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

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JUN 3 - 1996

FEDERAL COMMUNICATIONS COMMISSION
CC Docket No. 96-98

In the Matter of)
)
Implementation of the Local)
Competition Provisions in the)
Telecommunications Act of 1996)

REPLY COMMENTS OF PACIFIC TELESIS GROUP

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SUMMARY

As Pacific Telesis Group ("PTG") pointed out in its earlier-filed reply comments, there is a consensus emerging that the Commission should establish "safe harbors" or "preferred outcomes" to guide parties in the implementation of the Telecommunications Act of 1996 ("Act"), while retaining the flexibility to develop other potentially beneficial solutions. The logic and advantages of this approach, in contrast to the evident pitfalls of the rigid, detailed and uniform federal standards advocated by some parties, are readily apparent with respect to the issues addressed here. In particular, the Commission should discount the extreme positions taken by certain major IXCs and resellers as part of their patently obvious campaign to delay BOC entry into the interLATA market. Those parties' demands for the imposition of unworkable and burdensome obligations on both incumbent LECs and the FCC itself should be rejected as contrary to the Act and to the complementary and collaborative relationship it creates among the Commission, state regulators, and negotiating parties.

In this context, we submit that the Commission should establish guidelines that acknowledge the adequacy of the pro-competitive interconnection policies being developed by the California Public Utilities Commission ("CPUC"). To that end, the FCC should identify the following as "safe harbors" supported in the record for implementation of the Act's requirements for notice of technical network changes, dialing parity, access to rights-of-way, and number administration.

The Commission should establish FCC guidelines in the form of "safe harbors" or "preferred outcomes" to foster competition in the local exchange market. (See Proposed FCC Rules and Implementing Guidelines for Section 251 Interconnection Requirements, Reply Comments of Pacific Telesis Group, Appendix A, filed May 30, 1996).

- Notice of technical changes in LEC networks should be provided to the same extent and on the same basis as notice is currently given for other interconnection-related information pursuant to the *Computer Inquiry* and Part 68 requirements. The scope of covered information and the time frames for disclosure established by those rules are adequate, and there is no need for additional formal requirements such as FCC filings or complaint procedures.
- Dialing parity should be defined as equal-digit dialing for all calls. Dialing parity methodologies, implementation schedules, and other related issues should largely be left to the states, although the Commission should identify full 2-PIC presubscription as a "safe harbor" for achieving toll dialing parity. LEC cost recovery should not be limited by noncompensatory incremental methodologies or unreasonably long amortization requirements. Federal requirements governing implementation of presubscription and consumer education or balloting are not required. Existing regulations and the marketplace will ensure that operator services, directory assistance, and directory listings are available on a nondiscriminatory basis.
- Nondiscriminatory access to rights-of-way does not require an owner to treat itself the same as other attaching parties, but only mandates that affiliated and non-affiliated third parties be treated equivalently. Attachments should largely be left to private negotiations, with state oversight, as is currently the case. Detailed federal rules regarding denials of access for capacity or safety reasons, pricing, and notice of modifications are unnecessary and, in any event, may not be imposed to deny facilities owners' legitimate rights to the use of and compensation for their assets.

- Additional numbering regulations beyond the *North American Numbering Plan Order* are not needed, but that *Order* should promptly be implemented. As under existing practice, application of the FCC's numbering principles should remain with the states, particularly in connection with the use of overlay area codes, which should not be unreasonably limited where supported by local circumstances and the public interest.

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REPLY COMMENTS OF PACIFIC TELESIS GROUP

Pacific Telesis Group ("PTG"), by its attorneys, hereby respectfully submits its reply to comments filed in the above-captioned docket with respect to the following issues raised in the *Notice of Proposed Rulemaking*:¹ (1) the duty of local exchange carriers to provide notice of technical network changes (*Notice*, para. 189-194); (2) dialing parity (*Notice*, para. 202-219); (3) access to rights-of-way (*Notice*, para. 220-225); and (4) number administration (*Notice*, para. 250-259).

¹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Notice of Proposed Rulemaking*, FCC 96-182 (released April 19, 1996) ("*Notice*").

