

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Implementation of the Telecommunications Act)
of 1996:)

Accounting Safeguards Under the)
Telecommunications Act of 1996)

CC Docket No. 96-150

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**REPLY COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION**

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September 10, 1996

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SUMMARY

The Commission should address the threshold issue in this proceeding: whether the current Joint Cost rules should continue to be applied to incumbent exchange carriers. Such rules do not apply to their competitors and their competitors realize that this gives them an advantage in the marketplace. The current rules are superfluous. The Act contains specific safeguards, requirements and prohibitions. Other safeguards, as listed in USTA's comments, exist to deter improper cross subsidization and unreasonable discrimination. Price cap regulation, particularly absent any sharing obligations, breaks the link between costs and rates eliminating any incentive to misallocate costs. Competition significantly reduces any opportunities to improperly cross subsidize.

If the Commission does not forbear from applying these rules, the Commission should streamline the rules as suggested in USTA's comments to ensure that they are clear, consistent and predictable.

Other commenting parties raise peripheral issues which are not relevant to the threshold issue. These parties offer no justification for more stringent requirements and certainly do not meet the heavy burden imposed by the Commission to merit the imposition of additional requirements.

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**REPLY COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION**

The United States Telephone Association (USTA) respectfully submits its reply to the comments filed August 26, 1996 in the above-referenced proceeding.

In its comments, USTA recommended that the Commission forbear from applying the current accounting safeguards to incumbent exchange carriers. The safeguards included in the Act are sufficient to constrain improper cross subsidy and unreasonable discrimination. In addition, price cap regulation, particularly without sharing, eliminates any incentives to misallocate costs. Competition significantly reduces any opportunities for improper cross subsidization. In those instances where the Commission determines that the current safeguards must be continued for incumbent exchange carriers, those rules should be streamlined to ensure fair and efficient competition and to meet the Commission's stated objectives that the rules be clear, consistent and predictable. USTA included specific rules changes in its comments which would achieve those objectives. In no case should the current rules be made more stringent.

Such a result would be inconsistent with the intent of Congress.

I. THE COMMISSION SHOULD FORBEAR FROM APPLYING THE CURRENT AFFILIATE TRANSACTION AND COST ALLOCATION RULES.

A. The Commission Should Address the Threshold Issue in this Proceeding as to Whether the Current Rules Should Continue to be Applied.

The threshold issue in this proceeding is whether the current rules should continue to be applied to incumbent exchange carriers. Such rules do not apply to their competitors, although these competitors argued vigorously that the current rules, with even more stringent modifications, should be applied to incumbent exchange carriers. Competitors recognize that these rules impose regulatory burdens which restrict incumbent exchange carriers' abilities to compete in the market. They understand that the current rules add unnecessary administrative costs which are not included in competitors' rates. Competitors realize that the rules restrict incumbent exchange carriers' abilities to respond to the needs of customers. They recognize that the rules prevent incumbent exchange carriers from responding to customer requests in a timely manner. Competitors know that these rules provide them with an advantage in the marketplace and they are actively seeking to preserve and, in some cases, by advocating more restrictive requirements, to broaden that advantage. The Commission should not fall prey to such obviously self-serving statements.¹ The Act strikes the appropriate balance between promoting fair and efficient competition and prohibiting anticompetitive conduct. None of these arguments to continue to impose restrictions on incumbent exchange carriers meet the heavy burden imposed

¹See, for example, AT&T at 2, MCI at 4, and LDDS at 11.

by the Commission to justify further consideration.

As USTA explained in its comments, the current rules are superfluous. First, the Act itself contains specific safeguards, requirements and prohibitions which will prevent the possibility of anticompetitive conduct. Second, USTA listed a number of other “safeguards” which exist to deter improper cross subsidization and unreasonable discrimination in addition to those specified in the Act. These mechanisms impose discipline and offer protection. Third, price cap regulation, particularly absent any sharing obligations, breaks the link between costs and rates thus eliminating any incentive to misallocate costs.² Fourth, competition significantly reduces any opportunities for improper cross subsidization. Competition has grown to such an extent in many areas and is increasing so rapidly in others that the so-called “captive LEC customer” simply does not exist. In today’s regulatory and competitive environment, there is no need for the current rules.

