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

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

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CONSOLIDATED OPPOSITION OF THE
UNITED STATES TELEPHONE ASSOCIATION

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SUMMARY

USTA opposes several of the petitions for reconsideration or clarification submitted in response to the First Order in the Commission's interconnection proceeding. Although USTA is participating in the judicial review of the First Order now taking place in the Eighth Circuit, USTA submits this opposition because several of the reconsideration petitions ask for changes to the First Order that are not authorized by the statute and are not supported by either the intent of Congress or sound policy. As a general matter, USTA believes that the Commission should reject attempts by petitioners to increase regulatory burdens on incumbent LECs when not required under the 1996 Act. Such attempts seek to inject regulation, rather than competition, into the telecommunications marketplace, contrary to the intent of the 1996 Act.

Various petitioners seek changes to the Commission's pricing rules that would skew those rules to favor new entrants over incumbent LECs in the marketplace. USTA respectfully requests the Commission to refrain from granting these requests. Pricing determinations should not favor any particular set of industry participants. Accordingly, the Commission should not "clarify" the First Order's treatment of non-recurring charges to subsidize new entrants. The Commission should deny requests for additional national, rather than state, regulations regarding TELRIC cost study inputs. Similarly, the Commission should refrain from imposing additional national geographic-based deaveraging rules. The Commission should not condone efforts to obtain additional competitive discounts to resellers through adjustments to the First Order's methodology for setting default resale discount percentage.

The Commission should continue its wise policy of not endorsing the Hatfield Model for costing purposes, especially in light of that model's fundamental flaws. The Commission should decline requests for "clarification" that recurring charges associated with operations support systems ("OSS") generally should be built into the charges for the network elements that such systems support. The Commission should not redefine "common transport" as a network element and permit competitors to evade access charges.

With respect to resale issues, the Commission should affirm that promotional prices are not retail rates. Moreover, the Commission's treatment of "grandfathered" services is reasonable.

Expanded unbundling and collocation requirements are not warranted. Specifically, dark fiber should not be treated as an unbundled network element because it does not satisfy the definition of such elements in the 1996 Act. In addition, the Commission properly declined to require subloop unbundling; such unbundling poses reliability and technical feasibility issues. Moreover, additional Advanced Intelligent Network features should not be unbundled further.

The Commission should not mandate a deadline for national standards for electronic interfaces for OSS. However, petitions to do so demonstrate that the First Order's deadline of January 1, 1997 for implementation of nondiscriminatory access requirements to OSS is unreasonable. USTA supports deferral of that January 1, 1997, deadline.

Adoption of additional national reporting requirements and performance standards is unnecessary.

The Commission should rule that billing and collection services do not constitute a "network element" and that line class codes are not "databases". The Commission should affirm its holdings that collocation requirements do not apply for switching equipment such as Remote Switch Modules and packet and data switches.

CMRS providers should not be accorded special treatment. In particular, the Commission should deny petitions that paging companies provide "telephone exchange service." Moreover, there is no reason to apply TELRIC-based termination compensation arrangements to paging companies. The Commission should not permit cellular operators with multicellular systems in multiple MSAs or RSAs to define their local calling areas based on the contiguous footprint of their network operations. Nor should it permit CMRS providers to associate NXX codes with any point they choose, which would have the effect of permitting them to control incumbent LECs' retail rates. CMRS providers also are not entitled to "interim rate relief" prior to the renegotiation of current interconnection arrangements.

The Commission should not reverse itself and establish as a general guideline a right of access to incumbent LECs' roofs and riser conduit so that 38 GHz licensees or others may install radio equipment there. Such a "right" is not based on any reasonable interpretation of incumbent LECs' obligations under the 1996 Act.

