BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20544

FCC 96-182

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

REPLY COMMENTS OF THE TEXAS OFFICE OF PUBLIC UTILITY COUNSEL

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EXECUTIVE SUMMARY

Virtually all potential new entrants that filed comments on the Commission's NPRM advocate that the Commission promulgate rules to establish a uniform and national telecommunications policy. This almost near unanimity among new entrants should be a clear indication to the Commission that these companies need more regulatory certainty than is currently afforded by the fractured mosaic of state policies and statutes.

The Commission should also recognize that it is simply not true, as claimed by some parties, that "the States are unequivocally committed to local competition." Indeed, any objective observer of the telecommunications industry will recognize the wide variations in regulatory hospitability toward competition.

For example, consider that the Michigan Commission *in about six months* provided US Signal with, among other arrangements, a conditional "bill and keep" arrangement for interconnection with Michigan Bell, interim number portability ("RCF" at $1.14 per month), and access to Michigan Bell's unbundled local loops on a basis other than collocation. By contrast, TCG -- which for the longest time has had two fully installed Class 5 switches and fiber rings in both Dallas and Houston -- is still battling with the incumbent LEC over certification requirements. No unbundled loops and no interim number portability arrangements are available. While investors have been willing to commit tens of millions of dollars to Texas, regulatory complexities continue to deprive end-users in Texas from the benefits of competition.

Clearly, the stakes are too high to permit individual states to substantially affect the further development of telecommunications competition in such disparate fashions. The Commission must exercise a substantial degree of control over these policies to ensure a national competitive marketplace.

In developing rules with a sufficient degree of specificity, the Commission will have to make a number of difficult decisions about such issues as the necessary degree of unbundling, resale restricitions, etc. To sort through the issues, OPC offers the Commission a simple heuristic device of asking the hypothetical question: What would a company do in a truly competitive market?

For example, would a company without market power and with a lot of stranded outside plant allow another firm to use its feeder plant and to connect at the SLC hut? Obviously, the answer is: yes. Indeed, we should expect that the engineers and sales people that will make it work will be in for promotions. Therefore, when SBC argues that loop sub-unbundling is technically not feasible, the commission should reject such arguments for what they are: rational intransigence on the part of a monopolist.

Likewise, would a company without market power and with a lost of excess switching capacity allow another firm to use its switching capacity in the form of a switch platform product (such as proposed by the Illinois Staff)? The answer, again, is: yes. Indeed, as discussed in more detail, this is precisely the type of arrangement that MCI has worked out with Hancock Rural Telephone Corporation in Indiana. The arrangement is voluntary and to the benefit of both companies. (MCI will use the switch platform to compete with Ameritech for Centrex customers in downtown Indianapolis). Therefore, when SBC argues that switch platform products are technically not feasible, the Commission should, once again, reject the argument as an attempt to maintain the *status quo*.

Additionally, to determine whether certain levels of wholesale discounts are appropriate, the Commission should investigate what discounts the incumbent LECs are willing to provide in competitive settings or in settings where it serves their business interests. In Georgia, for example, Bell South offers a *Complete Choice* package of some twenty vertical features bundled with local service for only $30.00 -- the undiscounted value of this package is well over $70.00. When it serves Bell South's business interest, therefore, discounts in excess of 50 percent are well within the range of what is possible. (LEC tariffs are replete with double digit discounts, on Centrex and other services, that are revenue enhancing for the LECs.) This discount contrasts starkly, of course, with the 9 to 12 percent wholesale discounts Bell South holds out to competitors. While the Act sets forth a specific methodology for the determination of wholesale discounts, it would still serve the Commission to have a well developed sense of what range of discounts are reasonable in competitive settings or in settings where discounts serve the incumbent LECs' interests.

Finally, OPC recommends for the Commission's consideration TCG's preferred outcome approach. This approach, under which the incumbent's superior bargaining position is off-set by certain default arragements, seems well suited to reconcile the conflicting needs of new entrants for policies that, not only are uniform and nationwide, but also allow for sufficient flexibility to accomodate their specific individual circumstances.

