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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

September 30, 1996

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

Re: CC Docket Nos. 96-98, 95-185, Petition for Reconsideration and Clarification of the First Report and Order

Dear Mr. Caton:

The Local Exchange Carrier Coalition, by its counsel, hereby petitions for reconsideration and clarification in the above captioned proceeding. Enclosed is a signed original petition with 11 copies. Also enclosed is a stamp-and return copy to be stamped and returned with our messenger.

Please do not hesitate to contact the undersigned with any comments or questions.

Sincerely,

William F. Maher, Jr.

Enclosures

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

RECEIVED

SEP 30 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185

PETITION OF THE LOCAL EXCHANGE CARRIER COALITION FOR RECONSIDERATION AND CLARIFICATION

The Local Exchange Carrier Coalition

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September 30, 1996

SUMMARY

The Local Exchange Carrier Coalition ("LECC") respectfully asks for reconsideration and clarification of the First Report and Order (the "Order") in this proceeding. Many aspects of this Order should be changed, to ensure that the Commission's rules and policies reflect marketplace and technological realities while being consistent with the Telecommunications Act of 1996 (the "1996 Act").

Local Exchange Carriers ("LECs") should not be required to offer customer-specific contract or trial offerings at wholesale rates to resellers. This requirement does not take into account the competitive basis for contract offerings or the limited extent of trials.

The implementation date for access to operations support systems should be deferred to January 1, 1998. Under the current deadline, implementation by all LECs for all such systems cannot occur.

Reconsideration of several aspects of the Order's collocation requirements is necessary. Collocation is infeasible at LECs' vaults and in other small spaces. Similarly, incumbent LECs should not be required to provide interconnection between carriers collocating on their premises. Virtual collocation should be limited to being a substitute for physical collocation, consistent with the 1996 Act. Relinquishment of space for virtual collocation should not be required. Moreover, the Order's subcontracting requirements for collocation should also be clarified.

The temporary transitional access charge mechanism should not be removed prematurely, as the Order appears to contemplate, but should remain in place until access charge reform is implemented.

The Commission should alter its pricing rules for transport and termination to eliminate several anomalies. In this regard, the Order misapplies "symmetrical pricing" based on tandem rates. In addition, interconnecting incumbent LECs should be permitted to negotiate interconnection rates. LECs' obligations to provide transport and termination under "interim agreements" should be clarified.

The Order's regulations for compensation between LECs and Commercial Mobile Radio Service ("CMRS") providers should be modified to avoid an overly broad definition of calling areas for CMRS providers, which distorts competition and will result in jurisdictional shifts in costs and revenues. The Order's compensation arrangements for paging providers do not properly reflect paging traffic flows and should be changed.

Additional guidelines for interconnecting carriers, including a requirement that such carriers provide demand forecasts to incumbent LECs, are necessary to avoid introducing major inefficiencies into the interconnection process. Interconnecting carriers also should be required to inform incumbent LECs if advanced loop technologies are to be deployed on analog loops. Similarly, LECC seeks clarification that interconnection requests do not require incumbent LECs to alter their fundamental network technologies. As this petition demonstrates, implementation of the Order's branding and customized routing requirements is technically infeasible at present.

LECC also seeks reconsideration or clarification of several additional definitional and technical issues. Directory assistance services and operator services should not be considered network elements under Section 251(c) of the 1996 Act. Similarly, unbundling of the SMS/800 database is unnecessary. The interval within which LECs must switch customers for local service should be modified. The Commission should also clarify that shared

transmission facilities must be purchased in conjunction with local and tandem switching capability.

LECC urges that "avoided costs" should not be increased to include an allocation of shared costs. Similarly, profits or mark-ups on resold services should not be considered to be attributable to costs that will be avoided.

LECC also seeks changes to the Commission's implementation of requirements regarding poles, conduits, and rights of way. In order to prevent competitive imbalances, incumbent LECs should not be barred from reserving attachment space for their future use, and should not be required to exercise eminent domain rights on behalf of other carriers.

