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May 16, 1996

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**By Hand Delivery**

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

DOCKET FILE COPY ORIGINAL

**Re: Implementation of the Local Competition Provisions in the  
Telecommunications Act of 1996; CC Docket No. 96-98**

Dear Mr. Caton:

Enclosed for filing with the Federal Communications Commission please find an original and 16 copies of the Comments of American Communications Services, Inc. regarding the above-referenced matter. American Communications Services, Inc. has simultaneously filed, under separate cover, a 3.5 inch diskette containing an MS DOS 5.0/WordPerfect 5.1 version of its Comments.

Please acknowledge receipt of this filing by date-stamping the duplicate provided and returning it to the bearer

Very truly yours,



Brad E. Mutschelknaus

Enclosures

**ORIGINAL**

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

FILED  
MAY 16 1996

In the Matter of )  
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Implementation of the Local ) CC Docket No. 96-98  
Competition Provisions in the )  
Telecommunications Act of 1996 )

DOCKET FILE COPY ORIGINAL

**COMMENTS OF  
AMERICAN COMMUNICATIONS SERVICES, INC.**

Respectfully submitted,

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May 16, 1996

## SUMMARY

This proceeding presents the Commission with a historic opportunity to promote consumer welfare by increasing competition in the local telecommunications services market substantially. For a century, the telecommunications industry functioned as tightly regulated monopoly. The Commission's *Competitive Carrier* rulemaking, in tandem with the *Modified Final Judgment*, effectively replaced monopoly with competition in the long distance market by authorizing open market entry *and* requiring interconnection, equal access and resale. There can be no doubt that the Commission's bold experiment with long distance competition a decade ago has been a tremendous success. Consumers benefited through introduction of many new services and a precipitous price decline. Service providers benefited through the explosive market growth stimulated by the Commission's actions. And the nation as a whole benefited as hotly competitive U.S. long distance firms quickly evolved into world leaders.

Congress now has presented the FCC with the opportunity -- and the challenge -- to replicate this success story in the local telecommunications market. The Telecommunications Act of 1996 ("1996 Act") breaks down entry barriers in the local marketplace, and imposes a series of explicit duties upon incumbent local exchange carriers ("ILECs") to interconnect with competitors, offer their local services for resale and unbundle the elements of their local networks. The national policy is clear: Competition in the local market is to be nurtured through open interconnection, network unbundling and cost-based pricing. But Congress understandably deferred to the FCC to implement this national policy by adopting a complimentary regulatory framework and an aggressive enforcement role.

American Communications Services, Inc. ("ACSI") is one of a host of emerging competitive local exchange carriers ("CLECs") which stand ready to seize this opportunity.

ACSI already has constructed, or is constructing, alternative local fiber optic networks in 20 cities, and plans to expand to 30 markets by mid-1997. Meaningful interconnection with the ILECs is absolutely critical to achievement of this business plan. It simply is not technically or economically feasible to completely replicate the ILEC local networks in the near term. Thus, although ACSI is frantically constructing its own local networks, it will be necessary for ACSI to supplement its own facilities with ILEC interconnection, services and network elements for the foreseeable future.

The assistance needed from the Commission to make the competitive model work in the local market is clear. Not surprisingly, ACSI's own efforts to negotiate terms of interconnection with various ILECs largely have stalled as they have refused to discuss meaningful loop unbundling and negotiate seriously on price levels. Thus, the FCC should move quickly to craft regulations which accomplish the following:

1. Require ILECs to interconnect on nondiscriminatory terms with CLECs at any technically feasible point.
2. Establish nondiscriminatory and reciprocal terms for local traffic exchange.
3. Mandate that ILECs offer all network elements on an unbundled basis, especially discrete components of the local loop.
4. Require ILECs to make all of their local services (except lifeline offerings) available for resale at wholesale rates.
5. Establish TSLRIC costs as the baseline for establishment of rates for ILEC interconnection and network elements.
6. Establish procedures which enable aggrieved interconnectors to have swift resolution of violations of the terms of the 1996 Act and the Commission's rules, including the appointment of a special FCC ombudsman to oversee the resolution of ILEC/CLEC interconnection disputes.

Importantly, the Commission should assume a leadership role in establishing uniform, national rules in this area. Although some states have done a highly commendable job of

requiring ILEC interconnection already, most are moving slowly or not at all. Moreover, the uncertainty attendant to a patchwork of differing state requirements will substantially impair both interconnection negotiations and deployment of alternative local networks.