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Introduction

In Initial Comments,[1] the Texas Office of Public Utility Counsel (OPC) urged the Commission to promulgate rules that give potential entrants the opportunity to operate *viably* in all market segments and all geographic areas. We recommended that those rules should be detailed and explicit so as to establish a uniform and national telecommunications policy, consistent with the intent of the Act and the needs of new entrants.

We now respond to those parties who would hamper the FCC's ability to promote a national competitive telecommunications market. The Commission must exercise a substantial degree of control over these policies to promote competition and to remove legal and other entry barriers erected by incumbent LECs and some states.

II. PROVISIONS OF SECTION 251

A. Scope of the Commission's Regulations

The Commission should carry out its mandate to promulgate rules that optimally promote a uniform and national telecommunications policy.

In paragraph's 25 through 41 (and in a number of subsequent paragraphs), the Commission sought comments on the scope and specificity of the rules to be issued under Section 251 of the Act of 1996. On this issue, OPC agrees with the positions taken by virtually

[1]"Initial Comments of the Texas Office of Public Utility Counsel," *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* Before the Federal Communications Commission, FCC 96-182, CC Docket No. 96-98, May 16, 1996, (hereafter OPC).

all of the major potential new entrants, such as AT&T[2], MCI[3], MFS[4], TCG[5], and Time Warner[6]: not only has the Commission the authority to promulgate rules that establish a uniform and national telecommunications policy, it also has the obligation to do so.

OPC recommends for the Commission's consideration TCG's preferred outcome approach.[7] This approach, under which the incumbent's superior bargaining position is off-set by certain default arrangements, seems well suited to reconcile the conflicting needs of new entrants for policies that, at once, are uniform and nationwide and allow for sufficient flexibility to accommodate their specific circumstances.

In any event, the Commission should consider the near unanimity, among potential new entrants, on the need for uniform and nationwide policies as evidence that these companies require a higher degree of certainty about the environments in which they will have to compete than can be afforded by the fractured mosaic of state policies and statutes.

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[2]AT&T, Executive Summary.

[3]MCI, Executive Summary.

[4]MFS, Executive Summary.

[5]TCG, Executive Summary.

[6]Time Warner, Executive Summary.

[7]TCG, pp. 8 - 10. This approach also seems consistent with the policy recommendations of the Competition Policy Institute ("CPI"), which recommends, for example, that the Commission adopt "minimum sets" of unbundled network elements and points of interconnection. CPI, pp. 9, 14.

The Commission should reject arguments that detailed rules on critical issues would deter the onset of competition. For example, SBC argues that "the NPRM's highly detailed approach is unnecessary and could inadvertently serve to delay attainment of the pro-competitive goals established as national policy by the 1996 Act."[8] On a cynical note, one might wonder, if the NPRM's detailed approach were to delay the onset of competition, then why would any incumbent LEC be opposed to such a approach?

Likewise the Commission should not be persuaded by arguments that the states are willing and able to foster effective local exchange competition. For example, NARUC rejects the NPRM's contemplated approach, in part, because:

> The States are unequivocally committed to local competition and implementing the pro-competitive goals of the Act. It must be recognized that the level of intrastate competition experience, in each jurisdiction, is due in part to competitors' focus on the most attractive markets.[9]

First, the Commission should be realistic and recognize that, while many states have certificated new entrants, very few states are experiencing actual local exchange competition. Unfortunately, other states have even erected entry barriers providing hostile regulatory environments to new competitors. Of course, this is not necessarily proof that the states are incapable of promoting such competition. Rather, the absence of local exchange competition and the well documented difficulties of new entrants to obtain certification and appropriate

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[8]SBC, p. 4.

[9]NARUC, Executive Summary, page *i*.

interconnection arrangements does demonstrate that the state regulatory environment, with some rare exceptions, is not conducive to the promotion of competition.[10]

Second, it is simply *not* true that the "competitors' focus on the most attractive markets" is one of the main indicators of where competitive entry is succeeding. For example, US Signal, a relatively small new entrant, is already "up and running" in Grand Rapids, Michigan. By contrast, telecommunications markets in Texas, with three of the nation's largest metropolitan areas -- Dallas/Fort Worth, Houston, and San Antonio -- have yet to witness the actual entry of a successful local exchange competitor.

