Further, TCG states (at 4) that in some less mature markets in New York its payments to NYNEX exceed its local switched revenues. Thus, in identifying relevant product markets, the Commission should take into account the fact that many access services nominally "provided" by non-LECs are, to a large extent, actually LEC services.

Moreover, AT&T (at 9-12) explains that access customers need all of the components of access in order to make any end user service work and that LECs often sell groups of those elements in service "bundles." The Commission should take these market realities into account when it defines relevant product markets. In particular, it must retain price caps for any access bundle that incorporates one or more non-competitive elements, especially bundles that include local loops. Failure to adopt such a methodology would give LECs the ability to leverage their power over the non-competitive elements into emerging markets for competitive service elements.

Accordingly, MCI (at 27) is correct that all bundled LEC access services must be priced so that the price for the bundled service at least equals the tariffed rates for non-competitive elements, plus the incremental cost of all other inputs to the bundle. However, such an imputation rule for the non-competitive elements of bundled service is insufficient, because it merely assures that contribution for the bundled service is at least as large as the contribution from the monopoly component. It does not

eliminate LECs' incentives to exercise their market power in other ways, such as by raising prices for the bundled services and promoting sale of such bundles by providing discriminatory access to the non-competitive element through the bundle, or other forms of non-price discrimination.

2. The Commission Should Use The Existing Price Cap Categories, But LECs Should Be Allowed To Propose Alternative Product Markets.

AT&T agrees with the numerous commenters who recommend that the Commission initially use the existing price cap baskets and categories to define product markets.[40] Any LEC that proposes other groups of services as relevant product markets[41] in particular circumstances must bear the burden of proof to demonstrate the reasonableness of that alternative aggregation, based upon clear evidence of competitive market conditions -- including especially the cross-elasticities of demand among the group of service elements it proposes as a single product market. In addition, the Commission should review the facilities used to provide such elements and determine the extent to

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[40] See Ad Hoc at 27-28; Ameritech at 36; Sprint at 22; TRA at v; U S WEST at 33. There is no reason at this time to make significant alterations to the existing baskets (see Section IV.G below).

[41] See, e.g., Bell Atlantic at 19; GTE at 54, 58; SWBT at 10.

which they share common costs[42] and whether they are subject to similar or different supply elasticities.

3. Product Markets Should Not Be Defined Based On A Switched/Special Access Dichotomy Or On The Identity Of End User Customers.

Some LECs suggest that switched and special access services should, at least for some purposes, be included in separate product markets,[43] and others suggest that product markets should have a customer dimension. AT&T opposes both suggestions. It would be unwise to segregate switched from special access services. As Pacific notes, these services are often cross-elastic with each other.[44] Creating separate product categories for cross-elastic functions defeats the basic purpose of defining relevant product markets.

The customer product distinction some LECs[45] seek is not analogous to the distinctions the Commission relied upon in developing AT&T's price caps. There, the business/residential customer distinction was used to define end-to-end interexchange services, and it was based upon market forces and IXCs' competitive offerings to their

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[42] See Time Warner at 42.

[43] NYNEX at 5.

[44] Pacific, Att. 1 at 16.

[45] E.g., GTE at 47; SWBT at 10; USTA at iii.

direct subscribers. Here, the LECs seek to create a product distinction that is not based upon the identity of their own customers, but rather the identity of their access customers' end users.

In addition, applying a customer dimension to the access product market definition would create unnecessary confusion and require the separation of existing price cap baskets and categories. Moreover, the principal reason why LECs appear to want such a split is so that they can create different access charge rates -- and apply different subsidies -- to identical functionalities depending upon whether a minute of use is originated (or terminated) by a business customer or a residential customer. To the extent that the proposed changes are intended to ameliorate market distortions created by the current access charge rules, these issues should be addressed and resolved in the Commission's forthcoming access reform proceeding, before it considers any significant changes in price cap rules.