It is especially critical that the FCC take a strong stand with respect to ILEC pricing of interconnection and unbundled network elements. The availability of each will be meaningless if the prices are set unreasonably high. The 1996 Act requires that interconnection rates be cost-based. Nevertheless, recent experience in ILEC negotiations and state regulatory proceedings have not been encouraging. CLECs have been presented with ILEC pricing in both fora which simply are not based on the cost of providing the services at issue. It is imperative that the FCC create a model which will insure that ILEC prices for interconnection and network elements are set at the total service long run incremental cost ("TSLRIC") of providing the service or facility requested. Without such an explicit pricing standard, the ILECs can and will indefinitely use above-cost pricing to create an inherent and artificial cost advantage over their rivals.

Just as many naysayers did a decade ago with respect to long distance services, some commenters will urge the Commission to move cautiously, phase out ILEC subsidies gradually and defer to state regulators in many areas. But such protestations must be seen for what they are; *i.e.*, veiled efforts to defeat the purposes of the 1996 Act and perpetuate the ILEC monopoly stranglehold over the local services market. Bold federal action is required to usher in an era of vibrant local competition. ACSI hereby respectfully urges the FCC to move quickly to adopt and implement rules which are comprehensive and aggressive in implementing the terms of this 1996 Act.

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

MAY 16 1996

In the Matter of )  
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Implementation of the Local )CC Docket No. 96-98  
Competition Provisions in the )  
Telecommunications Act of 1996 )

**COMMENTS OF  
AMERICAN COMMUNICATIONS SERVICES, INC.**

American Communications Services, Inc. ("ACSI"), by its attorneys, hereby comments on the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.<sup>1</sup>

**I. INTRODUCTION**

**A. ACSI Has a Vital Interest in This Proceeding.**

ACSI, a publicly traded Delaware corporation, through its almost two dozen operating subsidiaries, provides competitive local access and exchange services. ACSI is headquartered in Annapolis Junction, Maryland, and currently has more than 200 employees. The company constructed its first network in 1994. At present, ACSI has eleven operational

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<sup>1</sup> FCC 96-182 (released April 19, 1996).

local fiber optic networks and nine additional networks under construction.<sup>2</sup> The Company intends to have 30 local networks in service by mid-1997.

Although ACSI is constructing its own fiber optic networks in the markets it serves, fair and efficient interconnection with the incumbent local exchange carriers ("ILECs") in these markets is critical to ACSI's long-term success. In the wake of the passage of the Telecommunications Act of 1996 ("1996 Act"), ACSI has requested and commenced interconnection negotiations under new Section 251(c) of the Communications Act of 1934, as amended, with three of the Bell regional holding companies,<sup>3</sup> GTE and Sprint/Central. Not surprisingly, the negotiations are proceeding slowly. As is discussed later, discussions of local loop unbundling and initial pricing are at a virtual standstill while participants await FCC guidance. Without a doubt, the rules adopted by the Commission in this proceeding will have a profound effect on ACSI, the industry and, ultimately, the public. Companies like ACSI, which depend to a significant degree upon interconnection with the ILECs, have a vital stake in the outcome of this rulemaking.<sup>4</sup>

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<sup>2</sup> ACSI's currently operational networks are located in Albuquerque, NM; Columbus, SC; El Paso, TX; Fort Worth, TX; Greenville, SC; Lexington, KY; Little Rock, AR; Louisville, KY; Mobile, AL; Montgomery, AL; and Tucson, AZ. ACSI networks in the following cities are scheduled to be operational by September 30, 1996: Amarillo, TX; Baton Rouge, LA; Birmingham, AL; Charleston, SC; Columbus, GA; Irving, TX; Jackson, MS; Las Vegas, NV; and Spartanburg, SC.

<sup>3</sup> The three RHCs are BellSouth Corporation, SBC Communications, Inc., and US WEST Communications.

<sup>4</sup> ACSI is a member of the Association of Local Telecommunications Services ("ALTS") and adopts ALTS' comments and appendix of proposed rules in this proceeding. ACSI's comments are supplementary to the ALTS filing.

