prime concern to both incumbent LECs and new entrants alike. The standards set by the Commission and the states will determine if the consumers ultimately will benefit from a truly competitive telecommunications market or whether the benefits of the Telecommunications Act of 1996 accrue only to the stockholders of some companies through a market wrought with contrived inefficiencies at the expense of consumers.

The Commission seeks comments on various issues related to setting prices and establishing costs for service, interconnection, and unbundled elements.[34] As a preliminary issue, the Commission sees the need to establish "national pricing principles." Although CBT recognizes that such principles might be helpful in facilitating arbitration, negotiation, and reviewing agreements[35], CBT recommends that these principles be very general in nature.

The basic premise of the Act is that private negotiation, subject to arbitration by the states, is the primary mechanism to establish prices. Creating specific guidelines that mandate rate levels or specific services is contrary to this basic premise. Such mandates would limit the ability to address unique situations and to apply innovative approaches. Thus, the Commission is faced with the challenge of balancing the need to implement the provisions of the Act within an increasingly competitive industry while, at the same time, ensuring that the industry participants and states have sufficient freedom to deal with the

[34] NPRM at ¶¶ 117-148.

[35] NPRM at ¶ 119.

unique situations they are facing. The goal should be to let the competitive process develop with as little intervention as possible.

1. <u>**LRIC based pricing methodology.**</u>

Section 252(d)(1) provides that state determinations of just and reasonable rates for interconnection and providing network elements shall be "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding)." Because of this, the Commission notes that the Act "precludes states from setting rates by use of traditional cost-of-service regulation, with its detailed examination of historical carrier costs and rate bases."[36] As a result, the Commission is attempting to establish new cost standards and, in so doing, requests definitions of various cost related terms.[37] CBT submits the following definitions for the Commission's consideration:[38]

<u>**Volume Sensitive Cost**</u> is the change in forward-looking cost caused by increasing the output of a service, or the cost which can be saved by producing less output. Volume-sensitive cost can be defined for a single service or a single network function.

<u>**Service-Specific Fixed Cost**</u> is the portion of the forward-looking cost caused by producing a single service which does not vary as the level of output varies. This concept

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[36] NPRM at ¶ 123.

[37] NPRM at ¶ 126.

[38] Testimony of Dr. Richard D. Emmerson on behalf of Cincinnati Bell Telephone Company, presented to the Public Service Commission of the Commonwealth of Kentucky on February 26, 1996.

can be defined for the fixed cost of a network function as well. This type of cost is sometimes called "volume-insensitive" cost. An example is a fixed right-to-use fee for a single service.

Total Service Long Run Incremental Cost (TSLRIC) identifies the forward-looking cost avoided (or added) by discontinuing (or offering) an entire service or group of services, holding constant the production of all other services produced by a firm. For a single service, TSLRIC consists of the sum of the service's volume-sensitive cost and service-specific fixed cost.

Long Run Incremental Cost (LRIC) identifies the forward-looking cost avoided (or added) by discontinuing (or offering) additional units of a particular service, holding constant the production of all other services produced by a firm. LRIC differs from TSLRIC in that TSLRIC considers the entire service, while LRIC allows the possibility of considering fewer units. If only the next unit of service is considered, then the LRIC would equal the marginal cost, i.e. the forward-looking cost of producing one more unit of output or the cost saved by producing one less unit of output.

CBT believes that this definition of LRIC is generally consistent with that provided in the NPRM.[39] However, the Commission's definition includes the identification of the impact on common costs of adding units of service. There can be no impact on common

[39] NPRM at ¶ 126.

costs when additional units of service are added. Any additional costs would be part of the incremental cost of the service and therefore would not be classified as a common cost.

Average Incremental Cost (AIC) is the TSLRIC of a single service or network function expressed per unit of output. This cost is normally greater than the per unit volume-sensitive cost of a service due to service-specific economies of scale and the lumpy or indivisible manner in which plant is added.