III. ISSUES RELATING TO THE ASSESSMENT OF MARKET POWER

All commenters recognize that supply elasticity is a key element in determining whether a market is competitive, and most acknowledge that facilities-based competition is necessary to restrain LECs from exercising market power. Contrary to the LECs' general view, however, addressability and potential competition alone are not sufficient to limit a LEC's market power, especially at the

addressability levels most LECs propose. Most commenters also confirm that the LECs need to demonstrate demand responsiveness before a market can be found to be competitive. The Commission should thus reject the attempts by some LECs to diminish the importance of this factor. Except for NYNEX, the LECs predictably reject the use of market share as an indicator of market power. Considering the LECs' currently huge shares of the access market, however, this position is inconsistent with Commission precedent and simple logic.

A. Supply Elasticity

1. The Commission Should Only Review Facilities-Based Competition in Determining Supply Elasticity.

As a threshold matter, most commenters, including many LECs, agree with AT&T (at 17) that facilities-based alternative suppliers are necessary to establish an effectively competitive marketplace.[46] A few LECs, however, including Bell Atlantic (at n.71), insist that resale competition should be enough.[47] This assertion is not only wrong, it is at complete odds with the position Bell

[46] See, e.g., CCTV at 10-11; BellSouth at 5, Att. 1 at 19; GTE at 66; ICG at 5; LCI at 4; LDDS at 17-18; NYNEX at 31; Sprint at 24; SWBT at 12, n.70; USTA at 50.

[47] See also Pacific at 36, which alternatively argues that (i) the existence of a facilities-based competitor makes price regulation unnecessary, and (ii) its prospective sale of unbundled loops eliminates its bottleneck.

Atlantic, Pacific and other RBOCs took only six months ago in connection with the Commission's review of the highly competitive interexchange market.

The absence of facilities competition enables a LEC, as the sole facilities-based carrier, to retain control over all supply for an access service. Consequently, the LEC is able to induce either scarcity or abundance of supply and therefore control price.[48] Moreover, LECs also have the ability to engage in price squeezes of their competitors. Thus, contrary to Ameritech's assertion (at 32), the mere fact that local exchange service (whether bundled or unbundled) is available for resale does not assure that there will be effective competition in either the local exchange or access markets.[49] Facilities-based competitors are the key to assuring the possibility of effective long-term competition.

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[48] See AT&T, App. A at 14. Moreover, as shown in Section II.B.1 above, LECs have significant impact on the fortunes of CAPs and thus have even greater market power than might be expected by reviewing their market share in isolated segments of the access market.

[49] Bell Atlantic's full reliance on resale is also inconsistent with its recognition (at iv) that price regulation should not be removed until there are competitors with a real ability to limit price. Moreover, unless local services are offered for resale on an unbundled basis at a price based on long-run incremental costs, LECs will still be able to inhibit the entry or growth of resale competitors. See Time Warner at 31.

Reviewing the existence of facilities-based competition, and not merely resale, is consistent with the Commission's actions in the interexchange market. In the AT&T Nondominance Order, the Commission relied principally on competition from facilities-based IXCs in assessing supply elasticity.[50] It should be no less demanding in the local exchange and access markets, especially because the competitiveness of those markets also has a profound impact on competition in the interexchange market.[51]

Bell Atlantic's and Pacific's claims that resale of local services is (or may be) sufficient to prove effective competition are especially ironic in light of their recent opposition to reduced regulation for AT&T. Only last June, these RBOCs opposed AT&T's demonstration that the interexchange market was competitive, claiming that AT&T faced "only" two national, facilities-based carriers.[52]

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[50] Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, FCC 95-427, released October 23, 1995 ("AT&T Nondominance Order"), ¶ 59 (reviewing supply elasticity of MCI, Sprint and LDDS/WilTel).

[51] Sprint at 4; Comcast at 8 (LECs control bottleneck facilities); LDDS at 9-10; MCI at 6.