I. THERE IS BROAD SUPPORT IN THE RECORD FOR APPLICATION OF THE COMMISSION'S EXISTING NOTICE AND DISCLOSURE RULES TO NETWORK CHANGES (*Notice*, para. 189-194)

Despite the sometimes conflicting interests of the parties to this proceeding, all commenters recognize that the disclosure of relevant information regarding technical changes that affect network interconnection is essential to competition.² Many parties expressed support for the existing network information disclosure rules established in *Computer II* and *III*³ and contained in Part 68 of the Commission's rules,⁴ subject to some fine tuning to ensure fairness.

The Commission comprehensively addressed network information disclosure issues in its *Computer II* and *III* proceedings. As we and others pointed out in our initial comments,⁵ since 1980 the Commission has required "all carriers owning basic transmission facilities" to disclose "all information relating to network design . . . to all

² See, e.g., Comments of GTE Service Corporation at 3-4 ("GTE"); Comments of Pacific Telesis Group at 7 ("PTG"); Comments of Time Warner Communications Holdings, Inc. at 3 ("Time Warner"); cf. Comments of Ameritech at 25 ("Ameritech"); Comments of AT&T at 23 ("AT&T"); Comments of Bell Atlantic at 10 ("Bell Atlantic"); Comments of MCI at 15-16 ("MCI"); Comments of MFS at 12-13 ("MFS"); Comments of the National Cable Television Association at 12 ("NCTA"); Comments of NYNEX at 15 ("NYNEX").

³ See, e.g., Ameritech at 29; Comments of BellSouth at 2-3 ("BellSouth"); GTE at 6; Comments of Frontier Corporation at 6 ("Frontier"); PTG at 4-5; Comments of US West, Inc. at 12-13 ("US West").

⁴ See, e.g., GTE at 4; PTG at 6-7; Time Warner at 4.

⁵ BellSouth at 2; GTE at 3-4; PTG at 4-5.

interested parties on the same terms and conditions, insofar as such information affects either intercarrier interconnection or the manner in which interconnected CPE operates."⁶ The Commission imposed this rule in light of the finding that "carriers providing basic network service . . . have the incentive and ability to withhold information to the detriment of competition and the communications ratepayer in that competitive market."⁷ This concern is just as legitimate in the context of network-to-network interconnection. It is appropriate to rely upon requirements that have functioned effectively for more than fifteen years as the model to achieve the goals of network connectivity established by the Act.

The FCC should consider established industry guidelines as a reasonable compromise that adequately balances the interests of affected parties. For example, a number of commenters support using the "Recommended Notification Procedures to Industry for Changes in Access Network Architecture" (ICCF 92-0726-004). This industry paper, endorsed by NYNEX, SBC, and USTA, sets forth notification procedures for numerous disclosure issues, including the maintenance of business relationships, problem resolution procedures, and information reporting intervals.⁸ We believe that these industry guidelines are consistent with the *Computer II* and *III*

⁶ *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II)*, 84 FCC 2d 50, 82-83 (1980).

⁷ *Id.* at 82.

⁸ See NYNEX at 17; Comments of SBC at 14 ("SBC"); Comments of United States Telephone Association at 12 ("USTA").

requirements. Thus, we urge the Commission to state that compliance with this established industry approach is sufficient to comply with the Act's notice and disclosure requirement.

Scope of Disclosure (Notice, para. 190). Notwithstanding the demonstrated adequacy of the current rules, certain parties seek to expand the existing regulatory scheme by proposing additional, excessive, and onerous requirements. For example, AT&T and MCI both endorse increasing the scope of information that must be disclosed. Their proposals would require notice of "any changes that affect facilities and networks, including back-office capabilities such as: maintenance, billing, ordering and other provisioning changes "⁹

This laundry list is unreasonable and wholly inconsistent with what the Commission has traditionally identified as the information necessary to ensure efficient interconnection. AT&T and MCI fail to provide any analysis of their purported need for such information or why the information otherwise might merit disclosure. The Act requires the public disclosure of "changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as any other changes that would affect the interoperability of those facilities and networks."¹⁰ This scope is consistent with that of the *Computer II* and *III*

⁹ MCI at 15-16; *see also* AT&T at 23.

¹⁰ Section 251(c)(5)(emphasis added).

disclosure requirements, which have never included the information sought by AT&T and MCI.

