

benefit of peak period pricing would be lost). For instance, it would be difficult to develop and administer a rate structure (much less explain it to customers) where, for a particular day and time, the rates for toll calls to any specific city can vary by end office.

Moreover, peaks are ever shifting (witness the effect of Internet usage, which has shifted peaks in many end offices to the late evening time frame). Thus, we would face the need to continually revise rate structures -- both access and IXC toll -- to reflect the changes in the peak periods.

The only workable form of peak period pricing is capacity pricing. Under this approach, the IXC purchases chunks of capacity (essentially, exclusive access to a facility twenty-four hours a day). The IXC, in paying for full capacity, assumes responsibility for the efficient utilization of the facility. This could entail either peak/off-peak pricing of toll calls, or marketing strategies that attempt to fill the off-peak period. Capacity-based pricing is already in use for transport, where IXCs can purchase capacity (DS1s, DS3s, etc.) for a fixed monthly charge. The same rate structure could be applied to the usage-sensitive local switching component of access. In this instance, IXCs would purchase switch trunk ports (at the DS1 level) at fixed monthly rate. The advantage of capacity-based pricing is that it does not require the measurement of minutes of use, thereby saving considerable administrative as well as measuring equipment and billing costs.

However, at least for the foreseeable future, it will be necessary to maintain a usage based option for smaller carriers. To require the purchase of, e.g., a minimum DS1 transport facility and switch port at every end office in the country would effectively drive small specialized IXCs out of business and substantially increase the access costs of the larger IXCs.

**D. Transport (¶¶80-95)**

Sprint agrees with the Commission's tentative conclusion that it ought to maintain a structure of flat-rated charges for entrance facilities and direct-trunked transport. These charges are flat-rated in the sense that they are not based upon minutes of use, but they typically involve a fixed component plus a distance related element. Sprint would observe that as more LECs convert their local networks to fiber optic cable using a ring architecture, the costs will be driven not so much as airline distance between the serving wire center and the end-office (or the serving wire center and the IXC point of presence) as by the number of rings traversed. Therefore, consideration should be given for a revision of the structure of flat-rated transport to reduce reliance on a distance factor as such, and instead base the trunking rates on the number of rings traversed between the serving wire center and the end-office.

The Commission should continue to require ILECs to offer the unitary SWC-to-EO, per-minute structure for tandem-routed traffic that it adopted in CC Docket No. 91-213 (see ¶¶87-89). As discussed below, the unitary structure is consistent with longstanding Commission ratemaking policies, whereas the bifurcated structure for tandem-routed traffic (requiring purchase of direct trunks between the SWC and the tandem) encourages inefficient local networking and arbitrarily favors large IXCs over smaller IXCs.

The Commission has a well-established policy that rates should be based upon airline distance rather than the physical routing of traffic.<sup>13</sup> This longstanding policy reflects the fact

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<sup>13</sup> See, e.g., Western Union Corp. v. Southern Bell et al., 5 FCC Rcd 4853, 4855 (1990) (tariffs "should reflect rates based on the service provided and not the physical routing"), and cases cited therein.

that if rates were instead to be based upon physical routing, it could have arbitrary affects on particular customers and provide perverse economic incentives to the local exchange carriers. The unitary structure -- an end-to-end charge from the serving wire center to the end office based on the airline distance between those offices -- is fully consistent with this long-established policy. On the other hand, the bifurcated treatment of tandem-routed traffic is irreconcilable with this policy.

The main vice of the bifurcated rate structure for tandem-routed traffic is that it requires users to pay on the basis of the physical routing of traffic -- i.e., the distance via the tandem switch location, rather than the airline distance. This has two effects that are irreconcilable with the Commission's policy goals.