[52] Further Opposition of Bell Atlantic Corporation, BellSouth Corporation, Pacific Telesis Group, and SBC Communications to AT&T's Motion for Reclassification as a Nondominant Carrier, CC Docket No. 79-252, filed June 9, 1995 ("RBOC AT&T Opposition"), at 2-3 ("AT&T's claim that there are no barriers to entering the interexchange market is at odds with an elemental market fact: More than a decade after divestiture, AT&T, MCI and Sprint are still the only national, facilities-based carriers").

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In addition, Bell Atlantic's broad claims (at 4-5) that other carriers have declared "competitive war"[53] ignore the significant time and huge investment that are needed to mount a substantial competitive threat in the local exchange and access markets.[54] These claims are also inconsistent with the statements of Bell Atlantic's Chairman, who predicted last spring that local competition over the next several years is "farther out and less significant . . . than our potential competitors would have you believe."[55] In all events, Time Warner (at 32) correctly states that LEC attempts to exaggerate the amount of competition "cannot and [do] not justify the retention of barriers to entry merely

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Bell Atlantic's call (at iii) for the elimination of distinctions between dominant and nondominant service providers is also in striking contrast to its recent arguments concerning the much more competitive interexchange market. Moreover, contrary to Bell Atlantic's claims (at 6-8), the possible price "telegraphing" issues that are associated with dominant regulation are simply irrelevant when there are no significant actual competitors.

[53] See also SWBT at 61.

[54] This claim also ignores the dissimilarities between the local and interexchange markets and the relative ease with which competitors -- especially LECs with large "administrative" networks -- can develop competing long distance services. See CompTel at 14; LDDS at 20.

[55] "Tough Battle Predicted," Communications Daily, Vol. 15, No. 66 (April 6, 1995) at 7.

for the purpose of slowing the development of an effective, price-constraining competitive marketplace."

2. The LECs' Addressability Tests Are Inconsistent With Prior Commission Actions And Inadequate To Prove The Existence Of Substantial Competition.

Many LECs,[56] led by USTA (at 51), propose that the Commission should adopt a 25% "addressability" test to determine whether a market is sufficiently competitive to remove access services from price caps and permit streamlining.[57] These proposals are inconsistent with Commission practice and should be rejected. In addition, the metrics the LECs propose are completely inadequate to constrain their market power.

The LECs' addressability[58] proposals require only one alternative supplier capable of addressing 25% of the demand in the relevant market, and they do not even require

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[56] Bell Atlantic at 17; GTE at 69; SNET at 24; SWBT at 63; U S WEST at 39. See also Ameritech at 31, which proposes an even weaker test.

[57] NYNEX, which does not make a similar proposal, correctly notes (at 3) that the "truly significant difference" in regulation for price cap carriers is the removal of services from price caps associated with streamlining. See also Frontier at n.31.

[58] Although not completely clear from the LECs' comments, AT&T assumes that "addressability" means that competitive facilities are in place with the capacity to serve stated portions of the demand for specific access elements in a relevant geographic area.

that competitor to have a single customer.[59] This is the equivalent of a mere "open for business" test, and it should be rejected as patently insufficient under the Commission's prior precedents, which expressed concern about the viability of competitors and their ability to provide effective competition over the long term.[60] That concern is heightened in the case of the local exchange, where incumbents enjoy long-standing monopolies supported by years of capital generated from captive ratepayers and protected by regulatory, economic and subsidy barriers.

In sharp contrast to the LECs' proposals, there was more than mere addressability -- there was significant actual market penetration -- by facilities-based competitors

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[59] See BellSouth at 55 (mere existence of an authorized and operational competitor warrants streamlining). Pacific (at 42) also proposes that the Commission permit all services in a relevant geographic area to be subject to contract-based pricing when the LEC shows a competitor has "built a network" in that area. However, Pacific does not propose a metric for the number of lines or percentage of traffic that could be served or the specific services the competitor would have to be able to handle over its own facilities.