In *Computer II* and *III*, the Commission struck a proper balance between the rights of LECs, their competitors, and the public. It considered the issues, evaluated the competing interests, and arrived at a reasonable outcome that would not unfairly burden any one industry segment. Recognizing the need for parameters, the FCC limited the information subject to disclosure to "network changes or new basic services that affect the interconnection of enhanced services with the network."¹¹ A similar careful balancing and reasonable outcome are required here.

Means of Disclosure (Notice, para. 191). The FCC's proposal to require the disclosure of technical information through industry forums or in trade publications won unanimous support.¹² (*See Notice*, para. 191) These distribution mechanisms are more than sufficient to ensure timely and adequate notice. Filing formal notice with the FCC and/or state commissions, as proposed by several commenters,¹³ is

¹¹ *Amendment to Sections 64.702 of the Commission's Rules and Regulations (Computer III), Phase II*, 2 FCC Rcd 3072, 3087 (1987).

¹² *See, e.g.*, Ameritech at 28; Bell Atlantic at 10; GTE at 7; MCI at 17; MFS at 14; NYNEX at 15; PTG at 7; Comments of Telecommunications Resellers Association at 12 ("TRA"); Comments of Teleport Communications Group Inc. at 11 ("Teleport"); USTA at 12.

¹³ AT&T at 24; MCI at 17; MFS at 13; Time Warner at 10.

unnecessarily duplicative and would place a significant administrative burden on these government agencies forced to serve as repositories.¹⁴

We also object to requiring LECs to notify directly each interconnecting party or carrier requesting such information, as suggested by a few parties.¹⁵ Such requirements would impose excessive and unnecessary costs on LECs. Further, requiring LECs to notify every carrier that requests information, regardless of whether it interconnects with the LEC, raises both security and proprietary interest concerns. The purpose of the Act was certainly not to invite unrestricted fishing expeditions into information about a LEC's facilities and technical innovations. Thus, the use of industry publications and forums is a logical and efficient distribution method that ensures widespread and timely dissemination and makes elaborate notification procedures unnecessary.

We oppose the proposal to require LECs to designate a contact person "capable of discussing the impact on every facility and support system potentially affected by [proposed network] change[s]"¹⁶ for similar reasons. Such a requirement is not only unwarranted but virtually impossible to fulfill. Identifying a single omniscient individual -- or even a group of available personnel -- who can answer all questions

¹⁴ Ameritech at 30-31.

¹⁵ See Cox Communications, Inc. at 11-12 ("Cox"); MFS at 13-14.

¹⁶ MCI at 17.

about every facility and support system affected by proposed network changes is infeasible.

Timing of Disclosure (Notice, para. 192). We and other commenters, including AT&T, support the network disclosure timetables established in the *Computer III* proceeding as appropriate for network-to-network interconnection.¹⁷ There is no need to revisit this issue. Because these time frames have proven effective over the years, efforts to lengthen, shorten, or completely eliminate them are unwarranted. Again, the Commission should rely on proven mechanisms and not seek to impose untested standards.

Moreover, the use of nondisclosure agreements is an essential safeguard that should be retained. The Commission has recognized that "substantial public benefits accrue from the use of such agreements in that they permit early disclosure to the [most affected] firms, while promoting innovation in the network services,"¹⁸ and that the absence of such agreements "could curtail network innovation and deprive the public of new" services.¹⁹ To avoid such pitfalls and to capitalize on the benefits, the FCC should permit the continued use of nondisclosure agreements.

¹⁷ See, e.g., AT&T at 24; GTE at 4-5; MCI at 20; PTG at 5-6; Teleport at 11.

¹⁸ 2 FCC Rcd at 3091.

¹⁹ *Id.*

Enforcement of Disclosure Requirements (Notice, para. 193). Some parties recommend the imposition of penalties and sanctions for noncompliance with the notice requirements. For example, the National Cable Television Association ("NCTA") proposes that the FCC impose monetary sanctions where a competitor's service is disrupted because an incumbent LEC failed to comply with the notice requirements.²⁰ In addition, MFS urges the FCC to establish a procedure for temporarily blocking any proposed network change until the Commission has time to investigate alleged violations.²¹ Specifically, MFS proposes a rule "that authorizes the Commission for good cause to issue an order, without prior notice or hearing, requiring an ILEC to cease and desist from making any specified changes for a period of up to 60 days."²²

These proposals are not only unwarranted, but also could lead to abuse. Interconnecting or other entities should not be allowed to disrupt or interfere with change and technological innovation. Section 251 does not limit an entity's right to change its network; it only requires notice to interconnecting parties so that they can make the necessary adjustments to their systems.²³ Thus, the Commission should

²⁰ NCTA at 12.