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CONSOLIDATED OPPOSITION OF THE UNITED STATES TELEPHONE ASSOCIATION

I. INTRODUCTION

The United States Telephone Association ("USTA") hereby files this consolidated opposition to several of the petitions for reconsideration or clarification submitted in response to the First Report and Order (the "First Order") in the above-captioned proceeding.[1] USTA's members include over 1300 incumbent local exchange carriers ("LECs") that are directly affected by the Commission's actions in this docket. USTA has filed comments and reply comments in this proceeding.

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[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) ("First Order"), *recon. pending*; *pets. for review pending sub nom. Iowa Utilities Board v. FCC*, No. 96-3321 (8th Cir. filed Sept. 19, 1996); *partial stay entered*, *Iowa Utilities Board v. FCC*, No. 96-3321, slip op. (8th Cir. Oct. 15, 1996) ("Stay Order").

USTA is concerned that, in seeking to implement several of the key provisions of the Telecommunications Act of 1996 (the "1996 Act"),[2] the First Order exceeded the Commission's authority and the terms of the 1996 Act. Accordingly, USTA is participating in the judicial review of the First Order now taking place in the Eighth Circuit. Nevertheless, USTA is filing this opposition because several of the reconsideration petitions ask for changes to the First Order that are not authorized by the statute and are not supported by either the intent of Congress or sound policy. The Commission's actions on these petitions will send important signals to industry participants, state commissions, and consumers regarding its policies under the 1996 Act. As a general matter, USTA believes that the Commission should spurn attempts by petitioners to increase regulatory burdens on incumbent LECs when not required under the 1996 Act. Such attempts seek to inject regulation, rather than competition, into the telecommunications marketplace, contrary to the intent of the 1996 Act. This proceeding is important to the public interest in reliable and affordable telecommunications services and infrastructure. USTA therefore requests the Commission to act rapidly in denying the requests discussed more fully below.

II. REQUESTS TO SKEW PRICING POLICIES FURTHER SHOULD BE DENIED

Various petitioners seek changes to the Commission's pricing rules that would skew those rules to favor new entrants over incumbent LECs in the marketplace. USTA respectfully requests the Commission to refrain from granting these requests. Pricing determinations should not favor any particular set of industry participants. The stay of the

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

First Order's pricing rules now in effect indicates that there is a substantial question as to the Commission's jurisdiction over these issues. Therefore, petitions seeking to extract greater competitive advantages over incumbent LECs in the pricing rules should be denied.

A. The Commission Should Not Change The Treatment Of Non-Recurring Charges

The Commission should deny the petitions of parties such as AT&T and ALTS that seek to impose greater burdens on incumbent LECs through "clarifications" of the rules regarding non-recurring charges.[3] In essence, these petitioners argue that the Commission's current rules are inadequate to protect against potential (and hypothetical) "abuses" by incumbent LECs in proposing or assessing non-recurring charges. They propose detailed rules for Commission adoption that would establish nationally the structure and pricing methodology under which non-recurring charges could be assessed.

In so arguing, of course, petitioners implicitly attack the First Order's recognition of the pivotal role of the states in addressing rate structure issues when implementing and enforcing the pricing provisions of the 1996 Act.[4] Petitioners would seek to augment the Commission's already detailed rules with an additional, burdensome anticompetitive set of requirements.

Even more egregiously, petitioners propose "clarifications" that would have the effect of codifying a federal subsidy for new market entrants. Although petitioners call for the

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3/ *See, e.g.*, AT&T Petition at 15 (arguing that for policy reasons, incumbent LECs should subsidize the non-recurring costs of new market entrants); ALTS Petition at 3-6 (same).

4/ *See* First Order at paras. 745-752.

Commission to adopt a so-called "competitively neutral" regime for cost recovery, they would do so by requiring incumbent LECs to "initially bear the largest absolute amount of one-time costs (and of all other costs as well)" for the market entry of competitors.[5] Such a policy would hinder, not advance, the development of efficient competition that benefits consumers. It would force incumbent LECs and their customers to subsidize requesting carriers by bearing a disproportionate share of the costs of modifying the incumbent LECs' networks to facilitate the entry of competing carriers.[6] At their core, these requests seek sanction by the Commission for a perpetual and artificial price advantage for AT&T and other large carriers.