[60] Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, First Report and Order, 85 F.C.C.2d 1, 21 (1980) (taking into account the number and size distribution of competing carriers, including their financial resources); id., Notice of Proposed Rulemaking, 77 F.C.C.2d 308, 326 (1979) (noting that IXC competitors lacked maturity). See also IIA at 3 (Commission must review the viability of competitors, not their mere existence); SWBT at 12 (competitors must be viable); TRA at n.43.

in the interexchange market before AT&T's services were streamlined.[61] Moreover, the Commission did not even begin to grant AT&T such relief for more than seven years after it divested itself of the monopolies the RBOCs still enjoy today.

There are two critical problems with the LECs' proposals. First, they rely heavily on potential competition, and would only require that a LEC face competition from one other supplier.[62] Thus, the access and local exchange markets they define as "substantially competitive" are a far cry from the robust competition the Commission demanded before streamlining interexchange services. Sprint (at 27), for example, notes that AT&T was

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[61] See, e.g., ALTS, Att. 1 at 10 ("[b]y the time price caps were implemented for AT&T, the carrier did not provide any essential non-substitutable facilities for its interexchange competitors").

[62] Contrary to Bell Atlantic's claim (at 16) that potential competition may be sufficient to check LECs' market power and SWBT's suggestion (at 59) that the Commission could rely equally on actual and potential competition in assessing market competitiveness, potential competition must be reviewed using much more demanding criteria (see AT&T, App. A at 12-14). See also CCTV at 15 (it is "foolhardy" to rely on potential competition to provide a competitive check on LECs) and n.14 above. Further, given the LECs' scant competition and huge power in the local exchange and access markets, the mere fact that competitive facilities, once built, may be permanently available does not guarantee that there will be effective future competition (see BellSouth at n.74). If a LEC is successful in erecting and maintaining barriers to competition, the most likely purchaser of those facilities may well be the LEC itself.

not accorded initial streamlining until after its Basket 3 services faced competition from two nationwide and many regional facilities-based carriers.[63]

Second, the 25% standard proposed by most LECs is inadequate to limit their monopoly power. The deficiencies of the 25% addressability test are clearly revealed by the analysis below, which shows that the proposed standard would not restrain LECs from extracting higher than normal prices from their customers.

The LECs argue that 25% addressability is sufficient to allow them to remove access services from price caps for entire relevant markets. Accordingly, by definition, 75% of all access customers (or demand) in a relevant geographic area would not have even a theoretical or potential choice of suppliers. Even if LECs were required to average prices across entire geographic markets after streamlining -- and they do not specifically propose such a requirement -- they would still have powerful incentives to raise price.[64] Appendix E shows that a LEC

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[63] See AT&T at 17; Comcast at iv, 23; NCTA at 29; TRA at 21. See also RBOC AT&T Opposition at 2-3. In addition, AT&T faced competition from hundreds of active resellers.

[64] Some commenters, including AT&T (at 13-16), noted that the impacts of reduced regulation on customers in non-competitive areas could be reduced if LECs are required to charge uniform prices throughout the market (see also Time Warner at 44). However, AT&T (id.) also showed that even a price uniformity requirement does not effectively

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would profit from a 10% rate increase applied across the entire geographic market, even if 30% of its customers in the competitive area switched to a competitor.[65] Thus, contrary to the LECs' assertions, the proposed 25% addressability test for streamlining fails to provides any significant limit on the LECs' ability to exercise market power.

B. Many LECs Improperly Assume Away the Importance of Demand Responsiveness.

The LECs generally acknowledge the need to demonstrate demand responsiveness in order to show market competitiveness.[66] At the same time, many LECs try to dismiss the importance of demand responsiveness, asserting that access customers are large and sophisticated buyers and are always conscious of price.[67] Alternatively, they

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control LEC pricing if a large proportion of the market does not have access to alternative suppliers.

