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

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In the Matter of	)	
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Access Charge Reform	)	**CC Docket No. 96-262**
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Price Cap Performance Review for Local Exchange Carriers	)	**CC Docket No. 94-1**
	)	
Transport Rate Structure and Pricing	)	**CC Docket No. 91-213**
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	**CC Docket No. 96-263**
	)	

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FEDERAL COMMUNICATIONS COMMISSION
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COMMENTS OF COMPUSERVE INCORPORATED
AND PRODIGY SERVICES CORPORATION

Randolph J. May
Bonding Yee
SUTHERLAND, ASBILL & BRENNAN
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2404
(202) 383-0100

Their Attorneys

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SUMMARY

CompuServe and Prodigy applaud the Commission's tentative conclusion that the existing price structure for enhanced service provider (ESP) use of local exchange facilities should remain in place at this time. Under the current regime, ESPs may subscribe to state-tariffed business lines like other end users, rather than being classified as common carriers subject to the payment of per-minute interstate carrier access charges. The Commission has wisely recognized in the Notice of Proposed Rulemaking that the current ESP access charge policy has been very successful and thus far has been responsible for encouraging the development of a robust and competitive information services industry -- one in which the United States is the world's leader in making available to residential and business consumers a wide variety of innovative and productivity-enhancing Internet and online services. CompuServe and Prodigy are two of the leaders and real pioneers of the information services business, and they can verify that had the Commission required that per-minute carrier access charges be applied to ESPs it is very unlikely that Internet and other information services would have developed today to the extent they have.

Even though the growth of the information services industry has been very substantial in the last several years, there is no doubt the industry is still evolving and that consumers are very price sensitive. The Commission is correct that it makes no sense to extend the current non-cost-based, economically inefficient carrier access charge regime to enhanced service providers. Were the Commission to do so, the viability of many independent ESPs would be threatened. The existing ESP policy should not be changed, at least pending the completion of fundamental access charge reform upon which the Commission has now embarked and completion of the important new Notice of Inquiry (NOI) initiated to examine the technical, operational, and economic issues implicated by growing Internet and information service usage.

CompuServe and Prodigy intend to participate in the NOI proceeding, and they commend the Commission for initiating this effort to identify policies that will help stimulate the introduction of high-bandwidth data-friendly networks of the future. In the meantime, however, the Commission should not be misled by the claims which some of the RBOCs have made in ex parte submissions and in the press regarding the impact on the public switched network of growing Internet and online usage. First, the claims in the RBOC "studies" regarding "network congestion" attributable to longer holding times of online users are highly selective and anecdotal and involve only a few central offices. (It is important to distinguish between alleged public network congestion problems and "congestion" which may be experienced by a particular ESP because of a lack of sufficient lines by that ESP to handle its own customers' traffic. This latter type of "congestion," in

which customers do not reach their service provider because the provider does not have in place sufficient lines, does not equate to or cause congestion on the public network.) Second, the rates which ESPs pay for the business lines they use already cover their costs. The RBOC studies underestimate the revenues they currently receive from ESPs and also the local exchange revenues they receive from the ESPs' subscribers. For example, recent reports show that the addition of second (and third and so on) lines by residential and small business consumers installed specifically to accommodate online services is fueling substantial revenue growth for the RBOCs.

CompuServe and Prodigy support the policy in effect now to charge only one subscriber line charge (SLC) per facility, rather than one SLC per derived channel. ISDN is a readily-available technology that enables high-speed, high-quality transmission of voice, data, fax, and other information over ordinary local loops. Because of the price sensitivity of information services consumers, the public interest benefits of the Commission's tentative decision not to impose carrier access charges on ESPs will be mitigated somewhat if the Commission takes actions which increase the end user price of ISDN services. Now that the RBOCs finally are beginning to make available ISDN after much delay, the "per facility" approach will promote the growth of this new service which, at least in the near-term, addresses the need for higher-bandwidth access. CompuServe and Prodigy believe the "per facility" approach is consistent with cost causational principles, but if the Commission believes otherwise, any deviation from a "per facility" approach should be as small as possible.

Finally, the Commission should not permit or require the local exchange carriers to impose a separate call setup charge. Such a setup charge would have a very adverse impact on the financial transactions processing industry which utilizes short duration calls for point-of-sale credit card verifications, debit card authorizations and the like. Efficient processing of these types of short duration data calls is very productivity-enhancing. Indeed, the growth of these short duration data calls under the current access charge regime has been an important contributor to the health of the U.S. economy.

