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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

April 19, 1996

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Mr. William F. Caton, Secretary  
Federal Communications Commission  
1919 M Street, N.W., Rm. 222  
Washington, D.C. 20554

**RE: Policy and Rules Concerning the Interstate, Interexchange Marketplace;  
Implementation of Section 254(g) of the Communications Act of 1934, as  
amended, Notice of Proposed Rulemaking, CC Docket 96-61**

Dear Mr. Caton:

Attached please find one (1) read-only diskette containing the contents of USTA's initial comments in the above-referenced proceeding. The comments are contained in two files: the text in "96-61.txt," and the table of contents and summary in "96-61.sum." This diskette is submitted pursuant to paragraph 117 of the above-referenced Notice.

Should you have any questions, please call.

Sincerely,

A handwritten signature in black ink, appearing to read "C.D.C.", written over a horizontal line.

Charles D. Cosson, USTA Attorney

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

APR 19 1996

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WASHINGTON, D.C. 20554

In the Matter of: )  
)  
Policy and Rules Concerning the )  
Interstate, Interexchange Marketplace )  
as a Non-Dominant Carrier )  
) CC Docket No. 96-61  
Implementation of Section 254(g) )  
of the Communications Act of 1934, )  
as amended )

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**COMMENTS OF THE UNITED STATES TELEPHONE ASSOCIATION**

Mary McDermott  
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April 19, 1996

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OFFICE OF THE SECRETARY

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## SUMMARY

The Commission must fulfill the Congressional mandate with respect to geographic rate averaging of interexchange services. The Commission should adopt its rule codifying the mandatory geographic rate averaging language of Section 254(g) of the Telecommunications Act of 1996. The 1996 Act requires that the Commission's rule specify that rates charged by all providers of interexchange telecommunications services to subscribers in rural and high costs areas be no higher than the rates charged by each individual provider. Geographic interexchange rate averaging is sound policy, and an important element of the 1996 Act's provisions designed to ensure universal service.

USTA supports the Commission's proposal to rely on the complaint process for enforcement of this rule. Generally, the Commission should avoid attempts to anticipate all possible methods of violating a rule in complex and burdensome regulations. However, because of the Congressional mandate and the importance of geographic interexchange rate averaging, the Commission must provide for appropriate mechanisms to permit enforcement of this rule through the complaint process. Given the Commission's detariffing proposal, subscribers in rural and high cost areas must have a reasonable method to gather information concerning nationwide interexchange rates if they are to protect their rights through the complaint process.

Consequently, USTA supports a minimally intrusive rule which would require interexchange carriers to provide price information regarding their interexchange services to any interested party upon request. In conjunction with the certification proposed in the Notice, interexchange carriers should be required to provide an address and phone number to identify where to request such information. Additionally, the Commission should specify further standards regarding complaints alleging violations of the geographic rate averaging rules. The Commission should not require parties to provide all necessary evidence in the complaint, but permit parties to develop the facts supporting such a complaint through discovery.

USTA supports the Commission's proposal to replace AT&T's commitments made in the course of the non-dominant proceeding with binding rules based on the geographic rate averaging requirements of the 1996 Act. Additionally, the Commission should affirm that AT&T, like all other facilities-based, non-dominant carriers, will not be permitted to discontinue, reduce or impair service to areas with no other comparable facilities-based interexchange provider.

The Commission should eliminate the separation requirements for non-dominant treatment of LEC interstate, interexchange services. These requirements are unnecessary to protect against the anticompetitive cost-shifting harms they are intended to address. Adequate market and regulatory controls exist which render dominant regulation of integrated LEC interexchange services unnecessary. All other segments of

the telecommunications industry are planning to use integrated facilities for local exchange, exchange access, and interexchange services. LECs should not be competitively disadvantaged against these carriers. This is particularly so where dominant treatment, e.g., requiring integrated LECs to file tariffs with longer notice periods, does not address the alleged cost-shifting at issue.

Finally, the Commission should adopt its proposed definition of the geographic market for interstate, interexchange service. The Commission correctly notes that it would be impracticable to conduct a market power analysis in each individual market implied by a point-to-point market definition for interstate, interexchange services. The Commission should use this geographic market definition for all providers.