The explanation is simple. The regulatory environment in Michigan is relatively hospitable to competition, the one in Texas is less so. Consider that the Michigan Commission *in about six months* provided US Signal with, among other arrangements, a conditional "bill and keep" arrangement for interconnection with Michigan Bell, interim number portability ("RCF" at $1.14 per month), and access to Michigan Bell's unbundled local loops on a basis other than collocation.[11] By contrast, TCG -- which for the longest time has had two fully installed Class 5 switches and fiber rings in both Dallas and Houston -- is still battling with the incumbent LEC

[10]In fact, even the further development of long distance competition has been hampered by many states. Many important states, such as Texas, still do not require intraLATA presubscription.

[11]*In the Matter of the Application of City Signal, Inc. for an Order Establishing and Approving Interconnection Arrangements with Michigan Bell Telephone Company*, Michigan Public Service Commission, Case No. U-10647.

over certification requirements.[12] Additionally, no unbundled loops[13] and no interim number portability arrangements are available in Texas.[14]

Again, the Texas experience does not indicate that the Texas Commission is unwilling to promote competition. Indeed, the Texas Commission has as of May 8, 1996, approved 24 applications for new entrants into the local service markets. Clearly, however, a certificate to provide local exchange service removes only the legal barriers to market entry; it does not yet allow carriers to actually operate viably as a competitor. Thus, there is still a significant role for the FCC to provide national, uniform guidelines so that other barriers to entry are removed.

Clearly, the stakes are too high, both for individual companies and for society at large, to permit individual states to substantially affect the further development of telecommunications competition in such disparate fashions. It is imperative that the Commission promulgate rules to ensure that competitive entry is commercially viable in all parts of the country.

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[12]*Southwestern Bell Telephone Company v. Public Utility Commission of Texas*, (No. 96-05327) (District Court of Travis County, Texas.)

[13]Further, to the extent that unbundled loops will be made available in Texas, the Texas statute requires that such unbundled loops are priced on a *usage-sensitive* basis. (Public Utility regulatory Act, Section 3.453)

[14]In a non-unanimous stipulation, which is not joined by AT&T, MCI, MFS, TCG and OPC, Southwestern Bell has agreed to offer RCF at rates substantially in excess of $1.14, the rate at which US Signal receives RCF from Michigan Bell. This stipulation has not yet been approved by the Texas PUC. *Application of Southwestern Bell Telephone Company for Interim Number Portability Pursuant to §3.455 of PURA 95*, Docket No. 14940.

B. Obligations Imposed by Section 251(c) on "Incumbent LECs"

2. Interconnection, Collocation, and Unbundled Elements

The Commission should adopt national standards for the terms and conditions for interconnection. Meet point arrangements are technically feasible and efficient.

The Commission should reject recommendations for interconnection arrangements that are rigidly linked to the existing network architecture of the incumbent LECs. Surely, it is true, as SBC contends, that "physical facilities and interconnection alternatives (how to interconnect) are well known in the industry."[15] However, this does not mean that, as suggested, "federal guidelines or models do not need to be developed in this area."[16] To the contrary. The experiences of many of the new entrants has been one of frustration, suggesting a definite need for federal guidelines to ensure that technically feasible and commercially viable interconnection arrangements are made available.

Also, the fact that "how to interconnect" is well known in the industry, does not mean that interconnection arrangements should follow the current practice of bifurcating interconnection into end-office and tandem arrangements.[17] OPC agrees with the recommendations of MCI,[18] MFS[19] and TCG[20], that meet point arrangements are: (a) technically

[15]SBC, p. 33.

[16]SBC, p. 33.

[17]SBC, p. 33.

[18]MCI, pp. 41-46.

[19]MFS, p. 16.

[20]TCG, p. 26-27.

feasible (indeed they are often used for the exchange of local and toll traffic between adjacent LECs); and (b) more neutral with respect to the network architecture that competing companies may choose. For example, new entrants will most likely deploy switches that will double as end-office and tandem switches. Therefore, if an interconnection arrangement artificially bifurcates connections between end-office and tandem arrangements, then an artificial situation is created in which the new entrant will have to declare its switches as one or the other. (Such a choice might also have adverse financial consequences for new entrants, depending on the financial aspects of interconnection arrangements. *See*, discussion below.) Meet point arrangements avoid such situations.