Specifically, AT&T requests the Commission to rule that "one time" non-recurring costs that reflect any differences between an efficient single provider network and a hypothetical multi-carrier network be treated like the costs of the actual network elements themselves.[7] AT&T essentially attempts to deny incumbent LECs any recovery at all for the actual costs of modifying their networks to allow interconnection by competing carriers.

Clearly, AT&T's proposals do not promote "market entry." Rather, by urging the Commission to misapply TELRIC methodology to non-recurring costs, AT&T seeks to create

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[5] *See* AT&T Petition at 15. *See also id.* at 13 (requesting a Commission requirement to spread the recovery of forward-looking costs associated with one-time events across all demand -- that is, across all lines, including the lines still served by the incumbent LEC).

[6] For example, costs arising from the deployment of electronic interfaces to operations support systems ("OSS") and associated software, testing and electronic translations should not be borne by incumbent LECs. The methodologies proposed by AT&T and others would merely create a financial windfall for new entrants. Equally pernicious are requests by AT&T to limit incumbent LECs' ability to recover non-recurring charges for their electronic gateways by assessing contributions based on the total number of customers served by each carrier in the relevant period. No scheme could be further from the principle of recovering costs from the cost-causer in the manner in which they are incurred.

[7] *See* AT&T Petition at 11.

a permanent regulatory distortion in its favor.[8] AT&T claims that incumbent LECs should charge only for the forward-looking costs of one-time and transactional non-recurring activities that an "efficient provider" would undertake when providing the requested facility and using the most efficient (however that may be defined) technologies.[9] No LEC's network currently meets this hypothetical definition. USTA urges the Commission to refrain from imposing such a distortion at a national level.

In particular, the Commission should not require all one-time and non-recurring transactional activities to be computed on the basis of a distorted view of TELRIC. Such a requirement thus would be tantamount to misallocating to the incumbent LECs the cost for all network upgrades, specifically upgrades to accommodate competitors. This is clear in AT&T's request that incumbent LECs cannot recover true forward-looking transaction costs for activities undertaken because the incumbent LEC does not in fact deploy the most efficient technology.[10]

Indeed, AT&T abandons any pretense that it is espousing cost-based recovery principles in arguing that the Commission should impose a rebuttable presumption to be used in TELRIC cost studies that the forward-looking cost of any non-recurring activity that can be accomplished largely through software or other electronic means is $5, the ceiling for PIC

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[8] *See id.* at 12.

[9] *See* AT&T Petition at 16 (asking the Commission to deny any recovery of costs by an incumbent LEC for activities that it must undertake "because it does not in fact employ the most efficient technology or practices").

[10] *Id.*

change charges.[11] The basis for this remarkable proposal is AT&T's claim that non-recurring transactional costs for interconnection will often require little more than pushing a few buttons because of software. There is no rational relationship between this proposed presumption and the Commission's adoption -- over ten years ago -- of the $5 ceiling for PIC change charges, which itself was not based on cost.[12]

Moreover, it is plainly misleading for AT&T to represent that transactional non-recurring activities will require merely "pushing a few buttons."[13] In fact, in almost every conceivable instance, non-recurring transactional activities will involve substantial effort and costs. This is true even for changes where a requesting carrier (such as AT&T) assumes an account "as is." Record changes are required to supersede billing responsibility from the end user to the reseller. More importantly, if customized routing changes are requested, incumbent LECs must undertake considerable engineering tasks and provide substantial switching modifications to accommodate such requests.

USTA emphasizes that "obsolete equipment" is not the issue here. Rather, the unbundling obligations of the 1996 Act require a reconfiguration of current networks and their operations support systems ("OSS"), which may be state-of-the-art for their present single-provider purpose. AT&T would have the Commission declare that today's absence of a multi-provider capable LEC network requires the LECs to bear the costs of all required

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11/ *See* AT&T Petition at 18.