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

**In the Matter of:** )  
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Policy and Rules Concerning the )  
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**COMMENTS OF THE UNITED STATES TELEPHONE ASSOCIATION**

The United States Telephone Association (USTA) respectfully submits these comments in response to the Federal Communications Commission's (Commission)'s Notice of Proposed Rulemaking dated March 25, 1996.<sup>1</sup> USTA is the principal trade association of the local exchange carrier industry. Its members provide a wide variety of telecommunications services, including interstate, interexchange service.

- I. The Commission Must Fulfill the Congressional Mandate With Respect to Geographic Rate Averaging of Interexchange Services**
- A. The Commission Should Adopt its Proposed Rules Regarding Geographic Rate Averaging of Interexchange Services**

The Commission proposes adoption of a rule that would require that rates charged by all providers of interexchange telecommunications services to subscribers in rural and high cost areas be no higher than the rates charged by each individual provider to its urban area

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<sup>1</sup>In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61, FCC 96-123, Notice of Proposed Rulemaking (released March 25, 1996)("Notice").

subscribers. Notice, para. 67.<sup>2</sup> The Commission notes that adoption of such a rule is required by Section 254(g) of the Communications Act, as amended by the Telecommunications Act of 1996 enacted on February 8, 1996.<sup>3</sup> Prior to enactment of the Act, USTA had joined with other LEC Associations in urging the Commission to undertake a proceeding to codify geographic rate averaging policies.<sup>4</sup> USTA is gratified to see the Commission, propelled by the requirements of the Act, moving to codify these important policies.<sup>5</sup> Like the Commission, USTA has long supported geographic toll rate averaging as a vital link in furthering the Commission's goal of providing a universal nationwide telecommunications network. Adoption of the rule proposed by the Commission is essential, and this proceeding should move quickly to final order.

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<sup>2</sup> The Notice proposes similar rules regarding rate integration. Notice, para. 74, 76. USTA supports adoption of the rate integration rule proposed to fulfill Congressional intent in Section 254(g), and also recommends the adoption of meaningful measures to permit enforcement of this rule through the Section 208 complaint process. Removal or modification of AT&T's commitments, as proposed in the Notice, para. 79, is only appropriate where the Commission adopts rules which permit enforcement of rate integration rules.

<sup>3</sup> Notice, para. 68. The newly modified Communications Act is hereafter referred to as the "Act" or "1996 Act," to refer to the amendments enacted on February 8, 1996.

<sup>4</sup> See Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier; Petition for Reconsideration of the State of Hawaii; Petition for Reconsideration or Clarification of General Communication, Inc., Comments of the LEC Associations, CCB Pol 95-25, January 16, 1996 ("LEC Association Comments"). The LEC Associations are the National Rural Telecom Association (NRTA), the National Telephone Cooperative Association (NTCA), the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), and USTA.

<sup>5</sup>The Commission interprets the Act, its legislative history, and the Joint Explanatory Statement to preempt inconsistent state laws or regulations on intrastate geographic toll rate averaging, but would not foreclose consistent state action. Notice, para. 68. USTA supports this interpretation of the Act.

All interexchange providers except AT&T were non-dominant until October 23, 1995, and AT&T has been so since that time.<sup>6</sup> Since no codification of a geographic rate averaging requirement existed, interexchange rates may have diverted from this principle, perhaps significantly. To the extent these changes have occurred, interexchange carriers should be required to demonstrate that their rates are in alignment (and have been realigned if necessary) with the above proposed rule. However, Congress did not intend that existing contracts for the provision of telecommunications services be renegotiated. Congress also notes that the Commission has permitted interexchange carriers to offer non-averaged rates for services in some limited situations, such as AT&T's Tariff 12 contracts, and expects this practice to continue.<sup>7</sup> Accordingly, any rate realignment necessary to comply with a newly adopted rate averaging rule would exclude rates covered under these agreements.