Telecommunications networks are modular. This means that network elements can be defined at various levels of aggregation, depending on the needs of the market. AT&T's minimum set of eleven unbundled elements is appropriate. Sub-loop unbundling is technically feasible. Performance standards must include penalties for non-compliance.

OPC agrees with AT&T's recommendation that a minimum set of eleven unbundled network elements need to be made available.[21] OPC also agrees with AT&T's recommendation for sub-loop unbundling into feeder and distribution portions.[22]

[21]AT&T, pp. 16-26.

[22]MCI also supports sub-loop unbundling. MCI, p. 29.

SBC argues that sub-loop unbundling "is not technically feasible."[23] However, there is ample evidence that there exists a natural point of interface between the feeder and distribution portions of the local loop. For example, in a Michigan proceeding, an Ameritech witness, Mr. Florence, explained that Ameritech uses different costing models and methodologies for costing the feeder portion and the distribution portion of the local loop. With respect to the feeder portion of the loop, Mr. Florence notes that "[t]he LRIC study used Michigan specific data from the Ameritech Feeder Analysis Model (AFAM) to develop a forward looking meld of the investments for copper and fiber technologies used in the *feeder portion* of the loop." (Emphasis added.)[24] That is, not only does Ameritech recognize the natural division between feeder and distribution plant, it also has a separate costing model, AFAM, to cost the feeder part.

Also, in the consolidated "Customer First" proceedings in Illinois, Ameritech filed cost studies for loop facilities that included an explicit "field connection" charge for connecting the feeder portion of the loop with the distribution of the loop. Specifically,

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[23]SBC, pp. 38-40.

[24]*In the Matter, on the Commission's Own Motion, to Establish Permanent Interconnection Arrangements Between Basic Local Exchange Providers*, Michigan Public Service Commission, Case No. U-10860, Florence, Direct Testimony on behalf of Ameritech, P. 10, Lns. 4-7.

Ameritech filed testimony that:

> <u>Field Connections</u>
> The loop field connection recurring expense represents the costs associated with the placement and/or rearrangement of cross-connections for the establishment of a loop. The connections are used to establish electrical continuity between the central office *feeder cable* and the *distribution cables* that serve the customer location.[25] (Emphasis added.)

Clearly, if incumbent LECs can make arrangements for their own facilities to be cross-connected at this natural point of interface, then the facilities of competitors can be cross-connected at that very same point.[26]

OPC also agrees with TCG that to ensure adherence to performance standards the Commission's rules must "include penalties for non-compliance. In the absence of 'teeth', the best-intended performance standards become little more than wishful thinking."[27]

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[25]Palmer on behalf of Ameritech, Exhibit 5.6, p. 1., Illinois Commerce Commission Consolidated Docket Nos. 94-0096, 94-0017, 94-0146, and 94-0301.

[26]The Commission should note that Ameritech, in their comments (p. 38), claims that only 27% of their loops is cannot be unbundled for *technical* reasons. Naturally, this implies that the remainder, 73%, can be unbundled into feeder and distribution portions. Most importantly, Ameritech's comments seem to contradict SBC's flat-out assertions that sub-loop unbundling is infeasible.

[27]TCG, p. 34.

Unbundled local switching offers great potential for new entrants. The Commission should not be deterred from defining unbundled switching in terms of capacity.

OPC agrees with AT&T and MCI on the requirements for unbundled local switching. Specifically, the Commission should order an unbundled local switching element with the basic characteristics as described by MCI. (AT&T's concept is, in essence, the same.) MCI describes this unbundled element as:

> All the functionalities residing in a central office switch and/or remote switching system needed to provide the full array of local exchange services, including switched access, dialtone, screening, recognition of service request, recognition of call specific information, digit analysis, routing, testing, recordings, signal generation, call completion or hand-off, SSP functionality and tables, PIC tables, trunk tables, class of service tables, data ports for remote access to switching functions, CLASS tables and AIN tables. In purchasing the unbundled local switching element at an end-office, a carrier commits to the purchase of a minimum block of line ports, a minimum level of trunk port *capacity*, and a minimum level of busy hour switch *capacity* for a period of one year, thus sharing the investment risk with the ILEC.[28] (Emphasis added.)

