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

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FEDERAL COMMUNICATIONS COMMISSION
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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

REPLY COMMENTS

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SUMMARY

Comcast Corporation ("Comcast"), by its attorneys, respectfully submits these reply comments regarding the Commission's Notice tentatively proposing regulatory relief for price cap LECs. LEC commenters favor maximum deregulation without actual competition. The Commission must reject LEC proposals because they will forestall new entry and hinder actual facilities-based competition.

LEC proposals to introduce price cap reform absent actual facilities-based competition will undermine the Commission's vision for local competition. That being so, the Commission should engage in a comprehensive survey of the state of the local exchange market in order to fashion a pro-competitive paradigm for the future. The initial survey must collect meaningful information regarding incumbent LEC revenues, network usage, capacity and market share in support of rules to prevent incumbent LECs from continuing to engage in anticompetitive pricing and unjust and unreasonably discriminatory conduct. Reporting burdens on new entrants and competitive local exchange service providers should be limited.

The LEC comments fail to provide any concrete evidence to support their contention that immediate price cap reform is necessary to enable them to respond to market forces. Wholesale reduction in cost support mechanisms and notice periods provided by the new services and restructure tests, as well as elimination of regulatory oversight by means of the Part 69 waiver process, as advocated by the LECs, will eviscerate what few protections are left in the price cap plan against LEC monopoly power. It is axiomatic that incumbent LECs will be free to exercise market power to restrict output and exclude competition absent any regulatory oversight.

LEC proposals to receive further pricing flexibility now will forestall facilities-based competition and stifle new entry. By eliminating limits on downward pricing flexibility and freeing LECs to engage in individual case pricing without justifying such arrangements by competitive necessity, the LEC proposals would facilitate LECs in "price squeezing" competitors and engaging in discriminatory pricing schemes.

The Commission must reject LEC requests to implement litmus tests for receiving streamlining and non-dominant treatment on a market-specific basis. Such regulatory relief is entirely premature. LEC commenters would understate their dominant position by excluding market share, the widely accepted economic bellwether of competition, as a factor in evaluating whether streamlining and non-dominance are allowed. Granting regulatory relief on a piecemeal, market-by-market, basis as the LECs propose would be administratively burdensome. LECs remain the dominant providers of local exchange service controlling over 90 percent of the local exchange market and possessing bottleneck control over essential facilities. These circumstances are not even close to the level of competitiveness that led the Commission recently to find AT&T to be non-dominant in long distance services.

Accordingly, the Commission must reject the LEC requests for price cap relief now and instead initiate an expeditious assessment of the local exchange market to determine its competitiveness. Upon conclusion of such an assessment, the Commission must implement a regulatory regime that will promote new entry and facilities-based competition as a predicate to further regulatory relief for incumbent LECs. The Commission must retain

sufficient regulatory control over incumbent LECs to eliminate the anticompetitive threat they pose during the transition to full competition in the local exchange market.

TABLE OF CONTENTS

SUMMARY i

I. INTRODUCTION 1

II. THE COMMISSION MUST REJECT LEC PROPOSALS TO ELIMINATE A FINDING OF ACTUAL COMPETITION AS A PRECONDITION OF DEREGULATION 2

A. Facilities-Based Competition Must Exist in the Local Exchange Market Prior to Extending Regulatory Relief to Incumbent LECs. 2

B. LEC Deregulation Now Will Harm Emerging Competitors 3

III. AS THE FIRST STEP IN ESTABLISHING LOCAL COMPETITION RULES, THE COMMISSION MUST UNDERTAKE DATA COLLECTION TO DETERMINE THE STATE OF, AND BARRIERS TO, LOCAL COMPETITION. 5

A. The Proposed Data Collection Must Produce Meaningful Statistics Regarding Incumbent LECs. 5

B. The Proposed Data Collection Must Be Tailored To Minimize any Undue Reporting Burdens on New Entrants and Non-Dominant Service Providers 7