12/ *See Investigation of Access Divestiture Related Tariffs*, Memorandum Opinion and Order, CC Docket No. 83-1145, FCC 84-188 (rel. Apr. 27, 1984) ("PIC Change Charge Order").

13/ *See* AT&T Petition at 18.

modifications to enable many competitors to be interconnected with and to use LEC network elements in their provision of service.

There is no basis in the 1996 Act for requiring incumbent LECs or their existing customers unilaterally to bear the costs of altering their networks based on a regulatory construct of the "most efficient" network technology. To the contrary, Section 252(d)(1) clearly contemplates that requesting carriers, such as AT&T, pay the cost of providing the unbundled elements they request. As a policy matter, the proposed national rule would serve only to favor the requesting carriers for which incumbent LECs are changing their networks. A national rule would take no account of variations either in incumbent LECs' networks or in the state regulatory environments that have heavily influenced the deployment of those networks.

Permitting LECs to recover "one time" non-recurring costs from such activities as developing gateway and direct routing capabilities, preparing service departments internally to address the regulation-driven needs of requesting carriers, and altering loops to support unbundled services,[14/] supports the Commission's objective of recovery of costs from the cost-

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[14/] For example, contrary to the claims of AT&T and MFS, LECs must be able to recover the non-recurring costs of conditioning associated with preparing a twisted pair for advanced digital services. *See* AT&T Petition at 17, MFS Petition at 6 (requesting that the Commission forbid any recoupment of conditioning costs for loops shorter than 18,000 feet when copper pair is the least-cost transmission technology).

Such arguments ignore fundamental realities of network design and digital technologies. Twisted pair copper wires are not currently optimized for the provision of advanced digital services and will require substantial efforts to make them compatible with services such as ADSL, HDSL and ISDN. This is true even for copper loops shorter than 18,000 feet. For example, incumbent LECs will be required to remove existing loading coils or bridge taps from, and make other changes to, copper lines to carry digital signals effectively. There is no basis in the 1996 Act for AT&T and MFS' effort to shift such costs onto incumbent LECs and (continued...)

causer. Such costs are appropriately recovered from the requesting carriers through non-recurring charges.

Rather than a misuse of monopoly power, as AT&T contends, recovery of "one time" non-recurring costs from the cost-causer furthers the competitive intent of the 1996 Act because it prevents the very subsidization of new entrants that AT&T seeks. Recovery of costs from the cost-causer avoids sending incorrect economic signals that would encourage inefficient market entry. Instead, each potential competitor must evaluate the marketplace and determine if market entry is viable. Recovery of costs from the cost-causer is consistent with the terms of Section 252(d) because it promotes efficient competition by compensating incumbents accurately for the costs of complying with requests from new entrants.

The Commission should not condone AT&T's attempts to tilt the competitive framework in its favor through subsidies at the expense of incumbent LECs and their customers. The incumbent LECs' ability to assess non-recurring charges is already constrained by state and federal regulation and tariff review. The First Order recognized that non-recurring charges are often not fully compensatory. Instead, some one-time costs are regularly recovered through recurring charges. The regulatory obligations now imposed on incumbent LECs are sufficient for ensuring fair and neutral competition. Rather than preempting state consideration of issues regarding non-recurring charges in arbitration or other enforcement proceedings, the Commission should deny these requests.

[14/](...continued)
their customers and deny any other means of recovery. The Commission should see through such transparent efforts to use its regulations to favor one class of competitor.

B. The Use Of Cost Studies Should Be Governed By State Rules And Regulations

The Commission should deny AT&T's request for additional regulations regarding TELRIC cost study inputs.[15] The proposed "clarifications" would further constrain state flexibility in considering inputs such as cost of capital, depreciation/asset life, and "fill factors."