The Commission should note that MCI's proposal is not unlike the proposal for an unbundled local switch platform put forth by the staff of the Illinois Commerce Commission, cited by the Commission.[29] Further, the Commission should note that the examiner, in the pertinent proceeding before the Illinois Commerce Commission, after having reviewed the

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[28]MCI, p. 30.

[29]NPRM, paragraph 100.

evidence, found that Staff's proposal should be adopted by the Commission.[30] Specifically, the Examiner found:

> The [Illinois Commerce] Commission finds that requiring Ameritech and Centel to make these unbundled network elements available will further our goal of promoting competition in the local exchange market place. Potential new entrants to the local exchange market place would be provided the flexibility to design their own operational and marketing strategy to compete with the incumbent LEC and other carriers for end users of local exchange and other telecommunications services. Purchasers of the network elements would compensate the incumbent LEC for the lease of the network facility or equipment, enabling the requesting carriers to utilize those network elements in designing their own services and marketing strategies as they deemed best to recover their costs and to compete in the market place. *Having paid the incumbent LEC for the use of the network elements, the purchasing carrier is entitled to all revenues generated by local exchange, exchange access, and other telecommunications services it provides utilizing the purchased network elements, in the same fashion as the incumbent LECs.* This will enable carriers to make decisions based on economic efficiency as to which network elements it should build, and which it should purchase from incumbent LECs or from competing other providers, free of any predetermined regulatory requirements.[31] (Emphasis added.)

It is important for the Commission to note the recognition on the part of the Illinois Commerce Commission that "having paid the incumbent LEC for the use of the network elements, the purchasing carrier is entitled to all revenues" associated with any services that can be generated with the unbundled local switching element. This recognition, that the "purchasing carrier is entitled to all revenues," makes the unbundled local switching element a particularly useful component in facilitating competitive entry. Unlike traditional resale, the purchase of

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[30]*Petition for a Total Local Exchange Wholesale Tariff from Illinois Bell Telephone Company d/b/a Ameritech Illinois and Central Telephone Company Pursuant to Section 13-505.5 of the Illinois Public Utilities Act,* Illinois Commerce Commission, Docket Nos. 95-0458 and 95-0531. Hearing's Examiner's Proposed Order, p. 64. May 16, 1996.

[31]*Id*, p. 66.

such an unbundled local switching element allows the new entrant, in effect, to earn revenues over a full array of local services, including switched access revenues.

OPC strenuously disagrees with comments, such as those filed by SBC, which claim that the unbundled local switch platform is not technically feasible. SBC, for example, claims that:

> A review of the testimony filed with the Illinois Commission, however, does not reveal any technical description of the proposal. It is, therefore, difficult to determine how such a proposed plan would be sized, maintained, provisioned, or costed. For these reasons alone, the FCC should reject mandating such an unbundled structure.[32]

A review of the testimony reveals not only that the contemplated local switching platform is feasible (as also concluded by the examiner in the pertinent case in Illinois) but also that such a "platform" arrangement is already in place between an incumbent LEC in Indiana and MCI. The pertinent piece of testimony reads as follows:[33]

> Q. IS A LOCAL NETWORK PLATFORM PRACTICAL FROM A OPERATIONAL POINT OF VIEW?
>
> A. Yes. Indeed, MCI currently purchases a local network platform product from a small independent telephone company, Hancock Rural Telephone Corporation, in Indiana. This local platform product consists basically of the three components that I have discussed earlier, and which have also been identified by Staff and LDDS witness Mr. Gillan: a) unbundled local loop facilities; b) a switch component that provides for all features and other

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[32]SBC, p. 42.