**B. Congress Intended that the FCC Implement the 1996 Act by Adopting Uniform National Rules (Section II.A, ¶¶ 25-41).<sup>5</sup>**

Some ILECs have asked the FCC to step aside and leave implementation of the provisions of the 1996 Act to state regulators. Happily, the Commission thus far has rejected this notion. Reasoning that Congress intended it "to implement a pro-competitive, de-regulatory, national policy framework envisioned by the 1996 Act," the FCC tentatively concluded that uniform, national rules are needed "to serve the full benefits of competition to consumers."<sup>6</sup> ACSI strongly agrees, and urges the FCC to quickly adopt rules which are explicit as well as exhaustive, to ensure that the *entire nation* -- not just select states or regions -- realize the benefits offered by a truly competitive local market.

ACSI submits that uniform national rules are needed to guide state commissions in conducting arbitrations of Section 251 interconnection disputes, as well as for ruling on the validity of both negotiated and arbitrated interconnection agreements. Without national rules governing the states' roles, carriers will be forced to deal with a patchwork of state regulatory interpretations, diverting new entrants' attention away from competing with the ILECs in the marketplace and toward fighting legal and regulatory battles in numerous, widespread fora.

There can be little doubt that Congress intended that the Commission take a leading role in implementing the interconnection and unbundling provisions of the 1996 Act. The

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<sup>5</sup> As requested in paragraph 291 of the NPRM, ACSI will identify in each section heading the portion of the NPRM to which that section of its comments relates. This section responds to Section II.A.(¶¶ 25-41) of the NPRM.

<sup>6</sup> Notice ¶ 26.

1996 Act charges the FCC alone with establishing the rules necessary to implement the requirements of Section 251.<sup>7</sup> The statute also provides that the Commission may preempt inconsistent state and local requirements, orders, and policies that substantially prevent the achievement of Congress' objectives.<sup>8</sup> Similarly, the Commission is required to preempt any state or local statute, regulation, or other legal requirement that prohibits entry or any state or local requirement that affects universal service, the public safety and welfare, the quality of service, or safeguards for the rights of consumers in a manner that is not competitively neutral or that contravenes the universal service provisions of the 1996 Act,<sup>9</sup> or the FCC regulations implementing them.<sup>10</sup> Thus, while important roles are left for the states under the new Act -- such as approving negotiated and arbitrated interconnection arrangements -- they are all to be carried out, ultimately, pursuant to the direction of the FCC and its implementing rules.<sup>11</sup>

Another clear indication that national interconnection rules were intended is that the 1996 Act, with respect to interconnection, makes no distinction between interstate *and*

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<sup>7</sup> *Id.* § 251(d)(1). The six-month deadline imposed by Congress on the FCC to adopt regulations governing interconnection is a clear expression of the national legislature's intent that the regulatory framework needed to achieve its objectives be established expeditiously. Without strong national standards, little will have been accomplished by August 8, 1996, and the states will be free, essentially at their own pace, to establish a mosaic of policies, orders, and rules affecting interconnection.

<sup>8</sup> 47 U.S.C. § 251(d)(3).

<sup>9</sup> *See* 47 U.S.C. § 254.

<sup>10</sup> 47 U.S.C. § 253(d).

<sup>11</sup> In addition, it is the Commission alone that determines whether carriers that are not ILECs at the date the statute was passed later became so. 47 U.S.C. § 251(h). Moreover, only the FCC has the jurisdiction to determine whether commercial mobile service ("CMRS") providers should be regulated as local exchange carriers. 47 U.S.C. § 153(44).

intrastate interconnection services and elements. Rather, interconnection is treated as an organic whole, as it should be. Accordingly, to insure that *interstate* services are not subject to state-to-state variation, the FCC should adopt national standards.

Concomitantly, the Commission must be integrally involved in resolving disputes and complaints related to interconnection agreements approved by state commissions. In addition, the FCC must expeditiously resolve disputes concerning the meaning of its own Section 251 regulations to ensure that a uniform and coherent body of interpretive law emerges. Accordingly, the Commission should make clear in its Section 251 regulations that it has jurisdiction pursuant to Section 208 over any complaint stating that a telecommunications carrier has violated any provision adopted under the 1996 Act.