[65] This analysis is favorable to the LECs because it assumes -- often contrary to fact -- that alternative suppliers are ready and able to provide service at prices, terms and conditions equal to the LEC's. Moreover, it assumes no repression of demand with the increase in price and no decrease in the LEC's cost associated with the loss of market share.

[66] E.g., Ameritech at 26-27; SWBT at 12.

[67] See Ameritech at 27; BellSouth at n.73 (no need to quantify the demand elasticity for exchange services); SWBT at 60 (demand elasticity for access is difficult to measure).

suggest that demand responsiveness could be shown based upon information from other suppliers in distant markets.[68] These attempts to minimize -- or assume away -- the importance of demand responsiveness should be rejected.

Although access customers are often large, they also have the most demanding standards for quality and reliability, because access is an essential element of the services they sell to end users. Accordingly, they must be extremely cautious before abandoning LECs' access services, and price is not -- and cannot be -- the sole factor in their purchasing decisions. Indeed, the LECs have offered no significant proof of actual customer demand elasticity[69] even though BellSouth's expert acknowledges that substantial competition supporting streamlining is present only when "customers find [competitors'] services to be acceptable substitutes for the LEC services."[70] Similarly, GTE (at 70) agrees that each LEC should have to "assemble evidence to show that the services it uses in its addressability showing are acceptable to consumers," and SWBT (at 55) recognizes that the key issue is whether customers will switch carriers in response to relative changes in price.

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[68] GTE at 71; SWBT at 12; USTA at 52-53.

[69] See TRA at 32 (noting a particular absence of demand elasticity for local exchange services).

[70] BellSouth, Hausman Statement at 19.

In fact, non-price issues such as short-term and long-term quality assurance and customer support are absolutely critical to access purchasers.[71] No new entrants have yet performed well enough (or long enough) that an IXC could afford to completely jettison the incumbent LEC as a provider of its access services. Indeed, even Sprint (id.), which has a "policy of giving as much access business to CAPS as they are able to handle," acknowledges (at 25) that its orders to CAPs are subject to "service standard and cost considerations."[72] Moreover, supply elasticity in the local exchange market is irrelevant if consumers will not change carriers because of factors such as lack of number portability.[73] These facts thus completely refute Ameritech's assertion (at 27-28) that access services are fungible, as well as any claims that demand elasticities for local access services should apply equally across distant geographic markets and different suppliers and facilities.

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[71] SWBT (at 61) itself acknowledges that IXCs "routinely 'grade' the LECs on their price and service responsiveness" (emphasis added). See also TRA at n.43 (competitors must be viable).

[72] Indeed, Sprint (id.) notes that the vast majority of its access expenditures go to LECs, even though it has tried to develop alternative sources of supply.

[73] Time Warner at 54.

C. The LECs' Huge Market Shares Cannot Be Ignored In Assessing Their Market Power.

Most LEC commenters oppose giving any significance at all to market share.[74] This is inconsistent with the Commission's prior decisions assessing market power, and it is also remarkable in light of the LECs' general willingness to disregard (or simply assume) the existence of demand elasticity. In its International Competitive Carrier Policies decision, the Commission stated that even though market share "is not determinative of market power, it appears to be a clear indication of dominance" if a carrier has "an overwhelming market share."[75] In virtually every

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[74] Ameritech at 34; Bell Atlantic at 19-20; BellSouth at 6; CBT at 13; GTE at 71; SNET at 25; SWBT at 65; U S WEST at 41; USTA at 53. In contrast, customers argue that market share should be the most important factor in reviewing market competitiveness (Ad Hoc at 32). See also TRA at 35; Time Warner at ii.