Moreover, the growth of short duration calls contributes to the efficient operation of the public switched network. Indeed, to the extent that the RBOC concerns about greater network costs allegedly imposed by claimed longer holding times of some types of online calls have any merit at all -- and the technical, operational, and economic aspects of this question are going to be examined in the NOI -- it certainly follows, from a traffic engineering perspective, that short duration calls, such as those credit card verification calls handled by CompuServe which average 12 seconds in length, contribute to the cost-efficient operation of the public switched network and should not be discouraged.

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COMMENTS OF COMPUSERVE INCORPORATED AND PRODIGY SERVICES CORPORATION

CompuServe Incorporated and Prodigy Services Corporation, by their attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby submit these initial comments in response to the Notice of Proposed Rulemaking ("NPRM") released December 24, 1996, in the above-captioned proceeding.[1/] CompuServe and Prodigy are among the nation's leading independent providers of enhanced services. As described more fully below, they make available to the American public at reasonable prices a rich variety of innovative and productivity-

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[1/] In the Matter of Access Charge Reform, CC Docket No. 96-262, FCC 96-488, released December 24, 1996.

enhancing online and Internet access services. Consequently, they have a vital interest in some of the issues raised in the NPRM and, of course, the Notice of Inquiry ("NOI") issued the same day.

CompuService and Prodigy are two of the real pioneers of the information services business, for many years having been at the forefront of the development of the industry. They have witnessed -- and often led -- the changes that have occurred in the industry from the initial development of proprietary online services to the current growth and popularity of the Internet. To show the dynamism of the information services marketplace, each company will be described briefly below.

CompuServe provides its services to the consumer marketplace through the CompuServe Interactive (CSi) online and Internet service. CompuServe and its licensees and affiliates around the world serve over five million consumer subscribers. These subscribers have access not only to CompuServe's own wide-ranging databases and proprietary content, but also the World Wide Web and other parts of the Internet. Of course, they can send and receive e-mail; bank, shop, and make travel arrangements; access news, weather, and financial information; participate interactively in special interest fora and bulletin boards; and engage in all of the other online activities that increasingly are becoming more and more a part of our daily lives. CompuServe's CSi service features navigational and interface tools designed to make access to the World Wide Web and other parts of the Internet as transparent and easy to use as possible. In November 1996, CompuServe announced that, while continuing to offer all of its consumer subscribers a distinctive online experience through a variety of content, it was going to focus special attention

on business, technical, and professional users with the launch of "CompuServe for Business." This will be a CSi service specifically designed for small business and professionals.

In addition to consumer services, CompuServe provides enhanced services to over 1000 corporate customers through its Networks Services division. CompuServe provides these customers with a wide range of productivity-enhancing data services, including point-of-sale financial transactions processing capabilities, wide area intranet connectivity, and applications hosting and systems management.

Under CompuServe's standard pricing plan, a member is charged $9.95 per month. This monthly fee includes five free hours of usage, with additional hours charged at $2.95 per hour. For an additional $15 per month, a member may add 15 free hours to the five free hours available under the standard plan. If this option is elected, then each additional hour is $1.95.

Prodigy presently has over one million members, and it offers its consumer information services through two different services, Prodigy Internet, the company's new flagship Internet-based service, and Prodigy Classic. As described above with regard to CompuServe, both of these services offer a wide array of interactive content, such as news, weather, sports, games, travel, financial information, home banking and shopping computing, and education information, as well as e-mail, chat rooms and bulletin boards. Prodigy Internet is more than just an ordinary Internet access provider; it employs advanced technology and software to deliver the breadth and depth of the Internet in a user-friendly fashion through the use of navigation and personalization tools that enable a subscriber to tailor the service to suit his individual interests. For example,

when a subscriber logs onto the service, he can see the prices for his favorite stocks, movie listings for his hometown, and the news from the Associated Press.

Prodigy Classic and Prodigy Internet are each available for the flat fee of $19.95 per month. Both services also offer basic plans: $9.95 per month for ten hours of usage of Prodigy Internet, with additional hours billed at $2.50 per hour, and $9.95 per month for five hours of usage of Prodigy Classic, with additional hours billed at $2.95 per hour.