The 1996 Act did not revise Section 208 of the Communications Act of 1934 ("1934 Act"), which allows aggrieved carriers to file complaints with the FCC for violations of the 1934 Act, or any Commission regulation or order. As the provisions of the 1996 Act do not vest jurisdiction to resolve disputes over interconnection agreements in any other entity, the FCC clearly has jurisdiction to resolve disputes arising under the 1996 Act pursuant to Section 208.<sup>12</sup> Nonetheless, in order to clear up any potential confusion that might arise, the FCC should make clear that any disputes that arise over the propriety of ILEC practices under the 1996 Act are the subject of a Section 208 complaint.<sup>13</sup>

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<sup>12</sup> While the states have initial jurisdiction to resolve disputes during the interconnection negotiation process, *i.e.*, through arbitration, the 1996 Act does not give them independent authority to resolve disputes arising after approval of such interconnection agreements that inevitably will arise regarding interpretation and implementation.

<sup>13</sup> The FCC should also make clear that it will entertain requests for declaratory rulings under Section 1.2 of the Commission's Rules to remove uncertainties or to terminate controversies. 47 C.F.R. § 1.2. *See also* 5 U.S.C. 554(d).

In order to ensure that complaint proceedings are resolved expeditiously and consistently, ACSI respectfully suggests that the Commission appoint an "ombudsman" within the FCC to oversee the process. This "interconnection czar" should be charged with resolving formal and informal complaints (as well as requests for declaratory rulings) regarding the interconnection process and interconnection agreements. The ombudsman should be instructed to resolve all such disputes within six months of filing. By designating a specific office within the Commission to discharge these responsibilities, the FCC will ensure that the regulatory process will serve to promote the growth of local competition.

Finally, it is both important and appropriate that the FCC make clear that the provisions of the 1996 Act applying to *incumbent* LECs should not, through state order, be made to apply to competitive LECs ("CLECs") such as ACSI.<sup>14</sup> Such state action would be inconsistent with the 1996 Act and its purposes. In acknowledgement of the market power of ILECs, the 1996 Act imposes a distinct set of obligations on ILECs in addition to those imposed on all LECs.<sup>15</sup> The 1996 Act explicitly sets forth the circumstances in which the Section 251(c) ILEC obligations may be applied to CLECs.<sup>16</sup> Section 251(h)(2) provides that the *FCC* may, by rule, provide for the treatment of a LEC as an ILEC if the Commission finds that the carrier occupies a market position "comparable" to that occupied by an ILEC. Thus, any LEC that has "substantially replaced" an ILEC could be treated as

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<sup>14</sup> *Notice* ¶ 45 (inquiring whether state actions imposing obligations on new entrants' duties like those in Section 251(c) would be consistent with the Act).

<sup>15</sup> *Compare* 47 U.S.C. 251(b) (obligations on all LECs) to 47 U.S.C. 251(c) (obligations on all *incumbent* LECs).

<sup>16</sup> *See* H.R. Conf. Rep. No. 104-458, 104th Cong., 2d Sess. 1 (1996) [hereinafter Joint Explanatory Statement], p. 121.

an ILEC, if doing so would promote the public interest. Given Congress' articulation of this standard, *to be applied by the FCC*, the state commissions cannot on their own conclude that new entrants should be subject to 251(c) ILEC obligations.

## **II. INTERCONNECTION**

### **A. Guidelines for Good Faith Negotiations Must be Established (Section II.B.1, ¶¶ 46-48).**

ACSI supports the FCC's tentative decision to adopt national standards requiring the ILECs to negotiate in good faith.<sup>17</sup> Uniform standards will facilitate negotiations in all areas by reducing the use of stalling tactics and non-productive posturing by ILECs. Moreover, national standards will expedite regulatory review (including state arbitration) by reducing the scope of potential disputes.

The FCC should not presume that ILECs will voluntarily engage in good faith negotiations. Unfortunately, on several occasions, ACSI already has had reason to doubt the "good faith" of the ILECs. For example, despite the fact that ACSI delivered a formal request for interconnection to Sprint/Central more than two months ago, Sprint/Central has not arranged to meet with ACSI on the subject.<sup>18</sup> While SBC has met with ACSI, it conditioned negotiations for interconnection upon execution of a nondisclosure agreement that prohibits ACSI from discussing the details of its negotiations with SBC with other CLECs and strictly limits ACSI's ability to share information with government regulators. Other

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<sup>17</sup> *Notice* ¶ 47. Of course, the requesting telecommunications carriers should have a reciprocal obligation, *see* 47 U.S.C. § 251(c)(1), but the Commission is correct in observing that it is the entrenched incumbent that is prone to deploy tactics frustrating good faith negotiations. *See Notice* ¶ 47.