The Commission notes that, in the AT&T Reclassification proceeding, parties claimed that interexchange carriers do not offer discount rate plans uniformly, and this amounts to de facto rate deaveraging. We agree that failure to make a discount plan available in the entirety of its service area may constitute geographic deaveraging. Notice, para. 72. For this reason, the Commission should affirm that evidence that a carrier has discriminated in the availability of discount plans can constitute adequate grounds for a complaint.

The Commission has repeatedly supported geographic rate averaging, and has explained that customers of rural or high cost LECs are benefitted in three ways:

1. Geographic rate averaging ensures that interexchange rates for rural areas, or areas served by high cost companies, will not reflect the disproportionate burdens that may be associated with common line, or non-traffic sensitive, cost recovery in these areas. This furthers the Commission's goal of providing a

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<sup>6</sup> AT&T was reclassified as a non-dominant carrier on that date. See Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, Order, FCC 95-427, (October 23, 1995) ("AT&T Reclassification Order").

<sup>7</sup> 1996 Act, Joint Explanatory Statement of the Committee on Conference, pg. 132.

universal, nationwide telecommunications network;

2. Geographic rate averaging ensures that ratepayers share in the benefits of nationwide interexchange competition. If prices are falling due to competition in the corridors carrying the most traffic, prices will also fall for rural Americans;
3. Geographic rate averaging contributes to the simplicity of toll rates. Customers seeking to compare rates charged by various interexchange carriers have been substantially benefitted by the relative simplicity<sup>8</sup> of the existing, averaged, rate structure.<sup>9</sup>

This solid policy foundation, coupled with the requirements of Section 254(g) of the Act, clearly establish a national policy of geographic rate averaging for interexchange services. At issue in this proceeding, and as addressed immediately below, is the need for effective mechanisms to enforce this policy, particularly if the Commission adopts its proposal to detariff interexchange services.

**B. The Commission Must Provide for Appropriate Mechanisms to Enforce the Geographic Rate Averaging Requirements of the Act and the Commission's Rules Adopted in this Proceeding**

Consistent with its tariff filing requirements forbearance proposal, the Commission believes a certification of compliance with geographic rate averaging obligations, together with the Section 208 complaint process, is sufficient absent the tariff process.<sup>10</sup> USTA believes a

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<sup>8</sup> To the extent this simplicity remains a goal of the Commission, availability of interexchange providers' rates for their services would seem to be a necessary continuing requirement, as discussed under Section I.B., infra.

<sup>9</sup> Policy and Rules Concerning Rates for Dominant Carriers, Report and Order and Second Further Notice of Proposed Rulemaking, 4 FCC Rcd 2873, 3132 (1989) ("AT&T Price Cap Order"), quoted in Notice, para. 66. Generally, the Notice demonstrates the Commission's long record of support for the principle of geographic rate averaging.

<sup>10</sup> Notice, para. 70, citing 47 U.S.C. § 208. Section III of the Notice addresses the Commission's detariffing proposal.

mere certification of compliance with rate averaging requirements, without more, is not a sufficient alternative to the tariff process. There would be no adequate means of verification of rule compliance. Particularly without filed tariffs, determining the existence of rate averaging through customer review would be a superhuman task given the breadth and complexity of the interstate marketplace. USTA supports the Commission's proposal to rely on the complaint process for enforcement of this rule; up-front regulations which attempt to foresee all possible violations would be burdensome and complex. But subscribers in rural and high cost areas must have a reasonable means to protect their rights established in the 1996 Act.

We agree with the Commission that the geographic rate averaging rules should not be enforced through the tariff process, Notice, para. 70. There is evidence that advance notice of price information regarding interexchange services has reduced competition in the interexchange marketplace.<sup>11</sup> Additionally, attempts by regulators to address all hypothetical harms through rules usually lead to a complex and burdensome regulatory process. However, to the extent that the Commission states that it intends to rely on the complaint process under Section 208 to bring violations of the rate averaging rules to the Commission's attention, some type of price information would, at a minimum, be necessary to establish a prima facie complaint. See, e.g., 47 C.F.R. § 1.716 (informal complaint requires "a complete statement of the facts tending to show that such carrier did or omitted to do anything in contravention of the Communications Act"). The Commission may not simply rely on the complaint process without providing realistic opportunities to utilize that process to enforce the interexchange geographic rate averaging rules.<sup>12</sup> Furthermore, while market incentives may protect against unjustly excessive rates, market incentives tend to encourage the type of geographic

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<sup>11</sup>The Commission's concerns with advance notice underscore the need to quickly introduce further facilities-based competition in the interexchange market. Notice, para. 81. USTA will address this issue further in its April 25th comments.