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PETITION OF THE LOCAL EXCHANGE CARRIER COALITION FOR RECONSIDERATION AND CLARIFICATION

I. INTRODUCTION

The Local Exchange Carrier Coalition ("LECC") respectfully requests the Commission to reconsider several important aspects of its First Report and Order (the "Order") in the above-captioned proceeding,[1/] and to clarify others. LECC consists of incumbent local exchange carriers ("LECs") that provide telecommunications services to residential and business customers in rural, urban, and suburban areas throughout the United States.[2/] LECC is thus profoundly affected by the Commission's interconnection rules.

The issues for which LECC requests reconsideration or clarification are important to the future of LECC's members, their customers, and the national information infrastructure.

1/ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98, FCC 96-325 (rel. Aug. 8, 1996).

2/ The members of LECC are listed in Attachment A hereto.

By implementing the local competition provisions of the Telecommunications Act of 1996 (the "1996 Act"),[3] this proceeding will have a major impact on the telecommunications industry for years to come. Accordingly, LECC files this petition to ensure that the Commission's rules and policies reflect the realities of the telecommunications marketplace and the underlying technology, while being consistent with the 1996 Act. Other important issues are currently the subject of pending appeals and will not be addressed here.

II. RECONSIDERATION OF CERTAIN ASPECTS OF THE ORDER IS ESSENTIAL

A. LECs Should Not Be Required to Offer Customer-Specific Contracts at Wholesale Rates to Resellers

The Order concludes that the language of Section 251(c)(4) of the 1996 Act, requiring LECs to resell services at wholesale prices, makes no exception for trials or discounted offerings, "including contract and other customer-specific offerings."[4] LECC believes this interpretation to be unsupported by statute and practice.[5]

The Order apparently misconstrues the nature of most customer-specific contracts entered into by the LECs. These contracts typically reflect negotiated, customized services

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[3] Pub. L. No. 104-104, 110 Stat. 56 (1996), to be codified at 47 USC §§ 151 et seq.

[4] Order at para. 948. See also 1996 Act, § 251(c)(4); Order at App. B-36,37, 47 CFR § 51.603, 51.605.

[5] By their very nature, trials are not offered by incumbent LECs "to the public" or "at retail." Generally, trials instead are provided under controlled circumstances for technical, operational, and marketing purposes. Trials often are limited in time, geographic extent, and scope. Based on information gathered during a trial, an incumbent LEC may make substantial changes before the service is eventually rolled out as a retail offering to the public. In some cases, the incumbent LEC may decide not to offer the trialed service at all. The Commission should therefore reconsider this issue and determine that trials do not fall within Section 153(46) or Sections 251(b)(1) or 251(c)(3) of the 1996 Act.

offered to customers on an individualized case basis. Such contracts are treated individually with respect to both costs and the rates charged. Indeed, contract services are generally products of a competitive selection process in which the customer chooses a service provider that satisfies a "request for proposals" or other objective criteria. Interexchange carriers ("IXCs") and competitive access providers also bid in these competitive processes.

The business customer that has selected its contract services from among competing bidders has already benefitted from competition; no purpose is served by requiring an otherwise successful incumbent LEC-bidder to make its contracted services available to competitors subject to a wholesale discount.[6] It would be irrational to require an incumbent LEC to supply its competitors with services at prices below what the LEC could reasonably expect to receive in a fair bidding process. To do so will discourage LECs from aggressively bidding in the first place, actually limiting competition.

In addition, under a customer-specific contract, an incumbent LEC has already incurred marketing and other costs. These costs are no longer "avoidable" under the Commission's rules. Competition would be distorted by requiring incumbent LECs to sell, at wholesale prices, services that they have provided based on a competitive process and for which they have incurred unavoidable costs. Unless the Commission reconsiders its holding in this regard, incumbent LECs will leave, or at a minimum, bid less aggressively in the contract services marketplace, and the benefits to customers of such competitively-procured services will not be realized.

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[6] Of course, bidders competing with LECs will be able to purchase unbundled network elements and generally available services as components for the bidders' contract offerings.