[33]*Petition for a Total Local Exchange Wholesale Tariff from Illinois Bell Telephone Company d/b/a Ameritech Illinois and Central Telephone Company Pursuant to Section 13-505.5 of the Illinois Public Utilities Act,* Illinois Commerce Commission, Docket Nos. 95-0458 and 95-0531. Surrebuttal of Dr. August H. Ankum on Behalf of MCI.

functionalities to be sold by MCI to end-users; and c) mutual compensation for calls terminating and originating on the platform. The essence of the arrangement is that MCI is purchasing "capacity" on the switch of Hancock Rural Telephone Corporation, *rather than individual services*. The arrangement has been worked out to the mutual satisfaction of both MCI and Hancock Rural Telephone Corporation.

Q. IS MCI ALLOWED TO INTEGRATE THE LEASED PLATFORM PRODUCT WITH THE SERVICES/FACILITIES OF A THIRD PARTY, SUCH AS A COMPETITIVE ACCESS PROVIDER?

A. Yes. MCI is allowed to use the services of a third party, such as a competitive access provider ("CAP"). Again, Staff's and MCI's proposals advocate an "open network" approach in which platform based providers can mix their own facilities, or a third party's facilities, with the platform product leased from the incumbent LEC. The arrangement that MCI has with Hancock Rural Telephone Corporation demonstrates that these type of configurations are technically and commercially feasible.

While local exchange markets in Indiana are far from competitive, this particular arrangement between MCI and Hancock Rural Telephone Corporation is an indication that a local network platform product can be beneficial to all parties. Presumably, MCI benefits here because it is able to reduce the up-front capital cost of constructing a local network. Hancock Rural Telephone Corporation benefits because it is able to achieve a higher degree of capacity utilization on its switch. Over time, as local exchange markets become more competitive, the Commission should expect many such arrangements to emerge "spontaneously," as companies will seek to maximize the revenues they can generate with their facilities. At this stage, however, the monopoly nature of these markets create certain "zero sum" situations that, as indicated by SBC's comments, require Commission intervention to jump-start the process.

New entrants should be allowed to combine unbundled elements to compete freely. The fact that this might threaten the existing revenue streams of the incumbent LEC should be considered part of the competitive process.

OPC disagrees with SBC that "unbundling must not threaten the current access structure."[34] In general, OPC recommends that unbundled network elements are structured and made available in such a manner so as to optimally promote competition. The possibility that network unbundling will pose a threat to the incumbent LECs' switched access revenues should not deter the Commission in setting appropriate principles for such network unbundling. The truth is that the Act of 1996 is intended to promote competition. By necessity, this means that certain revenue streams of the incumbent LECs, increasingly, will become subject to competitive pressures.

d. Pricing of Interconnection, Collocation, and Unbundled Network Elements

Rates for interconnection, collocation and unbundled network elements should be set at their TSLRICs.

OPC strongly disagrees with SBC that restricting rates to TSLRIC would not allow for recovery of all relevant costs. SBC states the following:

> To the extent that incremental cost concepts capture only the direct costs of providing a particular service, prices set equal to the incremental costs (however measured, either LRIC or TSLRIC) will fail to contribute toward the recovery of an ILECs joint, common, and other costs. For that reason, prices set equal to incremental cost are too low. If the prices of *every* service offered by an ILEC were set at incremental cost, the ILEC's joint, common, and other costs could

[34]SBC, p. 77.

never be recovered and the ILEC would eventually cease operations and exit the market.[35] (Emphasis added.)

SBC's statement is quite misleading.[36] While the statement is true if *all* of SBC's services were priced at TSLRIC, clearly the pricing of *all* services at TSLRIC is not the issue before the Commission, nor is it the issue addressed by Section 251(d)(1)(A) and (B) of the Telecommunications Act of 1996. The real issue is the pricing of interconnection, collocation, and unbundled elements to be used by dependent competitors. Therefore, the pertinent question is: Would SBC recover all of its costs and earn a reasonable profit if SBC: (a) is already recovering all of its "common, joint, or other costs"; and (b) priced the unbundled network elements at TSLRIC? The answer is, *yes*.

The reasoning here is simple. First, TSLRIC captures *all* the additional costs that SBC incurs in offering interconnection, collocation, or unbundled elements. Therefore, if SBC is already covering its "common, joint, or other costs" -- that are not incremental to offering the unbundled elements -- then *by definition* prices that are set at TSLRIC will recover all of SBC's additional costs. Moreover, because TSLRIC includes a return on invested capital, SBC would also earn a reasonable profit.