[75] 102 F.C.C.2d 812, 830 (1985), recon. denied 60 R.R.2d 1435 (1986), modified 7 FCC Rcd. 577 (1992) (emphasis added). See GTE at 64 (urging the Commission to use "indicators" of market power). The Commission's use of market share data in such circumstances is consistent with the DOJ/FTC Merger Guidelines, and it is also supported by economic theory. Even LEC experts admit that it is too complex and difficult to develop accurate econometric estimates of supply and demand elasticities in the access market (see Pacific, Att. 1 (Kahn-Tardiff Report) at 19; see also SWBT at 61). The use of market share as an indicator of market power, especially in cases where a firm has a share of 90% or more, helps to overcome the weaknesses inherent in the econometric modeling process. At a minimum, it provides an external "reality check" against LECs' theoretically-based claims that they lack market power, so that, as suggested by the

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case, LECs' market shares for access services exceed even the 91-95% AT&T shares the Commission then found to be "overwhelming" in international markets, yet the LECs' addressability tests would allow access services to be streamlined even if the LEC has a higher market share.[76] In contrast, Sprint (at 27) notes that AT&T's Basket 3 services were not streamlined until AT&T had lost nearly 50% market share to its competitors.[77] The LECs' complete rejection of

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Merger Guidelines, their burden of proof should increase proportionally as their market share rises.

[76] Ameritech's proposed addressability test (at 31) is particularly weak. It would only require the competitor to have the capacity to serve 25% of the access demand in the addressable market area, i.e., only 5% of the total market demand. Contrary to Ameritech's inference (at 30-31), this hardly approaches the supply elasticity AT&T demonstrated in the interexchange market. AT&T showed there that its facilities-based competitors could almost immediately absorb about one-third of AT&T's total switched traffic, and that almost two-thirds of its traffic could be absorbed in the short term with modest investment (AT&T Nondominance Order, ¶ 59). Moreover, AT&T's showing was coupled with a demonstration that its own market share had already fallen below 60% as a result of vigorous competition. In contrast, Ameritech's proposal would permit LECs to be streamlined in a market where its single competitor's maximum possible share is only 5%, with Ameritech retaining at least a 95% share of the market. This test is thus clearly deficient in light of the Commission's International Competitive Carrier Policies decision. See also RBOC AT&T Opposition at 3 (urging the Commission to completely discount the market impact of LDDS/Wiltel, which "generates about 4 percent as much annual revenue [as AT&T]," as well as the impact of all "minor resellers").

[77] In all events, the LEC proposals to permit nondominance upon a showing of 50% addressability are clearly

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market share makes their addressability proposals devoid of any assurance that local exchange and access competition will come from viable carriers who can win and retain customers over the long term.

In contrast to the other LECs, NYNEX (at 5-7) proposes that streamlining should not be permitted until entry barriers are completely removed throughout a LEC's entire operating territory, competition is present for "major segments" of the LEC's market,[78] and the LEC has lost 15% share in the specific geographic market where it seeks streamlining. Although NYNEX's proposed metrics are too low to demonstrate effective competition, NYNEX's proposal at least recognizes that a market share threshold test is an appropriate part of measuring competitiveness in the local exchange and access markets, and it also acknowledges that addressability alone is insufficient to determine whether there is substantial competition for purposes of streamlining.

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insufficient. See USTA at 56; SNET at 22; SWBT at 14, 72.

[78] NYNEX (at 30) defines this to mean that alternative carriers have established a competitive presence in areas representing 40-50% of a LEC's total business lines (for switched access) or 40-50% of special access/transport revenues.

D. Other Issues

1. Checklists Are Helpful Tools For Determining Whether The Preconditions For Effective Competition Are In Place.

Although "competitive checklists" cannot alone demonstrate the presence of sufficient competition in a specific market to warrant streamlining,[79] compliance with the terms of a well-drawn list can establish whether the market is likely to be conducive to such competition. Accordingly, AT&T and many other commenters suggested specific lists of conditions that the Commission could use to make such a determination.[80]

Virtually all of these lists include (directly or by inference) the nine conditions proposed by AT&T. In particular, commenters' and the Commission's checklists included the following important items, all of which are inherent in AT&T's proposals:

- establishment of economic cost-based reciprocal compensation arrangements that will enable competitive carriers to complete calls to each others' customers;[81]
- effective access to directory assistance, 911 and other key LEC databases;[82]

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[79] AT&T at 16; Ad Hoc at iv, 22-23.

