HARDY MYERS
ATTORNEY GENERAL

DAVID SCHUMAN
DEPUTY ATTORNEY GENERAL

1162 Court Street NE
Salem, Oregon 97310

FAX: (503) 378-5300
TDD: (503) 378-5938
Telephone: (503) 378-6003

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

January 23, 1997

JAN 24 1997

VIA OVERNIGHT

Office of Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington D.C. 20554

Re: FCC 96-488
CC Docket Nos. 96-262, 94-1, 91-213, and 96-263

Greetings:

Enclosed for filing are the original and 16 copies of the Initial Comments of the Public Utility Commission of Oregon in the above-captioned docket. I am also enclosing a diskette in the required format.

Sincerely,

Michael Weirich by Benny Won

Michael T. Weirich
Assistant Attorney General
Public Utility Section

tjh/MTW0750.LET
Enclosure
c w/enc (no diskette):
Competitive Pricing Division
Common Carrier Bureau
Room 518
1919 M Street, N.W.
Washington, D.C. 20554

Roger Hamilton, PUC
Ron Eachus, PUC
Joan Smith, PUC
Pete Paris, PUC
Cynthia VanLanduyt, PUC

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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JAN 24 1997

In the Matter of	)	
	)	CC Docket No. 96-262
Access Charge Reform	)	

INITIAL COMMENTS OF THE

PUBLIC UTILITY COMMISSION OF OREGON

Under Oregon law, the Public Utility Commission of Oregon (OPUC) is responsible for representing the customers of telecommunications utilities in rate, valuation and service matters, in order to protect them from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates. Part of its responsibility is to represent these customers before officers, commission and public bodies of the United States. *See ORS 756.040.*

We appreciate this opportunity to comment on the Notice of Proposed Rulemaking (NPRM) on Access Charge Reform. Our comments address comprehensive review of separations and access charges, additional state commission workload, recovery of the interstate portion of loop costs, and changes to the Transport Interconnection Charge.

1. **Comprehensive review of access charges should be done in concert with the comprehensive review of separations.**

Paragraph 6 states that FCC Part 69 rules are designed to be consistent with Part 36 jurisdictional separation rules that govern the allocation of Incumbent Local Exchange Carriers' (ILEC) expenses and investment between the interstate and state jurisdiction. While the Telecommunications Act of 1996 (1996 Act)[1] directs the FCC to end implicit universal service subsidies by a date certain, it did not specifically require comprehensive access charge reform by the same date. Therefore, OPUC urges the FCC to recognize that comprehensive review of both separations and access charges should be done in concert to preserve consistency.

The FCC should address at this time the universal service issues regarding implicit subsidies, and rate structure modifications related to pricing e.g., flat versus usage sensitive, etc. Sweeping changes to the Part 69 access charge rules which are determined without regard to Part 36 will destroy the consistency between access and separations and preempt the 80-286 Joint Board's efforts regarding comprehensive review of separations. The flow of allocation of expenses and investments begins with Part 36 (Step 1) and continues with Part 69 (Step 2). Adopting changes to Step 2, access charges, before comprehensive review of separations, Step 1, is not in sync with the natural flow. If the FCC does go forward with extensive changes, we strongly recommend the FCC adopt these on an interim basis and acknowledge that following comprehensive review of

[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified* 47 U.S.C. §§ 151 *et. Seq* (1996 Act). Hereinafter, all citations to the 1996 Act will be to the 1996 Act as codified in the United States Code.

separations, another review of the access charge rules may be required to restore consistency.

2. **The FCC should not burden state commissions with additional uncompensated workload.**

At paragraphs 224 and 258, the FCC proposes relying on state commissions to conduct Total Service Long Run Incremental Cost (TSLRIC)-based studies and conduct rate cases. The FCC relies on section 410(a) of the Act[2] to implement these approaches. The OPUC has the following reservations regarding these proposals.

First, these proposals appear to be unfunded mandates imposed on the states. At paragraph 224 it states, "the Commission could evaluate ILECs' TSLRIC studies for each price cap basket. This approach, however, could impose significant and potentially costly burdens on the FCC, incumbent LECs, and interested parties. Alternatively, state commissions might be better suited to evaluate TSLRIC-based studies because state commissions generally have more experience with cost studies." Also at paragraph 258, the FCC believes that state commissions should conduct the rate cases because the states will have to address the issue of recovery anyway if it chooses to set prices on forward-looking costs, or some other basis other than embedded costs. We are concerned that the FCC contemplates imposing additional cost study evaluations and rate cases on the states according to the FCC's schedule and priorities. States would have little control over the timing of a potentially significant workload. We are particularly concerned about allocation of scarce resources and the pressure put on state commissions to hire and fund additional employee positions.