<sup>18</sup> Sprint/Central did not even acknowledge ACSI's request for over six weeks.

ILECS have demanded that ACSI agree that the execution of an interconnection agreement satisfies the statutory checklist for a BOC's provision of in-region long distance services,<sup>19</sup> or that the effective date of the agreement be delayed so that it is coincident with the FCC's approval of a BOC application in-region interLATA authority. Virtually all ILECS have proposed pricing with a "take it or leave it" attitude, and have refused ACSI's request for supportive cost studies. In addition, almost every ILEC has been reticent to share information regarding existing or planned interconnection arrangements with other ILECs, CLECs, or other telecommunications carriers. FCC-imposed guidelines for negotiation should proscribe such non-productive ILEC posturing.

The national guidelines for good faith negotiations should include, at a minimum:

- A requirement that ILECs begin negotiations promptly after receipt of a formal request for interconnection.
- Prohibitions on nondisclosure agreements that preclude entirely the discussion of ILEC information with other CLECs or with any responsible federal or state government agency.
- A proscription against requiring CLECs to certify ILEC compliance with Section 271 competitive checklist requirements.
- Requirements that ILECs provide copies of all interconnection agreements with other ILECs and CLECs, whether filed with regulators or not.
- A rule that obligates ILECs to provide complete descriptions of their own local network architectures, including all existing interconnection arrangements with other ILECs, CLECs, CMRS providers, and other telecommunications carriers.
- A requirement that ILECs provide total service long-run incremental cost ("TSLRIC") studies upon request in support of all proposed pricing, or at a minimum, any existing long-run incremental cost ("LRIC") studies for the same or similar ILEC services.

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<sup>19</sup> See 47 U.S.C. § 271(c)(2)(B).

- An obligation upon ILECs to disclose, upon request, a list of all past and present points of interconnection with other local service providers, or other telecommunications carriers.

In addition, with reference to the FCC's question concerning the applicability of the 1996 Act's approval process to interconnection agreements that predate the 1996 Act,<sup>20</sup> ACSI submits that Section 252(c) clearly mandates the filing of such agreements with state commissions for approval. Section 252(a)(1) states unambiguously that "an incumbent local exchange carrier may negotiate and enter into binding agreement with the requesting telecommunications carrier," but any such "agreement, including any interconnection agreement negotiated *before the date of enactment*," shall be submitted for state commission approval (emphasis added). Once such an agreement is approved, Section 252(i) provides that "[a] local exchange carrier shall make available any interconnection, service, or network element provided under [such] an agreement . . . to any other requesting telecommunications carrier upon the same terms and conditions . . . ." There are no exclusions or limitations — all ILEC interconnection agreements must be filed for approval and made generally available. Despite this clear edict, however, most ILECs continue to resist requests for the filing of ILEC-to-ILEC agreements, and refuse requests by CLECs to make similar arrangements generally available. Indeed, in Arkansas, ILECs succeeded in persuading the PSC to suspend its own order requiring them to file all such agreements for review. The FCC should expressly clarify that ILEC/ILEC and ILEC/CLEC interconnection agreements are equally subject to the requirements of Section 252. Such pre-1996 Act interconnection

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<sup>20</sup> Notice ¶ 48.

agreements should be filed publicly and their prices, terms and conditions made available to others pursuant to Sections 252(h) and (i).<sup>21</sup>

**B. Explicit National Rules Governing Interconnection Arrangements Must Be Adopted.**

**1. Standards for Interconnection Should be Uniform Nationally (Section II.B.2, ¶¶ 49-55).**

The FCC correctly concludes that national standards for evaluating interconnection arrangements will promote the development of local competition.<sup>22</sup> Uniformity will limit the potential for dispute between negotiating parties, facilitate the Section 252 arbitration and approval processes by allowing states to focus their resources on issues that are genuinely geographically unique, and provide sufficient regulatory certainty to permit new entrants to draw up business plans and seek financing with greater confidence. Without uniform national standards,<sup>23</sup> new entrants are likely to face a patchwork of regulatory frameworks that will frustrate their ability to quickly implement regional or national business plans and that would be likely to tax their limited resources in lengthy series of legal disputes.

