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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185
	)	
Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers	)	CC Docket No. 94-54

REPLY COMMENTS

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COMCAST CORPORATION

Leonard J. Kennedy
Laura H. Phillips
Peter A. Batacan

Its Attorneys

DOW, LOHNES & ALBERTSON
A Professional Limited Liability Company
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036-6802
(202) 776-2000

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SUMMARY

Comcast Corporation ("Comcast") urges the Commission expeditiously to adopt its tentative conclusion that interim bill-and-keep interconnection between local exchange carriers ("LECs") and commercial mobile radio services ("CMRS") networks is in the public interest. A fusillade of opposition by the incumbent LECs ("ILECs") is as noisy as it is wrong, and should not deflect the Commission from its course.

The facts and the law fully support the Commission's tentative conclusion. First, the ILECs hold market power over the local exchange with which CMRS providers must interconnect in order to be a meaningful contributor to the "network of networks."

Second, current interconnection rates, the putative product of "negotiations," are neither mutual nor reciprocal nor just nor reasonable and cannot stand. CMRS providers are paying a thousand times or more the LECs' incremental costs for the right to interconnect; LECs are paying nothing in return, despite the mutuality of benefit to both networks and their users.

Third, the record evidence of incremental costs borne by ILECs for interconnection strongly indicates that bill-and-keep, at least for an interim period, would be a mutual, reciprocal, just and reasonable arrangement. The fact that traffic may be imbalanced between LECs and CMRS providers, at least at this time, is irrelevant in view of the fact that real interconnection costs are so low as to make tracking of traffic flows uneconomic and inefficient. (Moreover, a move to cost-based interconnection is likely to promote a greater traffic balance).

Fourth, the Commission has plenary jurisdiction over the matter of LEC-to-CMRS interconnection. The Omnibus Budget Reconciliation Act of 1993 vested the Commission

with exclusive authority over CMRS providers, and its amendments to Sections 2(b) and 332 of the Communications Act reinforce the Commission's jurisdiction to take the actions it tentatively proposed in the Notice. The Telecommunications Act of 1996 (the "TCA") preserves this exclusive grant of authority.

In addition to their unavailing attacks on the Commission's jurisdiction and on powerful record evidence of the actual incremental costs of LEC interconnection, the ILECs offer myriad other arguments against an interim bill-and-keep arrangement, none of which compel any modification of the Commission's tentative conclusion.

The fact of CMRS growth in recent years ignores the detrimental effects that unjust and unreasonable interconnection arrangements will have on the expansion of CMRS services to a broader public. Just because CMRS has been able to grow under current circumstances does not mean that existing policies promote its full potential or the Commission's policy goals of promoting competition.

LEC allegations that bill-and-keep constitutes a "subsidy" of wireless are plainly wrong. Moreover, to the extent that LECs suggest that current interconnection rates constitute a "subsidy" of universal service, they are in the wrong proceeding — the Commission will have completed a comprehensive review of existing and proposed universal service programs over the next 15 months, and this issue, if valid, belongs there.

LEC allegations that bill-and-keep would encourage "arbitrage" between interexchange carriers ("IXCs") who must pay the LECs access charges and CMRS providers who would allegedly receive "free" interconnection to the LEC are totally

unfounded, and present no evidence that the existing, substantial price spread between access charges and LEC-to-CMRS interconnection has promoted such activity.

The LECs fail to overcome the argument that bill-and-keep is the most administratively and economically efficient approach to pricing LEC-to-CMRS interconnection. They have failed to provide any meaningful alternative, and they have failed to provide any consistent, supportable analysis of other "unrecovered" costs.

An interim bill-and-keep rate is the only appropriate course while the Commission undertakes more detailed studies of the true costs associated with interconnection. If the Commission fails to establish an interim rate that prices interconnection at incremental cost, it will cede to the ILECs the ability to price interconnection to gouge. The Commission must start, literally, at zero, if it is to have any opportunity to move to a policy that prices LEC-to-CMRS interconnection at true incremental cost. Delay, deferral, or reversal of course will be an abdication of the Commission's commitment to promote aggressive wireless competition and broader public access to advanced technologies.