B. The January 1, 1997 Implementation Deadline for Access to Operations Support Systems Is Not Feasible For All LECs And Must Be Deferred

Throughout the section of the Order addressing access to operations support systems, the Commission acknowledges the efficiencies to be derived from a set of industry standards for obtaining such access.[7] Yet, while recognizing that industry standards are not complete,[8] the Order sets an arbitrary deadline of January 1, 1997, for the provision of full access to operations support systems.[9] This deadline cannot realistically be met by all carriers for all support systems. Accordingly, it should be deferred for at least one year.

As the Commission is well aware, interfacing with operations support systems requires the use of Electronic Data Interchange ("EDI"). EDI is a developing technology with emerging industry standards. While the Order cites the progress made by industry groups in formulating standards, and the on-going efforts of incumbent LECs to create interfaces with other service providers,[10] it is unrealistic to conclude that the establishment of industry standards and full compliance with those standards by all incumbent LECs can occur quickly enough to meet the January 1, 1997, deadline. Indeed, the Order's references to widely

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[7] See e.g., Order at para. 527 ("Ideally, each incumbent LEC would provide access to support systems through a nationally standardized gateway") and paras. 524, 528.

[8] See Order at para. 520 ("several industry groups are actively establishing standards").

[9] Order at para. 525; App. B-24, 47 CFR § 51.319(f)(2).

[10] Id.

divergent degrees of success in creating interfaces[11] strongly indicates that the industry is in a state of flux in this regard.

Moreover, to the extent that the incumbent LECs attempt to comply with the January 1, 1997, deadline without the benefit of industry standards, their efforts could potentially be wasted once a consensus is reached regarding standards. Without industry standards -- and without the time to implement them -- the incumbent LECs will be forced to proceed inefficiently, and at breakneck speed, in order to comply with the deadline set in the Order. The result will be great and wasteful expenditures on interim or differing solutions by incumbent LECs and interconnecting carriers alike. LECC thus requests the Commission to change this deadline to January 1, 1998.

C. Several Collocation Requirements Should Be Changed

1. Mandatory Collocation Requirements for Vaults and Other Small Spaces Are Infeasible

In the Order, the Commission adopted with some modifications the rules of its Expanded Interconnection proceeding regarding collocation.[12] In addition, the Order expanded the definition of "premises" for collocation purposes by expressly including "all buildings or similar structures owned or leased by the incumbent LEC that house LEC

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[11] See e.g., Order at para. 510 (discussing implementation of BellSouth interfaces); para. 511 (reporting that various incumbent LECs are developing interfaces); para. 513 (reporting that Sprint and other industry leaders are working on standards in the Electronic Communications Implementation Committee).

[12] See Expanded Interconnection with Local Telephone Company Facilities, First Report and Order, 7 FCC Rcd 7369 (1992) (Special Access Order).

network facilities."[13] Although the Order acknowledges that "LECs are not required to physically collocate equipment in locations where not practical for technical reasons or because of space limitations,"[14] the Order's broad definition of premises and the still-uncertain meanings of "practical" and "space limitations" leave unclear the rights and responsibilities of interconnecting parties.

Specifically, the Order's broad inclusion of vaults, huts, and other small field structures (collectively "vaults") in the definition of "premises"[15] would impose heavy burdens on incumbent LECs. Vaults are almost invariably too small to accommodate physical collocation equipment, and, in most cases, cannot accommodate virtual collocation arrangements because of their small size and lack of vacant space. Vaults are also too small for incumbent LECs practically to implement security measures to protect against harm to their own or the collocators' equipment. Because providing collocation at vaults is impractical, LECC requests that the Commission remove such structures from its definition of "premises" for collocation purposes. Doing so would realistically acknowledge the physical and economic limitations to which incumbent LECs are subject.

2. Mandatory Interconnection Between Collocators on Incumbent LEC Premises is Unwarranted

The Order requires incumbent LECs to allow collocating telecommunications carriers to connect their collocated equipment with that of other collocating carriers within the incumbent LEC's premises, so long as the collocated equipment is used for interconnection

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[13] Order at para. 573, App. B-10, 47 CFR § 51.5.