**2. Requirements for Interconnection and Reciprocal Compensation Must Be Consistent.**

The Commission seeks comment on the relationship between the ILECs' obligation to provide "interconnection" under Section 251(c)(2) and the obligations imposed on all LECs, including ILECs, under Section 251(b)(5), to establish reciprocal compensation for the

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<sup>21</sup> See Section IV.D, pp. 53-55, *infra*, for a more detailed discussion of the requirement that interconnection, services, and network elements contained in agreements approved under Section 252 be available to other carriers.

<sup>22</sup> Notice ¶ 50.

<sup>23</sup> See FCC questions in Notice ¶ 51.

"transport and termination" of traffic.<sup>24</sup> ACSI submits that the requirements for interconnection and reciprocal compensation must be consistent and complementary. Certainly interconnection must be more than mere "physical linking."<sup>25</sup> Without transport, such a limited type of interconnection would be meaningless for any telecommunications carrier. Indeed, the Act itself provides that interconnection include "transmission and routing."<sup>26</sup>

Thus, the pricing standards for "interconnection" and "reciprocal compensation" should be interpreted in a consistent manner. Both provide for cost-based charges for the termination of traffic.<sup>27</sup> The only difference between them is that Section 251(d)(2) provides for the exchange of mutual compensation between two LECs, and allows a "reasonable approximation" of LRIC costs to be employed in place of a detailed analysis of actual LRIC costs.

**3. Interconnection Must Be Required at Any Technically Feasible Point (Section II.B.2(1), ¶¶ 56-59).**

The Act makes clear that ILECs must provide for interconnection at any "technically feasible point" within their respective networks.<sup>28</sup> At a minimum, interconnection with an ILEC at a given point must be considered technically feasible if the ILEC currently provides,

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<sup>24</sup> Notice ¶ 53.

<sup>25</sup> See Notice ¶ 54.

<sup>26</sup> 47 U.S.C. § 251(c)(2)(A).

<sup>27</sup> Compare 47 U.S.C. § 251(c)(1)(A)(i) with § 251(d)(2)(A)(i).

<sup>28</sup> 47 U.S.C. § 251(c)(2)(B).

or has provided in the past, interconnection at such point.<sup>29</sup> In addition, a point of interconnection that is *technically* feasible within one network is technically feasible in another ILEC's network to the extent that they employ similar technology.

Technically feasible interconnection should not be limited to those points where interconnection has historically been permitted. Rather, to achieve Congress' objective of full and fair competition, interconnection must be made available at any point in the ILEC network where physical linkage is possible, where partitioning of the facility being interconnected is feasible, and where billing for that linkage and partitioning is practical. Further, in determining whether a point of interconnection is feasible, regulators must also inquire whether an ILEC provides interconnection to itself at that point.

Technical feasibility is a concept that will evolve as the network evolves. At no time should the "list" of technically feasible interconnection points be considered definitive. Thus, ACSI supports the Commission's conclusions that "as technology advances, the number of points at which interconnection is feasible may change and . . . that the federal standard for minimum interconnection points should change accordingly."<sup>30</sup>

ACSI submits that the burden of proving (by a preponderance of the evidence) that interconnection at a given point is infeasible must lie with an ILEC resisting interconnection. The ILECs' unique access to critical network information puts them in the best position to establish whether interconnection is technically feasible. Therefore, they should bear the burden of proving that interconnection at a particular point is not feasible. Moreover, any

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<sup>29</sup> See Notice ¶ 57.

<sup>30</sup> Notice ¶ 57.

ILEC that employs largely similar technology at a requested point of interconnection as another ILEC which has permitted interconnection at that point should face a very high burden if it seeks to refuse interconnection.

**4. Terms for Interconnection Must Be Just, Reasonable and Nondiscriminatory (Section II.B.2(2), (3), ¶¶ 60-63).**

In addition to being able to interconnect physically at any feasible point, the 1996 Act requires that such interconnection be at prices, and on terms and conditions that are just, reasonable, and nondiscriminatory.<sup>31</sup> ACSI submits that national standards interpreting these provisions are necessary to ensure that new entrants have an equal opportunity to compete in all regions of the country and that users everywhere have an equal chance to benefit from competition.

Specifically, the FCC's rules should require that ILECs meet the same performance standards for installation, maintenance, and repair on competitors' interconnected facilities as for its own. Standard electronic ordering interfaces should be made available to competitors.<sup>32</sup> In addition, waiting periods for installation, maintenance, and repair should be reasonable and nondiscriminatory, and consistent with the lead times applied to large corporate accounts.<sup>33</sup> Moreover, CLECs should be permitted to perform installation,

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<sup>31</sup> 47 U.S.C. §§ 251(c)(2)(D); 252(d)(1).