Shared Cost is a cost which is incurred by two or more services. As such, a shared cost is an incremental cost to a group of two or more services but is not an incremental cost to any one service in the group. Since shared costs do not vary as the output of individual services vary, they are "fixed" or volume-insensitive. CBT considers joint cost to be synonymous with shared cost.

Common Costs are a special case of shared costs. Common costs are costs incurred for the benefit of the firm as a whole but which are not avoided when an individual service or group of services is discontinued. Common costs could be avoided if all services offered by the firm were discontinued. Common costs are, like other shared costs, fixed with respect to services or specified families of services.

Fully Distributed Costs are the reported costs of services after allocating all of the financial accounting costs of a firm to the services or categories of services produced by the firm. In this process, fixed common costs and fixed costs shared by groups of services are allocated to individual services and are added to the costs caused by each service. By nature, these allocations are arbitrary and cannot be based on cost causation. Moreover, fully distributed costs, unlike incremental costs, generally measure historical costs rather than forward-looking costs. By construction, the sum of the fully distributed costs is the historical or forward-looking cost of the entire firm.

Embedded Cost means the historical cost of previously acquired resources, including embedded investments.

CBT supports the above definitions and believes that they provide accurate descriptions of forward looking economic costs. However, CBT does not support the use of any of these definitions as a means to establish a price. Economists have never recommended that prices be set equal to costs. It appears that the Commission is seeking a cost definition that will be used to set prices equal to this defined cost. Developing prices "based on" costs[40] does not mean developing prices equal to cost. Such an approach could result in prices equal to TSLRIC which, as explained below, would be financially disastrous to the LECs, or would result in prices set equal to some form of fully distributed costs which would simply maintain the cost methods currently required by the Commission. This is not the intent of the Act.

CBT strongly agrees with the recognition by the Commission that joint and common costs are not included in a service's incremental cost.[41] Because joint and common costs

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[40] See NPRM at ¶ 129.

[41] NPRM at ¶ 129.

are not included in incremental cost, it would be financially disastrous to a LEC if all prices were set equal to incremental costs. CBT supports the Commission in recognizing the need to set prices above incremental costs in order to provide contribution towards joint and common costs.[42] However, CBT strongly recommends that a fixed mark-up above incremental cost for all services is not an appropriate means to recover joint and common costs. Rather, the Commission should give LECs the flexibility to negotiate agreements that require revenues to exceed the TSLRIC, but not exceed the stand alone cost of providing the service. Requiring a fixed markup for all services to cover joint and common costs would amount to determining an allocation method to cover these costs. Any allocation is inherently arbitrary and may send incorrect economic signals to the market. Also, fixed allocations of joint and common costs would restrict the LEC's ability to respond to competition, thereby reducing the opportunity for consumers to receive the benefits of competition.

The Commission also seeks comment on the use of a transitional pricing mechanism during an interim time period in an attempt to address unequal bargaining power in negotiations.[43] It is not clear from the NPRM how such an interim pricing mechanism would be applied. CBT submits that the Commission has not substantiated any need for a transitional pricing mechanism. The Commission's suggestion that an interim mechanism

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[42] NPRM at ¶ 130.

[43] NPRM at ¶ 132.

may be necessary to offset the bargaining power of incumbent LECs incorrectly assumes that the incumbent LEC will always be the stronger party in the process of negotiations. CBT believes that large national or multinational corporations with their vast resources and expertise will not be disadvantaged in negotiations with most companies, certainly not when negotiating with small and mid-size LECs. Furthermore, any attempt to set rates for interconnection and unbundled elements at short run marginal cost, even for an interim period, will be confiscatory, in that LECs would not be able to fully recover their total cost of providing service.[44]

The Commission seeks comment on whether interconnection and unbundled element rates should be set on a geographically- and class-of-service averaged basis for each incumbent LEC or whether some form of disaggregation is desirable.[45] CBT recommends flexibility to develop disaggregated rates. Many of CBT's reasons for requesting this flexibility are already identified by the Commission. e.g. creating uneconomic incentives.[46] Also, although CBT's operating territory is primarily urban and suburban, it also serves the rural areas surrounding Cincinnati. The cost of serving these areas is significantly different

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[44] By its short run nature, and the fact that it only includes the next unit of service, the short run marginal cost of a service is likely to be significantly less than the average incremental cost of a service, as previously defined. For example, service-specific fixed costs would not be included in a marginal cost.