I. ESPS SHOULD NOT BE REQUIRED TO PAY USAGE-SENSITIVE CARRIER ACCESS CHARGES

A. The Access Charge Reform NPRM

The Access Charge NPRM initiates a comprehensive review of the Commission's existing interstate access charge regime contained in Part 69 of the Commission's regulations. The NPRM recognizes that this review is necessitated by changes in the telecommunications industry brought about by the Telecommunications Act of 1996[2/] in order to further the Act's goal of "develop[ing] efficient competition by opening all telecommunications markets through a pro-competitive, deregulatory national policy framework."[3/] In other words, the Commission is seeking to determine the extent to which its access charge rules should be changed:

> to take account of the local competition and Bell entry provisions of the 1996 Act and state actions to open local networks to competition; to reflect the effects of potential and actual competition on incumbent LECs' pricing for interstate access; to implement the Act's direction to end implicit universal service subsidies in favor of a system of explicit subsidies; and to establish fair rules of competition

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2/ Pub. L. No. 104-104, 110 Stat. 56, to be codified at 47 U.S.C. §§ 151 et. seq (1996) ("1996 Act").

3/ Access Charge NPRM ¶ 2.

> for both the local exchange and interexchange markets; and to establish fair rules of competition for both the local exchange and interexchange markets. . .[4]

In the most fundamental sense, the Commission's proposals relate to the need to bring local exchange access rates down to costs as a key component of the move towards hoped-for local competition.

CompuServe and Prodigy generally are supportive of the Commission's proposals to move towards implementation of cost-based access. Their most specific concerns, of course, relate to proposals that could impact the rates they currently pay for local access arrangements as enhanced service providers. For the most part, but not exclusively, these parties utilize flat-rated state-tariffed business lines for access to their subscribers, rather than paying per-minute carrier access charges. On this issue of utmost importance to CompuServe and Prodigy, the NPRM "tentatively conclude[s] that the existing pricing structure [under which ESPs are not required to pay per minute carrier access charges] should remain in place at this time."[5]

At the same time it issued the NPRM, the Commission initiated a separate *Notice of Inquiry on the Implications of Information Service and Internet Usage* ("NOI").[6] In the NOI, the Commission recognizes that further development of the Internet and other online information services implicate numerous technical, operational, and economic issues that go far beyond the narrow question of whether local exchange carriers ("LECs") should be allowed, for now, to

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[4] Id. ¶ 5.

[5] Id. ¶ 283.

[6] Id. ¶¶ 311-318.

charge ESPs per-minute carrier access charges. The Commission recognizes that current circuit-switched voice networks, while capable of connecting end-users to ESPs, do so much less efficiently than emerging high-bandwidth packet-based technologies.[7] The Commission seeks comment on the incentives that can be created to promote investment and innovation in the national telecommunications infrastructure so that data transport to and from end-users can be accomplished more efficiently.[8] The Commission also seeks comment in the NOI on the effects of current usage patterns of information services on the circuit-switched network, as well as the impact of such usage on the costs and revenues of LECs.[9] In addition, comment is sought on jurisdictional, metering, and billing questions, given the practical difficulty, if not impossibility, of applying jurisdictional divisions or time-sensitive rates to packet-switched networks.[10]

By initiating the NOI with a comment cycle separate from the NPRM cycle, the Commission has acknowledged that much more information concerning these technical/operational/economic issues needs to be provided before changes to the current ESP treatment are contemplated. CompuServe and Prodigy will file comments consistent with the separate NOI timetable. In keeping with the Commission's intent in initiating the separate NOI, the comments in this section are confined to supporting the Commission's tentative conclusion

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7/ Id. ¶ 311.

8/ Id. ¶ 313.

9/ Id. ¶ 315.

10/ Id. ¶ 315.

that the existing ESP access charge treatment should not be disturbed pending further developments that follow completion of access charge reform and the NOI.