²¹ MFS at 16.

²² *Id.*

²³ *See* Section 251(c)(5).

ensure that carriers are "not obligated to forego or unreasonably postpone [] technical changes in order to serve the interests of such interconnecting competitors."²⁴

* * *

In sum, the FCC need not overhaul the existing notice and disclosure framework. The current rules and industry guidelines governing the type of information that must be disclosed and when such disclosure must occur are adequate to ensure timely and sufficient notice in compliance with the Act, so long as they are applied consistently to all LECs, not just the BOCs.²⁵ The Commission should not impose onerous disclosure burdens on LECs that would threaten innovation, give rise to excessive costs, and jeopardize proprietary interests.

II. THE PARTIES STRONGLY ENDORSE SIMPLE DIALING PARITY STANDARDS TO BE IMPLEMENTED BY THE STATES (*Notice*, para. 202-219)

The commenting parties unanimously agree that the duty to provide dialing parity pursuant to Section 251(b)(3) requires a LEC "to permit telephone exchange service customers within a defined local calling area to dial the same number of digits to make a local telephone call, notwithstanding the identity of a customer's or the

²⁴ USTA at 14.

²⁵ See Ameritech at 31; GTE at 5-6; NYNEX at 15-16; PTG at 4, 7; USTA at 13.

called party's local telephone service provider."²⁶ (*Notice*, para. 211) Nonetheless, to eliminate any potential for confusion, we again urge the Commission to distinguish between local dialing parity and toll dialing parity.²⁷ As we articulated in our initial comments, the Commission should acknowledge that the local dialing parity requirement is satisfied if customers of different LECs can interchange traffic throughout the relevant calling area in a seamless fashion without dialing extra digits and with transmission quality the same as for calls between two customers of the incumbent LEC.²⁸ Toll dialing parity, on the other hand, should mean that customers can reach competing toll carriers on the same dialing basis, including through the use of carrier access codes with an equal number of digits.

Presubscription (*Notice*, para. 207-210). The parties overwhelmingly agree that presubscription offers the best solution to achieve toll dialing parity.²⁹ Moreover, there was near unanimous endorsement for the use of full 2-PIC technology to

²⁶ *See, e.g.*, Comments of American Communications Services, Inc. at 9 ("ACSI"); Ameritech at 3; Comments of Association for Local Telecommunications Services at 4 ("ALTS"); AT&T at 4; Bell Atlantic at 5-6; BellSouth at 10; Comments of General Services Administration at 3 ("GSA"); GTE at 7-8; NCTA at 6; NYNEX at 3; PTG at 8-9; TRA at 4; USTA at 2; US West at 6.

²⁷ PTG at 8; *cf.* USTA at 5.

²⁸ PTG at 8; *see also* Comments of Sprint Corporation at 1-2 ("Sprint").

²⁹ *See, e.g.*, AT&T at 4; GSA at 4; GTE at 8; MCI at 4; MFS at 3; Comments of Ohio Public Utilities Commission at 2 ("Ohio PUC"); TRA at 3.

implement toll dialing parity.³⁰ Although a few parties recommend the use of "multi-PIC" or "smart-PIC,"³¹ even AT&T and MCI acknowledge that these technologies are unavailable for network deployment at this time.³² Thus, we urge the Commission to identify full 2-PIC presubscription as a "safe harbor" for achieving toll dialing parity.

Implementation Schedule (Notice, para. 212). AT&T proposes that the FCC require all Tier 1 LECs to implement dialing parity by January 1, 1997.³³ MCI and TRA recommend that LECs be required to provide intraLATA presubscription within six and twelve months, respectively, of the Commission's final order.³⁴ These timetables are arbitrary, conflict with other provisions of the Act, and are also unnecessary.