[45] NPRM at ¶ 133.

[46] NPRM at ¶ 133.

from the urban areas due to less dense serving areas, longer subscriber loops, and reduced economies of scale. As a result, an average company-wide cost will grossly under-estimate costs for certain geographical areas. Deaveraging to a density pricing zone, a wire center or even customer level will ultimately be required.

2. <u>Proxy-based outer bounds for reasonable rates.</u>

The Commission seeks comment on whether it should establish rate ceilings which would define the maximum end of the reasonable range within which state commissions could establish rates.[47] In addition, the Commission seeks comment on whether such ceilings could be developed using a proxy or surrogate for cost-based rates that does not require a cost study.[48] As discussed below, because of the unbundled network elements that will likely be requested as local competition increases, CBT believes that it will be very difficult, if not impossible, for the Commission to establish accurate proxies for all such services. However, should the Commission attempt to determine such proxies, CBT submits that these proxies should not be established as rate ceilings. Such proxies should only be levels below which rates will be presumed valid and above which they must be further justified.

CBT recognizes the Commission's desire to develop proxy rates in order to reduce administrative costs and delays, but, CBT is concerned with the practicality of such an

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[47] NPRM at ¶ 134.

[48] NPRM at ¶ 136.

approach. The number and type of unbundled network elements requested is likely to increase as more competitors enter the local exchange market. Having a workable and efficient proxy requires the Commission to have advance knowledge of the services that will be requested. The cost and time required to develop a national proxy methodology for all possible services may restrict competitive entry. For example, average or generic cost data will not exist as new unbundled network elements are requested. As a result, there will be a need to develop costs for a requested service. Even if the Commission could quickly develop national proxies to reflect new unbundled elements, it would not necessarily accurately represent the costs of small and mid-size LECs, since most requests for new unbundled elements will likely appear first in the large LEC territory, long before small and mid-size LECs receive requests for such elements.

The Commission proposes several methods for developing proxies. These include using generic or averaged cost data, or developing a generic cost study.[49] CBT strongly opposes such methods to establish proxies. These methods will, at best, only develop approximations of the relevant cost. They cannot capture the unique characteristics of each LEC's situation and should not be used to establish proxies. Although CBT does not agree with the assumptions in the Benchmark Cost Model or the Hatfield study, even these studies show that there is significant state to state variation in costs. Hence, a national

[49] NPRM at ¶ 137.

average cost is not appropriate.

Using existing agreements is also of limited value.[50] These agreements often reflect public policies and situations that differ from those which will develop in a competitive industry. For example, traditional EAS agreements between LECs were often developed based on detailed analysis of the historical traffic flowing between LECs. Such detailed traffic data will not exist as LECs begin interconnecting with new competitive entrants. Also, these existing agreements will have few, if any, rate elements in common with those requested for interconnection, collocation, or unbundled network elements.

Using existing access rates may provide some reasonable proxies in limited situations such as interconnection, unbundled loops, and transport and termination of traffic.[51] However, there are some unbundled elements that have no counterparts in access charges (e.g., switching ports and databases). The Commission seeks comment on whether all or part of the carrier common line charge (CCLC) or transport interconnection charge (TIC) should be excluded from such a proxy[52] CBT submits that it is premature to exclude such charges. As the Commission points out, the CCLC recovers a portion of local loop costs.[53] Removing such charges before addressing the implicit universal service support

[50] NPRM at ¶ 138.

[51] NPRM at ¶ 139.

[52] NPRM at ¶¶ 139-140.

[53] NPRM at ¶ 140.

flows from the CCLC is premature. This would potentially give existing LEC access customers a means to avoid paying the CCLC before these universal service issues are addressed.

The Commission also points out that a proxy rate may be usage sensitive while a service or element is sold on a flat-rate basis, or vice versa.[54] This would require some conversion factor between the two different rate structures, e.g. average usage per line. CBT submits that this demonstrates why such proxies can only be considered approximations and should not be used to establish rigid rate ceilings.

