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

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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

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REPLY COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION

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January 11, 1996

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SUMMARY

The arguments that exchange carriers do not face competition, thus no regulatory changes are necessary, and that checklists must be adopted before any regulatory reform is adopted, as advanced by avowed exchange carrier competitors are self-serving attempts to prevent exchange carriers from competing in access markets. Exchange carriers face competition and the level and intensity of that competition is growing at an astounding rate, from the largest cities to the mid-size and smaller cities, from the central business districts to surrounding areas, from the largest customers to smaller customers. Given the highly concentrated nature of interstate access markets and the focus strategy employed by competitors, large percentages of exchange carrier revenues are vulnerable to competitive entry. If the Commission examines the relevant market areas where competitors have employed their focus strategy, competition not only exists, it is thriving.

The Commission should adopt an adaptive framework whereby the Commission first implements the pricing, structural and Part 69 reforms advocated by USTA under baseline regulation to ensure that the current price cap plan promotes economically efficient pricing, facilitates the introduction of new services and sends the correct economic signals to competitors. Competition is not a factor under baseline regulation and these changes, ideally, should be made before competition.

Under baseline regulation, the Part 69 waiver process should be eliminated, no tracks should be used to differentiate new services, a fourteen day notice period is all that should be required for restructured services, APPs should be allowed, contract-based pricing should be permitted, the lower band limit should be eliminated, limited changes to the basket structure

adopted and additional pricing flexibility allowed.

Streamlined regulatory treatment should be afforded in the relevant market areas, geographic, service and/or customer, where customer demand is addressable by alternative providers. Nondominant status should be afforded in the relevant market area where competition is greatest. There is no cost or risk involved since reduced regulation is permitted only in those markets where exchange carriers can show that competition exists. Delay in adopting such a framework will only hurt customers by delaying the benefits of competition.

USTA's attachment addresses specific issues raised by several other economists.

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REPLY COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association (USTA) respectfully submits its reply to the comments filed December 11. 1995 in the above-referenced proceeding.

I. INTRODUCTION.

In its comments, USTA encouraged the Commission to adopt a price cap regulatory framework which will allow the Commission to tailor its regulation of exchange carriers based on the level of competition present in a relevant market. Such a framework, ideally, should have been implemented before competition reached present levels to ensure that new entrants and incumbents make efficient entry and exit decisions. USTA recommended specific changes to the current rules which would permit price cap exchange carriers to achieve the underlying goals of this proceeding: promote the development of fair and effective competition in the interstate

access markets, encourage the introduction of new services, permit economic pricing and guide efficient investment in the information infrastructure.

USTA noted that the current price cap rules must be changed to reflect the current environment and an adaptive framework implemented to allow a quicker competitive response as competition increases. Exchange carriers must be permitted to adjust their prices and products as economic conditions warrant, regardless of the level of competition, under baseline price cap regulation. USTA proposed several changes to the current rules to facilitate the introduction of new services, permit economic pricing and encourage efficient investment. USTA also proposed an adaptive structure under which exchange carriers could seek streamlined treatment in those markets which are addressable by competitors and, ultimately, nondominant status in markets where addressability reaches a higher level. Such a three-step framework is consistent with the Commission's proposals. Without such a framework, exchange carriers will continue to hold a price umbrella over certain market areas and customers will not receive the full benefits of competition. In addition, new entrants will receive false economic signals and make uneconomic decisions about their ability to supply services.

Not surprisingly, exchange carrier competitors reject any attempt to alter the current rules which would permit fair and economic competition. They seek to maintain their artificially-created competitive advantage which has allowed them to capture substantial portions of exchange carrier access markets while exchange carriers are precluded from responding. They continue to argue that access competition does not exist and, therefore, no regulatory changes need be made. Further, they propose outrageous checklists which they claim must be met before any changes to the current price cap rules are justified. Successful public policies should be

responsive to the current and expected growth of the telecommunications industry. Current regulatory policies present obstacles to fair competition, economic pricing and new service offerings. The checklists proposed by exchange carrier competitors would only increase the number of obstacles in the way of effective regulation.