B. Existing ESP Access Charge Treatment

In its 1983 *Access Charge Reconsideration Order*, the Commission expressly declined to apply per-minute carrier access charges to ESPs.[11] The Commission reasoned in part that such an action would result in "huge increases in their costs of operation which could affect their viability."[12] In addition, the Commission recognized the practical (or even impossible) implementation problems that local exchange carriers would face in attempting to measure ESP usage for purposes of assessing per-minute interstate access charges.[13]

Subsequently, in July 1987, the Commission released a Notice of Proposed Rulemaking tentatively concluding that the so-called "ESP exemption" should be terminated on the basis that concern about rate shock may no longer justify the exemption.[14] Numerous formal comments and reply comments, as well as thousands of informal comments and letters, were submitted in response to the Notice, an overwhelming majority of which opposed the Commission's proposal. Conceding that these parties had made valid arguments, the Commission decided that the "ESP

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[11] MTS and WATS Market Structure, CC Docket 78-72, Phase I, 97 FCC 2d 682, 711-22 (1983).

[12] Id. at 715.

[13] Id. ¶ 713-14. While the decision not to subject ESPs to carrier access charges is often referred to as the "ESP exemption," in fact, what the Commission did was to classify ESPs as "end users" rather than "carriers". The Commission's rules contain no "ESP exemption."

[14] Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, CC Docket No. 87-215, 2 FCC Rcd 4305 (1987).

exemption" should be retained because imposition of carrier access charges on ESPs "could cause such disruption in this industry that provision of enhanced services to the public might be impaired."[15]

The Commission revisited the issue of whether ESPs should be required to pay carrier access charges in a rulemaking to consider how to integrate open network architecture tariffing policies into the existing federal access charge rules.[16] In its proposed rulemaking, the Commission tentatively concluded that the "ESP exemption" should be maintained, and it reaffirmed the existing ESP access charge treatment should be continued in an order issued July 11, 1991.[17]

C. Imposition of Per-Minute Carrier Access Charges Would Have A Detrimental Impact On Further Growth And Development Of The Information Services Industry And Would Damage the U.S. Economy

The Commission wisely recognizes that the current ESP access charge policy has been very successful and thus far has been responsible for encouraging the development of a robust and competitive information services industry. The Commission is correct in its observation that "[i]t is extremely likely that had per-minute interstate access rates applied to ESPs over the past

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[15] Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, 3 FCC Rcd 2631, 2633 (1988).

[16] Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 89-79, 4 FCC Rcd 3983 (1989).

[17] Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, 6 FCC Rcd 4524, 4535 (1991).

13 years, the Internet and other information services would not have developed to the extent they have today -- and indeed may not have developed commercially at all."[18]

Without belaboring the point, the success of the Commission's ESP policy is clear. At the time of the adoption of the ESP exemption in 1983, the enhanced services industry was in its infancy, with a total of only a few hundred thousand online subscribers. And, the subscriber growth rate remained slow for many years as the fragile industry developed. Of course, it has accelerated with falling prices for personal computers, modems, and, in many instances, for the online services themselves. If ESPs had been required to pay per-minute charges for local access, their own rates to subscribers would have skyrocketed. Today, in significant part due to the Commission's foresight there are over 15 million subscribers to commercial online services.[19]

CompuServe's own experience mirrors the industry's development under the existing access charge treatment. At the time CompuServe filed comments in September 1987 opposing the Commission's proposal to impose carrier access charges on ESPs, CompuServe had approximately 375,000 consumer subscribers and was using 6860 dial-up flat-rated local business access lines.[20] In August 1989, when CompuServe again supported retention of the ESP exemption, it had approximately 500,000 subscribers and was using 9675 business access

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[18] Access Charge NPRM ¶ 285.

[19] Information and Interactive Services Report, Vol. 17, No. 38, October 25, 1996, at 1.

[20] Comments of CompuServe Incorporated, CC Docket No. 87-215, September 24, 1987.

lines.[21] By September 1992, the number of business access lines had grown to 18,250.[22] And today CompuServe has approximately 3,000,000 subscribers in this country (with another 2,000,000 worldwide through affiliates and licensees) and is using approximately 85,000 local business access lines. As a pioneer ESP and developer of the online business, CompuServe can say with considerable first-hand assurance that the proprietary online -- and now Internet -- services probably would not have survived if the Commission had imposed per-minute carrier access charges on ESPs.