[14] Order at para. 575.

[15] See Order at B-10 (definition of "premises").

with the incumbent LEC or access to its unbundled network elements.[16] Incumbent LECs must also provide the connections between such equipment unless they permit the collocating parties to provide such connections themselves.[17]

LECC requests that the Commission eliminate these requirements. These requirements are not authorized by the 1996 Act, which specifically establishes a duty for incumbent LECs to provide "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises" of the incumbent LEC.[18] Section 251(c)(6) addresses only interconnection between the facilities of incumbent LECs and collocating carriers within incumbent LECs' central offices. Had the 1996 Act intended to require interconnection between two collocating carriers within an incumbent LEC's central office, such a requirement would have been specifically included in its provisions.

Instead, Congress established a general obligation to interconnect in § 251(a)(1). The 1996 Act does not require that two or more collocating carriers be permitted to interconnect their equipment on the incumbent LEC's premises, and certainly does not allow them to do so when they do not connect through the LEC. As a matter of policy, these requirements are not competitively neutral because interconnection between collocating carriers may be accomplished less expensively than can interconnection between a collocating carrier and an incumbent LEC. Any such advantage, favoring use of collocating carriers' networks, should not result from burdens placed on the incumbent LEC outside the authority of the 1996 Act.

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[16] Order at para. 594, App. B-27, 47 CFR § 51.323(h).

[17] Id.

[18] See 1996 Act § 251(c)(6).

Collocating carriers should be required to interconnect their networks as they would to interconnect with an IXC -- at a meet point or through a collocation arrangement in their own buildings.

3. Virtual Collocation Should be Required Only As A Limited Substitute For Physical Collocation

The Order requires incumbent LECs to provide virtual collocation in addition to physical collocation.[19] The Commission should remove this general virtual collocation requirement because it is contrary to the intent of the 1996 Act and the public interest. Instead, the Commission should require virtual collocation only to the extent that Congress required it, as a substitute for physical collocation under Section 251(c)(6).[20]

The Order establishes a general virtual collocation requirement largely so that competitive providers will not have to "undertake costly and burdensome actions to convert back to physical collocation even if they were satisfied with existing virtual collocation arrangements."[21] This policy reason does not justify the blanket virtual collocation requirement now in place. At most, this concern may justify grandfathering existing virtual collocation arrangements.[22] Neither the 1996 Act nor this policy provide a rational basis for requiring virtual collocation offerings by incumbent LECs that may never have

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[19] Order at paras. 550-552.

[20] The incumbent LEC must demonstrate that "physical collocation is not practical for technical reasons or because of space limitations." 1996 Act § 251(c)(6).

[21] Order at para. 551.

[22] LECC does not agree with the Commission's finding that it has the authority to order virtual collocation under § 251(c)(2) in addition to § 251(c)(6). See Order at para. 551. The specific language of the latter section governs over the general language of the former.

(i) provided virtual collocation; (ii) provided virtual collocation to specific locations, or (iii) provided virtual collocation to specific customers in specific locations, but instead elected to provide physical collocation.[23]

The Order's sole other reason for the general virtual collocation requirement is that "[i]n certain circumstances, competitive carriers may find, for example, that virtual collocation is less costly or more efficient than physical collocation."[24] The Order bases this speculation on a comment by one party, Hyperion,[25] to the effect that "small carriers lack the financial resources to make the economic investment necessary for physical collocation at every end office."[26]

There is no need, however, to collocate at every end office. A party may collocate in the offices where it has the most traffic and use the incumbent LEC's interoffice transport to cover other areas, or the party may use unbundled network elements in lieu of collocating any equipment. Moreover, the Commission has required meet point arrangements,[27] which can provide the same benefits as virtual collocation, particularly when combined with SONET technology.[28]

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[23] Of course, this does not preclude parties from negotiating virtual collocation arrangements, as contemplated in the 1996 Act.

[24] Order at para. 552.

[25] Order at para. 552, n. 1343.

[26] Order at para. 545.