IV. THE COMMISSION MUST REJECT LEC FLEXIBLE PRICING PROPOSALS AS CONTRARY TO THE PUBLIC INTEREST. 8

A. LEC Proposals To Change Existing Price Cap Safeguard Mechanisms Will Eviscerate Meaningful Regulatory Oversight of Controversial LEC Service Offerings 8

B. The Commission Must Reject LEC Proposals To Increase Pricing Flexibility 11

C. The Commission Must Reject LEC Proposals To Consolidate Price Cap Baskets and Service Categories. 13

V. THE COMMISSION MUST REJECT THE LECS' PROPOSED MARKET DEFINITION OF, AND TEST FOR, STREAMLINING. 14

A. The LECs' Solipsistic Approach to Defining a Paradigm for Local Exchange Competition Would Guarantee Only the Perpetuation of LEC Monopoly Power. 14

B. It Is Well-Settled That the Test for Streamlining Must Be Based, at a Minimum, on a Finding That the Carrier Does Not Possess Market Power in the Service To Be Streamlined 16

VI. CONSIDERATION OF NON-DOMINANT STATUS FOR INCUMBENT LECS IS ENTIRELY PREMATURE 16

VII. CONCLUSION 17

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REPLY COMMENTS

Comcast Corporation ("Comcast"), by its attorneys, hereby submits its reply comments regarding the above-captioned notice to address proposed changes in regulation of price cap local exchange carriers ("LECs").[1/]

I. INTRODUCTION

The Commission must reject LEC proposals to maximize deregulation without actual facilities-based competition. Rather, as reflected in Comcast's comments, any consideration of LEC deregulation must be deferred until the Commission has: (i) completed an expeditious assessment of competition in the local exchange market;[2/] (ii) established a competitive paradigm for the local exchange market; (iii) eliminated regulatory

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1/ *See Price Cap Performance Review for Local Exchange Carriers; Treatment of Operator Services Under Price Cap Regulation; Revisions to Price Cap Rules for AT&T*, Second Further Notice in CC Docket Nos. 94-1; Further Notice of Proposed Rulemaking in CC Docket No. 93-124 and Second Further Notice of Proposed Rulemaking in CC Docket No. 93-197 (released September 20, 1995) ("Notice").

2/ *See* Comments of Comcast Corporation, at 3-8, filed in CC Docket No. 94-1 (December 11, 1995) ("Comcast Comments").

barriers to entry at the state and federal level; and (iv) encouraged the competitive growth of alternative local exchange service providers.[3/]

II. THE COMMISSION MUST REJECT LEC PROPOSALS TO ELIMINATE A FINDING OF ACTUAL COMPETITION AS A PRECONDITION OF DEREGULATION.

The Notice's proposal to relax the price cap rules absent actual facilities-based competition must be rejected. LEC commenters have failed to provide any concrete evidence that they will lose customers, market share, or suffer any competitive harm without the price cap reforms they seek. If LECs get the deregulation they want now, new entry and facilities-based competition will be stymied. The protections contained in the price cap system — already being stretched to their limits — must not be further abraded so long as incumbent LECs continue to exercise market power and control bottleneck facilities.

A. Facilities-Based Competition Must Exist in the Local Exchange Market Prior to Extending Regulatory Relief to Incumbent LECs.

LEC commenters assert that price cap deregulation is necessary to allow them to respond quickly to market forces and to provide "customer-specific pricing" and "one-stop shopping."[4/] PacBell argues that "irreversible investment" by interexchange carriers ("IXCs"), competitive access providers, cable companies and wireless service providers automatically converts these new entrants into "incumbents" in the local exchange

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3/ *See* Comcast Comments, at 9-16.

4/ *See* Comments of the United States Telephone Association, at 9-15, filed in CC Docket No. 94-1 (December 11, 1995) ("USTA Comments"); Comments of Pacific Bell and Nevada Bell, at 9-14 ("PacBell Comments").

network.[5] FCC precedent and reality, however, demonstrate that only facilities-based competition is sufficient to predicate a deregulatory model for incumbent LECs.[6] Adoption of regulatory streamlining for incumbent LECs now will have a ruinous effect on competition.[7] LECs will be free to impose unjust rates and unreasonably discriminatory terms and conditions to exclude competitors absent affirmative regulatory action.