The Commission is absolutely correct, however, that the information services industry is "still-evolving."[23] While the industry obviously has developed to substantial extent since the Commission established the so-called "ESP exemption," imposition of per-minute charges at this time would still affect the viability of many independent ESPs. If the ESPs became subject to carrier access charges, the increase in underlying telecommunications costs for ESPs would be tremendous and, because of the price sensitivity of consumers, it is very unlikely online and Internet access providers would be able to pass along these increased costs to the end users. Taking CompuServe as an example, it now pays the LECs in the range of $36 million on an annual basis for the approximately 85,000 local business lines it employs to make available its

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21/ Comments of CompuServe Incorporated, CC Docket No. 89-79, August 10, 1989.

22/ Additional Comments of CompuServe Incorporated, CC Docket No. 89-79, September 30, 1992.

23/ Id. ¶ 288.

services to subscribers.[24] Assuming that CompuServe were required to pay existing per-minute access charges, its annual expenses for these very same lines would increase to something in the range of $367 million, an increase in annual costs approaching 1000%.[25] Obviously, per-minute access charges even at a rate level somewhat less than the existing rate would cripple CompuServe's ability to offer services to its customers at prices that they would find attractive. The Commission is no doubt aware that even major ESPs currently are experiencing serious financial pressures because of pricing sensitivity. Any significant increase in the costs for local access likely would deal a devastating blow to the independent consumer information services industry.

Section 230(b)(1) of the 1996 Act declares that "[i]t is the policy of the United States. . . to promote the continued development of the Internet and other interactive computer services. . ."[26] Imposition of existing carrier access charges would be flatly inconsistent with the Congressional policy because such action would inhibit growth in this vital sector with detrimental effects on the overall U.S. economy and American competitiveness in the world marketplace.

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[24] 85,000 lines x $35 per month per line x 12 months = $35,700,000.

[25] For purposes of this calculation, CompuServe has used a nationwide average carrier access charge of 2.5 cents per minute. CompuServe uses its local lines in the range of 240 hours per month. Thus, 240 hours x 60 minutes x 12 months x 85,000 lines x $.025 cents per minute = $367.2 millon.

[26] 47 U.S.C. § 230(b)(1)

D. At Least Pending Completion Of Fundamental Access Charge Reform And The NOI, The Existing Access Charge Treatment For ESPs Should Not Be Changed

At present, carrier access charges are non-cost-based, economically inefficient, and fundamentally inconsistent with the pro-competitive direction of the 1996 Act.[27] Only a portion of the fixed local loop costs are recovered through the flat-rate subscriber line charge ("SLC") imposed on end-users.[28] The remaining fixed loop costs are recovered through the per-minute CCL charge paid by common carriers.[29] It is this uneconomic system which the Commission is now proposing to fix. The Commission states in the NPRM that "we see no reason to extend this [uneconomic] regime to an additional class of users, especially given the potentially detrimental effects on the growth of the still-evolving information services industry."[30]. The Commission's position is correct.

Recently, four RBOCs have made *ex parte* submissions of studies which they claim shows that the current pricing structure encourages Internet and online users to stay on line much longer than voice users.[31] Even if the claims concerning longer holding times were true, and

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27/ See id. ¶ 7-9.

28/ See NPRM ¶ 27. Currently the SLC is set at $6.00 per month for multi-line business customers and $3.50 per line for residential and single-line business customers. 47 C.F.R. § 69.104.

29/ 47 C.F.R. § 69.105; see also NPRM ¶ 27.

30/ Id. at p. 288.

31/ See, e.g. Letter from Glenn Brown to James Schlichting, June 28, 1996 attaching *US West Communications ESP Network Study*; Letter from Joseph Mulieri to James Schlichting, June 8, 1996 attaching *Report of Bell Atlantic on Internet Traffic*.

CompuServe doesn't necessarily agree that they are to the extent portrayed in highly selective and anecdotal RBOC "studies", [32] the rates for the flat-rated business access lines used by ESPs already cover their costs, and in some jurisdictions, actually provide a subsidy for below cost local exchange residential services.[33] Indeed, one of the problems in the RBOC studies is the extent to which they underestimate the revenues the RBOCs are currently receiving from ESP use of business lines. For example, while Bell Atlantic assumes $17 per month and Pacific Telesis $20 per month,[34] CompuServe's costs per line are considerably higher when the vertical features, such as hunt group capabilities, call forwarding, direct inward dialing and the like are included. In fact, on a nationwide basis, CompuServe pays approximately $35 per line per month, considerably higher than the revenue figures assumed in the RBOC studies.