[80] AT&T at 6-7; Ad Hoc at 23-24; CCTV at 8-10; Comcast at 15-16, 19; MCI at 22-29; MFS at 7; Sprint at 23. See also BellSouth NZ at 67; SNET at 19.

[81] E.g., MCI at 26-27; Time Warner at 34. See Sprint, Att. at 2; SNET at 24-25; Comcast at 19.

[82] E.g., Sprint, Att. at 3; SNET at 24-25.

- intraLATA dialing parity;[83]
- effective collocation opportunities;[84] and
- competitively neutral universal service funding mechanisms.[85]

All of these items are necessary to assure that LECs cannot leverage their entrenched monopoly position to exclude effective competition in local markets. Thus, these conditions should be in place prior to any streamlining of an access market.

2. The Commission Should Not Rely On State Rules To Determine Whether There Is Effective Competition.

The Commission should reject any suggestion that it consider LEC compliance with state requirements for opening the local exchange to competition as a factor in determining whether to reduce access regulation.[86] Rather than relying on state rules, the Commission should assert leadership -- and its statutory authority[87] -- to establish its own criteria for determining whether local competition

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[83] See SFNPRM at ¶ 108.

[84] Sprint, Att. at 2.

[85] MCI at 27; Sprint, Att. at 4.

[86] See, e.g., SNET at 24; SWBT at 6, 72; U S WEST at 45.

[87] The new telecommunications legislation passed by Congress gives the Commission an explicit role in developing a competitive checklist and assessing the competition that results.

is sufficient to allow reduced regulation of interstate access services.

The Commission should not allow state rules to dominate its exclusive authority to regulate interstate access or permit LECs to engage in jurisdictional whipsawing.[88] In particular, the Commission should not place itself in a position where federal regulatory policy would rely upon a patchwork of inconsistent state standards, some of which may stunt the potential growth of local competition.[89] However, the adoption of federal standards does not mean that the Commission should ignore state experiences. Rather, it means only that LEC compliance with local rules should not be dispositive proof of sufficient competition to warrant reduced access regulation. The Commission should -- and must -- decide for itself, based on information from the states and its own judgment, the prerequisites for reducing its oversight of interstate access.[90]

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[88] Comcast at 12.

[89] In fact, some of the rules adopted in the states have become substantial inhibitors of effective competition. For example, the full build-out requirements in Texas impose significant restrictions on alternative carriers' ability to compete effectively.

[90] See also Comcast at 14-15 (Commission should require consistency in LEC pricing proposals at the state and federal levels as a condition of reduced regulation).

3. A Notice And Comment Procedure Should Apply To All Requests For Reduced Regulation.

Many commenters, including several LECs, support AT&T's proposal (at 18-19) that LEC requests for reduced regulation should be reviewed in proceedings that allow interested parties an opportunity to participate in a meaningful way.[91] Given the substantial impact of local competition on multiple markets, the Commission could not fulfill its public responsibilities without allowing such an opportunity. Accordingly, contrary to NYNEX's view (at 31)[92] any type of "short form" or "negative option" procedures (i.e., automatic approvals in the absence of Commission action) are inappropriate.

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[91] See Ameritech at 25 (declaratory ruling); BellSouth at 25 (petition for reduced regulation); GTE at 76 (market classification plan); MCI at 29 (waiver or declaratory ruling); TRA at 22, 36 (waiver or petition); Time Warner at 8.

[92] See also SWBT at 70.