USTA will address the efforts of exchange carrier competitors to prevent exchange carriers from competing in access markets as well as their comments on the specific proposals contained in the 2nd FNPRM in its reply. In addition, attached to this reply is a paper prepared by Dr. Richard Schmalensee and Dr. William Taylor which discusses several issues including those raised by other economists.[1]

II. AN ADAPTIVE REGULATORY FRAMEWORK MUST BE ADOPTED NOW.

As mentioned above, exchange carrier competitors reiterate past arguments to seek delay of any regulatory relief for exchange carriers. For example, MCI, AT&T and Telecommunications Resellers Association (TRA) claim that competition does not exist, thus no Commission action is necessary.[2] ALTS, AT&T and TRA do not support any changes to baseline (current) price cap rules until some unrealistic competitive threshold is reached. AT&T and CompTel suggest that access reform is needed before price cap reform can be implemented.

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[1]Schmalensee, Richard and Taylor, William, "Pricing Flexibility for Interstate Carrier Access Services: Reply Comments", January 10, 1996. [Schmalensee and Taylor Reply].

[2]Despite these claims, MCI has formed MCImetro, a competitive access provider which currently competes in approximately 17 metropolitan areas; TRA has stated that its mission is to promote competition with the price cap exchange carriers (p. 2) and AT&T has taken its access business to competitive providers and has filed in numerous states to provide competitive local exchange service.

Sprint, ALTS and MCI propose lengthy checklists which must be met before any regulatory flexibility can be considered. These arguments are little more than subterfuges designed to maintain the competitive advantage that these and other telecommunications providers currently enjoy. It is in the best self-interest of competitors to prevent exchange carriers from competing for customers. Competitors apparently are not interested in promoting fair competition or in ensuring that customers enjoy the benefits of economic pricing and fair competition.

A. Exchange Carriers Face Competition.

Several parties grossly understate both the current and future levels of competition. They claim that the Commission need not take any action now because competition does not exist.[3] If anything, the pace of change which is transforming the telecommunications industry and opening markets to competition has been grossly understated by exchange carrier competitors in this docket.[4] This pace underscores the need to reject the arguments of those parties which suggest that it is unnecessary for the Commission to address the issues of how to transition regulation as markets become competitive. Both the interstate access market, as depicted in Attachment 2 of USTA's comments and the local exchange market as noted in Attachment 3 of USTA's comments, are experiencing more competition at an increasingly faster pace. In fact, the

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[3]MCI at 33, TRA at 4, AT&T at 2 and Sprint at 5.

[4]In other venues, competitors have admitted that the pace of industry change is dramatic. For example, Mr. Richard W. Miller, AT&T's chief financial officer, in an article describing AT&T's planned elimination of jobs, stated, "Our industry is changing at light speed. What was acceptable last year is not acceptable this year. The pace of change [in telecommunications] is more rapid than anything I've ever seen." "AT&T Will Eliminate 40,000 Jobs and Take a Charge of $4 Billion," The Wall Street Journal, January 3, 1996 at p. A6.

competitive providers of access services are expanding their facilities so that they can enter the local exchange markets. Bundling local access and toll services will give competitive access providers greater opportunities for both revenue and profit growth.

For example, the California Public Utilities Commission (PUC) recently approved thirty-one applications filed by companies seeking to provide competitive local exchange service in California beginning January 1, 1996, including AT&T, Brooks Fiber Properties, Electric Lightwave, ICG Access Services, MCImetro, MFS Intelenet of California and Teleport. The PUC also gave GTE California and Pacific Bell authority to provide facilities-based local exchange and intraLATA toll services in each other' service areas also beginning January 1, 1996.[5] Sprint Telecommunications Venture (STV) is currently offering personal communications service in the Washington, D.C. area in direct competition with Bell Atlantic. In addition to its wireless services, STV is developing a wireline component, using digital broadband integrated networks in competition with incumbent exchange carriers. Sprint and three cable companies plan to offer local exchange service nationally as part of a bundled offering witch includes local, long distance, wireless and cable television service. The National Cable Television Association has stated that the cable television industry plans to invest $20 billion to $30 billion over the next five years to enter the local telephone markets.[6]

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[5]"Calif. PUC Proceeds with Local Competition Plans, Approves Applications for Operating Authority," Telecommunications Reports, Vol. 61, No. 51/52, December 25, 1995 at p. 5.