B. LEC Deregulation Now Will Harm Emerging Competitors.

It is no surprise that LEC commenters, controlling bottleneck facilities and wielding extensive market power,[8] object to consideration of market share as a factor in any survey of competition in the local exchange market.[9] The comments of long distance carriers, competitive access providers ("CAPs"), and cable operators overwhelmingly demonstrate that price cap deregulation without a prior finding of actual competition will result in competitive harm to new entrants.[10] LECs have failed to show that deregulation of firms

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5/ *See* PacBell Comments, at 34 (citing Daniel F. Spulber, *Deregulating Telecommunications*, 12 YALE J. ON REGULATION 25 (1995)).

6/ For example, the FCC has established that resale of cellular service is required until facilities-based competition is established. *See* 47 C.F.R. § 22.901(e).

7/ Comcast Comments, at 6-9.

8/ *See* Comcast Comments, at 6-7. "Market power" refers to the ability of a firm or group of firms acting jointly to raise prices to exclude competition. *See U.S. v. E.I. du Pont de Nemours & Co*, 351 U.S. 377, 391 (1955); William M. Landes & Richard A. Posner, *Market Power in Antitrust Cases*, 94 HARVARD LAW REV. 937 (1981).

9/ *See, e.g.*, Comments of Ameritech, at 33, filed in CC Docket No. 94-1 (December 11, 1995) ("Ameritech Comments"); Comments of BellSouth, at 51-3 ("BellSouth Comments").

10/ *See, e.g.*, Comments of MFS ("MFS Comments"); Comments of MCI ("MCI Comments"); Comments of AT&T ("AT&T Comments"); Comments of Teleport Communications Group ("Teleport Comments").

with market power will not lead to competitive harm. These commenters have failed to present any concrete evidence to rebut the conclusion that LECs pose a serious competitive threat by virtue of their monopoly bottleneck control and extensive market share.

One of the main goals of the price cap system of regulation is to prevent anticompetitive conduct, such as cost-shifting and discriminatory pricing, by incumbent LECs.[11/] Basket and service category banding limitations, new services cost justification and notice period requirements, among others, are regulatory tools, although imperfect ones, to rein in LEC exercise of market power.

If the Commission deregulates price cap LECs before actual facilities-based competition has taken hold, there will be neither a regulatory buffer to deter LECs from exploiting bottleneck control to hinder competition in the local loop nor a marketplace backstop to prevent LECs from exercising market power to exclude competition. Actual facilities-based competition in the local exchange market must be firmly established prior to deregulation of incumbent LECs.[12/]

11/ *See Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, CC Docket No. 87-313, 5 FCC Rcd 6786, 6791 (1990) ("*LEC Price Cap Order*"), *recon.*, 6 FCC Rcd 2637 (1991) ("*LEC Price Cap Reconsideration Order*"), *aff'd sub nom.*, *National Rural Telecom Ass'n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993).

12/ Indeed, as the Notice correctly points out, the price cap plan is designed "to act as a transitional regulatory scheme until the advent of **actual competition** makes price cap regulation unnecessary." *See* Notice, at ¶ 9 (emphasis added).

III. AS THE FIRST STEP IN ESTABLISHING LOCAL COMPETITION RULES, THE COMMISSION MUST UNDERTAKE DATA COLLECTION TO DETERMINE THE STATE OF, AND BARRIERS TO, LOCAL COMPETITION.

The Commission should be applauded for its proposal in a related proceeding to implement a market survey to collect information regarding the state of competition in the local exchange market.[13/] The proposed Data Collection will provide the necessary foundation for articulating a telecommunications policy for the local exchange market that will stimulate new entry and encourage facilities-based competition. It is essential to collect meaningful statistics regarding incumbent LECs, while avoiding any undue reporting burden on fledgling or potential providers of local exchange service.