The RBOCs also conveniently ignore the fact that hundreds of thousands of residential and small business customers have installed second lines specifically for online services.[35] The growth of the Internet actually has produced millions of dollars in new phone company revenues.

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[32] As the Commission notes in the NOI "arguments about network congestion caused by long hold-time calls would not seem to apply to information services such as telemessaging or credit card validation." NPRM, at ¶ 316. See Lee L. Selwyn and Joseph W. Laszlo, "Imposing Access Charges on Internet and Other Enhanced Services Providers: A Counterproductive Solution," January 22, 1997.

[33] See, e.g. Reply Comments of CompuServe Incorporated in CC Docket No. 89-79, at 15-16, October 30, 1992.

[34] Bell Atlantic Study, June 28, 1996, at 17; Pacific Bell Study, July 2, 1996, at 1.

[35] See November 15, 1996 letter from the CEOs of America Online, Inc.; CompuServe Incorporated; Prodigy Services Corporation; and PSINet, Inc. to FCC Chairman Reed Hundt, at 2.

For example, while continuing to call for the imposition of carrier access charges on ESPs, Pacific Bell again just acknowledged the benefits it is reaping from increased online traffic - a 150% increase in new phone installations, 190% increase in second phone lines, and a 285% increase in ISDN lines.[36] Indeed, in November 1996, PacTel began promoting the marketing of second lines by offering customers free installation and five free months of unlimited Internet usage![37]

The RBOCs would have the Commission believe that the "solution" to the alleged "problem" of public switched network congestion is to impose per-minute access charges, thereby "inducing" consumers to use the network more efficiently. Any purported public network congestion problems are more likely attributable to inadequate planning and inefficient engineering on the RBOCs' own part and may be addressed, at least in the near-term, by solutions that use packet switch technology to separate and divert data calls away from the originating LEC switch.[38] There has been considerable recent publicity about a Northern

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[36] "Pacific Bell Attacks Internet Access Exemption", Communication Daily, January 16, 1997, at 3-4. This article contains the curious statement attributed to a Pacific Bell spokesman to the effect that second lines used for Internet access do not generate revenue for the company. Id., at 3. That would be true, of course, only if PacBell were giving away the second lines for free.

[37] See Pacific Telesis Home Page, http://www.pacbell.com.

[38] It is important to distinguish between the alleged public network congestion problems and "congestion" that may be experienced by a particular ESP because of a lack of sufficient lines to handle its own customers' traffic. This latter type of "congestion," in which customers do not reach their service provider because the provider does not have in place sufficient lines, does not equate to or cause congestion on the public network.

Telecom product that enables such diversion of data calls.[39] In any event, the Commission has recognized that the existing rules designed for the circuit-switched network may hinder the development of advanced Internet and online services. That is why the Commission has requested comment on these technical, economic, and operational issues in the new NOI, and the Commission is correct in tentatively concluding that the existing ESP treatment should not be changed pending the development of a full record on the NOI issues.

E. The Commission Must Be Concerned That It Does Not Allow Independent ESPs To Be Subject To A Price Squeeze By The RBOCs

The RBOCs are now allowed, of course, to provide their own information services. Accordingly, they now function not only as the dominant providers of access upon which the independent ESPs are dependent to reach their consumers,[40] but as actual competitors to the independent ESPs. Indeed, it appears that the RBOCs intend to compete vigorously in the Internet and online services marketplace.[41]

The Commission acknowledged in the NPRM that, as the dominant providers of access, the RBOCs have the potential to engage in anticompetitive price squeezes. It explained that one

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[39] See, e.g., "Southwestern Bell Introduce New High-Speed Route for Internet Call Traffic, PR Newswire via First!, January 14, 1997.

[40] Only a few weeks ago, the FCC reiterated: "BOCs currently are the dominant providers of local exchange access services in their in-region states, accounting for approximately 99.1 per cent of the local service revenues in those markets." Implementation of the Non-Accounting Safeguards of Sections 271 and 272, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96- 149, FCC 96-489, at ¶ 10.