[6]"NCTA Targets Arizona, Missouri for Local Competition," Telecommunications Reports, Vol. 61, No. 11, March 20, 1995 at p.13.

Attachment 2 of USTA's comments depicts hundreds of examples where a vital and compelling competitive interstate access market already exists. That attachment lists 698 locales with one or more existing or planned competitors. Competitors, including both competitive access providers (CAPs) and competitive local exchange carriers (CLECs), are serving every major metropolitan area in the country. In fact, almost all of the nation's top fifty markets have at least four competitors and a significant number of smaller markets have two or more competitors. The top fifty markets contain 68 percent of the U.S. population. The attachment also demonstrates that competitors are moving rapidly to serve mid-size and smaller cities. Brooks Fiber, a competitive access provider specializing in local telecommunications services in medium-sized cities, recently announced its intention to invest over $20 million in the building and operation of two new fiber optic networks in Stockton, California and Jackson, Mississippi.

Competitors are expanding beyond the central business districts in metropolitan areas. This growth will continue at an increasingly faster pace. Once a competitor builds a fiber ring in a downtown area, which can be accomplished for a relatively small investment, it is easy to expand its base of customers. For buildings currently passed by its network, all the competitor need do is run an access line into the building. For example, in Memphis, Tennessee, Signal Communications has built spurs of approximately 2500 and 1,000 feet from its fiber ring to serve large customers and has even offered to build out to one customer location not on its network in order to tie that location to another customer location already on the network.

In addition, even without adding to the size of its network, a competitor may have spare capacity to serve many additional customers. A competitor need only install new electronics to gain more capacity from its existing fiber network. For example, it was recently reported that

MFS is seeking authority to provide competitive local exchange services in Virginia. MFS currently provides special access and private line services to larger Virginia businesses via a 52-route mile fiber optic network in Richmond and its 492-route mile network in Washington, D.C. which extends into northern Virginia.[7] The company plans to offer one stop shopping to small and midsize businesses, offering local exchange, interexchange and facilities management services.[8]

The "focus" strategy of competitors whereby they target high-volume, low-cost customers enables them to grow rapidly and to have a strong competitive presence in the most lucrative markets.[9] In USTA's previous comments, USTA provided data from first quarter 1994 depicting exchange carrier high capacity service (special access and intraLATA point-to-point services for DS0, DS1, DS3, etc.) losses to competitors. USTA has updated those data. By first quarter 1995, the high capacity transport services captured by competitive access providers has grown from 33 percent to 39 percent in Philadelphia, from 28 percent to 35 percent in Pittsburgh, from 27 percent to 32 percent in Washington, D.C, from 24 percent to 27 percent in Baltimore, from 36 percent to 39 percent in Los Angeles, from 32 percent to 37 percent in San Francisco,

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[7]MFS' switching facility in Reston, Virginia is used to provide interstate access in Baltimore, Maryland. A competitor does not have to be located in the exchange carrier serving area in order to provide competitive service.

[8]Telecommunications Reports at p. 13.

[9]Lightpath, a wholly-owned subsidiary of Cablevision Systems the sixth largest cable television operator, provides competitive local exchange telephone service to more than 175 businesses on Long Island. Lightpath recently announced that in 1995 it was switching one million minutes of traffic per day through its Class 5 digital switching facility. This growth represents a 2,500 percent increase compared to 1994. Lightpath has filed applications in Connecticut and Ohio to provide local exchange services in those states.

from 43 percent to 50 percent in New York City and from 36 percent to 37 percent in Boston.

It is evident that competitive access providers have a significant presence in the provision of those services that generate substantial exchange carrier revenues.[10] This growth contradicts claims that competitors are unable to expand their operations due to exchange carrier practices. In fact, the evidence is clear that exchange carriers face competition and that competition is growing at a rapid rate.

