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DEC 1995

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

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

COMMENTS OF TELEPORT COMMUNICATIONS GROUP INC.

Teleport Communications Group Inc. ("TCG") hereby offers the following comments in response to the Commission's recent Notice in the above captioned matter.[1]

The premise of the Notice is that the Commission must modify its current price cap regime because of the "increasing degrees of competition for a LEC's services."[2] The Commission proposes to implement three different "stages" of price cap changes, each leading to progressively more pricing freedom for the Incumbent Local Exchange Carriers ("ILECs").

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[1]See 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 ("Notice").

[2]Notice at ¶ 32.

The problem with implementing any of the Commission's proposals, including its first stage plan, is that there is simply no evidence that competition has advanced in the access market to a point where any dilution in the Commission's current price cap policies is appropriate. Moreover, the Commission must establish explicit linkages between the ILEC's achievement of pro-competitive objectives (e.g., completion of "competitive checklist" elements),[3] the observance of actual, measurable competition in the market,[4] and the granting of price cap relief to the ILEC. If, however, the ILEC receives price cap relief without these elements being in place, the Commission will lose important leverage by which to ensure that the ILEC implements these policies fairly and does not "game" the process. The Commission need only look at the sorry example of Southwestern Bell's "gaming" of the collocation process to see the lengths to which ILECs will go to frustrate lawful competition.

It must be recognized that local competition is as yet more theoretical than actual. By any measure, competition for the local loop and local calling -- an essential precondition for there to be any competition for switched access services -- is microscopic. For example, TCG's switched access business in New York State represents less than one half of one percent of NYNEX's statewide market, for the six month period ending June 30, 1995, based on the Commission's own data on NYNEX's market

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[3]See Notice at ¶¶ 107-110.

[4]See Notice at ¶¶ 142-143.

volumes. This market share represents the product of ten years' effort by TCG in the New York market.

Insignificant as this market share might seem, it is important to recognize that it is the *"high water mark"* of the local competitive industry -- TCG's market shares in its other two major switched services markets (Illinois and Massachusetts) are far smaller even than that.

Not only do competitors such as TCG have an insignificant share of the local exchange market, they are critically dependent on the ILECs for essential elements of their services, and must pay out large portions of their total revenues to the LECs. While the general long distance industry "rule of thumb" is that switched access charges consume approximately one-half of the revenues on long distance MTS calls, in the competitive local market TCG's experience is that its payments to ILECs are far higher. For example, even in the New York LATA, TCG's most "mature" local switched market, 71% of TCG's local switched services revenues are currently paid to NYNEX. In less mature markets, payments to LECs for interconnection and related services will exceed local switched revenues.

The picture is no better in the switched access market. Pursuant to the Commission's policies, TCG and other competitors can provide one of the three elements of switched access service: an alternative "Local Transport" service to connect interexchange

carriers to LEC central offices, using collocation arrangements.[5] From those collocation arrangements, the IXC then purchases the remainder of its switched and special access services (e.g., Local Switching, Carrier Common Line).

The market opportunity opened up to TCG and companies like it by the Commission's action is actually very small. For example, TCG was selected several years ago by Sprint to provide all of the local transport services for Sprint's switched access services in the New York LATA. Even after those circuits were transferred to TCG, NYNEX continued to receive 97% of Sprint's payments for switched access, and only 3% is retained by TCG. Such dependency of the new competitor on the ILEC will certainly constrain the new competitor's pricing, while simultaneously shielding the ILEC from competition on the vast majority of its revenues.

Because the ILECs are in fact shielded from competition for the vast majority of their revenues, there is today no need for the Commission to "reform" price caps to "meet competition." There is as yet no competition for the ILECs to be introduced to, much less be protected from, and hence no need for the Commission to rush to modify its price cap rules. When there are strong local competitors and real competition for a meaningful portion of the market, then the market itself will drive access charges

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[5]See Switched Local Transport Expanded Interconnection Order, 8 FCC Rcd 7374 (1993).

downward. Access charge reform will likely be important *then*. It is not important *now*.

Indeed, premature price cap reform can only harm the Commission's longer term interests in a competitive local market. If ILECs today receive the rate flexibility suggested in the Notice, they will be able (and willing) to reduce charges selectively in certain zones or market segments to foreclose nascent competition. Given that competitors have such a scant presence in the marketplace, and will remain critically dependent on the ILECs for essential network components, they will particularly vulnerable to cost-price squeezes. Moreover, once the ILEC's have received the substantial price cap relief proposed in this Notice, the Commission will lose considerable bargaining power and leverage in attempting to encourage the ILECs to properly implement its pro-competitive policies. The FCC should make price cap relief dependent on the achievement of pro-competitive milestones and the actual observance of genuine competition in the market, so that there will be a positive incentive for the ILEC to compare fairly and properly and not "game" the process.

Instead of making its top priority premature ILEC deregulation, the Commission should make its highest priority the establishment of policies that will make local exchange competition possible and mechanisms to monitor the development of competition. With respect to the latter issue, the Commission has just proposed to a Telecommunications Access Provider Survey

("TAPS") that can begin to collect such data. TCG is separately filing comments today on TAPS.