[27] Order at para. 553, App. B-25, 47 CFR § 51.321(b)(2).

[28] SONET can allow each carrier to use its own fiber-optic equipment to terminate a connected line and can eliminate the need for an electrical cross-connection between CAP and LEC networks. See Comments of MFS, CC Docket No. 91-141 (filed Aug. 6, 1991) at 49 n.70. See also Letter from Stephen S. Melnikoff, Southwestern Bell, to William F. Caton, FCC, in CC Docket 91-141 (Jul. 7, 1994), concerning SONET-based interconnection.

(continued...)

Thus, the record does not establish any changed circumstances that would justify altering the Commission's earlier determinations that, as a general matter, requiring both physical and virtual collocation is unnecessary, and that virtual collocation should be required as a limited substitute for physical collocation.[29] LECC requests that the Commission implement collocation as Congress expressly intended -- requiring virtual collocation only as a limited substitute for physical collocation.

4. Mandatory Relinquishment Of Reserved Space For Virtual Collocation is Unwarranted

The Commission should remove the Order's requirement that incumbent LECs relinquish any "space held for future use" before denying virtual collocation requests due to a lack of space, unless they can prove to a state commission that virtual collocation is not technically feasible.[30] Instead, incumbent LECs should be allowed to reserve space to meet the anticipated needs of customers for local and other services. Doing so will permit LECs to meet their ongoing universal service and carrier of last resort obligations.

As the Order notes in discussing virtual collocation, "[a]llowing competitive entrants to claim space that incumbent LECs had specifically planned to use could prevent incumbent

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[28](...continued)
In Expanded Interconnection With Local Telephone Company Facilities, 9 FCC Rcd 5154 (1994) at para. 35, the Commission expressed openness to waiver requests proposing new interconnection arrangements in place of the virtual collocation that it prescribed. The Order should at the very least provide that alternative.

[29] Special Access Order, 7 FCC Rcd 7369, paras. 39-41, 77-78.

[30] Order at para. 606.

LECs from serving their customers effectively."[31] For example, in order to make efficient upgrades in service, it is essential that incumbent LECs be allowed to reserve switch-turnaround space. When an old switch is replaced, the new switch is typically installed in the same central office, tested and run in parallel for some period of time to ensure that end users experience no service disruptions. This process requires an incumbent LEC to reserve space for that eventual transition. Inability to reserve space for the turnaround process would threaten the service quality of incumbent LECs compared to other carriers that are not prevented from taking advantage of this process.

In addition, the requirement to relinquish reserved space in favor of those obtaining virtual collocation gives those parties an unjustified preference. Space is held by LECs for future use in order to meet the projected needs of (i) end users, resellers, and carriers that desire to interconnect or access unbundled elements in ways other than collocation, (ii) collocating carriers, and (iii) the incumbent LEC itself.

The Order's preferential treatment of those requesting virtual collocation would require incumbent LECs to incur additional expense in favoring those parties. Incumbent LECs could be forced to lease or construct additional space to belatedly meet universal service and other needs that could otherwise be addressed by using the reserved space. Thus, the relinquishment requirement is contrary to the Order's stated intent to allow LECs to reserve reasonable amounts of space and not be required to lease or construct additional space.[32] As such, it is contrary to the public interest.

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[31] Order at para. 604.

[32] See Order at paras. 585, 586, 604.

D. The Temporary Transitional Access Charge Mechanism Should Remain In Place Until Access Reform Is Implemented

The Commission acknowledges that its approach to interconnection issues and network unbundling has a direct relationship to other important policy objectives such as access charge reform and promoting universal service.[33] In addition, a sound approach to interconnection matters is essential to creating a level, competitively neutral market for telecommunications services.