[35]SBC, p. 90.

[36]Similar arguments are made by other incumbent LECs. *See*, for example, Ameritech, pp. 70 - 77. Also, GTE at p. 61.

For example, assume that SBC's total costs and required earnings (prior to offering an unbundled network element) is $1000 and that its current revenues are also $1000. That is, SBC is: (a) recovering all of its costs; and (b) earning a reasonable profit. Next, assume that SBC newly offers a particular unbundled network element priced at TSLRIC, which is $100. Now SBC's total costs and required earnings are $1100 and its revenues are also $1100. Thus, pricing the unbundled element at TSLRIC allows SBC: (a) to recover all relevant costs; and (b) to earn a reasonable profit. In short, there is no need for a mark-up above TSLRIC.

The Commission appropriately rejected the Efficient Component Pricing Rule.

SBC includes in Appendix A to its comments a discussion of the efficient component pricing rule ("ECPR"), which the Commission already seems to have rejected. The Commission should note that the attempt to rehabilitate the ECPR hinges critically on SBC's economists' understanding of the ECPR as expressed by the architects of the ECPR. SBC states:

> Given this discussion of entry barriers, SBC argues that it is clear that the ECPR is not an entry barrier. Perhaps the best explanation of why this is so comes from Baumol and Sidak, the architects of the ECPR.[37]

However, an affidavit signed by Professor Baumol (and two other notable economists) is attached to the comments of AT&T. Professor Baumol's affidavit explicitly rejects the ECPR. SBC's economists must have misunderstood what the architects of the ECPR meant.

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[37]SBC, Appendix A, p. 4.

3. Resale Obligations of Incumbent LECs

To establish what resale restrictions might still be reasonable, if any, the Commission should consider the question: "Would a company impose such a resale restriction if the market were truly competitive?" Further, discounted and promotional offerings should also be offered for resale to prevent anti-competitive price-squeezes.

As the Commission rightly observed in the NPRM, restrictions on resale are likely to be manifestations of market power. OPC recommended, therefore, that the guiding principle in determining what restrictions are still reasonable should be whether companies would impose such restrictions if markets were truly competitive. If the answer is no, then it is difficult to argue that such restrictions are reasonable.

SBC argues that "access services" should be exempt from any wholesale offerings because "access services cannot be said to be offered 'at retail'."[38] OPC disagrees with SBC's general reasoning, which is that a service should only be offered for retail if it is sold "in small quantities directly to the ultimate consumer."[39] Adopting this criterion would be very dangerous. For example, Centrex services are clearly a retail service; yet large contracts may involve hundreds, if not thousands, of loop facilities. SBC's proposed criterion, therefore, could possibly exempt from resale such important services as Centrex.[40] Further, switched access

[38]SBC, p. 69.

[39]SBC, p. 68.

[40]The implications of SBC's proposed criterion are ominously reminiscent of the company's successful attempts to prevent resale of its Centrex services by Centex Telemanagement, at the time the nation's largest reseller of Centrex services. (Centex Telemangement was subsequently obtained by MFS.) Centex Telemanagement engaged in protracted proceedings before the Texas PUC but ultimately was denied an opportunity to compete in Texas. *Request of Southwestern Bell Telephone Company to*

services are, strictly speaking, available to end-users, and thus they should be available for resale, as the Act requires.

It should be noted, however, that, because switched access services are typically offered to IXCs, any discount on switched access services, as calculated based on an avoided costs methodology, should be rather small. Presumably, the incumbent LEC will avoid few, if any, expenses by offering switched access services on a wholesale basis.

OPC also disagrees with SBC that wholesale discounts should not apply to promotional offerings.[41] The same argument is made by Ameritech.[42] It is critically important that the Commission does not adopt these recommendations to exempt promotional offerings from resale obligations.

First, Section 252(d)(3) of the Act directs that wholesale rates be determined on the "basis of retail rates charged to subscribers." That is, for every retail rate there needs to be a corresponding wholesale rate. OPC sees *no* reason why tariffed discounts in the form of *service packages* should be viewed as anything other than "retail rates charged to subscribers." Indeed,

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Obsolete and Grandfather Centrex Services and Joint Application of the Parties to Determine if the Restrictions, Terms, and Conditions Associated with the Sharing of Centrex and Plexar Services are Unreasonable as a Matter of Regulatory Policy or in Violation of Any Law, Docket No. 11109.

