

Original

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Price Cap Performance Review)
for Local Exchange Carriers)

CC Docket No. 94-1

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Motion to Accept Reply to Opposition and
Reply to Opposition

AD HOC TELECOMMUNICATIONS
USERS COMMITTEE

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Summary

The Ad Hoc Telecommunications Users Committee hereby moves for acceptance of the instant Reply to the Opposition filed on March 21, 1996, by the United States Telephone Association ("USTA"). Ad Hoc was never served with USTA's Opposition, which may explain why the copy of the Opposition on file at the Commission did not contain a certificate of service.

USTA's Opposition set forth USTA's reasons for not producing certain information that Ad Hoc has been requesting since January, 1996, pursuant to Paragraphs 15 and 148 of the Fourth Further Notice of Proposed Rule Making ("FFNPRM") in this docket. Because Ad Hoc requires that information to replicate the results of the studies on which USTA's comments and reply comments rely, Ad Hoc's requests are squarely within the bounds of permitted discovery under the FFNPRM.

Despite the legitimacy of Ad Hoc's requests, USTA has doggedly stonewalled, refusing to produce all of the information or producing it in a manner that did not facilitate replication of USTA's results. The instant Reply demonstrates with specificity how USTA's responses to date are inadequate and why Ad Hoc's motion to compel USTA to produce the requested information should be granted.

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**Before the
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Washington, D.C. 20554**

In the Matter of)
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Price Cap Performance Review) CC Docket No. 94-1
for Local Exchange Carriers)

**Motion to Accept Reply to Opposition and
Reply to Opposition**

The Ad Hoc Telecommunications Users Committee (Ad Hoc) hereby moves for acceptance of the instant pleading and, assuming such acceptance, replies to the "Opposition of United States Telephone Association [USTA] to Ad Hoc's Telecommunications' Motion to Compel Production of Documents, Or, In the Alternative, To Strike," filed March 21, 1996 ("USTA Opposition").

Introduction and Motion to Accept Reply

The dispute underlying this pleading has been brewing for months. On January 30, 1996, Ad Hoc requested that USTA produce six categories of information that USTA should have in its possession and that Ad Hoc required to replicate the results of studies USTA submitted in support of its Comments filed January 16, 1996.¹ USTA responded to Ad Hoc's requests on February 8 and

¹ The information relates to the study entitled "Total Factor Productivity Methods for Local Exchange Carrier Price Cap Plans" (Revised TFP Study), which USTA submitted in support of its Comments filed January 16, 1996 (USTA Comments) and its Reply Comments filed March 1, 1996 (USTA Reply).

23, but the information it provided did not enable Ad Hoc to replicate the results of USTA's studies, as contemplated by Paragraphs 15 and 148 of the Fourth Further Notice of Proposed Rulemaking in this proceeding.²

In a further attempt to obtain the required data, on March 13, 1996, Ad Hoc filed a Motion to Compel Production of Documents, Or, in the Alternative, To Strike. The Motion sought an order from the Commission compelling USTA to produce information previously requested by Ad Hoc in the form Ad Hoc has requested. If USTA failed to comply fully with the order, Ad Hoc requested that USTA's Comments and Reply Comments be stricken to the extent that they relied on the Revised TFP Study, the underlying data for which was being withheld.

USTA filed its Opposition to Ad Hoc's Motion to Compel on March 23, 1996, but never served Ad Hoc, either directly, or through Ad Hoc's counsel. Ad Hoc did not learn that USTA had opposed the Motion to Compel until it reviewed the docket for this proceeding at the Commission. Upon such review, Ad Hoc learned that USTA had apparently not included a certificate of service with its Opposition, and had not even indicated on its cover letter that it was serving Ad Hoc. See USTA Opposition

Because Ad Hoc was never served with USTA's Opposition, it was denied the ability to reply to that pleading in a timely manner. Accordingly, Ad Hoc moves for acceptance of the instant Reply to Opposition. Acceptance of the

² FCC 95-406 (released September 27, 1995) ("FFNPRM").

Reply is warranted by the importance of the issues raised herein and in this proceeding generally.

USTA's should not be the last word heard on these issues. As noted below, USTA is obfuscating and is hampering Ad Hoc's ability to verify and replicate USTA's studies in the manner explicitly permitted by the FFNPRM. Unless Ad Hoc is given the data it requires in a format it can use, USTA's Comments and Reply Comments should not be permitted to rely on studies based on such data.