<sup>12</sup>The 1996 Act requires that Section 208 complaints be resolved within 5 months. Section 402(b)(1)(B). Given this limitation, the use of pre-filing dispute resolution mechanisms may be appropriate.

deaveraging prohibited by the 1996 Act. See Notice, para. 69, n.154. Consequently, a more effective mechanism is needed to permit enforcement through the complaint process.

Specifically, USTA supports a minimally intrusive rule which would require interexchange carriers to promptly provide price information regarding its interexchange services upon request of any member of the public. In conjunction with the certification proposed in the Notice, interexchange carriers would be required to identify an address and phone number where interested persons may request such information. Interexchange carriers should certify their compliance periodically, and update this contact information as needed. The certification should be signed by an officer of the interexchange carrier company.

Additionally, in order to facilitate enforcement through the complaint process, the Commission should specify further standards regarding complaints alleging violations of the geographic rate averaging rules. While a party may file an informal complaint, see 47 C.F.R. §§ 1.716, 1.717, the formal complaint process may be necessary to obtain full relief. The Commission should affirm that a party may “state a cause of action under the Communications Act,” for purposes of compliance with Section 1.728, 47 C.F.R. § 1.728, if the formal complaint alleges a violation of Section 254(g). The Commission should also affirm that parties will not be required to meet an unreasonably high burden of proof in their initial complaint filing. Rather, parties should be permitted to develop the facts supporting such a complaint through discovery. Additionally, the Commission should clarify that complaining parties may determine a level of damages by demonstrating the effect of the difference between the actual price and what the price would be had the urban rate been offered in the rural and high cost area.<sup>13</sup>

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<sup>13</sup> For example, rural LECs may be damaged in the form of lost access charges directly resulting from the decrease in demand caused by unlawfully deaveraged interexchange service rates charged to subscribers in rural and high cost areas.

**C. The Commission Should Only Repeal Obligations Imposed on AT&T Which are Addressed by the Proposed Rules**

The Commission tentatively concludes that the voluntary commitments made by AT&T in the course of the non-dominant proceeding may be excused upon the adoption of the foregoing proposed geographic rate averaging rules. Notice, para. 73; AT&T Reclassification Order, para. 170; see also Appendix C (summarizing the commitments). USTA would support replacement of these obligations by effective prohibitions against geographic averaging of interexchange rates. But such commitments should be lifted only after AT&T has demonstrated compliance with the requirements of the Act and the new rules.<sup>14</sup>

The Commission observes that AT&T, like other non-dominant carriers, remains subject to regulation under Title II of the Communications Act. As such, it and other facilities-based interexchange carriers are required, among other things, to “give notice prior to any discontinuance, reduction or impairment of service.” Notice, par. 13, n.37, citing 47 U.S.C. § 214. In many small communities and rural areas, there is likely to be only one interexchange provider offering service. In many cases, this continues to be AT&T. The availability of service in these areas is an integral component of the nationwide availability of a modern telecommunications network. Such providers should not be permitted to withdraw service from these areas.

While the AT&T Reclassification Order established requirements particular to AT&T, the Commission’s rules apply similar requirements to all facilities-based, non-dominant interexchange carriers. The Commission should affirm that AT&T and other facilities-based, non-dominant interexchange carriers remain subject to the requirements of Section 63.71 of the Commission’s Rules, and will not be permitted to discontinue, reduce or impair service to

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<sup>14</sup>For example, AT&T committed to provide five days’ notice of any rates which departed from the geographic rate averaging principle. Under the 1996 Act, rates which depart from the geographic rate averaging principle are unlawful. Accordingly, the rules adopted pursuant to AT&T’s commitments should be replaced with rules implementing the 1996 Act.

areas with no other comparable facilities-based interexchange carrier. See 47 C.F.R. § 63.71.