Both switched and special access are highly cross elastic services for large volume customers. Because switching prices are not geographically deaveraged and do not have the same degree of pricing flexibility as trunking services, the crossover between switched and special access continues to decrease. For example, direct high capacity connections to an interexchange carrier are economical at a cross over point of less than seven hours per day of switched access.[11] This highlights the substitutability of switched and special services and underscores the need for the price structure of switching to match the price structure for special access, including zone pricing, volume and term discounts and contract-based pricing. It is also important to remember that the customers for these services are highly sophisticated telecommunications users with the knowledge, resources and capability of seeking the most economic service available, including self-supply.

With rapidly increasing revenue and vast market potential, exchange carrier competitors, including CAPs, private branch exchanges, private networks, wireless providers, cable

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[10]USTA Comments filed May 9, 1994 at Attachment 1, Appendix B.

[11]See, Comments of Pacific Bell at p. 27.

companies, other utility providers and interexchange carriers, provide significant competition in many different geographic areas, for both special access and switched services and to the highest volume customers. Considering their "focus" strategy of targeting only services, customers and geographic areas for which there is a concentration of traffic that makes competitive entry most profitable, it does not make sense to examine the interstate access market on a nationwide basis, as some parties suggest.[12] Further, it makes no sense to compare total, nationwide revenues of incumbents with competitive providers when competitive providers utilize their focus strategy to enter only the most profitable markets.

These parties fail to acknowledge the highly concentrated nature of interstate access markets, from a geographic, service and customer standpoint, which makes large percentages of exchange carrier revenues vulnerable to competitive entry and which further supports differentiation of relevant access markets from a nationwide local services market. USTA has already provided data which shows, for example, that almost 71 percent of Bell Atlantic's special access revenue is derived from 15 percent of its wire centers and that 92 percent of GTE's special access channel terminations are located in just 13 percent of GTE's central offices and just 6/10 of 1 percent of GTE's end user customers account for all of GTE's special access channel terminations.[13] Thus, while in the interexchange market, customers can change their primary carrier on a monthly basis without any significant impact, the loss of one large customer by an exchange carrier can have a severe market impact.

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[12]Sprint at 25.

[13]USTA Reply Comments filed June 29, 1994 at p. 22.

Relevant access markets are geographically discrete and consist of particular access services and their close substitutes provided initially to high volume users.[14] Regardless of whether exchange carrier competitors have a significant percentage of the nationwide access market, it is clear that they provide significant competition in the relevant market areas which reflect how they have chosen to enter the telecommunications market. Therefore, the Commission should examine the relevant market areas. whether geographic, service or customer-related, where competition exists and ensure that regulation adapts to the addressable level of competition that is present in the relevant market. "It would be nonsense, for example, to suggest that no service should be deregulated until all services are competitive or to suggest that a service that is clearly competitive in one geographic area should not be deregulated in that area because it may not be competitive in some other geographic area--no matter how distant."[15]

USTA has proposed such a framework in its comments in this proceeding in order to provide for an orderly transition to competition. In the first phase, or under baseline regulation, the Commission would adopt the pricing, structural and Part 69 reforms as recommended by USTA to ensure that regulation promotes economically efficient pricing, that competition develops in a fair and economically efficient manner and that customers will receive the maximum benefits of competition. In the second phase, streamlined regulatory treatment would

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[14]The Commission recognized the local nature of telecommunications service markets in implementing the "effective competition" standard for relieving cable operators of rate regulation. Implementation of Sections of the Cable Television Consumer Protection Act of 1992, Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-177, released May 3, 1993 at ¶ 49.

[15]Comments of Bell Atlantic, Affidavit of Alfred E. Kahn at p. 13.

be afforded to the relevant market area where competition is addressable. Finally, in the third phase, nondominant status would be conferred on the relevant market areas where competition is greatest. There is no cost or risk involved in adopting such a framework, since reduced regulation is permitted only in those markets where exchange carriers can show that competitive addressability exists. USTA's proposed framework is straightforward, easy to monitor and reasonable given the rapid changes taking place in the telecommunications environment.

B. Changes to Baseline Price Cap Regulation Should Not be Dependent Upon a Competitive Showing.

Several parties claim that a competitive showing should be required before any changes to baseline (current) price cap rules are adopted.[16] The baseline changes recommended by USTA are intended to ensure that customers benefit from economic efficiency and increased options. As such, these changes are not designed to respond to competition. Instead, they are aimed at facilitating the introduction of new services, encouraging market-based pricing, lowering prices and providing the correct economic signals for new entrants and incumbents. "Without these changes, LECs would continue to be handicapped in thier ability to provide new services or lower prices, and customers would ultimately be denied these benefits."[17] As noted above, this type of regulatory reform should, ideally, have been adopted before competition.