IV. LEC PRICE CAP REGULATION SHOULD NOT BE RELAXED IN MERE ANTICIPATION OF THE EMERGENCE OF COMPETITION IN THE ACCESS AND LOCAL EXCHANGE MARKETS.

As shown in the following sections, most of the price cap and procedural changes proposed by the Commission would give the LECs an unprecedented and unwarranted degree of pricing flexibility and should not be adopted as part of baseline regulation. As the Commission has properly concluded, because the LECs "retain substantial market power in providing local exchange and access services, regulation continues to be needed to achieve the goals of the Communications Act, and to increase consumer welfare."[93] Thus, until objective criteria demonstrating the existence of actual and meaningful local exchange and access competition can be satisfied, the original goals of the price cap plan -- "just, reasonable, and nondiscriminatory rates, as well as a communications system that offers innovative, high quality services"[94] -- should continue to guide the Commission. To ensure the reasonableness of

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[93] Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, First Report and Order, 10 FCC Rcd. 8961, 9002 (¶ 92) (1995) ("First Report").

[94] See Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd. 6786, 6787 (1990) ("LEC Price Cap Order"), recon. 6 FCC Rcd. 2637 (1991)("LEC Price Cap Reconsideration Order"), further recon. 6 FCC Rcd. 4524 (1991), second further recon. 7 FCC Rcd. 5235 (1992), aff'd sub nom. National Rural Telecommunications Association v. FCC, 988 F.2d 174 (D.C. Cir. 1993).

interstate access rates and to achieve the Commission's stated objectives, the Commission should maintain detailed price cap controls and procedures.

A. The Current Cost Support And Notice Requirements For New Services And Restructures Should Be Retained.

As would be expected, the LECs broadly support shorter notice and reduced cost support for their tariff filings that introduce new access services. They contend that new services increase customer choice and are not bottleneck offerings, and to facilitate their introduction, new services should presumptively be afforded Track 2 treatment, and allowed to be filed on 14 days' notice and with a direct cost showing only.[95] Ameritech further suggests that the LECs should be permitted to file cost support on a confidential basis.[96] These parties argue that if a LEC voluntarily provides a new service, market forces will effectively ensure that the rates are not too high (because if they are, no customer would purchase the

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[95] SNET at 12, 13; SWBT at 8; USTA at 21-22; U S WEST at 7-10. According to the LECs, only those services which the Commission has required the LECs to offer should be subject to Track 1 treatment. Ameritech at 9; BellSouth at 9; CBT at 7; GTE at 7; Pacific at 8; SNET at 9.

[96] Ameritech at 13. In an even more overreaching request, Bell Atlantic (at iii) contends that the Commission should eliminate price cap regulation for all new services and allow tariffs to be filed on one day's notice, the same regulatory treatment accorded to nondominant carriers' services.

offering).[97] The LECs also contend that tariffs that restructure existing services should likewise be subject to a reduced 14-day notice period.[98]

Contrary to the LECs' assertions, it is imperative for the Commission to retain the cost support requirements for new services and the current 45-day notice period for new services and restructures. No LEC has provided any evidence that the current cost support and notice requirements have impeded the introduction of any new services or restructured offerings.[99] Indeed, the fact that more than 500 new services have been successfully introduced since the inception of the current price cap rules totally undercuts the LECs' contentions. Moreover, as the Commission correctly found just a few months ago, competition for new services is not sufficiently widespread to constrain the LECs' pricing practices. Thus it

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[97] Ameritech at 11-12; Bell Atlantic at 12-13; BellSouth at 9.

[98] Ameritech at 20; BellSouth at 11 (claiming that a restructure is essentially an in-band price change); GTE at 10; SWBT at 8; USTA at 22.

[99] The LECs urge elimination of the Part 69 waiver requirement for new switched access rate structures alleging that that procedure creates extended delays, but the Part 69 waiver process is separate from the basic notice and cost support requirements under the Part 61 price cap rules. MCI at 12.