I. Embedded Costs.

The Commission seeks comment on whether embedded costs are relevant to the determination of cost-based rates.[55] CBT strongly supports the USTA's position that the recovery of these costs **must** be considered in the rate making process.[56] The Act allows recovery of these costs and the Commission cannot now bar compensatory returns on these legitimate investments that were made prior to the introduction of competition without potentially violating the Takings Clause of the Fifth and Fourteenth Amendments.

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[54] NPRM at ¶ 142.

[55] NPRM at ¶ 144.

[56] Comments of USTA, filed May 16, 1996.

J. **Resale.**

1. **Resale services and conditions.**

The Commission seeks comment on the restrictions that may be placed on services offered for resale.[57] In order to foster the development of a competitive, non-discriminatory market for local telecommunications services, CBT believes it is essential that rules for resale of retail services apply equally and in a non-discriminatory manner to all LECs, and not be limited in their application to incumbent providers. If incumbent LECs are forced to be more limited in their ability to purchase and resell retail services of other LECs, then the end-user customers of incumbent LECs will be disadvantaged. States should be required to extend non-discriminatory rules to all LECs as soon as practicable, in order to avoid discriminating against the end-user customers of incumbent LECs.

The Commission should explicitly specify in its rules that resellers of both incumbent LEC services and competing carriers' services must be telecommunications carriers, as defined by the Act. States should be permitted to certify carriers and impose certain obligations and restrictions on those that they certify, in order to both protect the public interest and to prevent circumvention of the Act. For example, all facilities-based and non-facilities based carriers could be required to demonstrate financial, technical and managerial capabilities in order to provide local service in the State, and provide

[57] NPRM at ¶¶ 172-188.

contingency guarantees of service for their end-user customers (e.g., pay any charges to switch these customers to another carrier) should the carrier choose to cease providing service at some future date.

The Commission should provide guidelines to state commissions concerning reasonable resale restrictions, but should leave implementation of provisions of the Act relating to resale obligations and specific restrictions to state commissions. Nothing in the Act suggests that states should not continue to have an active role in the determination of local rates and rate structures. CBT believes that state commissions are best able to address specific rate issues that correspond to the local service goals that have been established in their respective states. As such, state commissions have an important interest in ensuring that the resale provisions of the Act are implemented in a way that does not undermine these local service goals.

The Commission should recognize that resale restrictions serve only as a temporary correction for significant marketplace structural problems. A new universal service plan must be implemented which removes subsidies from existing services by rebalancing rates and, where necessary, allows the recovery of investments through explicit subsidy mechanisms. This and other rules adopted by the Commission, including a universal service plan, must also ensure that the pricing of all network elements allows recovery of appropriate joint and common costs and contributes to economic profit, by eliminating unstable and inefficient economic incentives. However, until these changes are accomplished, reasonable resale restrictions that take into account current regulatory mandates must be implemented and/or maintained.

In the interim, CBT recommends the Commission adopt the following guidelines for states to follow in setting reasonable resale restrictions:[58]

1) LECs should be allowed to recover an appropriate amount of joint and common costs, as well as economic profit.

2) Cross-class selling (e.g., residence services to business end-user customers or Lifeline service to non-Lifeline customers) should be prohibited.

3) Only carriers certified by state commissions as local service providers should be permitted to purchase services for resale.

4) Resale of promotional offerings should be prohibited. Promotional offerings are offerings priced at a discount or other incentives that are available for a limited duration. Requiring LECs to further discount promotional offerings eliminates the ability and incentive for each carrier to differentiate and market its services, and would not be in the public interest. Each carrier, like any competitive business, must be free to choose to accept less margin during a promotion in order to gain customers, without extending the promotional offer to benefit and fund its competitors. In addition, LECs should not be required to give advanced notice to resellers of a promotional offering because it would impede competition by signaling the market and minimizing ability to differentiate.

5) Resale of individual case basis offerings (ICBs) and contractual responses to customer-provided RFPs should be prohibited.