A. The Proposed Data Collection Must Produce Meaningful Statistics Regarding Incumbent LECs.

The Data Collection must rely not only on traditional econometric measures of LEC market share, as well as supply and demand elasticities in the local exchange market, but must explore the principal causes of LEC discriminatory and anticompetitive conduct to fashion strengthened safeguards against such conduct. The Data Collection's proposal to require LECs to report on baseline factors such as network usage, revenue, cost and capacity is fundamental to understanding the actual level of competition in the local exchange market.

13/ *See Common Carrier Bureau Seeks Comment on Telecommunications Access Provider Survey*, Public Notice, DA 95-2287 (released November 3, 1995) ("Data Collection").

Market share is the linchpin of competitive analysis.[14/] U S West argues that market share should not be considered in a competitive analysis and cites purported cross-elasticities resulting from transmission and distribution technologies.[15/] This is wrong. Market share and control of bottleneck facilities are incontrovertible signs of a non-competitive market subject to abuse by firms exercising such market power and bottleneck control. These factors must be at the core of the Commission's analysis of barriers to competition in the local exchange.

The Commission must also collect information from incumbent LECs sufficient not only to measure the extent of competition, but also to identify the causal relationships that give rise to competition.[16/] By scrutinizing the conduct of incumbent LECs, the Commission will be able to identify and explore the reasons why the local exchange market is not competitive. The data collected will help the Commission to fashion a pro-competitive regulatory paradigm that will foster new entry and encourage facilities-based competition.

14/ *See* Areeda & Kaplow, ANTITRUST ANALYSIS, 4th ed., 582-585 (Little, Brown & Co. 1988); *see also Policy and Rules Concerning Rates for Competitive Carrier Services*, Fourth Report & Order, Docket No. 79-252, 95 F.C.C.2d 554, 562-3 (1983).

15/ *See* Comments of U S West, at 11, filed in CC-IAD Docket No. 95-110 (December 11, 1995) ("U S West Data Collection Comments"); *see also* Comments of Ameritech, at 6 ("Ameritech Data Collection Comments").

16/ *See* Comments of ALTS, at 7-8, filed in CC-IAD Docket No. 95-110 (December 11, 1995) ("ALTS Comments").

B. The Proposed Data Collection Must Be Tailored To Minimize any Undue Reporting Burdens on New Entrants and Non-Dominant Service Providers.

The Commission must tailor its Data Collection to minimize undue reporting requirements on new entrants and non-dominant local exchange service providers. New entrants, competitive local exchange service providers, and wireless competitors should be exempt from burdensome data collection requirements.[17/] The reporting thresholds proposed in the Commission's Public Notice would improperly encompass both incumbent monopoly LECs and new entrants and competitive local exchange service providers with a tiny fraction of the LECs' market share.

New entrants should not be required to provide information that may divulge business strategies and other proprietary information.[18/] Incumbent LECs should be required to file revenue and other information called for by the Data Collection, at Schedule 3, and request proprietary treatment as appropriate. LEC objections to such a reporting requirement on proprietary grounds can easily be remedied by confidential treatment of data filed, such as the Commission's treatment of LEC-filed mandatory switching cost information systems ("SCIS").

17/ Comments of AT&T, at 2, filed in CC-IAD Docket No. 95-110 (December 11, 1995) ("AT&T Data Collection Comments"); Comments of NCTA ("NCTA Data Collection Comments"); Comments of Teleport Communications Group ("Teleport Data Collection Comments").

18/ *See* MCI Data Collection Comments; Teleport Data Collection Comments.

IV. THE COMMISSION MUST REJECT LEC FLEXIBLE PRICING PROPOSALS AS CONTRARY TO THE PUBLIC INTEREST.

Immediate increased pricing flexibility and streamlining of regulatory safeguards applicable to incumbent LECs will allow LECs to engage in anticompetitive conduct and stifle facilities-based competition. The Commission must reject LEC proposals to eliminate substantive cost review of controversial new services and rate restructures. LEC commenters would eviscerate any meaningful regulatory review by means of the new services test, the Part 69 waiver process, and price cap banding limitations. LEC proposals to consolidate price cap baskets and service category bands will result in anticompetitive cross-subsidization and will defeat a central purpose of the price cap system — deterrence of anticompetitive conduct by dominant LECs.