## **II. The Commission Should Eliminate the Separation Requirement for Non-Dominant Treatment of LEC Provision of Interstate, Interexchange Services Outside of A LEC's Local Access Service Area**

The Notice requests comment on whether it should modify or eliminate the separation requirements established in the Competitive Carrier proceeding as a condition for non-dominant treatment of interstate, interexchange services provided by LECs. Notice, para. 61. Essentially, these requirements are that a LEC: 1) maintain separate books of account; 2) not jointly own transmission or switching facilities; 3) obtain any LEC services at tariffed rates. See Notice, at para. 57; Fifth Report and Order, 98 FCC 2d at 1198. The Notice states that these requirements were intended to provide protection against “cost-shifting and anticompetitive conduct that could result from a LECs control of bottleneck facilities.” See, e.g., Notice, para. 58.

The Commission should eliminate these requirements for the provision of interstate, interexchange services by a LEC.<sup>15</sup> There are no allegations, or any basis for allegations, that separation requirements (or dominant regulation) are necessary to keep LECs from charging excessively high rates for out-of-region long-distance services. Additionally, price competition

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<sup>15</sup>The Notice states that the Commission will defer to another proceeding the question of the appropriate regulatory treatment of LEC interstate, interexchange services within the areas in which they also provide local exchange service. Notice, para. 61. While the 1996 Act requires that a Bell operating company establish a separate affiliate for the provision of in-region interLATA telecommunications services, see 1996 Act, Section 272(a)(2)(B), such requirements are not applicable to independent LECs. Given the existence of both equal access obligations and other local interconnection requirements, effective regulatory mechanisms exist which would preclude Independent LECs from favoring their own interexchange business or providing inferior access or interconnection to a competitor. Separation requirements are an unnecessary burden on Independents, particularly where they may compete with other integrated providers within their service area. Consequently, the Commission should eliminate any separation requirements for independent provision of interexchange services within their local serving area, as well as outside of that area.

from substantially larger and more established interexchange providers would preclude that strategy from being profitable.<sup>16</sup> Rather, these requirements are apparently intended as a prospective measure to prevent essentially one type of anti-competitive harm: below-cost or predatory pricing of interexchange services subsidized by revenues from local exchange or access services where LECs have market power.<sup>17</sup> In other words, the long-distance business of a LEC should not be unjustly or unreasonably favored, relative to its competitors, with respect to the costs of originating and terminating calls. But ensuring competitive fairness can be achieved through existing regulations and market forces without eliminating the efficiencies of integrated operations. See Competitive Carrier Proceeding, 98 FCC Rcd at 1198 (Commission seeks to avoid excessive burdens in establishing conditions for forbearance because such burdens lessen competition and impose costs on consumers).

Thus, USTA recommends elimination of all three separation requirements, and that all LEC-provided interstate, interexchange services be regulated as non-dominant. Separate books of account, separate facilities, and separate purchases of access services are unnecessary to protect against the anticompetitive harms which will allegedly result if unseparated LEC interexchange services are regulated as non-dominant. Instead, these separations requirements simply burden LECs relative to other facilities-based service providers who compete for the same customer.

All other segments of the telecommunications industry, e.g., wireless providers, cable television providers, and interexchange providers, are planning to use their own transmission

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<sup>16</sup>Nonetheless, the Commission still appears to consider whether dominant regulation is appropriate in light of whether the carrier (or class of carriers) at issue possesses “market power,” defined as the ability to profitably charge and maintain a supracompetitive price. See, e.g., Notice, para. 8; Fifth Report and Order, 98 FCC 2d 1189, 1192.