The Order states that special attention is needed regarding the implementation of interconnection requirements in this context because they may have significant and immediate adverse effects that Congress did not forsee.[34] LECC agrees and requests accordingly that the Commission reconsider its deadlines regarding its "temporary transitional mechanism" regarding access charges to avoid detrimental impacts on a viable and competitive telecommunications market.[35]

The Order's timetable for expiration of the transitional mechanism is needlessly aggressive and fails to protect LECs from precipitous and abrupt termination of revenue flows to recoup sunk costs. Although there are three alternative trigger dates for expiration of the transitional mechanism, the Order states that "[w]e can conceive of no circumstances

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[33] Order at paras. 6-8 (noting that this proceeding is the first in a "trilogy" of reform, including universal service and access charge reform); id. at para. 716 (implementing Section 251 of the 1996 Act is integrally related to both universal service and access charge reform).

[34] Order at para. 716.

[35] Order at paras. 716-726 (permitting incumbent LECs to receive CCLC and 75% of TIC revenues from only those carriers that purchase the local switch as an unbundled network element only until the earliest of: (1) June 30, 1997; (2) the effective resolution by the Commission of the access charge and universal service dockets; or (3) if the incumbent is a BOC, the date upon which a BOC receives section 271 authorization). See also App. B-36, 47 CFR § 51.515.

under which the requirement that certain entrants pay the CCLC or a portion of the TIC on calls carried over unbundled networks would be extended [beyond June 1997]."[36] Thus, according to the Order, incumbent LECs face the dissolution of a substantial revenue flow for recoupment of their sunk costs in the local loop and for transport on a date certain -- regardless of whether access charge reform has been completed.

There is no compelling reason to impose such an abrupt outcome when there is no assurance that a viable revised access charge structure will be adopted, much less in place, on June 30, 1997. Unless the Commission has prejudged the extent to which the access charge structure must be revised, it cannot now predict how simple or how extensive such changes may be. It is likely that adoption of a new access structure will take months to implement, due to such factors as billing system reconfiguration, and the placing and processing of orders for elements comporting to a new format.[37] Thus, the Commission should reconsider the Order and maintain the temporary transition mechanism until the revised access charge structure is implemented.

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[36] Order at para. 725.

[37] When the Commission adopted a revised transport rate structure in 1992, it recognized that a one year period would be needed for implementation of its interim rate plan. A comprehensive overhaul could easily take a longer time to implement fully. See Transport Rate Structure and Pricing and Petition for Waiver of the Transport Rules filed by GTE Corporation, 7 FCC Rcd 7006 (1992) at para. 14.

E. The Commission Should Reconsider Aspects of Its Transport And Termination Pricing Arrangements

1. The Order Misapplies Symmetrical Pricing Based on Tandem Rates

The Order effectively requires incumbent LECs to pay interconnecting carriers a higher rate for supposedly "symmetrical" compensation for transport and termination than the incumbent LECs receive. The Order correctly recognizes that the compensation rate that interconnectors pay to incumbent LECs may be higher for competitors handing off calls at tandem switches rather than at end offices.[38] The reason for this is simple. When calls are handed off at the tandem, the incumbent LEC will incur the cost of switching the call at both the tandem and end office, and of transporting the call between the two switches. But the Order also specifically directs that when an interconnecting carrier's switch serves a geographic area comparable to that served by an incumbent LEC's tandem, the rate that the incumbent LEC pays the interconnectors for transport and termination must be set at the sum of the incumbent LEC's tandem and end office switching rates.[39]

As written, this proxy for both the tandem and end office switching rates applies even if the interconnecting carrier is terminating the call through only a single switch. This proxy thus requires the incumbent LEC to pay a higher, non-cost-based total rate to the interconnector. This result is flatly inconsistent with the emphasis of the 1996 Act and the Order on cost-based rates. LECC requests the Commission to modify this rule so that

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[38] The Order emphasizes that these rates should be based on cost, and states that it costs more to terminate a call handed off at the tandem because the call has to be switched twice, once at the tandem and a second time at the end office. See, e.g., Order at para. 1090.

[39] See Order at para. 1090, App. B-42, 47 CFR § 51.711(a)(3).

incumbent LECs pay interconnectors the higher rate for tandem interconnection only where interconnectors actually have both tandem and end office switches.