These changes pose no risk of harm to either competitors or customers. They will provide benefits regardless of the presence of competition. "There is little downside risk

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[16]TRA at 20, AT&T at 29 and ALTS at ii.

[17]Schmalensee and Taylor Reply at p. 3.

stemming from the proposed baseline regulatory reforms. LECS receive no additional ability to raise prices across the board under the baseline proposals, and any additional rate increase made possible by additional downward pricing flexibility remains limited by the annual 5 percent upper band limitation."[18] One of the benefits of price cap regulation is that it eliminates the ability and incentive to cross-subsidize competitive services. "Cross-subsidization only exists when the incremental revenue from provision of some service at current prices falls short of the incremental cost of providing that service at its current volume, taking into account demand cross-elasticities and cost complementarities. To the extent that non-competitive services are isolated from competitive services under the price cap, lowering competitive service prices bestows no additional ability to raise non-competitive service prices to offset losses."[19] Price cap regulation, as well as the current separations rules, remove both the incentive and ability to cross-subsidize.

As Schmalensee and Taylor explain, firms generally lack an incentive to engage in predatory pricing because doing so requires giving up profits today in the hope of crippling or killing a rival quickly enough, and avoiding new entry and expansion of other rivals long enough to permit profitable future recoupment of today's sacrifices. "Recoupment is particularly difficult in telecommunications because many different services are provided through a single network, and networks are long-lived, immobile investments. While any particular target firm

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[18]Schmalensee and Taylor Reply at p. 3.

[19]USTA Comments filed December 11, 1995 at Attachment 1, "Pricing Flexibility for Interstate Carrier Access Services," Richard Schmalensee and William Taylor at p.14. [Schmalensee and Taylor].

may enter or exit different markets for different services, its network would remain, and a would-be predator would generally be unable to earn above-normal profits to compensate it for earlier losses. The additional capacity could be acquired by new rivals--or more likely by the interexchange carriers themselves--and the disciplinary effect of that capacity on the LEC's ability to raise price would remain intact."[20]

Likewise, an anticompetitive price squeeze requires recoupment of foregone profits without incurring re-entry by well-established competitors. Recoupment is unlikely for two reasons: competition and price cap regulation. "LEC competitors, especially CAPs which operate in every major metropolitan area, are unlikely to exit any market permanently, thus preventing LEC recoupment and making a price squeeze strategy unprofitable. In addition, the FCC has correctly recognized that its price cap system provides safeguards against a price squeeze."[21]

Predatory pricing would be difficult because carrier access services are not final goods but are sold as inputs to a small number of large, sophisticated customers who also self-supply parts of the services in question. Thus, unlike in consumer markets, predatory pricing in carrier access markets directly benefits one group of current competitors in the market, i.e., interexchange carriers that benefit from reduced access charges.[22]

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[20]Id. at p.13.

[21]Id. at p. 14.

[22]In addition, marketing and product differentiation barriers to entry are absent in the carrier access market. Schmalensee and Taylor at p. 13.

The antitrust laws, the Commission's complaint process and the ability of competitors to resell interstate access service will also prevent any opportunities for anticompetitive behavior. Competitors certainly have not been reluctant to litigate and to use the complaint process to challenge exchange carrier rates. USTA's framework will further impede anticompetitive behavior. The current long notice periods allow competitors to introduce services before exchange carriers at prices which may be just under the exchange carrier price. Shorter notice periods for exchange carriers will permit better price responsiveness by reducing the amount of time exchange carriers signal their prices. Shorter notice periods for introducing new services as well as implementation of flexible alternative pricing plans are likely to enhance competition by preventing price ceilings from becoming price umbrellas for competitors.