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To: The Commission

REPLY COMMENTS

Comcast Corporation ("Comcast"), by its attorneys, hereby submits its comments on the above-captioned Notice regarding interconnection between local exchange carriers ("LECs") and commercial mobile radio service ("CMRS") providers.[1/]

1/ *See Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers*, Notice of Proposed Rulemaking CC Docket Nos. 95-185 & 94-54 (released January 11, 1996) ("Notice"). By order of the Commission, these comments generally follow the Commission's "recommended format." Notice, at note 171.

I. INTRODUCTION

LEC commenters advance numerous procedural and substantive attacks on the Commission's proposed interim bill-and-keep solution to LEC-to-CMRS interconnection. These LEC comments do not provide a shred of evidence to contradict the conclusion that bill-and-keep affords the most administratively efficient and pro-competitive approach to LEC-to-CMRS interconnection. The incumbent LECs ("ILECs"), moreover, are in denial as to the central problem that has sparked this entire debate — ILEC bottleneck control over essential network facilities. Rather than providing any real solutions to this problem, the ILECs have resorted to voluminous and counterproductive doublespeak.

Contrary to the LECs' assertions, the Commission has both solid legal and policy authority to institute an interim bill-and-keep solution immediately to promote just, reasonable and nondiscriminatory interconnection between ILECs and CMRS providers. Comcast urges the Commission not to be deterred by LEC opposition and to establish the important reforms proposed in the Notice — just and reasonable physical interconnection of CMRS providers to monopoly ILEC networks, and nondiscriminatory availability to CMRS providers of efficiently priced LEC interconnection — by adoption of a uniform, bill-and-keep policy.[2/]

2/ *See* Notice, at ¶¶ 8-14.

II. BILL-AND-KEEP PROVIDES THE BEST SOLUTION TO PROMOTE EFFICIENT CMRS INTERCONNECTION TO LEC NETWORKS AND TO SUPPRESS LEC BOTTLENECK CONTROL OVER ESSENTIAL NETWORK FACILITIES.

In stubbornly opposing the Commission's tentative proposal of a bill-and-keep interconnection regime, the LEC commenters fail to advance any meaningful challenge. Furthermore, the only apparent alternative to adoption of bill-and-keep proposed by the LECs is an administratively burdensome cost inquiry to set a LEC-to-CMRS interconnection rate. Such an outcome is wasteful and unnecessary, especially given that the Commission firmly possesses both the legal and policy grounds to adopt a bill-and-keep interconnection plan for LEC-to-CMRS interconnection at the outset.

A. Abandoning This Proceeding in Mid-Course in Favor of the *Status Quo Ante*, As Advocated by the LECs, Would Have Ruinous Effects on CMRS Competition and Would Pervert the Statutory Framework Established by Congress.

The pro-competitive reforms promised by bill-and-keep should not be abandoned by the Commission. The ILEC comments create a gross caricature of the current state of LEC-to-CMRS interconnection in order to mask their abusive bottleneck control over the lion's share of the nation's local communications infrastructure. The Commission should not be distracted by these inaccurate portrayals. Existing LEC-to-CMRS interconnection arrangements, charging CMRS providers termination rates that are over a thousand percent above LEC incremental costs,[3/] are unjust and unreasonable. To redress the current illegalities in LEC interconnection arrangements, at a minimum, bill-and-keep must be implemented.[4/]

1. The ILECs' Exercise of Market Power Control Over More Than 90 Percent of the Local Exchange Network Poses a Serious and Continuing Threat to the Efficient Access by CMRS Providers to Essential ILEC Facilities.

As the Commission has correctly identified in the Notice, the central problem with the current state of LEC-to-CMRS interconnection arrangements is that "LECs . . . unquestionably still possess substantial market power in the provision of local

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3/ *See* notes 20-21 *infra*.

4/ An interim bill-and-keep solution is "incentive compatible" because it will encourage the LEC, as "the party with possession of the cost data[,] to produce it quickly and bring [interconnection] negotiations to a conclusion. *See* Statement of Dr. Gerald W. Brock, at 7-8, attached hereto as Exhibit A (March 25, 1996) ("Brock Statement").

telecommunications services."[5/] Instituting a reciprocal bill-and-keep interconnection policy will help prevent LECs from abusing this market power to the detriment of CMRS competitors.