A. LEC Proposals To Change Existing Price Cap Safeguard Mechanisms Will Eviscerate Meaningful Regulatory Oversight of Controversial LEC Service Offerings.

A central theme of price cap regulation is to approximate market forces in order to effectuate a transition to competitive markets, while guarding against anticompetitive activity by imposing certain protections, such as the cost justification process, public notice periods for new services and the Part 69 waiver review process. The LECs would have the Commission eliminate most, if not all, meaningful review of their services and pricing. The Commission must reject these requests as contrary to the public interest.

LEC commenters propose that all new service offerings, except those mandated by the FCC (*e.g.* expanded interconnection and open network architecture ("ONA")), be presumed to be "Track 2" services as defined in the Notice — *i.e.* subject to reduced cost

justification requirements and notice periods.[19] The new service test is a buffer — and not a perfect one — against LEC anticompetitive pricing mechanisms. LECs are required to cost-justify new services to guard against cross-subsidization of new ventures subject to competition by improperly cost-shifting onto captive ratepayers. Absent such a safeguard, LECs will be free to engage in anticompetitive practices in introducing new services.

LEC proposals to shorten the notice periods for almost all new services and all service restructuring are also unjustified. Regulators and competitors need sufficient time to scrutinize unfamiliar and controversial new or restructured services introduced by LECs for potentially unjust and unreasonably discriminatory rates, terms or conditions. Furthermore, the LECs' contention that streamlining of notice periods is necessary to respond to market forces is unsupported.

Elimination of the Part 69 waiver process will peremptorily cut off public debate regarding controversial or unfamiliar new LEC service offerings, and will lead to unreasonably discriminatory tariff offerings. Rather than hobbling innovation, as the LECs suggest, the Part 69 waiver process supports the well-established principle that existing Commission access charge categories and rules are in the public interest and should not be waived absent good cause.

In its reply comments, Southwestern Bell attacks Comcast's effort to preserve the Part 69 waiver process, asserting that Comcast has "misinterpreted" the relationship

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19/ *See* Ameritech Comments, at 9-11; BellSouth Comments, at 6-10; GTE Comments, at 5-6; USTA Comments, at 6-11.

between the Part 69 access charge rules and the Part 61 price cap rules.[20] According to Southwestern Bell, Comcast's "call for greater emphasis on cost allocation is groundless" because price cap baskets and bands are entirely disassociated from the "antiquated Part 69 cost allocation rules", and the AT&T price cap plan never utilized cost allocation rules.[21]

Southwestern Bell could not be more wrong. The Commission's main purpose in establishing separate price cap baskets and service categories in both the AT&T and the LEC plans is to establish a structural defense against anticompetitive cost-shifting and cross-subsidization among different services.[22] When the Commission transitioned from rate-of-return regulation to price caps for both AT&T and the LECs, moreover, cost allocation was implicit in the Commission's decision to use AT&T's and the LECs' historical rates

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20/ Reply Comments of Southwestern Bell Telephone Company, at 11-12, filed in CC Docket No. 94-1 (January 10, 1996) (citing Comcast Comments, at 27-8) ("Southwestern Bell Reply Comments"). Comcast had argued that it is important to allocate appropriate access revenues and costs to the relevant access charge elements so that they are flowed through to the appropriate price cap basket and service category.

21/ Southwestern Bell Reply Comments, at 11-12.

22/ With regard to the LEC price cap plan, the Commission stated that "[s]ubdividing LEC services into baskets substantially curbs a carrier's pricing flexibility, as well as its ability to engage in unlawful cost shifting between broad groups of services." *See Policy and Rules Concerning Rates for Dominant* Carriers, Second Report and Order, CC Docket No. 87-313, 5 FCC Rcd 6786, 6811 (1990) ("*LEC Price Cap Order*"), Erratum, 5 FCC Rcd 7664 (Com. Car. Bur. 1990), *modified on recon.*, 6 FCC Rcd 2637 (1991) ("*LEC Reconsideration Order*"), *aff'd sub nom.*, *Nat'l Rural Telecom Ass'n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993). In deciding to establish several baskets and bands for AT&T's interexchange services, the Commission indicated that it would "minimize the possibility of cross-subsidization and predation, both to protect residential and small business customers, and to foster competition that benefits all ratepayers." *See Policy and Rules Concerning Rates for Dominant Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 87-313, 4 FCC Rcd 2873, 3052 (1989) ("*AT&T Price Cap Order*"), Erratum, 4 FCC Rcd 3379 (1989).