States are best positioned to determine the reasonable starting point for cost calculations and have longstanding expertise in determining appropriate cost study inputs. When crafting the 1996 Act, Congress reserved broad authority for states to establish appropriate pricing rules and regulations.[16] Attempts to create additional national rules to regulate use of cost studies fail to reflect the realities and benefits of state authority over such studies.

As a matter of sound policy, states already play a leading role in assessing the use and content of cost studies. State regulators have actively been conducting cost reviews to determine the basis of state interconnection rates, in order to advance local competition.[17] The Commission should not disturb this progress.

15/ *See* AT&T Petition at 20-24.

16/ Indeed, requests to constrain the proper role of states in this process through such rules would undermine the allocation of jurisdiction in the 1996 Act. *See* First Order at para. 702.

17/ *See, e.g.*, Joint Motion of GTE Corporation and the Southern New England Telephone Company for Stay Pending Judicial Review, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-98, Affidavit of Dennis B. Trimble, Assistant Vice President-Marketing for GTE (describing cost studies submitted to the Florida Public Service Commission) *and* Declaration of Anne U. MacClintock, Vice President-Regulatory Affairs and Public Policy of SNET (discussing Connecticut Public Utility Commission initiatives). *See also* Stay Order at n. 7 (noting that some states have already established rates based on local conditions).

C. Geographic Deaveraging Methodologies Should Reflect Local Variations

The Commission should refrain from imposing additional national geographic-based deaveraging rules. AT&T requests that the Commission impose national proxy price rules for both interim and permanent rates based solely on density cost zone differences.[18] Such national pricing schemes are flawed because they would limit states' ability to consider variations in market demand, costs, and the competitive structure of specific local markets.

In particular, loop rates should account for local variations in demand characteristics and the cost structures of the relevant carriers. States are best positioned to understand and account for such local variations in establishing equitable rates. Indeed, it already has been the experience of USTA members in arbitration proceedings that requesting carriers' own costing models indicate that there are substantial differences in loop costs among incumbent LECs even when different LECs' loops in the same density zones are compared.[19] As noted below, models such as the Hatfield Model are essentially worthless. However, the variation in different LECs' loop costs that even these models show for the same density zones is another indication that petitions seeking to place artificial limits on proxy price rules should be denied.

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[18] *See* AT&T Petition at 27-28.

[19] *See, e.g., AT&T Communications of the Midwest's (AT&T's) Petition-for Arbitration with Contel of Minnesota, Inc. d/b/a GTE Minnesota (GTE), Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996*, OAH Docket No. 9-2500-10733-2, MPUC Docket Nos. P-442, 407/M-96-939 (Minn. PUC, Oct. 24, 1996) Vol. 6B Nonproprietary at 138-139 and AT&T Exhibit 44.

D. The Commission Should Decline Efforts To Distort Further Wholesale Discount Rates

MCI petitions the Commission to award additional competitive discounts to resellers by proposing adjustments to the Commission's methodology for setting default resale discount percentage.[20] That request should be denied as an attempt to gain massive and unjustified additional discounts from incumbent LECs.

Assuming *arguendo* that the Commission has jurisdiction to impose wholesale rates, many aspects of MCI's requests for additional discounts in such rates are based on arguments already considered and rejected by the Commission. As Time Warner notes, the First Order already establishes a mechanism for dramatically enlarging the costs to be backed out of retail prices in establishing wholesale rates, thereby improperly inflating the size of discounted wholesale rates for incumbent LECs' services to be resold.[21] MCI's efforts to slant the wholesale rates in its favor are both unjustified and contrary to the plain meaning of the 1996 Act.[22]

20/ *See* MCI Petition at 12-15.

21/ *See* Time Warner Petition at 5-6.