It is a well-accepted economic principle, as the Commission has acknowledged, that "a firm controlling bottleneck facilities has the ability to impede access of its competitors to those facilities."[6/] ILECs currently possess such bottleneck control to impede access by CMRS competitors to essential ILEC facilities. According to one industry expert, "[t]o build facilities that are in any way parallel to the Bell companies is a $300-$500 billion effort".[7/] Each of the BOCs is valued in the stock market at well above $10 billion, and GTE's market value now exceeds $40 billion.[8/]

According to one economic study, it will be at least five years before a majority of U.S. residents have an alternative to current LEC offerings. During the transition to competitive markets, BOCs will control six regulatory "choke points" — local number portability, network unbundling, network interconnection, local exchange service resale, reciprocal compensation for terminating traffic, and universal service support mechanism

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5/ *See* Notice, at ¶ 12.

6/ *See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorization Therefor*, CC Docket No. 79-252, 85 F.C.C.2d 1, 21 (1980) ("*Competitive Carrier I*").

7/ Howard R. Gold, *Brave New AT&T*, BARRON'S, March 11, 1996, at 33, 36 (quoting Brian Thompson, Chairman and CEO, LCI International).

8/ *See id.*

reform — each of which could forestall local exchange service competition.[9/] The study concludes that local competition is "effectively nonexistent when compared with interexchange competition."[10/]

The ILECs provide no evidence to rebut the conclusion that they retain substantial market power to suppress competitive access by CMRS providers to ILEC networks. PacBell unpersuasively relies on an allegedly "large and growing" supply of alternative local switching facilities to conclude that LEC market power is quickly "eroding."[11/] A study by the Commission's Industry Analysis Division, however, showed that, as of mid-1995, Tier 1 LECs still controlled "97% of access revenues—a level roughly comparable to the Bell System's share of toll revenues in 1981."[12/] The ILECs thus still possess an enormous competitive advantage in their monopoly control over essential local loop facilities.

Several ILECs contend that the growth of the CMRS marketplace obviates any need for continuing with this proceeding.[13/] The ILECs' emphasis on the "growth" of CMRS

9/ *See* Economic Strategy Institute ("ESI") study, *Ensuring Competition in the Local Exchange summarized in* Craig D. Dingwall, *The Last Mile: A Race for Local Telecommunications Policy*, 48 Fed. Com. L.J. 105, 111 nn.29-31 (1995) (citing *Study Sees Ongoing Barriers to Local Competition*, Telecom. Reps. July 17, 1995, at 14).

10/ *See id.*

11/ *See* Comments of Pacific Bell, Pacific Bell Mobile Services and Nevada Bell (collectively "PacBell"), filed in CC Docket No. 95-185, on March 4, 1996, at 40-42 ("PacBell Comments").

12/ *See Common Carrier Competition; Spring 1995*, at 5 (Industry Analysis Div. released May 31, 1995); *attached to FCC Releases Common Carrier Competition Report*, News Release, Rep. No. CC 95-31 (released May 31, 1995) ("*1995 Competition Report*").

13/ *See* Comments of Ameritech, filed in CC Docket No. 95-185, on March 4, 1996, at 5-6 ("Ameritech Comments"); Comments of Bell Atlantic, at 10 ("Bell Atlantic

services such as cellular telephony provides no support for their conclusion that CMRS is a competitive replacement for landline local exchange service. Bell Atlantic's reliance on a Commission finding that cellular penetration is expected to reach 20 percent by the year 2000 does not support its implied conclusion that cellular telephony is a replacement for landline local exchange service.[14/] By comparison, landline telephone penetration hovered at 94 percent on a nationwide basis, as of July, 1995.[15/] Bell Atlantic and PacBell also suggest that existing cellular retail rates are high in comparison to landline, flat-rated local service, demonstrating that bill-and-keep reform is unnecessary.[16/] As the Commission has acknowledged, however, sound economic principles dictate that the cellular rate levels cannot fairly be measured by the same standard as landline telephone rate levels because:

> [i]n analyzing the profits in parts of the CMRS industry such as cellular, paging and SMRs, the appropriate standard is for a growth industry rather than for a mature industry. There are at least three important differences between growth and mature industries. First, *growth industries tend to have higher profits.*[] Second, growth industries need cash from high profits to fund investment in additional plant and

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Comments"); Comments of Cincinnati Bell Telephone, at 6-7 ("Cincinnati Bell Comments"); Comments of United States Telephone Association, at 13 ("USTA Comments"); Comments of U S West, at 4 ("U S West Comments").