reported under the last rate-of-return period as the most reasonable basis to initialize the price cap indices.[23/]

Subjecting individual-case basis ("ICB") and contract tariffs to minimal review, as requested by the LECs, will permit unjustified and anticompetitive discrimination. The competitive necessity test provides an essential safeguard against such discrimination in ICB and contract pricing.[24/] The competitive necessity test requires a LEC to justify an ICB discount or price reduction by showing that a competitive alternative is generally available to customers of the discounted offering. Without a competitive necessity test, a LEC would thus be free to charge unreasonably discriminatory ICB prices and load the costs of the discount onto regulated ratepayers without any regulatory consequence.[25/]

B. The Commission Must Reject LEC Proposals To Increase Pricing Flexibility.

LEC commenters fail to provide any concrete evidence that increased pricing flexibility is necessary to respond to "market conditions." Indeed, allowing LECs to implement alternative pricing plans ("APPs") and volume and term discounts without sufficient cost justification and notice periods will enable incumbent LECs to engage in price squeezes to forestall facilities-based competition. Elimination of the lower service

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23/ *See LEC Price Cap Order*, 5 FCC Rcd at 6814 (the Commission concluded that "LEC interstate access rates, as they existed [under rate-of-return] on July 1, 1990 . . . , are the most reasonable basis from which to launch a system of price cap regulation."); *AT&T Price Cap Order*, 4 FCC Rcd at 3084 (the Commission held that "reliance on AT&T's existing [rate-of-return] rates is the most reasonable option for initially determining compliance with the price cap system.").

24/ *See* Comcast Comments, at 25.

25/ *See id.*

band index ("SBI") and expansion of zone density pricing will foster anticompetitive pricing schemes by incumbent LECs.

The Commission must reject LEC proposals to subject APPs and volume and term discounts to shortened notice periods and to allow them to remain in effect for extended periods of time. As the Commission correctly acknowledged in the long distance context, unmonitored APPs and volume and term discounts can facilitate cross-subsidization and predation.[26/]

Elimination of the lower SBI, as sought by the LECs, will facilitate predation and price squeezes to the detriment of competitors. Because price cap LECs possess market power, they retain the ability to charge below cost prices to exclude competitors.[27/]

LECs also propose to extend zone density pricing from transport rate elements to end office switching rate elements, originating and terminating carrier common line ("CCL") charges, and the residual interconnection charge ("RIC").[28/] LECs assert that, because costs associated with these access elements are related to traffic density, pricing of these access elements should be allowed to be higher in low density zones, and lower in high density zones. There is no empirical evidence to support this position.[29/] Traffic

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26/ *See Policy and Rules Concerning Rates for Dominant Carriers; Revisions to Price Cap Rules for AT&T*, 10 FCC Rcd 7854, 7860 (1995).

27/ *See* Comcast Comments, at 26-7.

28/ *See, e.g.*, GTE Comments, at 30-32.

29/ In its reply comments, PacBell opposes pricing of access and interconnection services at direct cost. Legal and economic principles, according to PacBell, dictate that interconnection should never be priced at direct cost "merely because competitors purchase it." *See* Reply Comments of Pacific Bell and Nevada Bell, at 19-20, filed in CC Docket No. 94-1 (January 10, 1996). This issue is not properly before the Commission in this

density should not be the litmus test for LEC downward pricing flexibility. LECs should not be allowed to engage in downward pricing flexibility with regard to these rate elements until actual facilities-based competition exists, and even then, on only a cost-justified basis.