22/ USTA notes that Time Warner accurately portrayed the Commission's expansion of Section 252(d)(3)'s requirement for an "avoided costs" standard into a "reasonably avoided costs" standard in the First Order as unsupported by the statute. Time Warner Petition at 2-6.

E. The Commission Should Not Endorse The Hatfield Model

The Commission should reject MCI's request that the Commission endorse the Hatfield Model, version 2.2.2 (the "Hatfield Model") as a suitable model for TELRIC estimation of unbundled network elements.[23] The Commission considered a variety of generic, forward-looking cost models in the First Order.[24] The Commission concluded that the models "were submitted too late in this proceeding for the Commission and parties to evaluate them fully."[25] MCI's request for the Commission to embrace the latest version of the Hatfield Model is untimely. The Commission has had little, if any, opportunity for further evaluation of any models.

It also has become clear in the short time since release of the First Order that the Hatfield model is fundamentally flawed.[26] For example, when the Hatfield Model is tested using multiple data sets, it produces wildly uneven results. This indicates that its underlying algorithms are outcome dependent and of limited use as a generic model for general

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23/ *See* MCI Petition at 2-7.

24/ *Id.* at para. 834. In addition to the so-called Hatfield Model, the Commission considered iterations of the Benchmark Cost and Cost Proxy models.

25/ First Order at para. 835.

26/ *See* W.E. Taylor, *Not the Real McCoy: A Compilation of Problems With The Hatfield Model,* (*ex parte* filing of USTA, Oct. 16, 1996).

application.[27] Indeed, the experience of USTA members demonstrates that often, the outcome of the Hatfield calculations cannot be explained, let alone relied upon.[28]

Evidence in the record demonstrates that the Hatfield Model contains serious structural flaws which prevent its adoption in this proceeding. Of even greater concern, errors in the model are still being uncovered. The President of Hatfield & Associates has testified in Texas proceedings that errors in the model had not been disclosed, raising doubt about other unforseen weaknesses which may yet be uncovered.[29] Complicating matters, a cascade of "new" versions, each with potentially unknown and unknowable flaws, prevents evaluation of a stable model. Version 2.2, release 1, was available for inspection in late June 1996. Hatfield & Associates released version 2.2, release 2, which the MCI Petition supports, in

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27/ *See* Shifman & Choura, *Universal Services - Existing Proxy Models: What Can They Be Used For?* at 17-25 (Sept. 1996) (noting that the Hatfield model is seriously flawed and does not accurately integrate data sets).

28/ *See, e.g.*, Statement of Lawrence P. Cole, GTE Laboratories, in *AT&T Communications Company of Hawaii, Inc.*, before the Public Utilities Commission of the State of Hawaii, Transcript of Proceedings, Docket No. 96-0329 at 586-87 ("I was involved in an exercise in which we increased the 3 switch input prices that are used in the [Hatfield] model by 33 percent to see what would happen... switching costs went up by what appears to be an appropriate amount... But for some reason, loop costs went down. Can't imagine why... We haven't resolved that... yet.")

29/ *See* Statement of Dr. Robert A. Mercer, Hatfield and Associates, in *Petition of AT&T Communications of the Southwest, Inc., for compulsory arbitration to establish an interconnection agreement between AT&T and GTE*, Docket No. 16300, and *Petition of MCI Telecommunications Corp., for arbitration with GTE Southwest, Inc., and Contel of Texas, Inc.*, Docket No. 16355, before the Public Utility Commission of Texas (Oct. 24, 1996)("Mercer Dep.") transcript at 96-98.

late August 1996.[30] Yet another version of this model is under preparation.[31] USTA submits that the succession of "fixes" to the model alone is sufficient grounds to support the Commission's decision to refrain from precipitous action and to study the matter further.