14/ *See* Bell Atlantic Comments, at 10 (citing *Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, First Report, FCC 95-317 (released August 18, 1995) ("*Annual Assessment of CMRS Competition*")).

15/ *See* Alexander Belinfante, *Telephone Subscribership in the United States* (Industry Analysis Div., December 1995), *attached to* News Release, *FCC Releases New Telephone Subscribership Report; Unemployed Adults Less Likely to Have Telephone Service* (released January 23, 1996); *see also* Notice, at ¶ 9 n.6 (citing *Monitoring Report*, CC Docket No. 87-339, Table 1.1 (Industry Analysis Div., May 1995) ("LEC networks [] reach, on a nationwide basis, 93.8% of all households . . . .")).

16/ *See* Bell Atlantic Comments, at 11; PacBell Comments, at 29.

> equipment.[] Third, the profits of growth industries typically follow a pattern in which firms incur start-up losses, followed by rising profitability, which is followed by declining profitability as entry by newcomers becomes relatively imminent, and a further decline when such entry finally occurs.[17/]

Furthermore, these ILECs' suggestions that cellular rates are disproportionately high fail to take into account the as-yet unrealized competitive dynamic between personal communications services ("PCS") and cellular. Current cellular markets are competitive, but not fully competitive, nor even close to approximating a substitute for landline LEC service. It is widely expected that cellular rates will decline with the expansion of PCS competition.[18/]

Because LECs continue to exert market power control over essential local loop facilities, Commission action is vital. Just as the Commission's pro-competitive interconnection and resale policies in the long distance context resulted in the dismantling of AT&T's monopoly in long distance services and the evolution of thriving, facilities-based competition, decisive and expeditious correction of anticompetitive abuses in LEC interconnection will promote wireless competition.[19/]

17/ *See Annual Assessment of CMRS Competition*, at ¶ 78 (footnotes omitted) (emphasis added).

18/ *See* Testimony of Anne K. Bingaman and Regina Keeney, Before the Committee on Commerce, *Competition in the Cellular Telephone Service Industry*, 104th Cong., 1st Sess., October 12, 1995.

19/ *See* Cox Enterprises, Inc., *Back to the Future: The FCC and Local Exchange Competition into the Next Century*, filed as an *ex parte*, in CC Docket No. 95-185, on January 31, 1996.

2. The Unjust and Unreasonable Rates, Terms and Conditions in Existing LEC-to-CMRS Interconnection Arrangements Are in Need of Immediate and Swift Reform.

The Commission must reject the contention of ILEC commenters that reform of ILEC-to-CMRS interconnection is unnecessary because existing arrangements are just, reasonable and nondiscriminatory. Quite the opposite is true. Existing ILEC-to-CMRS interconnection arrangements are patently unlawful, and their continued enforcement will have anticompetitive repercussions for the CMRS industry and the public.

As demonstrated in Comcast's initial comments, ILEC interconnection rates recover over a thousand percent above the average incremental cost of $0.002 per minute of providing interconnection.[20/] At the highest interconnection rates, ILECs are realizing over seven-thousand percent of their average incremental cost.[21/] These huge profits evidence that ILECs are ready, willing and able to raise prices to unlawful levels to restrict competitor access to their essential local facilities.

Existing ILEC interconnection practices at the state level also evidence market power abuses. The experience of the Illinois Commerce Commission ("ICC") directly contradicts the claim made by Ameritech in its comments that "Ameritech continues to fulfill principles of mutual compensation in its CMRS interconnection arrangements."[22/] The ICC held, in rejecting Illinois Bell's proposal to use its existing switched access rates as

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20/ *See* Comments of Comcast Corporation, filed in CC Docket No. 95-185, on March 4, 1996, at nn.8-10, 21 ("Comcast Comments").

21/ *See id.* at n.10.