B. If Not Forborne, the Commission Should At Least Streamline the Current Rules.

In order to ensure that the current rules are clear, consistent and predictable, the Commission should take this opportunity to streamline the current rules. The specific streamlining proposals appended to USTA’s comments are conservative, providing modest recommendations to simplify and reduce some of the current Commission requirements. For example, USTA’s proposals do not alter the principles of the Joint Cost rules contained in Section 64.901. USTA does propose to eliminate the shared forecast investment rule, and the

²USTA at 5, Pacific at 40-42, SBC at 2-5 and Bell Atlantic at 10-12.

associated ARMIS report, which is not applicable under price cap regulation.

The only change suggested for the CAM is to simplify the administrative process by eliminating the sixty day approval period, the quantification of cost pool and time reporting changes and the Common Carrier Bureau suspension provision.

By reducing the frequency of the Joint Cost audit to every other year and alternating that with the biennial audit required by Section 272(d) as suggested by USTA, the Commission can eliminate duplicative and overlapping activities.

Finally, by modifying the affiliate transaction rules to eliminate asymmetrical asset transfer rules, the Commission will also be eliminating a rule which is no longer applicable under price cap regulation. Retaining the valuation hierarchy allows streamlining for services.

C. More Stringent Requirements are Not Justified.

As noted above, given the current regulatory and competitive environment, the current rules must be reduced and/or eliminated. Additional regulation is not required under any circumstance. No party has met the Commission's requirement that such proposals must bear a heavy burden to justify adoption.

II. THE COMMISSION SHOULD NOT BE DIVERTED FROM ADDRESSING THE THRESHOLD ISSUE BY THE PERIPHERAL ISSUES RAISED BY SOME COMMENTING PARTIES.

The Commission should not be diverted from addressing whether the current joint cost and affiliate transaction rules are still applicable to incumbent exchange carriers by the peripheral issues raised by some commenting parties.

Many parties took the opportunity to use this proceeding as a forum to restate their complaints and concerns regarding issues arising from other Commission proceedings. For example, LDDS addressed the classification of the in-region interLATA affiliate.³ AT&T discussed the need for access reform.⁴ Telemessaging Services International requested guidelines for collocation.⁵ Others discussed the provision of inter-LATA service in-region, pricing relative to Sections 251 and 252 of the Act, and joint marketing pursuant to Section 271.⁶ Such issues are beyond the scope of this proceeding and are not relative to the applicability of the Joint Cost rules. The concerns expressed have no relationship to the threshold issue. These issues are peripheral at best and the Commission should not undermine the importance of the threshold issue by considering them in this proceeding.

Other commenting parties reiterate arguments made in previous proceedings which have been addressed by the Commission. For example, the alleged deficiencies in the CAM described by the American Public Communications Council (APCC) have already been the subject of lengthy and comprehensive proceedings which have resulted in specific and comprehensive requirements for the CAM and which require that the CAMs be uniform and subject to public review and comment.⁷ There is no need to reconsider those issues in this proceeding.

³LDDS at 21.

⁴AT&T at 2.

⁵Telemessaging Services International at 8-9.

⁶LDDS at 2-3, 21, AT&T at 3, CompTel at 18, Telemessaging Services International at 6-7 and Sprint at 3.

⁷APCC at 12-14.

III. THERE IS NO JUSTIFICATION FOR MORE STRINGENT REQUIREMENTS.

If Congress had intended to increase the burden of accounting regulations, it would have imposed additional requirements in Sections 260 and 271 through 276 of the Act. The intent of Congress was to minimize the burden of regulation. Therefore, any proposals which are more onerous than what is included in the Act must be rejected.

Some parties agreed with the Commission's suggestion that a uniform method of valuation for all affiliate transactions be adopted.⁸ As USTA and others explained in their comments, such a requirement would be administratively costly and complex and would be difficult to implement.