Such study will not be an easy task. Understanding the model and its limitations would be easier if the Hatfield Model was not opaque. The model is an extraordinarily complex EXCEL spreadsheet totalling over 1 million cells of data and information.[32] Over 5,000 equations in the model do not have explanation or documentation.[33] Of these equations, Hatfield & Associates have "hardwired" or password-protected major assumptions which have a dramatic impact on the costs projected by the model.[34] To USTA's knowledge, in state proceedings Hatfield & Associates have not been able to reproduce a single piece of paper that preserves, documents or memorializes the process by which default values in the Hatfield Model were chosen, in close consultation with AT&T and MCI.[35]

30/ *See* Testimony of Don J. Wood, consultant, in *Petition by MCI Telecommunications Corp. and MCI Metro Access Transmission Services, Inc., for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc., concerning interconnection and resale under the Telecommunications Act of 1996*, before the Florida Public Service Commission, Docket No. 960846-TP (Sept. 1996)("Wood Dep.") at 20. Mr. Wood advised Hatfield & Associates in developing the model.

31/ *Id.*

32/ *See* Wood Dep. at 1675.

33/ Mercer Dep. at 61 (noting that Hatfield & Associates have not documented the 5,000 assumptions in the spreadsheet); Wood Dep. at 1672 (same).

34/ *See* Mercer Dep. at 59-60 (noting that Hatfield & Associates turned off the spreadsheet's "audit" feature, thereby denying an outside party the opportunity to analyze the underlying assumptions).

35/ *See* Mercer Dep. at 20-22.

The model's undocumented and inaccessible equations have a profound impact on its results. For example, as used in a Florida proceeding, the model assumes that only 33% of the trenching costs of an incumbent LEC will be borne by that LEC because it is "anticipated" that the incumbent LEC will partner with two other utilities.[36] This unjustified and wholly arbitrary assumption alone reduced modeled loop costs by $3.90 in the study introduced in the referenced state proceeding.[37]

In light of these overwhelming deficiencies, the Hatfield Model should not be adopted.

F. Recurring Charges For Operations Support Systems Should Not Be Bundled

The Commission should deny AT&T's request for "clarification" that recurring charges associated with OSS should be built into the changes for the network elements that such systems support.[38] AT&T states that the interim default proxy rates already established by the Commission reflect such costs, and asks that no separate default proxy rates for OSS may be imposed.

The Commission should not adopt a national rule regarding such changes. Because a variety of OSSs exist, with different cost relationships with network elements, flexibility in charges for such systems is necessary. Moreover, in a resale setting, recurring charges for OSS may be necessary because such charges recover costs that by definition are not avoidable. Indeed, such costs are specifically incurred to permit incumbent LECs to perform a wholesale

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[36] *See* Wood Dep. at 1755-58.

[37] *Id.*

[38] *See* AT&T Petition at 28-29.

function. The Commission did not set default proxy rates to recover such costs under its resale regime. Indeed, the interim wholesale discount range established by the Commission reflects avoided costs. The Commission thus properly did not limit incumbent LECs' opportunities to recover recurring costs for OSS under TELRIC.

G. The Commission Should Not Redefine "Common Transport" As A Network Element And Permit Competitors To Evade Access Charges

The Commission should reject efforts by WorldCom to reclassify "common transport" as a network element.[39] WorldCom seeks a usage based pricing option under which requesting carriers could obtain transport, including "shared" transport, on a network element basis. In essence, WorldCom asks the Commission to treat unbundled transport network elements as a bundled service.[40] This is a transparent bid to evade access charges, contrary to the policy of the First Order and the Commission's order on reconsideration of September 27, 1996 (the "September 27 Order").[41]

A requesting carrier that seeks to purchase transport on a usage basis and capacity on an interoffice transmission facility that includes tandem or local switching is not requesting a

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[39] *See* WorldCom Petition at 1-2.

[40] *Id.* at 3-7.