C. Price Cap Regulatory Reform is Needed Now.

Although it agrees that economically sound pricing policies are needed and that the Commission should adopt an adaptive regulatory price cap framework, AT&T claims that the Commission should delay price cap reform until after access reform is completed.[23] The Commission should view this as the delaying tactic it is intended to be. As USTA stated in previous comments, the need for regulatory reform is based not only on the state of the market, but also on the rate of change in the market.[24] USTA has demonstrated that the current rate of change in the telecommunications market is nothing short of astounding. Technology, customer

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[23]AT&T at 8.

[24]USTA Reply Comments filed June 29, 1994 at p. 30.

demand, regulatory initiatives and pending legislation are pushing the market toward more competition at a breakneck pace.[25]

In view of this rapid change in the telecommunications market, the failure to adopt the framework proposed by USTA, including the changes to baseline regulation, would be a grave mistake as it would negatively impact consumers. Consumers would be denied new services, lower prices and the overall efficiency gains inherent in the adoption of economic pricing policies. Without changes, the costs of regulation, which also impact customers, would not be reduced. The delay in establishing a framework to address increasing competition would prevent new entrants and incumbents from enjoying any degree of certainty from the regulatory process and prevent them from planning for the most efficient means to provide service. As Schmalensee and Taylor describe it,

> Current regulation must be sensitive to the need for competitive equity. While regulation must continue to limit the ability of the regulated firm to exercise market power, it must also provide neither the entrant nor the incumbent any net advantage on a forward-looking basis. Such regulations would encourage the offering of new services and remove price distortions. When competitive forces effectively constrain the prices of the regulated firm in particular relevant markets (i.e., product, geographic or customer segment), regulation of those prices no longer provides benefits to offset its costs, and regulation should accordingly be effectively eliminated in those markets.[26]

The importance of economically correct pricing signals warrants changes to the existing regulation of new products, the adoption of alternative pricing plans, including term and volume

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[25]AT&T is filing for approval to offer competitive local exchange telecommunications services across the country. In the last two weeks in December 1995 AT&T applied in New Jersey and Maryland. On January 3, 1996, AT&T announced plans to offer local service in Wisconsin by mid-1996 by reselling Ameritech and GTE capacity.

[26]Schmalensee and Taylor at p. 3.

discounts, the extension of zone pricing to switching, CCL and the interconnection charge as well as the other changes proposed by USTA.

USTA agrees that unless access prices are rearranged to reflect market realities fully economic efficiencies cannot be realized. Therefore, both access reform and universal service reform are important. However, the importance of these efforts do not diminish the need for price cap reform. The Commission has the opportunity now to provide for efficient relative pricing and to increase new service options. This opportunity need not be delayed.

USTA is well aware of the need for access reform and recommended specific rules changes to reform the access charge rules in 1993. It is interesting to note that some of the parties which are advocating access reform now, wanted the Commission to delay consideration of access reform by requesting that the Commission issue a Notice of Inquiry instead of a rulemaking proceeding to address access issues. In fact, USTA has been seeking access reform throughout this proceeding. The Commission itself separated this docket into two parts. The Commission should not derail consideration of the issues raised herein and should not permit parties to game the regulatory process by seeking to delay any type of pricing flexibility for exchange carriers. The limited changes to the access rules advocated by USTA for price cap carriers are necessary if economically efficient pricing is to be achieved. This will at least ensure that the majority of exchange carrier customers receive some benefit.

In addition, the Commission should consider substituting monitoring for prediction. Instead of waiting to make the needed changes to the price cap plan until the outcome is completely certain, the Commission should institute streamlined and nondominant regulatory treatment when the simple standards described in USTA's comments are met and monitor the

further development of competition in those markets. "Delaying regulatory reform by waiting until its consequences can be predicted with great confidence would impose great costs on consumers. A far better use of society's regulatory resources would be to implement USTA's simple tests and monitor the results."[27]

D. Regulatory Reform Should Not be Dependent Upon Never-Ending Checklist Compliance.

Sprint, MCI, AT&T, ALTS and Time Warner argue that a long list of conditions must be satisfied before exchange carriers should be allowed to compete fully and fairly with other providers.[28] This is another delaying tactic, as some of the checklist items proposed would make it all but impossible for exchange carriers to ever meet the checklist requirements. Some of the proposed checklist items, such as the removal of subsidies, nationwide, uniform standards for interoperability, number portability, unbundled loops and even local competition are not relevant to the interstate access market and should not be required before the Commission recognizes that interstate access competition exists. The Commission should not adopt this "Christmas tree" approach where every party starts hanging their own ornaments on the tree until it is completely overburdened. The holiday season is over and its time to get to work on an adaptive framework that will accommodate the competitive environment.

