.

discussed in response to Issue 1a to eliminate rules that hinder the introduction of new services -- including APPs.

Although APPs, as defined by the Commission, should not be treated differently than other new services, APPs are typically offered to all customers. On the other hand, there are situations where limiting an offering to particular customers would be beneficial. For example, new technologies make a variety of new capabilities and applications possible. Nevertheless, there is significant uncertainty with respect to the degree that customers actually desire these capabilities. In attempting to define what new services should be offered, it would be useful for LECs to have the opportunity to establish trial or experimental offerings of limited duration. Reasonably, it could be expected that such trials would not continue beyond an 18-month period. Under existing rules, trials -- even if limited in scope and duration -- are treated as new services, and thus could be brought into the price cap index. This approach may not be the most efficacious means of accommodating trials or experimental offerings.

Trials and experimental offerings can contribute positively to bringing new services to the marketplace. They afford a means by which a LEC can collect technical, operational and market data that can be used in designing general offerings. They are tools which facilitate a LEC's ability to innovate. As such, they should be encouraged by the Commission. Because the intent of such offerings is to gather information for use in developing new services, the price cap rules should provide for and encourage their use.

The limited duration and scope associated with a trial or experimental offering warrants only minimal oversight by the Commission. If the proposed offering specifies that

it will not be available for more than an 18-month period in selected locations, it should be permitted to be filed without cost support to take effect on 14-days notice. The limited scope and duration of the trial makes extensive support materials unnecessary. Indeed, the preliminary nature of such offerings would make the filing of supporting data problematic and to little purpose. The very justification of these offerings lies in the technical and market information they can provide. A byproduct of these offerings often will be the very information that is needed to estimate the demand and cost characteristics necessary to develop supporting data.

In addition, the temporary nature of these offerings suggests that they should not be included in the calculation of the price indices. The inclusion of trials or experimental offerings in the price cap calculations would tend to distort the indices, particularly after the offering is terminated. On the other hand, if any of these offerings leads to the filing of a general offering, the general offering would be subject to the new service rules, and would be brought within the indices as appropriate.

Issue 2b

> *If we do not generally permit LECs to introduce APPs, should we nevertheless permit volume and term discounts for switched access services other than those currently permitted? If so, should we condition such offerings on a showing of competitive presence similar to the conditions adopted in the Switched Transport Expanded Interconnection Order or on the other measures of competition discussed in this Second Further Notice in the geographic areas where such competition exists?*

The availability of volume and term discounts for switched access services should not be tied to the Commission's determinations regarding APPs. As a general matter, volume and term pricing are standard commercial practices. Moreover, the Commission has long accepted such pricing, without conditions, for special access services.

The pricing limitations on switched access arise not out of special concern with LECs' pricing flexibility, but instead from the Commission's use of access charges to regulate the interexchange marketplace.

Tying the relaxation of switched access pricing limitations to the availability of expanded interconnection arrangements, as the Commission did in the Switched Transport Expanded Interconnection Order,[21] is not evidence that volume and term pricing is only appropriate upon a showing of competition.[22] In that situation, the Commission simply recognized that it could not promote access competition while continuing to constrain LECs prices as a means of regulating interexchange competition.

More importantly, the underlying justification for limiting access prices, i.e., to control the interexchange marketplace, is no longer valid. Where in the past the Commission may have been concerned that, because of its size and dominance, AT&T would disproportionately benefit from volume and term pricing, those concerns clearly are no longer valid. Having recently declared AT&T to be nondominant, the Commission can have no concern regarding the impact of volume and term pricing on interexchange competition.

From an access perspective, it makes economic sense for LECs to be permitted to price their services in the same manner that is found in competitive markets regardless of the level of competition. Indeed, in the absence of competition, the purpose of price regulation is to emulate as closely as possible competitive markets. Such a result can

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21. Expanded Interconnection with Local Telephone Company Facilities, Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7374 (1993) at ¶¶ 113 - 120.