Reply to Opposition

Set forth below are Ad Hoc's rejoinders to USTA's responses to Ad Hoc's individual information requests, as contained in USTA's Opposition. As shown below, USTA's responses do not fully address or resolve Ad Hoc's concerns, and in many instances, misconstrue the issues raised by Ad Hoc.

The information presented below responds to USTA's arguments set forth on pages 6 - 8 of USTA's Opposition and is organized in a corresponding manner.

A. Discrepancies in Data:

1. *Materials/Rents/Services Expense*

USTA Opposition:

USTA claims that the discrepancies cited by Ad Hoc "are entirely due to the fact that the GTE figures utilized in calculating the TFP Review Plan data include the Contel properties, while the GTE figures underlying the Table 8 results,

provided on February 23rd, do not include Contel." USTA notes that Ad Hoc provided no other (non-GTE) example of data differences.

Ad Hoc Reply:

The Kravtin Affidavit submitted with Ad Hoc's March 13 Motion to Compel clearly noted that the examples of data differences provided were illustrative only. Kravtin Affidavit, Para. 15. Indeed, there are a number of non-GTE examples of inconsistent data. Thus, contrary to USTA's assertion, we cannot dismiss the data discrepancies as being solely related to the treatment of Contel properties, and USTA's response fails to provide a satisfactory explanation for the cited discrepancies. The following are examples of non-GTE related discrepancies in the data:

Southwestern Bell - Wages and Salaries

<u>Year</u>	<u>LECMRS.WK3</u>	<u>TFP Review Plan</u>	<u>Difference</u>
1988	\$1,855,975,373	\$1,824,067,000	\$31,908,373
1989	\$1,888,306,637	\$1,826,661,000	\$61,645,637
1990	\$1,994,701,828	\$1,946,823,000	\$47,878,828
1991	\$1,932,285,738	\$1,867,233,000	\$65,052,738
1992	\$1,780,909,903	\$1,734,728,000	\$46,181,903

Southwestern Bell - Fringe Benefits

<u>Year</u>	<u>LECMRS.WK3</u>	<u>TFP Review Plan</u>	<u>Difference</u>
1988	\$392,790,909	\$364,418,000	\$28,372,909
1989	\$410,337,589	\$368,853,000	\$41,484,589
1990	\$457,393,530	\$336,434,000	\$120,959,530
1991	\$499,577,898	\$341,729,000	\$157,848,898
1992	\$571,972,748	\$444,824,000	\$127,148,748

US West Bell - Wages and Salaries

<u>Year</u>	<u>LECMRS. WK3</u>	<u>TFP Review Plan</u>	<u>Difference</u>
1988	\$1,983,817,000	\$1,798,890,000	\$184,927,000
1989	\$2,016,676,000	\$1,774,395,000	\$242,281,000
1990	\$1,973,173,000	\$1,727,623,000	\$245,550,000
1991	\$1,991,042,000	\$1,760,637,000	\$230,405,000
1992	\$2,050,644,000	\$1,776,071,000	\$274,573,000

US West Bell - Fringe Benefits

<u>Year</u>	<u>LECMRS. WK3</u>	<u>TFP Review Plan</u>	<u>Difference</u>
1988	\$445,167,000	\$304,002,000	\$141,165,000
1989	\$427,205,000	\$311,339,000	\$115,866,000
1990	\$417,609,000	\$277,202,000	\$140,407,000
1991	\$492,679,000	\$330,383,000	\$162,296,000
1992	\$569,949,000	\$704,406,000	(\$134,457,000)

2. Rate Changes

USTA Opposition:

Ad Hoc criticized USTA in its Motion to Compel for not including GTE rate change data in its February 23, 1996 data response. In its Opposition, USTA declares that GTE data was not available at the time of the original study.

Ad Hoc Reply:

Ad Hoc's Motion to Compel compared the rate change data provided in the data response to the TFP Review Plan rate change data excluding Sprint, Lincoln and GTE. Thus, Ad Hoc had already controlled for the exclusion of GTE data, and USTA response fails to provide a satisfactory explanation for the cited discrepancies. The following is a replication of Ad Hoc's table.