22/ *See* Ameritech Comments, at 4.

a basis for reciprocal compensation, that it "effectively would preclude new entrants from providing essential elements of exchange service in a financially viable manner."[23/]

ILECs have also violated the principle, established in the Commission's existing *LEC-to-Cellular Interconnection Order*, that delay in negotiating interconnection arrangements is a breach of good-faith.[24/] Although PacBell relies in its comments upon a self-described "model contract" for interconnection tariffed with the *Open Access and Network Architecture Development* proceeding before the California Public Utilities Commission ("California PUC"), PacBell fails to mention its dilatory tactics in refusing to provide any cost support to justify the rates in that contract in a timely manner.[25/] In particular, the California Telecommunications Coalition, in opposition to motions for extension of time to file cost support filed by PacBell and GTE California, Inc. ("GTEC"), states that:

> The LECS have *established a pattern of disregard* for the Commission's schedule in this case. For instance, Pacific and GTEC requested additional time for the cost

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23/ *See Illinois Bell Tel. Co.: Proposed Introduction of a Trial of Ameritech's Customer first Plan in Illinois*, Order Case Nos. 94-0096 *et al.*, at 96-7 (Illinois Commerce Comm'n, released April 7, 1995). ICC staff also recommended that the rates Illinois Bell should have charged to competing carriers for termination of traffic on its network are $0.0075 per minute of use for tandem switched termination and $0.005 per minute of use for end office termination. *See id.*, at 85-6.

24/ *See The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, Declaratory Ruling, 2 FCC Rcd 2910, 2916 (1987) ("*LEC-to-Cellular Interconnection Order*").

25/ *See* PacBell Comments, at 27-8 (citing *Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks*, R.93-04-003, I.93-04-002, Decision 95-12-016 (California PUC, released December 6, 1995) ("*Open Access and Network Architecture Development*").

> studies that were due on December 29, 1995. On January 29, 1996, one month after their purported completion, GTEC submitted significant revisions of its Round I studies. Both LECs now seek additional time for — and, indeed, indefinite deferral of some of — the January 31 cost studies. In addition, *both LECs have delayed in providing workpapers, forcing the other parties to ferret out central information piecemeal through requests. The pattern is obvious. The LECs are clearly benefited by delay and are taking every opportunity to cause delay* despite the Commission's aggressive schedule for [the *Open Access and Network Architecture Development* proceeding].[26/]

PacBell's comments merely state that the California PUC "has not yet addressed" its proposed model tariff in the *Open Access and Network Architecture Development* proceeding.

GTE also emphasizes in its comments that it offers basic interconnection arrangements to all CMRS providers "[i]n keeping with good faith negotiations."[27/] GTE further notes that "during the negotiation process, the provisioning of basic interconnection is not delayed while negotiations are being conducted."[28/] GTE's conduct before the California PUC in purposefully hindering the development of cost support materials in the *Open Access and Network Architecture Development* proceeding flatly contradicts its representations to the Commission in its comments. In particular, the California PUC's own Division of Ratepayer Advocates ("DRA") found that GTEC's portrayal of the DRA's opposition to GTEC's request for an extension of time to file cost support materials "to be

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26/ *See* Opposition of the California Telecommunications Coalition to LEC Request for Extension of Time To Submit Commission-Ordered Cost Studies, at 6-7, *submitted in* Letter from Glenn A. Stover, Senior Attorney, AT&T to Wesley Franklin, Executive Director, California Public Utilities Commission, filed on January 30, 1996 in *Open Access and Network Architecture Development* proceeding.

27/ *See* Comments of GTE Service Corporation, filed in CC Docket No. 95-185, on March 4, 1996, at 17 ("GTE Comments").

28/ *See* GTE Comments, at n.19.

not only a misrepresentation but an obstacle to agreement."[29/] Similarly, in the California PUC's *Local Competition Proceeding*, GTEC has advocated deferral of consideration of wireless interconnection issues before the California PUC into "separate proceeeding[s]" and "workshops and hearings."[30/]

Repeatedly, moreover, Bell Atlantic has failed to negotiate in good faith and provide suitable interconnection arrangements to Metrophone, a cellular subsidiary of Comcast Cellular Communications, Inc. As demonstrated in the attached affidavit of one of Metrophone's corporate engineers, in response to Metrophone's offers to negotiate the terms and conditions of these contracts Bell Atlantic engaged in dilatory tactics that delayed successful negotiations for some 48 months.[31/] Metrophone attempted to vary the terms of its interconnection arrangement with Bell Atlantic on several occasions, but met with little success. In addition, Bell Atlantic has offered the same terms and conditions of interconnection no matter where Metrophone requested interconnection to Bell Atlantic's network.[32/] Bell Atlantic's "take-it-or-leave-it" negotiating position resulted in Metrophone

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29/ *See* Letter from Ira Kalinsky, Staff Counsel, Division of Ratepayer Advocates, California PUC, to Hon. Jacqueline A. Reed, Hon. Kirk McKenzie, California PUC, filed in *Open Access and Network Architecture Development* proceeding, on January 29, 1996.