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[58] These guidelines are similar to and consistent with those offered by USTA in comments filed in this proceeding.

ICBs are specific to individual customer requirements and are not applicable to generalized offerings. Cost studies developed in support of these proposals represent customer specific costs and would be inappropriate for development of generalized offerings.

6) Resale requirements should not apply to market trials.

7) Resale requirements should not apply to grandfathered services that are being offered to a limited class of customers and are no longer generally available to the public.

The Commission should make clear in its rules that resale requirements do not apply to access services, which are generally sold to interexchange carriers today. All access tariff services are currently wholesale offerings and should not be subject to a requirement to establish an additional retail or further discounted rate structure.

2. <u>Pricing of wholesale services.</u>

The Commission seeks comment on a variety of issues related to the pricing of wholesale services.[59] As with the pricing of interconnection, collocation, and unbundled network elements, CBT strongly recommends that any pricing principles promulgated by the Commission be general in nature, so that the Commission's intervention in the pricing process is as limited as possible.

Section 252(d)(3) of the Act provides that wholesale rates shall be set "on the basis of retail rates charged to subscribers for the telecommunications service requested,

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[59] NPRM at ¶¶ 178-188.

excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier."[60] The Commission seeks comments on "whether avoided costs should also include a share of general overhead or 'mark-up' assigned to such costs".[61] CBT submits that avoided costs should not include overhead or "mark-up." First, general overhead costs are, by definition, not avoided when a service is discontinued. A cost that is avoided by not offering a service would be included in the TSLRIC of that service, not in general overhead costs. Second, the Act clearly states that the reduction to retail rates to create a wholesale rate be based on avoided costs. Since general overhead costs are not avoided, these costs should not be used to reduce retail rates. In the same manner, the Commission should not permit states to allocate some common costs to "avoided cost" activities.[62]

CBT does not oppose the development by the Commission of <u>general</u> guidelines which identify a number of expenses that "the states would presume to be retail expenses, absent a contrary showing by the incumbent LEC".[63] However, these guidelines must recognize that services vary in complexity. CBT believes that basing such a showing on a Uniform System of Accounts (USOA) is likely to be too broad to be effective, as account

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[60] NPRM at ¶ 178.

[61] NPRM at ¶ 180.

[62] NPRM at ¶ 181.

[63] NPRM at ¶ 181.

level expenses often contain a multitude of activities. Expecting all expenses within an account to be avoided is likely to be too simplistic.

CBT strongly recommends that incumbent LECs be allowed to vary the percentage for wholesale discounts across different services based on the degree of the avoided costs related to those services.[64] The alternative of using an average discount percentage across all services would be inappropriate because it would overstate costs for some services, while understating costs for other services. As a result. incorrect economic signals may be sent to the market.

CBT also recommends that any avoided cost calculation must be based on net avoided costs. Although some costs will be avoided in a wholesale situation, it is likely that LECs will incur some costs to support the wholesale offerings.[65] It is critical, therefore, that the Commission allow LECs to recognize these additional costs in the determination of the pricing of wholesale services.

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[64] NPRM at ¶ 182.

[65] Examples of these additional costs include: the cost to develop and maintain mechanized interfaces (e.g. investment in both electronic communications platforms to serve larger carriers as well as other mechanized interfaces to meet the needs of smaller carriers); the cost to build, maintain and monitor more complex databases for rights of way, conduits, and network facilities used by multiple carriers; the cost of implementing billing changes; the cost of supporting small carriers which may pose a greater credit risk; the cost to meet dialing parity and other non-discrimination mandates; and the cost due to additional database "churn" as end-users switch retail providers but retain the same facilities-based provider (e.g. must change records and service translations).