First, the ILECs are rewarded for circuitry and thus can increase their local transport revenues by inefficiently locating their tandem switches away from their IXC customers and their concentrations of traffic. The farther away the tandem switch is from the IXC POPs and the end office to which the IXCs are sending their traffic, the greater the mileage charges the ILECs will be able to assess. This incentive under the bifurcated rate structure for inefficient location of the tandem switches can only be overcome if the Commission is willing to undertake a detailed investigation of ILEC decisions on where to locate their tandem switches, and to disallow for ratemaking purposes any excess mileage resulting from suboptimal location of such switches. Such an investigation would require massive resources at a time when the Commission's staff is already spread too thin.

The second problem created by the bifurcated rate structure is that it would inevitably skew competition in the long distance market. Tandem-switched transport tends to be used

more heavily by smaller and medium-sized IXCs than large IXCs, and also tends to be used for longer routes,<sup>14</sup> thus elevating the importance of the distance-related rate elements. The bifurcated rate structure unfairly singles out the users of tandem-switched transport to pay for the costs of circuitous routings, while exempting the users of direct-trunked transport from such circuitry costs altogether.

"Direct trunking" is something of a misnomer: the term conveys an image of a series of straight-line connections from each serving wire center directly to every end office. With the enormous capacity and cost economies of fiber optic transmission, such a network would not be efficient. Instead, the reality is that "direct trunked" circuits often are circuitously routed through intermediate facility hubs, in a "hub-and-spoke" configuration, and in many instances these intermediate hubs are in the same LEC office as the tandem switch. Nonetheless, consistent with the longstanding policy discussed above, users of direct trunking pay only for the airline distance between the serving wire center and the end office. It is arbitrary and unfair to make users of tandem-routed traffic pay for the route via the tandem when direct-trunked users may be using an equally circuitous (or even identical) route for their traffic.

Furthermore, the differences in physical routing as between "directly-trunked" and tandem-switched traffic are becoming even smaller. Access customers today are demanding route diversity, and in response, many local exchange carriers have implemented ring architectures in their interoffice networks. Because of their inherent self-healing qualities, in

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<sup>14</sup>The larger the IXC, the greater the likelihood that it will have a sufficient volume of traffic to a particular end office to economically justify direct-trunking to that end office. Tandem-switched transport, on the other hand, tends to be used more by smaller carriers (or medium-sized carriers to smaller end offices) because the volume of traffic to any one end office may simply be too low to warrant efficient use of direct trunks.

the event of a fiber cut, transmission can be immediately restored simply by rerouting the traffic in the opposite direction around the ring. With the ring configuration, the tandem-routed traffic and directly-trunked traffic will all be moving in the same ring, and the distance traversed will simply be a function of the provisioning path selected by the LEC for individual traffic. Utilization of available bandwidth between two nodes at any point in time will become a higher priority in the economic determinant of cost than the distance between the two nodes.

In short, in view of the interoffice networking actually employed by the local exchange industry today, it is arbitrary to require tandem transport users to pay for the circuitry in the physical routing of their traffic while continuing to adhere to the Commission's long-standing policy of basing direct-trunking rates on airline distance.

The only affirmative argument made in favor of the bifurcated structure is a highly puristic one: that since the circuits between the serving wire center and the tandem switch are dedicated to a particular IXC (whereas the circuits from the tandem to the end office are shared by the traffic of multiple IXCs), they should be charged for on the same flat-rated basis as the entrance facilities or the direct trunks. In fact the "dedicated" circuits from the serving wire center to the tandem ride on transmission facilities that accommodate the traffic of many different carriers. Indeed, in many instances these facilities may also be carrying the "directly-trunked" traffic that the LEC routes through a facility hub in the central office housing the tandem switch. Thus, to bifurcate the rates for tandem-switched traffic merely because the SWC-tandem circuits are "dedicated" to a particular IXC would unfairly and arbitrarily saddle the IXCs using tandem-routed traffic with the circuitry costs that direct trunking users avoid

altogether. If this puristic approach to rate structure were carried to its logical conclusion, the rates for directly-trunked traffic should also consist of separate elements for each intermediate office traversed between the serving wire center and the destination end office. A fragmented rate structure of this sort would not only be costly to administer but would also reward, through higher charges, inefficient routing and multiple switching instead of encouraging efficiency on the part of the ILECs.