30/ *See* Reply Brief of AT&T Wireless Services, Inc., Regarding the Role of Wireless Services in Local Service Competition, at 3-4, filed in on January 25, 1996 in *Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service*, R.95-04-043, I.95-04-044, Decision 95-12-057 (California PUC, released December 20, 1995) ("*California PUC Local Competition Order*").

31/ *See* Affidavit of Ray Dombroski, attached hereto as Exhibit B ("Dombroski Affidavit").

32/ On one occasion, Metrophone requested interconnection at Bell Atlantic's Fort Washington, Pennsylvania tandem switch but was granted only limited access to this

agreeing to terms and conditions of interconnection that do not match its interconnection needs. In the end, these negotiations did not vary the terms of the interconnection agreement from those found in the access tariff — Bell Atlantic's starting position.[33/]

ILEC claims that no interconnection complaints have been filed by CMRS providers against ILECs are factually incorrect and do not support the proposition that existing ILEC interconnection arrangements are reasonable.[34/] While interconnection complaints have been filed by cellular carriers against ILECs,[35/] the jurisdictional split of ILEC-to-cellular interconnection between the states and the Commission is the real reason for the dearth of interconnection complaints against ILECs filed with the Commission by CMRS providers. Prior to the Budget Act, states possessed sole jurisdiction over "intrastate" ILEC rates and the Commission had jurisdiction over interstate rates. As some of the ILECs admit in their comments, moreover, 80 to 90 percent of CMRS traffic completed on ILEC networks was properly classifiable as "intrastate" prior to the Budget Act's federalization of all ILEC-to-

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facility. Bell Atlantic limited the number of NXX codes that could be routed through the switch even though interconnection agreements generally allow NXX codes to be routed through a tandem on a LATA-wide basis. *See* Dombroski Affidavit, Exhibit B.

33/ *See id.*

34/ *See* Ameritech Comments, at 3-5; Bell Atlantic Comments, at 9-11; PacBell Comments, at 26-29; U S West Comments, at 1-24; Comments of NYNEX, at 13-15 ("NYNEX Comments").

35/ *See* Cybertel Cellular Tel. Co. v. Southwestern Bell Tel. Co., Formal Complaint, File No. E-89-136, filed on March 16, 1989, *complaint withdrawn and proceeding terminated*, *Cybertel Cellular Tel. Co. v. Southwestern Bell Tel. Co.*, DA 91-179 (Enforcement Div., released July 16, 1991).

CMRS interconnection traffic.[36/] Thus, the majority of interconnection traffic was outside of the scope of the Commission's complaint processes prior to the Budget Act's enactment.[37/]

In sum, preserving the *status quo ante* of existing ILEC-to-CMRS interconnection arrangements would, contrary to LEC misrepresentations, perpetuate unlawful LEC interconnection rates. Such a result would unjustly reward ILECs for their continued pattern of bad-faith negotiations while inhibiting CMRS competitor access to ILEC monopoly networks.

3. The Commission Must Act Expeditiously To Implement Interim Bill-and-Keep Interconnection.

Several LECs argue that continuation of this proceeding is prohibited by the Telecommunications Act of 1996 ("TCA").[38/] According to these LECs, interconnection issues must be resolved in the larger context of the TCA implementation proceeding. The TCA does not limit the Commission's ample legal and policy authority to adopt a uniform bill-and-keep interconnection policy in this proceeding.

Contrary to the LECs' contentions, the interconnection negotiation process delineated in Sections 251 and 252 of the TCA is not mandatory with respect to CMRS.

36/ *See, e.g.*, Bell Atlantic Comments, at 9; PacBell Comments, at 31.

37/ *See Indianapolis Tel. Co. v. Indiana Bell Tel. Co.*, 1 FCC Rcd 228 (Com. Car. Bur. 1986), *aff'd* 2 FCC Rcd 2893 (1987).