<u>Composite Rate Change Data</u>		<u>Data from RATES.WK3 "RBOCs and SNET"</u>	<u>TFP Review Plan minus Sprint, Lincoln and GTE</u>	<u>Difference</u>
<i>Local</i>	Credits	(\$54,057,123)	(\$97,449,700)	(\$43,392,577)
	Annualized Rate Chg	(\$673,225,668)	(\$840,367,027)	(\$167,141,359)
	Effective Rate Chg	(\$635,913,651)	(\$805,729,128)	(\$169,815,477)
<i>Intrastate</i>	Credits	(\$14,860,000)	(\$14,860,000)	\$0
<i>Access</i>	Annualized Rate Chg	(\$337,289,830)	(\$280,649,450)	\$56,640,380
	Effective Rate Chg	(\$110,650,020)	(\$53,628,340)	\$57,021,680
<i>Toll</i>	Credits	\$19,797,000	\$19,797,000	\$0
	Annualized Rate Chg	(\$624,540,658)	(\$493,285,085)	\$131,255,573
	Effective Rate Chg	(\$279,359,270)	(\$154,545,260)	\$124,814,010

3. Labor Expense

USTA Opposition:

USTA asserts that the reason Ad Hoc found contradictions in its Labor Expense data was that the results from Table 9 (for the years 1988-1994) relied on publicly available data and that the results from Table 8 did not.

Ad Hoc Reply:

If USTA's explanation is true, then the results presented in Tables 1 through 8 of the Christensen study are totally misleading. In Table 8, Christensen presents TFP results for the 1984 -1993 study period which he purports to be directly comparable in terms of methodology to those presented in Table 9 for the eleven company sample for the study periods 1989-1993 and 1990-1994. According to Christensen [p.30]: "Table 8 compares the results from the original Christensen LEC TFP study with the results from the simplified method based on the

sample of nine price cap companies included in our original study." Similarly, in Tables E-1, 1, 2, 3, 4, 5, 6, and 7, Christensen presents results of a variety of sensitivity analyses which he purports show the effect of individual changes in study methodology as between the original and "simplified" studies for the nine company sample. If, as USTA now suggests, all of the nine company sample results are based on the original data sources, then how can the results presented in Tables 1 through 8 represent meaningful comparisons between original and simplified methodologies? The answer of course is that they cannot, and the Commission is not able to validate the "simplified" study results for the expanded eleven company sample.

4. *Capital Additions*

USTA Opposition:

Again, USTA asserts that the discrepancies found in data relative to Capital Additions is due to the fact that the TFP Review Plan data for GTE included Contel properties.

Ad Hoc Reply:

Once again, the Kravtin Affidavit clearly noted that the examples of data differences provided were illustrative only, and we can identify non-GTE examples of inconsistent data. Thus, contrary to USTA's assertion, we cannot dismiss the data discrepancies as being solely related to the treatment of Contel properties, and USTA response fails to provide a satisfactory explanation for the cited discrepancies. The following is a non-GTE example of inconsistent data:

Ameritech 1988 Capital Additions

<u>Category</u>	<u>LECCAP.WK3</u>	<u>TFP Review Plan</u>	<u>Difference</u>
General Support	\$246,668,611	\$252,401,000	(\$5,732,389)
Central Office	\$509,037,927	\$515,917,000	(\$6,879,073)
Transmission	\$408,197,911	\$405,451,000	\$2,747,911
IOT	\$51,099,707	\$40,711,000	\$10,388,707
Cable & Wire	\$521,548,863	\$521,447,000	\$101,863
Buildings	\$82,843,914	\$82,948,000	(\$104,086)

5. Taxes

USTA Opposition:

USTA explains that the discrepancy in Ameritech tax data found by Ad Hoc was due to a "reclassification" of some "capital stock" taxes as "other" taxes, but that the total is unchanged. USTA suggests Ad Hoc reversed the signs on one of its columns, which if corrected, would demonstrate the tax data discrepancy was merely a reclassification issue.

Ad Hoc Reply:

USTA's "reclassification" explanation (including the signing convention used by Ad Hoc) does not remedy the problem of replicating the results from Table 8, because what is used in the TFP Review Plan are the individual categories of tax data, not simply totals. For example, the "capital stock" taxes are directly incorporated in the TFP Review Plan's capital input calculations, while "other" taxes are not.