22. See Second Notice at ¶ 55.

only be achieved by permitting LECs to offer volume and term pricing plans for switched access.[23]

C. Individual Case Basis Tariffs.

Issue 3

Under what conditions, if any, should we permit price cap carriers to establish ICB rates? What showing would enable us to determine that the carrier cannot reasonably be expected to establish generally available average rates at the time the common carrier service is introduced? How long should we permit those rates to remain in effect before we require generally available averaged rates? What cost support requirements should apply when the carrier files ICB tariffs, and when the LEC files tariffs establishing generally available averaged rates?

The Second Notice raises a variety of questions regarding individual case basis (ICB) tariff filings. As a threshold matter, the concerns evidenced by the Commission are premised on a misperception of ICB offerings. ICB offerings currently are excluded from price cap index calculations. Thus, the relationship of ICBs to the price cap rule changes being considered is tenuous at best.

Apart from the absence of a connection between ICBs and the price cap rules, however, the Commission's ICB inquiry is premised on a series of assumptions that have no factual basis. The Commission's reasoning in the Second Notice with respect to ICBs is incorrect in its seeming assumption that an ICB is a precursor to the filing of a general offering. In the Commission's view, every ICB should be followed by a general tariff

23. To the extent that LECs are limited in offering volume and term plans for switched access, such limitations are not related to the price cap rules. Rather, the limitations are a function of the rate structure constraints set forth in the Part 69 access charge rules. An efficient set of switched access prices would naturally include volume based pricing plans such as recognizing differences in access prices based on the volume of switched minutes generated by each "end user".

filing. Following this logic, the open issue for the Commission is thus the trigger for the filing -- e.g., the passage of 6 months or the filing of a second, similar ICB.[24]

The Commission's focus, however, misses the essence of ICBs. As BellSouth's interstate access tariff makes clear, ICBs are services that are not elsewhere provided for in the tariff.[25] An ICB is developed when an access customer requests BellSouth to provide a unique service application. The application can involve, for example, new types of equipment, transmission of new signal formats, and unique network designs. In general, the applications are complex and the offering represents a specific design for the particular ICB. When evaluating the feasibility of an ICB, the paramount question for the LEC is whether the customer's request economically can be satisfied. An affirmative determination with respect to one customer does not equate to a determination that the same offering can or should be offered on a general basis.

Nor does providing the ICB for a period of time somehow establish a predicate for a general offering. A general offering implies a standard set of conditions under which the offering is made. Thus, there are a standard network design, standard network interfaces, standard equipment and standard operating procedures. All of these require a detailed analysis of demand characteristics that must be translated into an efficient network design. This information simply cannot be inferred from the mere fact of having provided an ICB to a customer for a significant period of time, let alone the brief six months suggested by the Commission.

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24. Second Notice at ¶ 65.

25. BellSouth Telecommunications, Inc., F.C.C. Tariff No. 1, Section 12.

Absent from the Commission's concept of ICB tariff filings is the fact that an ICB may remain in place for an extended period of time but never become a general offering. The Commission overlooks the possibility that an offering may satisfy the need of and have value to a few customers, but otherwise has no particular appeal to the broad spectrum of access customers. Likewise, an offering that may be feasible in a limited setting may not be capable of being economically integrated into a complex network such as those operated by the LECs. If a general offering is not economically feasible, the LEC ought not, because of an arbitrary time trigger, be forced to make such a filing.

Likewise, the fact that there may be multiple ICBs for a similar type of offering does not necessarily create a foundation for a general offering. ICBs often involve new, untried and rapidly changing technologies. While specific applications can be designed and implemented, each offering tends to be unique and tailored to fit a specific set of operational circumstances. Even though there may be multiple ICBs offering the same functionality (e.g., one ICB in each of the nine BellSouth states), each could involve unique network designs and operations conditions. None of the arrangements would necessarily provide a "standard" upon which a general service deployment could be made. Similarly, the multiple arrangements would not be indicative of sufficient demand that would warrant a general offering.

The complexity associated with designing standard offerings does not warrant an approach based on arbitrary triggers for the filing of general offerings. Such arbitrary triggers would simply chill the offering of ICBs. Consumers would suffer the loss. ICBs serve to meet specialized needs, not the demand of the broad spectrum of access customers.