[41] See, e.g. "Pacific Bell Launches Residential ISDN Package," *Internet Week*, (November 18, 1996).

of the major reasons why it is undertaking comprehensive access reform is that the 1996 Act will allow RBOC provision of interLATA service after the required competitive findings.[42] The Commission recognized that such reform is necessary in order to prevent the long-distance affiliates of incumbent RBOCs from having unfair competitive advantages in the provision of long-distance voice services.[43]

Just as the Commission recognized that RBOCs have an incentive to keep access rates artificially high in order to gain a competitive advantage in the long-distance voice market, they have the same incentive with regard to the information services marketplace. Any access charges collected by the parent RBOC from its affiliated information service provider merely represent an intracorporate transfer among RBOC affiliates with no real overall economic effect. Any increase in access charges, however, has the real effect of escalating the costs which non-telephone company-affiliated independent ESPs must absorb to stay in business. If the RBOCs are allowed to raise the price of a crucial input of the ESPs' businesses, then they "may be able to create a 'price squeeze' by raising rivals' costs."[44] The Commission's tentative conclusion not to allow the RBOCs to impose carrier access charges on independent ESPs lessens the possibility of such an anticompetitive result.

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[42] 47 U.S.C. § 271.

[43] Access Charge NPRM ¶ 47.

[44] Id.

II. THE COMMISSION SHOULD REQUIRE SUBSCRIBER LINE CHARGES TO BE ASSESSED ON A "PER FACILITY" BASIS

A. The Current SLC Treatment For Derived Channel Services

The NPRM proposes to resolve the question of whether subscriber line charges (SLCs) should be assessed on the basis of physical facilities (subscriber lines) used or instead on the basis of the number of channels derived from such loop facility. Resolution of this issue particularly affects the pricing for ISDN service, and the public interest benefits of the Commission's tentative decision not to impose carrier access charges on ESPs will be mitigated somewhat if the Commission takes actions which increase the end user price of ISDN services. ISDN is a readily available technology that enables high-speed, high-quality transmission of voice, data, fax, and other information over ordinary local loops. A further advantage of ISDN is that it is relatively cost-effective because it is a switch feature that requires merely the addition of office and customer premises equipment, without wholesale changes and investments in the local loop.

The LECs offer two types of ISDN service: (1) Basic Rate Interface ("BRI") service, and (2) Primary Rate Interface ("PRI") Service. The former allows a subscriber to obtain two voice-grade-equivalent channels and a signalling/data channel over a single twisted pair of copper wire, while the latter allows subscribers to obtain 23 voice-grade equivalent channels and one signalling/data channel through two pairs of twisted copper wire. Both BRI and PRI enable an end user to utilize the line simultaneously for voice and data transmission.

The issue of how SLCs should be applied to ISDN and other derived channel services first arose in a NYNEX tariff filing which proposed to assess only one SLC per facility in connection with certain derived channel services, including ISDN, so long as all the derived channels were being used by a single customer served by a single facility.[45] The Commission rejected NYNEX's position, reasoning that under Section 69.104, each channel derived from a subscriber, whether it be an ordinary local loop or a T1 facility, constitutes a separate "line," each of which is subject to the SLC charge.[46] While the Commission affirmed its prior decision upon reconsideration,[47] it acknowledged that NYNEX had raised a difficult question that had not been envisioned when the access charge rules were adopted.[48]

The Commission initiated a rulemaking proceeding to examine this issue in May 1995.[49] In addition to the "per facility" and "per channel" approaches, the Commission identified a potential intermediate option, whereby SLCs could be assessed based on the extent to which each additional derived channel increases the average cost of providing an ordinary local loop or T1

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[45] NYNEX Telephone Companies: Revisions to Tariff F.C.C. No. 1, 7 FCC Rcd 7938, 7939 (1992).

[46] Id.

[47] NYNEX Telephone Companies: Revisions to Tariff F.C.C. No. 1, 10 FCC Rcd 2247, 2250 (1992).

[48] Id.

[49] End User Common Line Charges, CC Docket No. 95-72, Notice of Proposed Rulemaking, 10 FCC Rcd 8565 (1995) (ISDN NRRM).

connection.[50] The Commission did not issue an order in the ISDN rulemaking before passage of the 1996 Act.