2. Transport and Termination Rates For Interconnection Between Incumbent LECs Should Be Negotiated

The Order concluded that when the interconnectors are both incumbent LECs, the larger LEC's costs "should be used to establish the symmetrical rate for transport and termination."[40] The Order reasons that larger incumbent LECs are better positioned than smaller incumbent LECs to produce cost studies for the purpose of determining transport and termination rates.[41] However, it is unreasonable to impose upon smaller incumbent LECs the lower rates that larger incumbent LECs are likely to provide.

The Order fails to consider important differences between small and large incumbent LECs. In particular, larger incumbent LECs generally have more densely populated service areas than smaller incumbent LECs. As a result, it is often the case that larger LECs will have lower costs than smaller ones.[42] Thus, smaller incumbent LECs -- being forced to base their prices on the lower costs of larger incumbent LECs -- will not recover their costs. To be consistent with Section 252(d)(2), the interconnecting LECs must be allowed to negotiate compensatory rates for transport and termination on the basis of their respective costs.

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[40] Order at para. 1085, App. B-41, 47 CFR § 51.705(b).

[41] Id.

[42] The Commission has recognized that there is an inverse relationship between population density and loop costs. See Order at para. 794, n. 1877.

F. The Regulations for Compensation Between LECs and CMRS Providers Must Be Altered

1. An Overly Broad Definition Of Calling Areas For CMRS Providers Will Distort Competition and Result in Jurisdictional Shifts in Costs and Revenues

In addressing interconnection issues, the Order correctly left undisturbed the existing local calling areas as established by states when determining whether a call originating from a wireline competitor is local or long distance. This analytic approach is consistent with the Commission's focus on promoting competition.

The Order, nonetheless, created a basis for significant competitive discrimination by holding that all calls by commercial mobile radio service ("CMRS") providers within the same Major Trading Area ("MTA") should be deemed local calls for the purposes of applying the inter-company compensation obligations of Section 251(b)(5), regardless of the LECs' or CMRS providers' local service area.[43/] The effect of this holding is to cause unreasonable discrimination against incumbent LECs and landline competitors. Incumbent LECs will, under the Order, require wireless competitors to pay, pursuant to reciprocal compensation principles, a relatively low rate for calls deemed to be local that originate within MTAs. MTAs are generally substantially larger geographic areas than traditional local calling areas created by the states for landline carriers and indeed may include portions of several states. Landline carriers will therefore pay different -- and likely higher -- access-based rates for the same area, for no reason other than that they are not CMRS providers.

In addition to causing unreasonable discrimination against LECs, the use of MTAs to distinguish local transport and termination areas will create substantial problems by

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[43/] Order at para. 1036, App. B-40, 47 CFR § 51.701(b)(2).

transforming interstate calls into "local calls." This results from the fact that many MTAs include areas from two or more states.[44] Surely, the Commission does not seek to so dramatically shift revenues and costs from the interstate to the intrastate jurisdiction.

LECC therefore requests that the Commission reconsider its holding that compensation arrangements between incumbent LECs and CMRS providers be based on MTAs. Instead, the Commission's goals of neutral competition can be best achieved by utilizing the existing local calling areas established by the states for all interconnectors, including both CMRS and wireline providers (as modified, if at all, in negotiations between the parties).

2. The Order's Compensation Arrangements For Paging Providers Introduce Significant Competitive Anomalies

The Order should be reconsidered to correct an apparent oversight when it determined that paging companies, as CMRS providers, transport and terminate traffic pursuant to Section 251(b)(5).[45] As a matter of policy, the Order's holdings applied to paging networks and paging traffic flows as they actually occur would result in an outright subsidy of paging companies. Unlike cellular or broadband PCS service, which are two-way and interactive, and thus comparable to local exchange service, paging is a one-way service.

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[44] For example, the Albuquerque MTA includes areas in New Mexico, Colorado, Arizona and Utah; the Chicago MTA includes areas in Illinois, Indiana, Michigan and Wisconsin; and the New York MTA includes areas in New York, New Jersey, Connecticut and Pennsylvania. See Rand McNally Commercial Atlas at 38-39.

[45] Order at para. 1008. See also App. B-42, 47 CFR § 51.711.