First, there is no evidence that these proposed timetables account for the regulatory status of presubscription in the states or the LECs' developmental plans and

³⁰ See, e.g., Ameritech at 15-16; AT&T at 3-5; MCI at 4; Bell Atlantic at 3; Citizens Utilities Company at 6 ("Citizens"); Frontier at 1-2; GTE at 9; Michigan Public Service Commission at 4 ("Michigan PSC"); Ohio PUC at 7-8; Pennsylvania Public Utilities Commission at 2 ("Pennsylvania PUC"); SBC at 3; USTA at 3; US West at 6.

³¹ GSA at 4; TRA at 3-5.

³² AT&T at 5 n.6; MCI at 5; see also Ameritech at 18; Bell Atlantic at 4-5; Comments of Cincinnati Bell Telephone Company at 4 ("Cincinnati Bell"); PTG at 11-12; US West at 6.

³³ AT&T at 5.

³⁴ MCI at 6; TRA at 4-5.

status for implementation of toll dialing parity. Second, the Act establishes a clear time frame for BOCs to provide dialing parity -- either coincident with the provision of interLATA service or three years after enactment of the 1996 Act, whichever is earlier.³⁵ Third, both the states and the LECs are actively addressing this issue. For example, in the initial comments, we, along with several other LECs, indicated our current efforts to develop intraLATA presubscription plans to achieve toll dialing parity.³⁶ The Commission should continue to allow us and other LECs to design our own implementation plans and schedules based on local conditions and state requirements.³⁷

Consumer Education (Notice, para. 213). The majority of commenting parties were strongly opposed to requiring LECs to participate in balloting and concluded that the FCC need not establish consumer education requirements.³⁸ However, we do not object to the suggestion of the California Public Utilities Commission ("CPUC") that

³⁵ See Section 271(e)(2)(b).

³⁶ See BellSouth at 10; GTE at 9-10; PTG at 10-11.

³⁷ See, e.g., Ameritech at 14; Bell Atlantic at 2; BellSouth at 9-10; Cincinnati Bell at 5-6; GTE at 9, 11-12; MFS at 6; PTG at 9; USTA at 2, 4.

³⁸ See, e.g., Ameritech at 20-21; AT&T at 6-7; Bell Atlantic at 5; Cincinnati Bell at 5; Citizens at 6; Frontier at 4; GSA at 6; GTE at 12-13; Michigan PSC at 3-4; Ohio PUC at 7; PTG at 13; SBC at 4; USTA at 4, 6; US West at 7-8.

LECs notify consumers about carrier selection procedures in choosing among competitive telecommunications providers.³⁹

As USTA points out, "LECs need only provide consumers with information, upon request, as to how they can change their presubscribed intraLATA or interLATA carrier, and what requirements must be met to protect against unauthorized carrier changes" ⁴⁰ Such "carrier-neutral" ⁴¹ notification should satisfy any obligations to inform customers. Moreover, advertising and promotions provide sufficient education as new alternatives become available. Again, because the states are in a better position to determine what, if any, additional consumer education requirements are necessary to inform their citizens, the FCC should leave such matters in their capable hands.

Operator Services (Notice, para. 216). In addressing nondiscriminatory access to operator services, the commenters observed that such access already exists in today's competitive marketplace.⁴² Accordingly, the Commission should refrain from

³⁹ Comments of the People of the State of California and the Public Utilities Commission of the State of California at 4 ("CPUC").

⁴⁰ USTA at 4.

⁴¹ Ameritech at 20.

⁴² See, e.g., Ameritech at 7; GTE at 16; NYNEX at 6-7; PTG at 14; SBC at 6; US West at 9.

imposing any additional requirements and allow the parties to negotiate arrangements for the provision of operator services.

In the *Notice*, the Commission asks whether the nondiscriminatory access provision imposes a duty upon LECs to resell operator services. (*Notice*, para. 216) Only MCI answers this question in the affirmative.⁴³ Even AT&T recognizes that "[t]here is no need for the Commission to require that operator services . . . be made available for resale" for purposes of this provision.⁴⁴ First, the Act itself does not impose a duty to resell operator services.⁴⁵ The purpose of this requirement is simply to ensure access. Second, Pacific and Nevada Ball currently offer operator services under contract to those competitive local exchange carriers ("CLECs") requesting these services. Since Pacific Bell, Nevada Ball, and other LECs already offer operator services on a voluntary basis, there is no need for the FCC to layer on unnecessary regulations.