Most parties who previously have commented on this issue strongly urge that only one SLC be assessed for each physical facility serving a given customer. The NPRM recognizes that these comments were presented prior to passage of the 1996 Act, and it requests "comment on the effect of the 1996 Act on determining how many SLCs should be applied to ISDN services."[51]

B. In Establishing A Policy of Promoting Internet and Online Services, The 1996 Act Provides New Support For the "Per Facility" Approach

CompuServe and Prodigy believe that the Commission should continue the existing policy, as set forth in the Public Notice, that end users should be assessed one SLC per facility, rather than one SLC per derived channel. Such a policy will help to keep prices for ISDN and other higher bandwidth services as attractive as possible for consumers, thus spurring demand for

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[50] The Commission simultaneously indicated that it would "not initiate enforcement actions against Local Exchange Carriers (LECs)" for any violations of the supposed requirement that one SLC should be assessed for each derived channel. "Common Carrier Bureau Will Not Enforce Current Rules on Application of Subscriber Line Charges to ISDN Service," May 30, 1995. ("Public Notice"). This action forestalled any detrimental impacts to consumers that a contrary application of the Commission's rules would have had. It is in this context that carriers and end users have been operating for the last year and a half, during which provision of ISDN services finally has begun to expand. For example, among the latest, highly-publicized expansions of ISDN services include Pacific Bell's "Home Pack" program. "Home Pack" is a bundled package consisting of an ISDN circuit, terminal adapter, and Internet access. After much delay, and many customer complaints about inadequate customer service and provisioning, PacBell anticipates under this program to double its existing number of ISDN BRI lines within a year and reach 1,000,000 lines by the year 2000 in California. "Pacific Bell Launches Residential ISDN Package," *Internet Week*, (November 18, 1996).

[51] Access Charge NPRM at ¶ 70.

these services. The 1996 Act explicitly finds that "the rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens".[52] The 1996 Act then states that it is the policy of the United States "to promote the continued development of the Internet and other interactive computer services" and "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services. . . "[53] These Congressional declarations in the 1996 Act constitute important new policy markers for the Commission in dealing with questions such as this one that affect the affordability of online services to end users.[54]

As Assistant Secretary of Commerce for Communications and Information Larry Irving noted in a letter to the Commission: "ISDN is an important low-cost, near-term technology for the information superhighway. Consumers, businesses and educators are using this service for high-speed Internet access, telecommuting, video conferencing, and PC based collaboration."[55] That statement captures the promise and potential for ISDN to serve as an important vehicle, at

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[52] 47 U.S.C. § 230(d)(1).

[53] 47 U.S.C. § 230(b)(1) and (2).

[54] In addition to the new 1996 provisions discussed above, existing Section 7's admonition that "[i]t shall be the policy of the United States to encourage the provision of new technologies and services to the public" is also pertinent to this issue. 47 U.S.C. § 157(a). ISDN and similar new services that enable higher bandwidth for speedier and less costly transmission of data certainly would seem to be within the category of "new technologies and services" that Congress intends for the Commission to encourage.

[55] Letter from Assistant Secretary Larry Irving to Chairman Reed Hundt at 1, March 17, 1995.

least in the near-term, for enabling residential and business consumers to obtain high-speed, high-quality digital access to the Internet and other information services. In particular, the speed and reliability at which data can be transmitted through ISDN are far greater than the capabilities of ordinary telephone lines.[56] Moreover, deployment of ISDN service has the added benefit of enhancing the capabilities of existing wiring, eliminating the need to install expensive new cabling.

The deployment of ISDN may be slowed, however, if the Commission requires LECs to impose one SLC charge for each derived channel.[57] Bell Atlantic advised if the Commission were to adopt a per channel approach, the price increases that would need to be passed on to consumers likely would lead to a 35-40 percent reduction in business demand for PRI ISDN, a 25-30 percent decline in business demand for BRI ISDN, and a 60 percent drop in consumer demand for BRI ISDN.[58]

At this stage of development, residential and small business users remain very sensitive to the price of connecting to online and other enhanced services. As Assistant Secretary Irving noted, "[a] significant increase in the cost of ISDN could severely reduce demand just as the market for this service is poised to take off."[59] Such a result is obviously inconsistent with the

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[56] In comparison to the 28,800 baud rate of most modems that are now most commonly being offered at the retail level, ISDN enables data to be transmitted at up to 128,000 baud.

[57] Letter from Randolph May to William Caton at 2, March 9, 1995.

[58] Bell Atlantic Emergency Petition for Waiver of Section 69.104, filed Feb. 10, 1995.

[59] Irving Letter at 1.