38/ *See, e.g.*, Bell Atlantic Comments, at 3-6, 14-5; BellSouth Comments, at 10-16; GTE Comments, at 6-12; Comments of the National Telephone Cooperative Association, at 3-8 ("NTCA Comments"); NYNEX Comments, at 3-7; PacBell Comments, at 1-5; Comments of SBC Communications, Inc., at 6-9 ("SBC Comments"); U S West Comments, at 53-56; USTA Comments, at 11-14, 24-5.

The Omnibus Budget Act Reconciliation Act of 1993 ("Budget Act")'s amendments to Sections 2(b) and 332 of the Act established a comprehensive framework for CMRS interconnection. Moreover, as demonstrated more fully in Subsection II(C)(3) below, Section 251(i) of the TCA explicitly provides that the powers vested in the Commission under the TCA are *in addition to, and do not limit*, existing authority prior to the TCA's enactment.

Deferring establishment of a pro-competitive interconnection policy for the CMRS industry for an omnibus proceeding encompassing an array of telecommunications carriers is neither legally mandated nor sound policy. The Budget Act established CMRS as a specific class of common carrier that would be subject to competitive assessments and regulatory forbearance, as well as be free of state regulation. The Budget Act applied no similar legal distinctions to other common carriers. Furthermore, the Commission has had the benefit of two previous notices to develop a complete record on CMRS interconnection issues.

Unlike other common carriers, moreover, CMRS providers have invested billions of dollars, as the LECs are quick to point out, in the auctions process and developing state-of-the-art cellular and PCS infrastructure. As the Notice correctly recognizes, only "*[i]n the absence of market power* or other distortions, [may] efficient forms of interconnection . . . develop through private negotiation."[39/] Yet, the LECs would move CMRS providers to the back of the line to wait for reasonable interconnection to LEC network facilities.

39/ *See* Notice, at ¶ 11 (emphasis added).

Requiring CMRS providers to engage in one-sided negotiations with dominant ILECs with market power makes no policy sense whatsoever.

B. Contrary to the LEC Comments, Bill-and-Keep Provides the Most Administratively and Economically Efficient Approach to Pricing LEC-to-CMRS Interconnection.

The LEC opponents fail to provide any substantive evidence to contradict the Commission's tentative finding that bill-and-keep will provide the most administratively and economically efficient approach to LEC-to-CMRS interconnection pricing. LEC commenters complain that bill-and-keep would prevent them from recovering their full network costs, but at the same time, fail to provide any evidence of what those costs are or why the average incremental cost study submitted by Comcast is not otherwise sufficient. Nor do these LECs face up to the only possible alternative to bill-and-keep — administratively burdensome costing inquiries to set and readjust specific interconnection rates for LEC interconnection to CMRS providers.

1. Demonstrated LEC Costs Fully Justify Adoption of Interim Bill-and-Keep Interconnection Pricing.

Several LECs argue that bill-and-keep is not justified because they incur costs in addition to average incremental cost in providing interconnection to CMRS providers that are well above zero.[40/] According to these LECs, moreover, the conclusion in the public engineering study relied upon by Comcast that average incremental cost of interconnection is equal to $.002 per minute is too low. The Commission must reject these LEC arguments

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40/ *See* Bell Atlantic Comments, at 6-8, and Statement of Robert W. Crandall on Interconnection Policies for CMRS; GTE Comments, at 38, Attachment A; NYNEX Comments, at 15; PacBell Comments, at 34-36, 80; USTA comments, at 24, and Jeffrey H. Rohlfs, Harry M. Shooshan III, Calvin S. Monson, *Bill-and-Keep: A Bad Solution to a Non-Problem*, Strategic Policy Research (March 4, 1996) ("Strategic Policy Research").

to the extent that they are entirely without merit and offer no coherent alternative other than administratively burdensome and ongoing costing inquiries.