A. Safeguards for Integrated Operations are Sufficient and No Additional Regulation is Necessary.

1. Telemessaging.

No party disputed the fact that, to the extent the Joint Cost rules apply, those rules are sufficient.⁹ However, the Commission should not remove all the embedded costs for telemessaging as suggested by MCI.¹⁰ Telemessaging investment is already subject to the Joint Cost rules and the investment is removed from regulated Part 32 accounts.

⁸AT&T at 14.

⁹See, for example, Sprint at 7-9,

¹⁰MCI at 12.

Further, as USTA explained in its comments, there should not be exogenous treatment for cost allocations. An over-allocation of common costs to nonregulated activities will provide a disincentive for incumbent exchange carriers to enter nonregulated markets, as it places them at a competitive disadvantage. In a price cap environment, particularly with no sharing, allocated costs do not affect rates, therefore no exogenous rate adjustment to correct errors in allocated costs is necessary.

2. Incidental InterLATA Telecommunications and Information Services.

Many parties agreed that the Commission should not adopt either of the accounting alternatives proposed to implement Section 271(h).¹¹ While MCI proposed the creation of subsidiary accounts for interLATA services and CompTel supported nonregulated accounting treatment, neither provided justification for deviating from the current rules.¹²

LDDS supported the Commission's proposal regarding the accounting for access charge imputation required by Section 272(e)(3).¹³ This proposal is inconsistent with Section 32.5280 of the Commission's rules and should be rejected.¹⁴ LDDS also maintains that where different rates are charged to unaffiliated companies, the BOCs' integrated operations must pay the highest rate.¹⁵ Such a suggestion would only serve to unnecessarily constrain a BOC from

¹¹USTA at 20, Ameritech at 20, Pacific at 10, SBC at 18-23.

¹²MCI at 14 and CompTel at 10.

¹³LDDS at 3.

¹⁴Ameritech at 21 and Pacific at 13.

¹⁵LDDS at 15.

volume discount purchases and should be rejected. Finally, LDDS and several other parties states that the Part 32 rules should apply to the BOCs and all affiliates.¹⁶ Such an interpretation should not be adopted. Part 32 clearly applies only to local exchange carriers.

B. Additional Regulations are not Required for Separated Operations.

1. Manufacturing and InterLATA Services.

As USTA explained in its comments, Section 272 provides clear and specific safeguards to prohibit unreasonable discrimination and detailed structural and transactional requirements. Therefore, the Commission should reject the proposals advanced by the National Association of Regulatory Utility Commissioners (NARUC).¹⁷ Those proposals far exceed the statutory requirements of the Act and are, in many instances, inconsistent with the provisions of the Act. Section 272 is self-executing and no further accounting or record-keeping regulations, especially the unprecedented regulatory requirements proposed by NARUC, are necessary.

IV. CONCLUSION.

The Commission should not be diverted from evaluating whether there is a continuing need for the application of the current Joint Cost rules given the requirements of the Act and the affect of price cap regulation and competition with matters which are clearly outside the scope of

¹⁶LDDS at 13, AT&T at footnote 9, MCI at 16-18 and Telecommunications Resellers at 26.

¹⁷NARUC at Appendix.

this proceeding. The deregulatory policy established by the Act should encourage the Commission to forbear from regulation, or at the very least, streamline the rules as proposed by USTA. In no instance does the record provide any reason to impose any stricter requirements than those contained in the current rules.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

By:  _____

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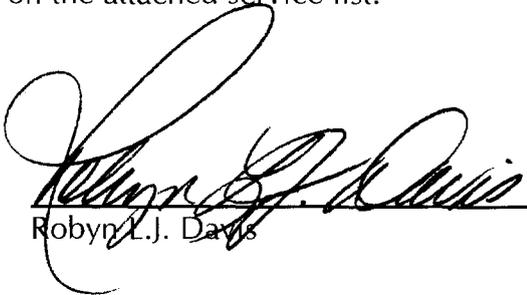
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September 10, 1996

CERTIFICATE OF SERVICE

I, Robyn L.J. Davis, do certify that on September 10, 1996 reply comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.


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