[41] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Order on Reconsideration, CC Docket No. 96-98, FCC 96-394 (Sept. 27, 1996).

network element. Such a request seeks instead to recreate the common transport aspects of switched access service.[42]

The Commission should deny WorldCom's effort to blur the carefully crafted distinction in the First Order between network elements and the services otherwise provided by incumbent LECs. TELRIC-based network elements should not be substituted for switched and special access services, thereby allow a requesting carrier to obtain the same functionalities as access services while not paying access charges.

WorldCom fails to offer any convincing policy or statutory arguments to justify the Commission overturning its access charge policy, most recently applied in the September 27 Order. There, the Commission confirmed that carriers are not permitted to substitute unbundled switching elements to originate and terminate interexchange traffic to end users for standard access arrangements.[43] The Commission should adhere to this sound policy.

III. THE COMMISSION'S TREATMENT OF PROMOTIONS AND GRANDFATHERED SERVICES IN THE RESALE CONTEXT ARE REASONABLE

A. Promotional Prices Are Not Retail Rates

The Commission should deny petitions requesting it to treat promotional prices as retail rates, to which the resale provisions of Section 252(d)(3) must apply. AT&T and MCI claim

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[42] Because WorldCom seeks all traffic to be charged on a uniform minutes of use ("MOU") basis, WorldCom makes untenable assumptions regarding network usage. For example, it assumes that different switching and transport combinations carry the same MOUs at the same price. Such assumptions improperly leave the incumbent LEC to bear all potential costs and risks.

[43] *See* September 27 Order at para. 10.

that the Commission essentially contradicted itself by finding that "short-term promotional prices do not constitute retail rates,"[44] while also declining to create a general exemption from the wholesale requirement for all promotional or discount services.[45]

These petitions ignore the fact that the Commission was interpreting two different sections of the 1996 Act: Section 251(c)(4), which establishes a resale obligation for incumbent LECs, and Section 252(d)(3), which requires state commissions to determine "wholesale rates" on the basis of "retail rates."[46]

Because the 1996 Act does not define "retail rate," the Commission reasonably interpreted that term "in light of the pro-competitive principles underlying the 1996 Act,"[47] concluding that rates for short-term promotions are not retail rates. To limit further the definition of promotions, as MCI and others suggest, would disable incumbent LECs from using promotions to differentiate their services from the offerings of others. This would eliminate the important benefits to consumers that promotions bring. In the First Order, the Commission carefully noted the ambiguities of Section 252(d)(3). In interpreting the undefined term "retail rates," the Commission addressed the concerns of new market entrants and struck a careful balance between their short-term interests and the benefits to the consumer of promotional offerings.

44/ *See* AT&T Petition at 29-30; MCI Petition at 8-9.

45/ *See* First Order at para. 949.

46/ *See* 47 U.S.C. §§ 251(c)(4), 252(d)(3).

47/ First Order at para. 949.

MCI recites a litany of reasons why additional safeguards should be imposed on promotions by incumbent LECs.[48] None of these claims is new and all were addressed with specificity in the First Order. For example, MCI complains that, although the Commission explained its 90-day limit on promotional offerings not offered at wholesale, promotions shorter than 90 days will have the "same anti-competitive effect."[49] Therefore, MCI urges the Commission to exclude only those promotions that are "truly short."[50] At this stage of the proceeding, such vague recommendations are unhelpful to the Commission and should be disregarded.

Based on the faulty assumption that incumbent LECs would somehow manipulate the Commission's rules established in the First Order, MCI also suggests that an arbitrary one-year period be imposed during which promotional offerings cannot be repeated or "repackaged."[51] The Commission has already acknowledged these concerns with specificity in holding that incumbent LECs may not evade the wholesale obligation by, for example, consecutively offering a series of 90-day promotions.[52] As a matter of policy, the effect of an additional one-year restriction would only be to stifle efficient competition while depriving consumers of the benefits of promotional offerings.

48/ *See* MCI Petition at 10-12.

49/ *See* MCI Petition at 9.

50/ *Id.*

51/ *See* MCI Petition at 10.

52/ *See* First Order at para. 950.