With respect to the former items -- the establishment of pro-competitive policies -- the Commission has far to go. Its three-year effort to put in place workable and economically sensible collocation tariffs continues to flounder, with rates that the Commission has declared to be so extreme as to demand investigation left in place for years, with ILECs free (and willing) to "game" the regulatory process to disadvantage their competitors.[6] The Commission's proceeding on number portability has only begun. Its policy decision to wrest control of NXXs away from the ILECs remains unfulfilled, forcing competitors like TCG to appeal to the Commission for relief from unfair ILEC denials of critical numbering resources. The Commission's inquiry into universal service policies, while proposing several useful and implementable improvements, has not yet actually resulted in any changes. In short, the Commission has yet to put in place its own contributions to the development of local competition. Under such circumstances, it is clearly premature to propose in this proceeding to dilute its regulation of the ILECs on the assumption that competition is so robust that the ILECs need relief.

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[6]Indeed, the continuing problems with virtual collocation has led TCG to scale back its collocation plans in a number of jurisdictions, so that in those states the prospects for local transport competition are less today than they were several years ago.

Before the Commission undertakes any efforts to relax its price cap rules for ILECs, it must make certain fundamental findings about competition -- both that it is actually observable in the marketplace, that the essential preconditions for its success are in place, and that the nature of the price cap reform is reasonably related to the changes in the competitive market. In its Comments today on TAPS, TCG discusses several of the accepted indicia of a competitive market that the Commission should consider in determining when it is worthwhile to begin to collect detailed information about the market. TCG also makes several suggestions for improvements in the Commission's proposed data gathering, and in particular suggests how a "competitive checklist" might be implemented as a new "Schedule 4" for the TAPS program.[7]

Once those crucial measurement capabilities are in place, the Commission can then develop standards to govern when changes to its price cap rules are appropriate. But until the Commission has put those measurement capabilities in place -- and indeed its own Notice for TAPS is a clear admission that it needs that information to make decisions about future ILEC regulatory policies such as price caps -- it is clearly premature for the

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[7]TCG attaches hereto its proposed competitive checklist.

Commission to make any of the changes proposed in the NPRM. And until the Commission has adopted and implemented the necessary pro-competitive programs -- and can assure itself that the ILECs are faithfully implementing those policies as opposed to evading them -- the FCC should not grant price cap regulatory relief to the ILECs.

Respectfully submitted,

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December 11, 1995

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ATTACHMENT 1

Schedule 4. Establishment of Necessary Conditions for Local Exchange Competition Among Peer Local Exchange Carriers.

Incumbent Local Exchange Carriers	**CAPs or CLECs**
Reciprocal Compensation for the Exchange of Local Traffic	
Have you implemented a negotiated reciprocal compensation arrangement with peer carriers? Y or N	Have you implemented a negotiated reciprocal compensation arrangement with peer carriers? Y or N
With how many carriers?	With the ILEC? Y or N
	With other LECs: how many?
With non-usage based compensation: how many?	With non-usage based compensation with the ILEC? Y or N
	With non-usage based compensation with other LECS: how many?
Whether or not arrangements have been negotiated, is a permanent state Commission-approved arrangement for reciprocal compensation effective? Y or N	Whether or not arrangements have been negotiated, is a permanent state Commission-approved arrangement for reciprocal compensation effective? Y or N

Incumbent Local Exchange Carriers	CAPs or CLECs
Central Office Interconnection Arrangements	
Have you implemented collocation arrangements with to all carriers making a bona fide request? Y or N With how many? Are your collocation arrangements offered on a virtual or physical collocation basis? Are you collocation rates currently subject to investigation and/or refund or accounting orders of any Commission? Y or N If Y, please identify the Commission, the date of the order, and the current status of the investigated rates. Have you implemented any non-collocation type interconnection arrangements with any CLECs (i.e. mid-span meet, fiber meet points)? Y or N If Y, please specify the type of interconnection arrangement, whether it is offered by tariff or contract, and whether it is subject to any regulatory investigation and/or refund or accounting orders.	Have you implemented collocation arrangements with the ILEC? Y or N Are the arrangements just, reasonable, and nondiscriminatory? Have you implemented any non-collocation type interconnection arrangements with any ILEC or CLECs (i.e., mid-span meet, fiber meet points)? Y or N If Y, please specify the type of interconnection arrangement, and whether it is offered by tariff or contract.