AT&T further suggests that nondiscriminatory access to operator services requires a LEC to make available equal opportunities for "branding."⁴⁶ This position is untenable. The intent of the Act was not to preclude the incumbent from labelling its services, but rather to guarantee "access." A competitor's ability to brand services

⁴³ MCI at 8

⁴⁴ AT&T at 9 n.13; *see also* GTE at 16; PTG at 15.

⁴⁵ *See* Section 251(b)(3).

⁴⁶ AT&T at 9 n.12.

depends upon whether a resale or facilities-based arrangement exists. In a resale environment, we accommodate the CLEC by not branding our service at all. If a CLEC wants to brand its own operator services, it can establish a facilities-based arrangement and set up its own operator services.

Directory Assistance/Directory Listings (Notice, para. 217). We wish to reiterate that access to directory assistance and directory listings does not mean access to the underlying databases.⁴⁷ Access to the database is unreasonable for a number of reasons. First, and most importantly, the plain language of the Act itself does not require access to the database.⁴⁸ Second, by statute and tariff in California and Nevada, LECs are prohibited from providing access to customers' names and addresses without their permission. The purpose of this requirement of the Act is to assist customers seeking to obtain telephone numbers, not to allow parties unfettered access to all information on record. Accordingly, the Commission should clarify that access to directory assistance services and directory listings does not include access to the LEC's database itself.

The statements of certain commenters also indicate some confusion with respect to the meaning of nondiscriminatory access to directory assistance. For example, in the *Notice*, the Commission interprets that language to mean that customers must be able to

⁴⁷ See PTG at 16.

⁴⁸ See Sections 251(b)(3), 271(c)(2)(B)(vii)(II)(competitive checklist).

access each LEC's directory assistance service. (*Notice*, para. 217) AT&T misinterprets the Commission's ambiguous statement to mean that "customers must be able to access any other LEC's directory assistance"⁴⁹ in the same manner (*i.e.*, by dialing 411 or 555-1212).

This interpretation is faulty. A customer will not be able to access every LEC's directory assistance services using the same number. Rather, the customer can access only the directory assistance service of the carrier selected to provide local service in this way.⁵⁰ This same distinction applies with respect to operator services. Thus, the Commission should clarify that nondiscriminatory access to operator services and directory assistance does not mean that a customer must be able to access every LEC's operator services or directory assistance using the same dialing scheme, but rather only the services of the carrier selected to provide local service.

Dialing Delay (*Notice*, para. 218). The parties strongly support waiting to establish delay standards.⁵¹ The commenters wisely recognize the uncertainty in determining how a delay will manifest itself in this ever evolving technological environment, especially in the absence of long-term number portability. Thus, the

⁴⁹ AT&T at 9-10.

⁵⁰ The selected carrier may, in fact, purchase its directory assistance services from another provider.

⁵¹ *See, e.g.*, Ameritech at 13; Bell Atlantic at 9; GTE at 19-20.

FCC should heed the warnings of various parties and not prejudge the number portability docket by establishing arbitrary standards here.

Cost Recovery (Notice, para. 219). The commenters offer varied suggestions for recovering the costs of implementing dialing parity. Many properly encouraged the FCC to leave such issues to the states.⁵² But, both AT&T and MCI support limiting recovery to incremental costs and propose that the FCC mandate an assessment of an equal access recovery charge on all providers of toll service, including the incumbent, based on minutes of use subject to dialing parity.⁵³ The Telecommunications Resellers Association ("TRA") recommends no recovery at all,⁵⁴ while the General Services Administration ("GSA") supports recovery through a percentage surcharge on bills for telecommunications services from all carriers.⁵⁵

We submit that anything less than full cost recovery is unreasonable. Any other approach would unfairly deprive the incumbent of its rightful compensation for its required expenditures. The best solution for managing cost recovery is to allow the states to determine methodologies and mechanisms necessary for full recovery.

⁵² See, e.g., Bell Atlantic at 2; Bell South at 11; GTE at 20-21; NYNEX at 10-11; PTG at 16.

⁵³ AT&T at 7; MCI at 6-8; see also Michigan PSC at 5; Ohio PUC at 11.

⁵⁴ TRA at 8.

⁵⁵ GSA at 7.