Further, these checklists are not required. Congress has considered a checklist as a prerequisite for RBOC entry into the interLATA market. However, such an approach is not

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[27]Schmalensee and Taylor at p. 37.

[28]Sprint at p. 26, MCI at p. 21, AT&T at p. 6-7 and TRA at p. 19.

necessary to adopt pricing flexibility for the interstate access market. Competitors are serving the interstate access markets now, without any checklist. Obviously, these checklist items are not currently a barrier to entry in that market.

USTA's proposal does recognize that certain conditions should be met before reduced regulation is granted. For example, USTA requires that local competition exists with one operational competitive local exchange carrier before streamlined treatment can be granted in a small customer relevant market. In addition, to obtain nondominant status, USTA requires 50 percent addressability and compliance with state requirements for local competition. However, USTA believes that the states, and not the Commission, should be permitted to set the requirements and make the determination regarding local competition. If a state certifies that a competitor may provide local exchange service and the exchange carrier has demonstrated addressability, there are no barriers to entry and the exchange carrier should be subject to reduced regulation and provided an opportunity to compete.

The overall purpose of these commenters' arguments for one or more checklists is simply to delay pricing flexibility for exchange carriers to prevent exchange carriers from competing fairly for customers. A checklist, such as that proposed by the above-listed parties, should not be adopted. In their reply, Schmalensee and Taylor note that AT&T 's competitive checklist is not necessary for effective competition in the carrier access markets. They also discuss their concerns regarding Dr. Bernheim's measurement of competitive intensity of a market.[29]

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[29]Schmalensee and Taylor Reply at pp.12-15.

III. BASELINE CHANGES SHOULD BE IMPLEMENTED AS RECOMMENDED BY USTA.

As explained above, the changes proposed by USTA for baseline regulation are necessary to send correct economic signals so that both entrants and incumbents make efficient entry and exit decisions, particularly when some of these decisions involve large investments and sunk costs. This type of reform should be enacted before there is any evidence that competitive forces can discipline the pricing decisions.[30]

A. The Treatment of New Services Should Be Modified to Benefit Consumers.

"New service introduction creates probably the greatest gains in consumers surplus and economic efficiency of any actions by telecommunications providers. Thus, the Commission should modify its rules to permit the introduction of new services without the regulatory delays which now exist, regardless of the level of competition in access of local exchange markets."[31] The Commission should take the steps necessary to eliminate the burdens which currently inhibit the introduction of new services by exchange carriers. Exchange carriers cannot compete and customers cannot benefit if these burdens are permitted to remain.

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[30]Schmalensee and Taylor at p. 3.

[31]Comments of BellSouth Filed December 11, 1995, Statement of Dr. Jerry A. Hausman at p. 12.

1. The Part 69 Waiver Process Should Encourage New Service Deployment.

Some parties argued that the Part 69 waiver process should be retained and that any changes be considered in the upcoming access reform docket.[32] However, no party was able to show what harm would occur if this process was eliminated. There are no benefits to be gained from this process which delays and in some cases prevents customers from receiving new services. The introduction of new services is in the public interest. The Commission should modify its rules as recommended by USTA to switch the burden from the exchange carrier to justify a new service offering to the party opposing the introduction of the new service. The current process delays new services and creates uncertainty in the market. Therefore, USTA urges the Commission to permit all new rate elements and subelements associated with the introduction of new services to be filed without a waiver. No waivers should be required to add new switched transport elements if the elements or services are preexisting tariffed special access services. In those instances where an exchange carrier previously has been granted a waiver, or in the limited instance as described in USTA's comments where a waiver may be required, current and future offerings involving similar rate elements should be allowed to be introduced under an expedited fourteen day waiver process. Opponents will continue to have the opportunity under the Commission's rules for oversight of new services through the tariff review process.

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[32]LDDS at p. 32, NCTA at p. 27 and MCI at p. 13.