Incumbent Local Exchange Carriers	CAPs or CLECs
Seamless Integration into LEC Signaling Networks	
Have you provided other local exchange carriers access to signaling networks and services on the same terms and conditions as you enjoy or as are provided to other LECs ? Y or N To how many peer LECs?	Have you received from the ILEC access to signaling networks and services on the same terms and conditions as the ILEC enjoys or as are provided to other LECs ? Y or N
Have you provided other local exchange carriers access to 611 on the same terms and conditions as you enjoy or as are provided to other LECs ? Y or N To how many peer LECs?	Have you received from the ILEC access to 611 on the same terms and conditions as the ILEC enjoys or as are provided to other LECs? Y or N
Equal Status In/Control of Network Databases	
Have you provided other local exchange carriers access to E911 on the same terms and conditions as you enjoy or as are provided to other LECs ? Y or N To how many peer LECs?	Have you received from the ILEC access to E911 on the same terms and conditions as the ILEC enjoys or as are provided to other LECs? Y or N
Have you provided other local exchange carriers access to TRS relay data bases on the same terms and conditions as you enjoy or as are provided to other LECs ? Y or N To how many peer LECs?	Have you received from the ILEC access to TRS relay data bases on the same terms and conditions as the ILEC enjoys or as are provided to other LECs ? Y or N

Incumbent Local Exchange Carriers	CAPs or CLECs
Have you provided other local exchange carriers access to Directory Assistance or DA data bases on the same terms and conditions as you enjoy or as are provided to other LECs? Y or N To how many peer LECs? Have you provided directory listings for CLEC customers in your white page directories? In your yellow page directories? As of December 31 of the reporting year, what percentage of the total listings in your white page directories are CLEC customers? What percentage of the total listings in your yellow page directories are CLEC customers?	Have you received from the ILEC access to Directory Assistance or DA data bases on the same terms and conditions as the ILEC enjoys or as are provided to other LECs ? Y or N Have your customers received white page directories and directory listings? Yellow pages listings and directories? Does the ILEC compensate you for your directory lists? Do you compensate the ILEC for directory listings and/or directories?
Equal Rights to and Control Over Number Resources	
Have you assigned NXXs to any other LEC? If Y, how many? If Y, is the assignment on the same terms and conditions as you enjoy? If N, how many carriers have requested NXXs? Have any NPA overlays been implemented in areas you serve? If Y, state what date the overlay was implemented and, as of December 31 of the reporting year, what proportion of your customers in the state receive overlay NPA telephone numbers.	How many NXX codes have you requested? When was your first NXX activated? How many NXXs have you received? Is the assignment on the same terms and conditions as are enjoyed by the ILEC? Y or N If N, have you requested NXXs? How many? Are you subject to any NPA overlays? If Y, as of December 31 of the reporting year, what proportion of your customers in the state receive overlay NPA telephone numbers?

Incumbent Local Exchange Carriers	CAPs or CLECs
Is dialing parity established for customers of all LECs ?	Is dialing parity established for customers of all LECs ?
Local Telephone Number Portability	
Have you implemented arrangements for data base service provider number portability that do not place a disproportionate or unreasonable burden upon CLECs? Y or N. If Y, as of December 31 of the reporting year, how many telephone numbers (in thousands) are currently being "ported" from your network to a CLEC network? How many from a CLEC network to you? What percentage do those ported number represent of the total telephone numbers you serve in the state?	Has the ILEC implemented arrangements for data based service provider number portability that do not place a disproportionate or unreasonable burden upon CLECs? Y or N. If Y, as of December 31 of the reporting year, how many telephone numbers (in thousands) are currently being "ported" from the ILEC to you? How many from your network to the ILEC or other CLEC networks?
Access to Poles, Conduits, Entrance Facilities	
Have you complied with all CAP/Complex requests for attachment to poles made this year? Y or N	Has the ILEC complied with all your requests for attachment to poles made this year? Y or N
What is the average number of days elapsed between the initial request from a CAP for pole attachments or access to conduit, and the granting of the request, during the last year?	What is the average number of days elapsed between the initial request to an ILEC for pole attachments or access to conduit, and the granting of the request, during the last year?
Are arrangements in place for other exchange Carriers to secure nondiscriminatory access to entrance facilities, risers, telephone closets, to the extent that such arrangements are under your control?	Are arrangements in place that enable you to secure nondiscriminatory access to entrance facilities, risers, telephone closets, to the extent that such arrangements are under the control of the ILEC?

Incumbent Local Exchange Carriers	CAPs or CLECs
Unbundled Network Elements	
Is a tariff approved by the appropriate state regulatory authority in effect for the resale of unbundled loops and ports for all classes of service, including residential service?	Is a tariff approved by the appropriate state regulatory authority in effect for the resale of unbundled loops and ports for all classes of service, including residential service?
If Y, as of December 31 of the reporting year, how many unbundled loops (in thousands) are currently being purchased from you by CLECs? What percentage do those unbundled loops represent of the total subscriber lines you provide in the state?	If Y, as of December 31 of the reporting year, how many unbundled loops (in thousands) are currently being purchased by you from ILECs?
Cooperative Practices and Procedures	
What is the average mean time to repair for each of your interconnected or collocated local carriers, during the last year?	What is the ILEC's average mean time to repair of its interconnection facilities during the last year?
What was the monthly percent availability for each of your interconnected or collocated local carriers?	What was the monthly percent availability for ILEC services during the last year?
Within the last 12 months, have any service quality complaints been lodged by other LECs? Y or N How many?	Within the last 12 months, have you lodged any service quality complaints with the ILEC? Y or N How many?
If Y, how many have been satisfactorily resolved?	If Y, how many have been satisfactorily resolved?