In addition, there are non-GTE examples of data inconsistencies regarding tax information. In the following example, certain tax categories, as well as the total, did not reconcile.

<u>Bell Atlantic 1992 Taxes</u>			
<u>Category</u>	<u>TAXES.WK3</u>	<u>TFP Review Plan</u>	<u>Difference</u>
Gross Receipts	\$260,811,000	\$240,791,000	(\$20,020,000)
Other Taxes	\$20,934,676	\$21,610,000	\$675,324
Total	\$1,529,757,676	\$1,510,413,000	(\$19,344,676)

6. Special Access Price Index

USTA Opposition:

USTA's only response here is that the data is identical in the years 1988-1991.

Ad Hoc Reply:

USTA's response completely fails to address Ad Hoc's point. While the data is identical in the years 1988-1991, Ad Hoc's point was that the Special Access Price Index differs in the year 1992 between the TFP Review Plan and the data response dated February 23, 1996.

7. Revenues

USTA Opposition:

USTA claims that "nonregulated" revenues are not identified as a separate line item in the TFP Review Plan, but that they are included as a part of the "miscellaneous" category.

Ad Hoc Reply:

USTA's statement is untrue at least with respect to SNET, the one company for whom data is broken out in more detail in this area. For SNET, the TFP Review Plan and the data response show identical "miscellaneous" revenues, but the data response, contrary to USTA's suggestion, also separately identifies "nonregulated" revenues. For example, in 1991, the TFP Review Plan and the February 23, 1996 data response list SNET "miscellaneous" revenues as \$243,685,000. However, in 1991, the data response shows a "nonregulated" revenue figure of \$10,899,000.

8. Switched Access Lines

USTA Opposition:

Again USTA asserts that Ad Hoc's claims regarding discrepancies in GTE data are solely due to the addition of Contel properties data to GTE in the TFP Review Plan.

Ad Hoc Reply:

Once again, there are non-GTE examples of data inconsistencies regarding tax information. The following table displays differences found in switched access line data for SNET:

<u>SNET Switched Access Line Data</u>			
<u>Year</u>	<u>LECLINES.WK3</u>	<u>TFP Review Plan</u>	<u>Difference</u>
1988	1,865,266	1,839,406	\$25,860
1990	1,876,053	1,904,499	(\$28,446)

B. Missing Data

1. Asset Price Indices

USTA Opposition:

USTA claims that the investment data needed to calculate the shares for the components that comprise the General Support category for the years 1984-1987 were provided in the February 23, 1996 response.

Ad Hoc Reply:

USTA's claim is not true. It appears that USTA has simply used the 1988 numbers as a proxy for the earlier years, but has not provided the rationale for doing so.

2. Cost of Capital

USTA Opposition:

The series USTA labels "cost of capital" provided in the data response is the exact same series used in Christensen's original study (which was based on non-public data).

Ad Hoc Reply:

Once again, USTA's response suggests another instance in which the nine company sample results purportedly based on the simplified methodology were in fact based on the original methodology. As indicated above, if this response is true, then the comparisons between the original and simplified methodologies for the

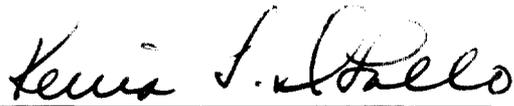
nine company sample are not valid, and the Commission is not able to validate the "simplified" study results for the expanded eleven company sample. Moreover, in order to calculate a 3 year moving average, we would need cost of capital numbers beginning in 1982. The series USTA provides (based in non-public data) begins in 1984.

CONCLUSION

For the foregoing reasons, the Ad Hoc Telecommunications Users Committee respectfully requests that the Commission accept this pleading and, for the reasons set forth above, issue an Order compelling the United States Telephone Association to produce the requested information to Ad Hoc. If USTA continues to withhold the requested information, Ad Hoc respectfully requests that the Commission strike USTA's Comments and Reply Comments, to the extent that they rely on studies based on the withheld information.

Respectfully submitted,

AD HOC TELECOMMUNICATIONS USERS COMMITTEE

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April 16, 1996

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Certificate of Service

I, Jonathan Reiter, hereby certify that true and correct copies of the foregoing Motion to Accept Reply to Opposition and Reply to Opposition were sent on this 16th day of April, 1996 by first-class mail, postage prepaid, or by hand delivery to the following persons:

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