K. Reciprocal Compensation.

The Commission poses various questions in this NPRM regarding reciprocal compensation for the transport and termination of traffic.[66] CBT believes that no need exists for the Commission to establish additional rules in this area. Charges for transport and termination of traffic are properly left to negotiations between the parties. If the state commission is requested to arbitrate a dispute between the negotiating parties, the Act provides sufficient guidance. The Act establishes that agreements must provide for the mutual recovery of costs based on a reasonable approximation of the additional cost of terminating such calls. This sets a price floor, beyond which state commissions have considerable discretion in implementing reciprocal compensation agreements. Innovative arrangements initiated by state commissions should not be hampered by rigid federal guidelines. CBT agrees with USTA that a strict separation of flat-rate "interconnection" from usage-based "transport and termination" should resolve the Commission's concerns about "the use of different pricing rules for the different categories" of services mandated by the Act.[67]

The Commission also raises several questions regarding the circumstances under which bill and keep arrangements for the transport and termination of traffic are allowed under the Act. CBT agrees with those parties that contend that Section 252(d)(2)(B)(I)

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[66] NPRM at ¶¶ 226-244.

[67] Comments of USTA, filed May 16, 1996.

"merely authorizes bill and keep arrangements in voluntary negotiated arrangements, but that the Commission and the states are prohibited from imposing bill and keep."[68] Mandatory bill and keep arrangements are contrary to competitive outcomes and economic efficiency. The incentives built into mandatory bill and keep arrangements are for a carrier not to become the most efficient provider of service, but to maximize the opportunity to bill (and keep) revenues. By masking the gross revenue flows among carriers, bill and keep can also lead to inadvertent price discrimination. None of these outcomes would be in the public interest.[69]

Only the parties to the negotiation can properly assess if a bill and keep arrangement would be appropriate. To allow the Commission or a state commission to mandate bill and keep is inappropriate unless it can definitively be determined that traffic flows are balanced and transport and termination costs are equal.[70] However, Section 252(d)(2)(B)(ii) prohibits

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[68] NPRM at ¶ 243.

[69] For example, a coalition of various public interest organizations, including the United Homeowners Association, United Seniors Health Cooperative, American Council of the Blind, and the National Association for the Commissions for Women, recently expressed their concerns regarding bill and keep in a letter to Chairman Hundt. Ex parte Letter, April 18, 1996, CC Docket No. 95-185.

[70] The Commission indicates that bill and keep is appropriate if actual costs are close to zero, regardless of traffic flow. CBT has previously indicated that even when cost-based interconnection rates are low, the losses to the carrier terminating most of the traffic will be significant due to the large volume of calls handled. See CBT Comments, Docket No. 95-185, p. 5.

the states from engaging in such detailed cost studies or requiring carriers to maintain records with respect to the additional costs of such calls. This further supports the interpretation that the Act only intends for bill and keep to apply under voluntarily negotiated agreements. Furthermore, because mandatory bill and keep will not allow carriers to recover their costs, once again, the issue of an unconstitutional taking of LEC property arise.[71]

L. Exemptions, Suspensions, and Modifications.

Section 251(f)(2) of the Act provides that:

> A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) to telephone exchange service facilities specified in such petition.

While the Commission recognizes that responsibility for granting a suspension or modification rests with state commissions, the Commission seeks comment on whether standards should be established to assist the States in satisfying their obligations under this section.[72]

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[71] To the extent that mandatory bill and keep requirements fail to allow a carrier to recover their costs, a potential violation of the Takings Clause of the Fifth and Fourteenth Amendments may exist. As stated earlier, the United States Supreme Court has held that an unconstitutional taking may occur where the result of regulation robs an entity of an expected property interest. See Penn Central Transp. Co. v. New York City, 438 U.S. 104, 124 (1978).

[72] NPRM at ¶ 261.

By including this provision in the Act, Congress acknowledged significant differences in size, financial ability, resources and economies of scope and scale between small/mid-size LECs and large LECs.[73] At least one new entrant to the local exchange market has publicly characterized this provision as merely a "loophole" to avoid competition.[74] This was clearly not the intent of Congress when it chose to include this provision in the Act. Rather, Congress clearly saw this provision as a means of ensuring that customers continue to receive high quality service at affordable rates from small and mid-size LECs during the development of a competitive market. The purpose of Section 251(f)(2) is to ensure parity for small and mid-size LECs as they enter into competition for local exchange customers with significantly larger national or global telecommunications companies.[75]

Section 251(f)(2) recognizes that because of the significant differences in the ability of small and mid-size LECs to immediately comply or, in some instances, to comply at all with the requirements of Section 251(b) and (c) of the Act, a mechanism must exist to provide additional time for these smaller carriers to comply with the requirements of Section 251(b) and (c), and to provide for modifying those requirements where compliance

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[73] Since the passage of the Act, these differences have been further magnified with announced mergers and the potential for even more industry consolidation in the future.