<sup>17</sup>A corollary to this allegation is the allegation that a LEC could somehow discriminate in the quality of interconnection it provides to a competitor, relative to the interconnection it provides itself. See Notice, para. 52, n.120. Of course, this type of discrimination is unlikely given existing equal access obligations.

and switching facilities for both local exchange, exchange access, and interexchange services. LECs should not be competitively disadvantaged in this regard. And dominant regulation adds no further protection from the alleged harms at issue. Requiring integrated LECs to file interexchange tariffs with longer notice periods, and to file additional information for new interexchange service offerings, will not provide any further protection against alleged cost-shifting. In sum, the Commission should eliminate these requirements because they do not effectively address the alleged harms at issue, and because adequate market and regulatory controls exist to prevent this type of anticompetitive harm.

**A. Adequate Regulatory Measures Exist Other Than Separation Requirements or Dominant Carrier Regulation**

The Notice seeks comment on whether complying with the separation requirements creates an unnecessary burden. Notice, para. 62. Such separation requirements are unnecessary because adequate regulatory measures exist to ensure that LEC interexchange services are not anti-competitively subsidized. First and foremost, state and federal regulation of LECs' local and exchange access rates (or rate of return) would thwart any attempt at predatory pricing of long-distance services. See Notice, para. 52 (“[w]e note, however, that all originating and terminating access services are currently subject to some form of price regulation, which constrains a LEC’s ability to raise access prices to monopoly levels.”)(footnote omitted). As numerous courts have explained, predatory pricing can only occur where the firm in question can make up lost revenues through supra-competitive prices for other services. See, e.g., Matsushita Electric Industrial v. Zenith Radio Corp., 475 U.S. 574 (1986). State and federal regulation of other LEC service rates, combined with growing competitive pressures in the access market and expected competition in the local service market, make such a strategy unlikely to be attempted, much less successful.

Additionally, the existing Part 64 regime for separating the costs of regulated local exchange and access services from other unregulated services adequately protects against any improper cost-shifting between regulated and long-distance services. See 47 C.F.R. §§

64.901-904. LECs must simply reflect on their books the proper access charges, they need not maintain separate books or engage in separate purchases of access service. Additionally, where LECs are able to utilize existing switching and transmission facilities for new services, local ratepayers benefit through more efficient use of those facilities.

The Commission has previously found that separate subsidiaries were not necessary to protect competing information service providers from anticompetitive conduct. See, e.g., 47 C.F.R. § 64.702(b). Congress prescribed minimal regulation for LEC provision of services other than traditional local exchange and exchange access services. For example, Congress provided that LECs can provide multichannel video programming through a variety of options, none of which require any structural separation. See, e.g., 1996 Act, Sections 651, 653; Conference Report at 172. By the same token, separation is not required here.

#### **B. Market Forces Will Protect Competition**

Adequate market controls exist to protect against anticompetitive behavior by a LEC in providing out-of-region interexchange service. The Commission has utilized certain “clearly identifiable market features,” to determine whether a particular carrier should be regulated as “dominant” in a particular market, including the number and size distribution of competing firms, the availability of reasonably substitutable services, and whether the firm controls bottleneck facilities. Notice, para. 8, citing First Report and Order, 85 FCC 2d 1, at 20-21.

In the interstate, interexchange services market, integrated LEC interexchange services will face competition from a number of substantially larger competitors, e.g. AT&T. As the Notice acknowledges, the number of competing firms and the availability of substitutable services in the interstate, interexchange marketplace deter improper conduct. See, e.g., Notice, para. 28. Additionally, a LEC does not control all of the essential facilities needed in order to provide such long-distance service. LEC long-distance carriers must obtain originating and terminating access, as well as leased transmission lines, from other carriers for

the bulk of their network services. To the extent that LECs resell long-distance services provided by others (as many Independent LECs already do), their ability to price too high or too low is constrained by the wholesale price charged by the underlying carrier (who may also be an actual or potential competitor).

**C. Separation Requirements or Dominant Regulation Will Distort Competition in the Growing Marketplace of “One-Stop Shopping” For Telecommunications Services and Do Not Address the Concerns at Issue**

Especially given the fact that these separation requirements are unnecessary, they create an unnecessary burden for LECs who are seeking to compete with larger, more established long-distance carriers and other interexchange service providers who will offer packaged local and interexchange services provided over their own facilities. LECs will be competing with a variety of facilities-integrated providers, and offering “one-stop shopping” for local and long distance services in competition with those providers. Yet the Commission does not require structural separations as a condition of non-dominant treatment of those carriers’ interexchange offerings. Regulatory parity is essential to avoid improper market distortions.