C. The Commission Must Reject LEC Proposals To Consolidate Price Cap Baskets and Service Categories.

Consolidating price cap baskets and service categories as proposed by the LECs would allow anticompetitive cost-shifting and discriminatory pricing to go undetected. The purpose of having separate price cap baskets and service categories is to prevent cross-subsidization among different services. If disparate services are placed within the same basket, LECs will be able to subsidize competitive services by virtue of their being averaged in to the PCI with non-competitive services.[30/] Consolidation of service categories will also allow LECs to engage in cross-subsidization among competitive and non-competitive services without detection. This is especially the case while LECs at the same time advocate wholesale elimination of regulatory review of new services and the Part 69 waiver process.

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proceeding and should, therefore, be rejected. Nevertheless, it is unavailing for PacBell to assert that direct-cost pricing of interconnection would be an unconstitutional taking because owners would be forced to forgo the contribution of overheads that would have been earned by retailing the service to customers. PacBell's takings argument is groundless and has, in any event, been rejected by the California PUC. *See Order Instituting Rulemaking and Investigation on the Commission's Own Motion Into Competition for Local Exchange Service*, Decision 95-07-054, R.95-04-043, I.95-04-044, at 32-3 (released July 24, 1995) (the California PUC concludes that "there is no statutory requirement to guarantee a prescribed return to the LECs nor to assure that the LECs exactly recover their embedded costs from prior investment").

30/ *See* Comcast Comments, at 27.

V. THE COMMISSION MUST REJECT THE LECS' PROPOSED MARKET DEFINITION OF, AND TEST FOR, STREAMLINING.

LEC commenters advance a market definition and test for regulatory streamlining that would improperly mask the significance of LEC market share and discount the LEC anticompetitive threat. The LEC proposals are also contrary to Commission precedent under the *Competitive Carrier* and *Interexchange Competition* proceedings.

A. The LECs' Solipsistic Approach to Defining a Paradigm for Local Exchange Competition Would Guarantee Only the Perpetuation of LEC Monopoly Power.

The Commission must reject the LECs "addressability" approach to defining the local exchange market for purposes of determining competitiveness.[31/] As a consequence, the LEC proposal to receive streamlining on a market-by-market basis is also without merit. As evidenced by the Commission's *Competitive Carrier* and *Interexchange Competition* proceedings and contrary to LEC assertions, regulatory streamlining is not the *sine qua non* of pro-competitive telecommunications policy. Rather, a pro-competitive regulatory paradigm must first encourage new entry and stimulate facilities-based competition.[32/]

The "addressability" concept advanced by the LECs to define supply elasticity is a misnomer. The mere "potential or actual availability" of alternative sources of supply to

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31/ LECs assert that the market criteria for streamlining should provide that: (i) supply responsiveness depend on "addressability" — the potential or actual availability of alternative sources of supply in the market; (ii) demand responsiveness be based on a consolidated price cap basket and service category structure rather than the existing price cap service baskets and categories; and (iii) the relevant geographic market be based on contiguous serving wire centers grouped according to "addressability" into a "competitive footprint." *See, e.g.*, GTE Comments at 44-64; USTA Comments, at 38-51.

32/ *See* Comcast Comments, at 9-16.

competitors does not sufficiently predicate deregulation of dominant LECs. In addition, basing demand responsiveness on consolidated price cap baskets and service categories would blur separate and distinct product markets and thereby overstate demand elasticity among "consolidated" services. LEC proposals to base the relevant geographic market on a "competitive footprint" of contiguous serving wire centers[33/] unnecessarily reduces the relevant geographic market surveyed by ignoring a Regional Bell Operating Company's ("RBOC") local access and transport areas ("LATAs"), as well as RBOC-affiliated wireless carrier's Metropolitan Trading Areas ("MTAs").[34/]

Even if the LECs' proposed market definition were acceptable, the Commission must not grant streamlining on a market-specific basis. Adoption of this approach would be administratively unworkable and contrary to the public interest. In the long distance market, in contrast, the Commission has consistently streamlined dominant carriers on a service-specific basis only.[35/]

33/ *See, e.g.*, Ameritech Comments, at 29-31; GTE Comments, at 44-53, 67-70; Southwestern Bell Comments, at 10-11.