[74] See AT&T News Release, dated April 30, 1996.

[75] Telecommunications Act of 1996, Joint Explanatory Statement, p. 119.

is not feasible even with additional time. By providing those carriers serving less than 2 percent of the access lines and rural carriers with a modification or suspension of the requirements of certain provisions of the Act, Congress sought to provide a transition for these small and mid-size carriers from regulated monopolies to competitors in a competitive marketplace, without negatively affecting the customers which these carriers serve. To force small and mid-size carriers to comply with all of the requirements of the Act before they are financially and technically prepared to do so would certainly not be in the public interest and would undermine the competitive goals envisioned by the Act.

The Act provides that for a carrier to be granted a suspension or modification of the requirements of Section 251(b) and (c), the carrier must make a showing that the suspension or modification is necessary:

> A) 1) to avoid a significant adverse economic impact on users of telecommunications services generally;
>
> 2) to avoid imposing a requirement that is unduly economically burdensome: or
>
> 3) to avoid imposing a requirement that is technically infeasible; and
>
> B) is consistent with the public interest. convenience, and necessity.

CBT asserts that once a carrier has made a showing that the imposition of requirements of Section 251(b) or (c) will result in: (1) a significant adverse impact on end-users of telecommunications services; (2) an unduly burdensome requirement; or (3) a technically infeasible requirement, then the state commission must conclude that the imposition of the requirement is, on its face, not in the public interest. The Act assumes that competition is in the public interest, but acknowledges that the immediate accomplishment of this competitive goal is not in the public interest when the requirements imposed by the Act to meet that goal result in one of the negative outcomes outlined in Section 251(f)(2)(A). In that situation, strict imposition of the requirements of Section 251(b) and (c) would not be in the public interest and should be suspended or modified.

While the decision as to whether a suspension or modification should be granted under the Act rests with state commissions, CBT believes that this Commission has an important and critical role to play in the process. Clearly, the Congress intended for the modification and suspension provisions of the Act to operate according to the guidelines and criterion set forth in the Act. To the extent that a state commission attempts to impose additional requirements or seeks to impose additional procedural hurdles on a carrier seeking a suspension or modification of the requirements of the Act, CBT asserts that this Commission must intervene to ensure that the intent of the Congress in adopting Section 251(f)(2) is followed by state commissions. By assuming this role, the Commission will underscore the intent of the Congress in adopting a provision providing for suspension and modification of certain requirements under the Act, namely to ensure that the ability to compete effectively and fairly is symmetrical for all competitors.

III. CONCLUSION

CBT respectfully requests the Commission to consider these comments as it develops regulations and guidelines related to the interconnection issues raised in the Act. CBT asserts that in order for the Commission to be consistent with the intent of the Act, and rules or regulations which are promulgated as a result of this proceeding must reflect the significant differences between small and mid-size LECs and their much larger counterparts. In developing the Act, Congress realized that small and mid-size LECs can compete effectively for the subscribers they had faithfully served over the years, provided that they are given sufficient time and reasonable accommodations in adjusting to the competitive market.

The significance of overhauling the current universal service support structure, access charge reform, rate rebalancing and deaveraging cannot be overestimated. These reforms must occur simultaneously, alongside actions taken as a result of this proceeding, in order to develop truly competitive markets in which all companies have an equal opportunity to compete. Regulations which unduly hamper incumbent LECs by setting rates below cost will raise significant constitutional questions that will ultimately slow the progress toward the competitive telecommunications market envisioned by the Act.

Respectfully submitted,

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