<sup>32</sup> ILECs should be compelled to develop and offer systems which enable CLECs to interface directly with ILEC ordering, installation, support and maintenance systems. This interface should be available on electronic basis with both PC and mainframe based systems.

<sup>33</sup> The Commission should consider requiring the ILECs to publish reports concerning installation, maintenance, and repair intervals to facilitate evaluation of the just, reasonable, and nondiscriminatory nature of LEC services.

maintenance, and repair themselves or through mutually agreed third-party vendors subject only to reasonable limitations on physical access to the interconnected facilities, *i.e.*, during regular business hours.

Charges for ILEC installation, maintenance, and repair services should be set at the LRIC of performing the service. This will prevent ILECs from using high non-recurring charges to reap an inherent competitive advantage. These charges must be publicly disclosed and made generally available. If an ILEC fails to meet agreed-upon performance standards for installation, maintenance, and repair, competitors should be free to withhold specified amounts of money as compensation for the substandard performance. Moreover, competitors should be able to utilize the Section 208 complaint process to enforce the interconnection performance standards.<sup>34</sup>

**5. Physical Collocation Must Be Made Available  
(Section II.B.2(4), ¶¶ 64-73).**

The 1996 Act requires ILECs to provide for physical collocation of a requesting carrier's equipment at the ILEC's premises to the extent necessary for interconnection or access to unbundled network elements.<sup>35</sup> ACSI recognizes that, in extremely limited circumstances, ILECs may be able to demonstrate that physical collocation is not practical for technical reasons or because of space limitations. In these circumstances, the 1996 Act provides for virtual collocation.<sup>36</sup> ACSI submits that such "virtual collocation" must

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<sup>34</sup> The Commission should also adopt rules encouraging ILECs to establish generally applicable procedures by which they will accept and respond to the requests and complaints of interconnection carriers.

<sup>35</sup> 47 U.S.C. § 251(c)(6).

<sup>36</sup> 47 U.S.C. § 251(c)(6)

include mid-span meets, or "meet point arrangements, at the option of the interconnector." The importance of strong Commission rules on these matters cannot be overemphasized. Some carriers are still refusing to provide collocation or meet point arrangements, frustrating the efforts of new entrants to establish interconnection arrangements that will allow them to compete effectively.<sup>37</sup>

National rules must prescribe how ILECs will provide interconnection. New local competitors will enter the marketplace in numerous markets, in multiple states, and will have to negotiate with several ILECs. ACSI, for example, will soon operate in more than thirty markets in over a dozen states. It has already commenced Section 252(a) negotiations with five ILECs. Standardization of requirements is needed to give ACSI the ability to plan, construct, and operate its local networks efficiently. If the states are given more flexibility than that provided in the statute, *i.e.*, the flexibility to determine that physical collocation is not feasible in particular instances,<sup>38</sup> then the development of local competition will be slowed.

Accordingly, ACSI submits that the FCC should adopt comprehensive national standards on the means for interconnection. ACSI believes that the FCC should revise its prior standards for collocation set out in the *Expanded Interconnection* proceedings.<sup>39</sup>

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<sup>37</sup> US West, for example, does not make physical collocation available under its proposed baseline interconnection agreement.

<sup>38</sup> 47 U.S.C. § 251(c)(6).

<sup>39</sup> *Expanded Interconnection with Local Telephone Company Facilities*, 7 FCC Rcd 7369 (1992) [*Special Access Expanded Interconnection Order*]; *Local Exchange Carrier's Rates, Terms, and Conditions for Expanded Interconnection for Special Access*, 8 FCC Rcd 6909 (1993) [*Special Access Physical Collocation Designation Order*]; *Expanded Interconnection with Local Telephone Company Facilities*, 9 FCC Rcd 5154 (1994) [*Virtual Collocation*

(continued...)

While the existing *Expanded Interconnection* rules provide a good starting point--indeed they already govern many existing arrangements--several modifications are necessary. First, the new statute sets up a clear requirement that physical collocation be available unless a state commission rules that it is not practical for technical reasons or because of space limitations. Where a requesting telecommunications carrier seeks physical collocation, the ILEC should have the burden of demonstrating the technical or spatial impracticality of that type of interconnection. Revised *Expanded Interconnection* rules should also reflect the resolution of issues raised in the outstanding designation orders for physical and virtual collocation tariffs.<sup>40</sup> The FCC should resolve those investigations promptly and incorporate the results in the revised rules.