The anticompetitive harms alleged to be addressed by a pre-conditioning non-dominant regulation for LECs on structural separations may occur with respect to other local providers. For example, a cable operator or competitive access provider may improperly attempt to use the interconnected local services it obtains under Section 251 and 252 of the 1996 Act to obtain local access at rates substantially lower than the tariffed access charge, even though the 1996 Act expressly preserves the present system of access charges for interexchange services. 1996 Act, Section 251(g). While the Commission should prohibit these types of anticompetitive acts, the Commission has not elected to enforce such prohibitions by conditioning non-dominant treatment of those entities’ interexchange services on structural separations. There is no basis to regulate these interexchange service providers as non-dominant, while regulating LECs as dominant based on the LECs use of its own transmission and/or switching facilities. Such regulatory discrimination is inappropriate, and may cause market distortions.

Finally, the Commission should recognize that it should apply the same considerations to the non-dominant treatment of integrated LEC long-distance as it does to other long-distance providers. Dominant treatment is not the answer to the anti-competitive concerns discussed in the Notice. Requiring extended notice periods, price cap regulation, and approval of new integrated LEC long-distance service offerings will not address hypothetical cost-shifting concerns, and could themselves lead to market distortions. See Notice, para. 21.

Dominant regulation of integrated LECs would be particularly inappropriate should the Commission adopt its mandatory detariffing policy for non-dominant carriers (which will effectively be all non-LEC long-distance providers). Having elected to rely on market forces and the complaint process to protect against anticompetitive conduct by AT&T (who is also a facilities-integrated wireline and wireless local exchange provider), while requiring facilities-integrated LECs to file tariffs, cost support, and obtain other approvals, will distort competition. The best policy result is to increase facilities-based competition in the interstate, interexchange marketplace by establishing a level playing field for all providers.

### **III. The Commission Should Adopt Its Proposed Definition of the Geographic Market for Interstate, Interexchange Services**

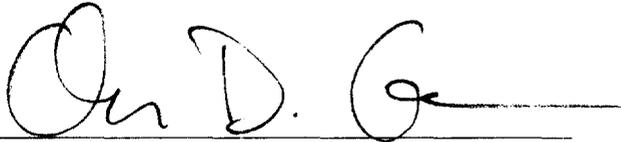
The Notice tentatively concludes that the Commission should continue to treat interstate, interexchange services as a single national market when examining whether a carrier or a group of carriers acting together has market power. Notice, para. 51. The Commission notes that it would be impracticable to conduct a market power analysis in each individual market implied by a point-to-point market definition for interstate, interexchange services. Notice, para. 50. We agree - the realities of the marketplace will cause various point-to-point markets to behave in sufficiently similar ways to enable the Commission to analyze the interexchange industry in an economically meaningful way on a nationwide basis. Notice, para. 50. The Commission should adopt its general conclusion that the market is nationwide and apply it to all participants, including new facilities-based interexchange providers.

**CONCLUSION**

The Commission should adopt its proposals with respect to geographic rate averaging, rate integration, and geographic market definition. The Commission should also adopt rules which permit enforcement of the geographic rate averaging rules, and modify its existing rules and policies regarding LEC provision of interstate, interexchange services consistent with the recommendations described above.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

BY 

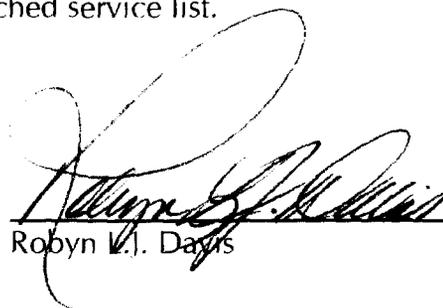
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April 19, 1996

**CERTIFICATE OF SERVICE**

I, Robyn L.J. Davis, do certify that on April 19, 1996 comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.

  
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