As Comcast indicated in its comments, a bill-and-keep model is economically efficient if: (i) traffic flow is roughly balanced in either direction;[41] *or* (ii) actual costs of terminating traffic are low in relation to the transaction costs of measuring and charging for terminating traffic.[42] Contrary to the LECs' assertions, the comprehensive public

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41/ Several LECs argue alternatively that bill-and-keep is not justified because LEC-to-CMRS interconnection traffic is imbalanced. According to these LECs, approximately 80 percent of their interconnection traffic consists of incoming calls originated by mobile carriers. *See* Frontier Comments, at 20 (80 percent mobile-to-land); NYNEX Comments, at 32 (86 percent mobile-to-land); PacBell Comments, at 29 (83 percent mobile-to-land); SBC Comments, at 12 (78.67 percent mobile-to-land). The LEC traffic numbers are not representative because they are limited only to overall traffic patterns. Because the principal costs of terminating traffic are capacity costs, hourly distribution will determine costs of providing terminating interconnection. *See* Charles River Associates, *Economic Issues in the Choice of Compensation Arrangements for Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, at 12-14 ("Charles River Study"), attached to comments of Cellular Telecommunications Industry Association, filed in CC Docket No. 95-185, on March 4, 1996. Terminating traffic delivered outside the busy hour will have little effect on needed capacity and therefore little effect on cost. Thus, the relevant cost measure is the balance in amount of traffic delivered to each provider during its busy hour, rather than the balance of overall traffic. There is evidence that the cellular system busy hour and LEC busy hour do not coincide. Charles River Study, at 14-20. The LEC traffic measures are defective to the extent that they do not take this into account. With respect to PCS, moreover, there is some evidence that LEC-to-PCS traffic will be balanced, thereby justifying bill-and-keep in the first instance. *See* Joint Initial Comments of Sprint Spectrum and American Personal Communications, at 21, filed in CC Docket No. 95-185, on March 4, 1996.

42/ *See* Dr. Gerald W. Brock, *Interconnection and Mutual Compensation With Partial Competition*, attached to Comments of Comcast Corporation, Appendix, *in* CC Docket No. 94-54, at 24 ("Brock Interconnection Paper"); Dr. Gerald W. Brock, *Incremental Cost of Local Usage*, filed on behalf of Cox Enterprises, Inc., in CC Docket No. 94-54 on March 16, 1995, at 2 ("Brock Incremental Cost Paper").

engineering study submitted by Comcast demonstrates that the average incremental cost of LEC interconnection, at $0.002 per minute, is very nearly zero.[43/]

The LECs attack the average incremental cost figure of $0.002 arrived at by the Incremental Cost Task Force Study on a number of fronts. But it is irrefutable that two ILECs, PacBell and GTE, as well as the California PUC, were members of the Incremental Cost Task Force.[44/] Furthermore, a separate public engineering study conducted by another ILEC, New England Telephone, for the Massachusetts Public Utilities Commission reached the same conclusion as the Incremental Cost Task Force Study that the incremental cost of local usage served by electronic switches was $0.002 per minute.[45/]

The ILECs disagree among themselves as to what the "correct" incremental cost of LEC interconnection is. U S West contends that the Incremental Cost Task Force Study

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43/ The most comprehensive public engineering study of incremental cost of interconnection was done by the Incremental Cost Task Force with members from GTE, Pacific Bell, the California Public Utilities Commission, and the RAND Corporation. *See* Bridger Mitchell, INCREMENTAL COSTS OF TELEPHONE ACCESS AND LOCAL USE (Santa Monica, Calif: The Rand Corporation, 1990); *reprinted in* William Pollard, ed., MARGINAL COST TECHNIQUES FOR TELEPHONE SERVICES: SYMPOSIUM PROCEEDINGS, NRRI 91-6, (Columbus, Ohio: National Regulatory Research Institute, 1991) ("Incremental Cost Task Force Study"); *summarized in* Brock Incremental Cost Paper, at 3-6.

44/ PacBell unpersuasively attempts to explain away its membership on the Incremental Cost Task Force by characterizing the Task Force study as outdated. *See* PacBell Comments, at 55-6. GTE does not even try to explain the apparent inconsistency between its current critique of the Incremental Cost Task Force's average incremental cost figures and its membership on the Incremental Task Force. PacBell and GTE do not provide any substantive proof to contradict the comprehensive nature of the Incremental Cost Task Force Study. *See* note 43 *supra.*

45/ *See* Brock Incremental Cost Paper, at note 4 (citing Lewis J. Perl and Jonathan Falk, *The Use of Econometric Analysis in Estimating Marginal Cost*, in Pollard, MARGINAL COST TECHNIQUES).