Finally, collocation pricing must be governed under the same cost-based standards applicable to interconnection generally.<sup>41</sup> Collocation under the 1996 Act is expressly for purposes of "interconnection or access to unbundled network elements."<sup>42</sup> Therefore, it is only logical that collocation must be priced in the same manner as interconnection and

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<sup>39</sup>(...continued)

*Expanded Interconnection Order*]; *Local Exchange Carriers Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport*, 10 FCC Rcd 11116 (1995) [*Virtual Collocation Designation Order*].

<sup>40</sup> See Notice ¶ 73. *Special Access Physical Collocation Designation Order*, 8 FCC Rcd 6909; *Virtual Collocation Designation Order*, 10 FCC Rcd 11116.

<sup>41</sup> 47 U.S.C. § 251(d)(1).

<sup>42</sup> 47 U.S.C. § 251(c)(6).

unbundled network elements. As explained in detail below, it is ACSI's view that this should be pursuant to a LRIC standard.<sup>43</sup>

### **III. LOCAL TRAFFIC EXCHANGE (Section II.C.5, ¶¶ 226-246)**

The seamless exchange of local traffic between competing LECs is a fundamental precondition to meaningful switched services competition in the local marketplace. The simple fact is that CLECs will start with no market share whatsoever. If CLEC customers can use CLEC services only to call other CLEC subscribers, CLECs will not be able to convince any end user to switch to their services -- regardless of price breaks, service improvements or other inducements. For competition to succeed, it is critical that CLECs be able to hand traffic to the ILECs for them to terminate calls placed to ILEC presubscribed phones, and vice versa.

Section 251(b)(5) of the 1996 Act resolves this dilemma by providing that each LEC has the duty to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." While, in ACSI's experience, no ILEC has refused to interconnect with CLECs for purposes of local traffic exchange, some ILECs have attempted to dilute the requirement by imposing anticompetitive conditions on the exchange or pricing

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<sup>43</sup> See Section IV.F, *infra*. These cost-based pricing principles must extend to the nonrecurring charges that the ILECs assess for customers that reconfigure their services from the ILEC to a collocated competitor. ACSI, in its role as a competitive access provider, for example, has found in some areas of the country that non-cost-based reconfiguration charges assessed by ILECs on access customers desiring to roll over to ACSI for special or switched access are so large (and non-cost-justified) that the customers are deterred from migrating any of their existing circuits to the competitors of such ILECs. While the complaint process is available to ACSI to address such concerns (*see, e.g., ACSI v. BellSouth Telecommunications, Inc.*, File No. E-96-20 (filed Feb. 16, 1996)), the public interest in vibrant local competition would benefit from the clarification of the *Enhanced Interconnection* rules in this regard.

of service. The Commission must step in and provide guidance in this area. ACSI strongly encourages the Commission to establish regulations setting minimum national requirements necessary for local traffic exchange agreements to satisfy the provisions of Section 251(b)(5).

**A. A Mandatory Calling Scope Should Include All Local Traffic Delivered by or Destined to Any Local Service Provider.**

The Commission sought comment on whether "transport and termination of telecommunications" is limited to certain types of traffic.<sup>44</sup> The FCC's concern is well-founded. Most ILECs with which ACSI has attempted to negotiate interconnection agreements have sought to effectively exclude substantial local traffic volumes from mutual traffic exchange arrangements. In some cases, ILECs refuse to terminate the traffic. US West, for example, has refused to terminate local calls placed by or destined to a CMRS customer. More commonly, however, ILECs have established varying rate structures for different types of local traffic types, thereby rendering traffic exchange uneconomic for certain local traffic categories, or have required use of inefficient traffic exchange trunking arrangements.

Indeed, the ILECs with which ACSI has met have attempted to cull out various types of local traffic and establish special (higher) prices for termination. Typically, the ILECs establish an allegedly cost-based price per minute for the exchange of "plain vanilla" local calling within their chosen basic plan local exchange area, but assess non-cost based switched access charges for the termination of all other local traffic types. EAS traffic and calls which the ILECs have chosen to classify as "intraLATA toll" are two examples. These distinctions are based upon the ILECs' strategic pricing decisions for their own retail

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<sup>44</sup> Notice ¶ 230.