34/ *Cf. CMRS Interconnection and Resale Notice*, Second Notice of Proposed Rule Making, CC Docket No. 94-54, FCC 95-149, at ¶ 18 (released April 20, 1995) (defining relevant geographic market as including LATA and MTAs); *Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services*, Notice of Proposed Rule Making and Notice of Inquiry, CC Docket No. 94-54, 9 FCC Rcd 5408, 5438-9 (1994).

35/ *See Revisions to Price Cap Rules for AT&T Corp.*, Report and Order, CC Docket No. 93-197, 76 Rad. Reg. 2d (P&F) 1375 (1995); *Competition in Interstate Interexchange Marketplace*, Report and Order, CC Docket No. 90-132, 6 FCC Rcd 5880 (1991).

B. It Is Well-Settled That the Test for Streamlining Must Be Based, at a Minimum, on a Finding That the Carrier Does Not Possess Market Power in the Service To Be Streamlined.

LECs oppose consideration of market share in considering whether to grant streamlined status. The Commission must reject the LECs' proposed alternative test for streamlining as it will stifle facilities-based competition.[36/] As demonstrated in the Commission's *Competitive Carrier* and *Interexchange Competition* proceedings and contrary to LEC assertions, market share is the linchpin of a grant of streamlining relief. LECs exercise market power and, as such, streamlined treatment is unwarranted. A 25-percent benchmark for determining supply responsiveness is ill-defined. Only when there is facilities-based competition will LEC streamlining be justified. LEC proposals to receive streamlining on a customer-specific basis would invite discriminatory and anticompetitive practices.

VI. CONSIDERATION OF NON-DOMINANT STATUS FOR INCUMBENT LECS IS ENTIRELY PREMATURE

The Commission must reject LEC proposals to base non-dominance on a minimal threshold showing. The record demonstrates that any consideration of non-dominance for incumbent LECs is entirely out of the question.

36/ LEC commenters propose that a LEC demonstrate supply responsiveness by showing that 25 percent of its access users can choose from another provider. A LEC could show demand responsiveness by submitting evidence that customers regard a competitor's services as substitutable for LEC services and are willing to use the alternatives. In "small customer segments", such as single line switching and single line CCL for traffic originating and terminating at small customer locations, a LEC would support streamlining by showing that the state has allowed local competition, and at least one competitor has been certified and is operational. *See* Ameritech Comments, at 29-31; USTA Comments, at 38-51.

LEC proposals to base a finding of non-dominance on the same criteria they propose for streamlining would short-circuit *Competitive Carrier* precedent. Under *Competitive Carrier*, AT&T as the dominant carrier was subject to heightened, rather than streamlined, regulation. Only after a decade of oversight, loss of significant market share approximating 40 percent of the long distance market, and the ascendancy of three nationwide facilities-based rivals, did AT&T receive non-dominant treatment.[37/] LECs have failed to show why similar conditions establishing actual facilities-based competition should not prevail in the local exchange market before nondominant status is applied to incumbent LECs.

Granting LECs non-dominant treatment on a market-by-market basis will be administratively harmful and undesirable from a public policy perspective because of the ability of incumbent LECs to exercise market power over the public switched telephone network. As long as LECs retain market share in specific geographic markets or product markets, they will be able to leverage that market power into other "competitive" markets.[38/] The Commission, therefore, must decline to adopt the LECs' proposal to grant nondominance on a service-by-service basis.

VII. CONCLUSION

Regulatory relief for incumbent LECs now is unwarranted. The Commission must first analyze the competitive disposition of the local exchange market to ascertain the

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37/ *See Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order, FCC 95-247, at ¶¶ 67-72 (released October 23, 1995).

38/ *See Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263 (2d Cir. 1979).

appropriate scope of regulation of incumbent LECs as dominant carriers and to foster facilities-based competition and new entry by competitive local exchange service providers. Alteration of existing safeguards in the price cap plan will only further entrench LEC monopoly control over bottleneck facilities and forestall competitive delivery of alternative local exchange services.

Respectfully submitted,

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