We also object to AT&T's proposal to amortize costs over a period not to exceed eight years.⁵⁶ This time frame is wholly inappropriate. Anything greater than three years is excessive and unreasonable. Since incumbents will incur the costs over a relatively short time frame, they should recover the cost in a reasonably short and efficient time period as well.

III. THERE IS SUBSTANTIAL AGREEMENT THAT DETAILED FCC RULES REGARDING ACCESS TO POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY ARE UNWARRANTED (*Notice*, para. 220-225)

Several commenters correctly recognize that the Act does not impose upon the Commission an affirmative obligation to establish new detailed rules regarding access to poles, ducts, conduits, or rights-of-way now or at any time in the future.⁵⁷ They urge the agency to permit parties to negotiate the terms of such access among themselves, as has long been the practice for cable television.⁵⁸ Thus, as we indicated in our initial comments, the FCC should limit its role here to the establishment of general guidelines on which private parties can rely in their negotiations.⁵⁹

⁵⁶ AT&T at 7.

⁵⁷ *See, e.g.*, BellSouth at 13; GTE at 22.

⁵⁸ *See, e.g.*, BellSouth at 14; SBC at 15-18; USTA at 10.

⁵⁹ PTG at 17-18; *see also* Bell Atlantic at 14; BellSouth at 13-14; Comments of Rural Telephone Coalition at 14 ("Rural Telephone"); SBC at 15-18; USTA at 9-11; US West at 15.

The CPUC recommends that the Commission wait to address all of the issues regarding access to poles, ducts, conduits, and rights-of-way in the Pole Attachment *NPRM* scheduled for release next month.⁶⁰ Given the historic reliance on the states to regulate issues of access, the FCC should defer to their expertise now. However, to the extent that the Commission is inclined not to so defer, it should address these issues in a future proceeding as recommended by the CPUC. Tabling the issues raised in the present *Notice* will allow the Commission to consider them in a comprehensive and efficient manner.

Nondiscriminatory Access (*Notice*, para. 222). Several commenters, including AT&T, MCI, and GST Telecom, Inc. ("GST"), support rules that would make capacity reserved for future use by the owner of a facility available to others.⁶¹ This proposal is not only unreasonable, but also inconsistent with prior FCC practices. A number of parties correctly point out that the Act neither requires nor suggests that a carrier must treat itself the same as other attaching entities.⁶² As we stated in our initial comments, uniform treatment of affiliates and nonaffiliates should be sufficient to comply with the nondiscriminatory access requirement.⁶³

⁶⁰ CPUC at 6; *see also* BellSouth at 14, 17-18.

⁶¹ *See, e.g.*, ACSI at 8; AT&T at 16; GST at 5-6; MCI at 23.

⁶² *See, e.g.*, Ameritech at 34; GTE at 23; PTG at 19.

⁶³ PTG at 21; *see also* Ameritech at 34.

LECs such as Pacific and Nevada Bell, which operate as carriers of last resort ("COLRs"), must be prepared to serve all of the public on short notice. Thus, COLRs must have the ability to reserve capacity for future use. Allowing other entities to have access to such reserves on request would wholly undermine the COLR regime to the detriment of these important obligations and the public interest.

Furthermore, in other contexts, the Commission has allowed LECs to reserve for themselves capacity that others cannot access to satisfy forecasted needs. For example, in addressing collocation space limitations in its *Expanded Interconnection* proceeding, the Commission permitted LECs to reserve space for future use.⁶⁴ The Commission found "that requiring LECs to expand their facilities or relinquish space reserved for their future use, as suggested by some parties, is neither reasonable nor likely to serve the public interest. Such a requirement could interfere with the LECs' ability to serve existing ratepayers and might impose considerable and unnecessary expense on the LECs . . ."⁶⁵ There is no valid reason why the Commission should not permit the same reservation here. Thus, the Commission should state that a LEC's reservation of reasonable capacity based on reasonably forecasted needs does not constitute a violation of the Act.⁶⁶

⁶⁴ *Special Access Expanded Interconnection Order*, 7 FCC Rcd 7369, 7408 (1992).

⁶⁵ *Id.*

⁶⁶ *See, e.g.*, Ameritech at 36; Bell Atlantic at 13; BellSouth at 15; Comments of Kansas City Power & Light Company at 4 ("Kansas City Power"); NYNEX at 13; PTG at 20; USTA at 10.