[41]SBC, p. 72.

[42]Ameritech, p. 56.

any retail discounts -- that promotional packages would represent -- could make it impossible for resellers to compete. If the tariffed retail rates are discounted close to or below the wholesale rates, then reseller will have little or no margin left to cover their own costs. In such a situation, resellers may have no choice but to exit from the market.

Moreover, if service packages and promotional products are excluded from the wholesale tariffs, incumbent LECs would always be able to creatively "package" features and other services to under-price its competitors. For example, the incumbent LEC could create a package that offers the Call Waiting feature at a 50% discount with a standard business line. In doing so, the incumbent LEC would instantly obtain a decisive competitive advantage over resellers.

Further, allowing the incumbent LEC to exclude service packages and promotional offerings from their wholesale tariffs, in effect, gives the company *carte-blanche* to impose price-squeezes on its competitors. Indeed, all that an incumbent LEC would need to do in order to preclude effective competition is to discount a retail package below the corresponding wholesale rates. Moreover, allowing incumbent LECs to exclude "service packages" and promotional offerings from its wholesale tariffs would give the company a powerful incentive to proliferate such offerings. Again, the resulting "price-squeeze" would be devastating for competitors.

For example, in Georgia, Bell South is promoting what the company calls its *Complete Choice* plan. Under *Complete Choice*, customers pay $30.00 a month for their local phone service and *any number of calling features*. "Best of all," as the company puts it, "you have the flexibility to choose and change features as often as you want -- *at no extra cost.*[43]" (Emphasis added.)

Customers can choose any of the following features (for each feature, the normal undiscounted charges are indicated on the right):

Complete Choice
Any Features and Local Service ($30.00)

Feature	Normal, Undiscounted Retail Rates
Caller ID	$6.00
Call Waiting	$3.25
Call Return	$4.00
Three-way Calling	$3.25
Speed Calling	$2.00
Call Forwarding	$2.10
Preferred Call Forwarding	$4.00
Remote Call Forwarding	*
Remote Access to Call Forwarding	$5.00
Flexible Call Forwarding	*
Call Forwarding Busy Line	$1.00
Call Forwarding Don't Answer	$1.00
Message Waiting Indication	$0.50
Call Block	$4.00
Call Selector	$4.00
RingMaster Service	$3.95
Repeat Dialing	$4.00
Call Tracing	$4.00
Anonymas Call Rejection	$7.50
Customized Code Restriction	$2.50

* OPC does not have available retail rates for these features.

[43]The local service charges covered by the $30.00 per month exclude FCC, 911, TeleRelay, Wire Maintenance and Directory Listing charges. This information was obtained from a bill-insert in Georgia.

The total value of the features alone is up-ward of $60 per month.[44] Even if one were to ignore the line charges and the non-recurring charges that are also included in this package, retail users are offered discounts of no less than 50% on these features. Clearly, given the relatively meager discounts afforded to resellers, resellers will not be able to compete against this package unless they can purchase the same package on a discounted basis.

All existing resale restrictions should be removed, particularly those restrictions that traditionally impaired or prohibited resale of Centrex services.

OPC agrees with the Competition Policy Institute that: "The range of restrictions which incumbent LECs may place on resale should be quite narrow. In particular, the LECs should be required to offer for resale any services which it offers for retail."[45]

OPC strongly disagrees with the SBC recommendation that the contiguous property restrictions found in SBC's tariffs should continue to prohibit resale of SBC's Centrex services. SBC argues that

> to allow otherwise would permit resellers to change the fundamental character of the ILECs retail services. That would go well beyond what was intended by the resale provisions of the Act, and would create the potential for reseller to *abuse* the resale process.[46] (Emphasis added.)

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[44]The identified rates are the base rates and do not reflect that many of these features have Deluxe versions that are considerably more expensive. The total value of these features, therefore, is actually greater than $60 per month.

[45]CPI, p. 24.

[46]SBC, p. 76.