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[2] 47 U.S.C. § 410(a).

Second, section 410(a) of the Act merely refers to establishing joint boards. It is not apparent in reading this section that authority is given to the FCC to implement the approaches discussed in paragraphs 224 and 258. The FCC should clarify its reason for relying on this section of the Act.

Third, paragraph 258 states that having the state commissions conduct the rate cases will permit coordinated treatment between the federal and state jurisdictions. The *NPRM* then seeks comments on what federal guidelines should be adopted for these TSLRIC studies and the rate cases. We see a conflict between federal guidelines and a coordinated treatment. Federal guidelines will merely attempt to force states to conform to the dictates of the FCC, e.g., putting pressure on the states to adopt the proxy model and costing assumptions approved by the FCC. Many of the states have adopted policies on costing methods and cost models as well as long standing policies regarding rate cases. It is certain, however, that these policies will differ from state to state. It is unclear how a coordinated treatment will be achieved given these differences. We urge the FCC not to adopt these approaches.

3. **The FCC should recover the loop cost assigned to the interstate jurisdiction through a flat-rated charge and eliminate the Subscriber Line Charge (SLC).**

We agree with the Joint Board's conclusion that usage-based recovery is inconsistent with the manner in which the loop cost is incurred. We further agree with the suggestion of the Competition Policy Institute (CPI) to recover the relative interstate portion of loop costs through a capacity charge assessed on carriers based upon the number of switch trunk ports purchased from the ILEC. The advantage of this mechanism

is that it reasonably captures the relative volume of two-way interexchange minutes over the subtending subscriber plant without the uneconomic drawbacks of a per minute charge and the potential adverse consequences of a monthly per presubscribed line charge.[3] The SLC, which is presently capped at actual or $3.50 per month for residential and single-line business and $6.00 for multi-line business, should be eliminated. The Joint Board cap on primary residential and single-line businesses combined with the proposed increase in SLCs for other lines aggravates rate differences, over and above the rate differences created by the USF mechanism. Mandated SLCs on ILECs with no similar requirement on the competitive LECs (CLECs) places the ILEC at a competitive disadvantage. This disadvantage increases with the amount of the SLC. Finally, eliminating the SLC removes the problem of developing SLC amounts on derived channels such as ISDN access.

4. **Correct misassignments of costs and then phase out the remaining Transport Interconnection Charge (TIC).**

Currently, interstate transport is provided pursuant to interim rules[4] which replaced the equal charge per unit of traffic rate structure. These rules included, among other things, arbitrarily setting the tandem switching rate to recover only 20 percent of the Part 69 tandem revenue requirement and allowing direct-trunked transport rates to be based on an ILEC's comparable special access rates. The difference between revenues

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[3] The USF Joint Board notes that a per presubscribed line charge may encourage customers to not presubscribe and simply dial-around. It also may encourage IXCs to not presubscribe or market services to low volume customers.

[4] Transport Rate Structure and Pricing, CC Docket No. 91-213, 7 FCC Rcd 7006 (1992) (*First Transport Order*); *recon.* 8 FCC Rcd 5370 (1993) (*First Transport Reconsideration Order*); *further recon.* 8 FCC Rcd 6233 (1993) (*Second Transport Reconsideration Order*); *further recon.* 10 FCC Rcd 3030 (1994) (*Third Transport Reconsideration Order*); *further recon.* 10 FCC Rcd 12979 (1995) (*Fourth Transport Reconsideration Order*).

realized applying the "equal charge" rule versus the interim rules is recovered through the TIC. We support the proposal to first correct any misassignment of costs to other access elements. This would assure recovery of costs from the cost causer and eliminate any cross-subsidies created between access customers. It would also address the issues remanded from the *Comptel v. FCC*[5] litigation. Any remaining costs should be phased out over a specified time period. Without knowing the magnitude of the remaining costs, we cannot recommend a specific time period for the phase out.

Respectfully submitted,

Public Utility Commission of Oregon
550 Capitol St NE
Salem OR 97310-1380

January 21, 1997

Roger Hamilton
Chairman

Ron Eachus
Commissioner

Joan H. Smith
Commissioner

accnprm.doc

[5] Competitive Telecommunications Association v. FCC, 87 F.3d 522 (D.C. Cir. 1996) (*Comptel v. FCC*).

Attachment A

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

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1 Diskette