The fact that these needs are not mainstream in character does not make them less important to serve. But they will not be served if the Commission establishes a requirement to extend these ICBs to all customers generally. Such a requirement would impose an unreasonable business risk, and without the necessary information to determine whether a standard offering were feasible, there would be strong disincentives for a LEC to ever provide an ICB.

BellSouth urges the Commission to rethink its assumptions regarding ICBs. Rather than imposing sweeping requirements, it should instead consider each ICB on its own merits. If there are reasons for multiple ICBs, then LECs ought to be given an opportunity to present them and to justify such filings. Similarly, an ICB should not be limited in duration. If there is no reasonable basis for a general offering, an ICB should not have to be discontinued or not offered because a customer does not perceive the service to be a short term offering.

There is absolutely no evidence that the public interest is disserved by ICB offerings. To the contrary, in an industry that is characterized by rapid technological change, ICBs have afforded customers a means of having their specialized needs addressed. That public benefit should not be disturbed by the Commission.

Finally, if the Commission proceeds to adopt rules to restrict ICBs, as it has proposed, then it must make clear that such rules are not merely applicable to price cap LECs but to <u>all</u> common carriers, dominant and nondominant alike. Such rules have nothing to do with price caps, but rather with tariff filings in general. In promulgating such rules, the Commission would be establishing the bounds of just and reasonable tariffs, and such a

determination would pertain to all common carriers subject to the Commission's jurisdiction under the Communications Act.

D. Part 69 Waiver Process.

Issue 4a

Should we eliminate the requirement for, or simplify the process of, obtaining a waiver of Part 69 for new switched access services, and, if so, how? What standard should we use in determining whether to grant a petition proposing to establish new rate elements for a switched access service? Would there be any anti-competitive or other negative effects from modifying the current system?

BellSouth fully supports the Commission's recognition that the current Part 69 waiver requirements are a barrier to new service introduction for switched access. The Commission's willingness to make limited changes to Part 69 in order to remove "undue restrictions which might hinder LECs' ability to respond to the marketplace or to introduce new services" is an important stride forward.[26] It represents an understanding by the Commission that if the Part 69 rules cannot accommodate the introduction of new switched access services, many of the positive changes the Commission will make to the price cap rules will be undercut. Currently, the Part 69 rules are antithetical to any incentive that the price caps plan provides to LECs to innovate, and the failure of these rules to promote new service development could actually retard the deployment of new technologies.[27]

Presently, the rate structure limitations of Part 69 result in an enclosed system for switched access. New technologies challenge the static nature of access rules. Such

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26. Second Notice at ¶ 69.

27. See Hausman Statement at ¶ 37 ("While price cap regulation is designed to provide the appropriate economic incentives for LECs to offer innovative services, the Part 69 waiver process direclty decreases the incentives for innovation. Part 69 decreases dynamic economic efficiency because it retards the deployment of new technologies and new services.").

technologies may afford a new means of providing an existing service or form the basis of new capabilities, neither of which are contemplated or easily accommodated in the enclosed system of access charges. For example, common channel signaling not only provided a new means of transmitting signaling information (i.e., call setup) for switched access, but also enabled the development of new database services. None of these capabilities could be tariffed as separate service elements without first going through protracted regulatory proceedings, simply because the Part 69 rules did not define elements for these services. Looming on the horizon is the advanced intelligent network with the potential for dozens of new service applications. Unless Part 69 is modified, the Commission, industry and the public will once gain be burdened with an unnecessary and unreasonable pre-filing process.

Price cap regulation is intended to create incentives for LECs to innovate through the deployment of new technologies and to exploit those technologies through the development of new services. If the Part 69 rules remain unchanged, then the effect of the price cap incentives is diminished because the Part 69 rules operate to delay the introduction of new and innovative service capabilities.[28]

In the Second Notice, the Commission recognizes that the Part 69 rules should not be an impediment to new service introduction.[29] It proposes to modify Part 69 so that price cap LECs would not be required to seek a waiver of Part 69 each time they want to establish new rate elements for new switched access services. BellSouth endorses the proposed modification of Part 69 that would eliminate the waiver requirement for new

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28. Id.

29. Second Notice at ¶ 70.