The opponents of the unitary structure argue that since the dedicated circuits between the serving wire center and the tandem switch are part of the per-minute charge, they are regarded as "free goods" by the IXCs, and the IXCs have an incentive to order more trunks to the tandem than they need to adequately accommodate their traffic. This is a legitimate concern, but one which can be easily remedied. The ILECs could assume responsibility for determining the quantity of trunks from the IXC's serving wire center to the tandem switch according to a grade of service standard that would be explicitly set forth in the ILEC tariff. If any IXC wanted a greater number of trunks than would be provisioned under the ILECs' grade of service standards, it should be required to pay for the additional trunks.

Alternatively, the ILECs could impose minimum monthly usage charges for the trunks from the serving wire center to the tandem switch. Either of these alternatives should eliminate the problem of uneconomic over-trunking between the tandem and the serving wire center.

In ¶¶92-95, the Commission raises a number of rate level issues relating to transport. The first is the establishment of a reasonable tandem switching charge in light of the court's remand of the FCC's decision, in CompTel v. FCC, 77 F.3d 522 (DC Cir. 1996), to recover only a portion of tandem switching costs through the tandem switching charge in CC Docket

No. 91-213. Sprint supports a tandem switching charge based on the forward looking costs of tandem switching to mirror the tandem switching pricing methodology adopted in the Interconnection Order. Determining the tandem switching charge for access consistently with its Interconnection decision would eliminate the issue of excessive allocations of overhead costs to the tandem switching element that also occasioned a court remand in CompTel v. FCC .

Similarly (although this issue is not explicitly raised in the NPRM), the rates for transport facilities should be based on forward-looking long run incremental costs, again to mirror the Commission's determinations in the Interconnection decision. This is the opposite of the contemplation, in ¶93, that revenue requirements now reflected in the transport interconnection charge (TIC) -- discussed in Subsection E below -- perhaps should be allocated away from the TIC and loaded onto direct-trunked transport, tandem switched transport and entrance facility charges. There is no reason to believe that existing charges for these services are below TSLRIC or TELRIC-based charges; on the contrary, Sprint believes that on average, existing transport rates are somewhat higher (perhaps on the order of 20%) than long run incremental costs. Loading additional revenue requirements onto the rates for these facilities would clearly be a step in the wrong direction. As will be discussed in Section VI below, Sprint proposes that the ILECs be required to implement TELRIC-based prices for local transport within five years.

Sprint continues to believe that the tandem switched transmission rates should be based on a reasonable utilization factor in converting the flat-rated elements to a per-minute of use rate element (see ¶94). The utilization of circuits between the tandem switch and end

offices is largely within the ILECs' control, and there is no reason to believe that 9,000 minutes per month is not reasonably attainable, or that, if the LECs choose to provision their facilities to attain a lower utilization, their access customers should bear the cost of this decision. The only portion of tandem switched facilities that the IXC's have any control over is the number of circuits between the tandem switch and the IXC's serving wire center. As discussed above, ILECs should be allowed to provision the number of facilities between the SWC and the tandem switch to achieve a 9,000 MOU per month utilization. If an IXC wishes to order additional facilities, it should pay the costs associated with the extra facilities.

Finally, the Commission seeks comment on the relationship between transport rate structure rules and its market-based and prescriptive access reform proposals discussed below. As Sprint will explain in Section IV, it believes the Commission's market-based reform proposals give ILECs far too much pricing flexibility too soon. For that reason, Sprint would oppose any move to prematurely relax rate structure rules currently applicable to local transport.

In fact, in one respect, the Commission's rules do not go far enough. The Commission has never required the ILECs to demonstrate that the rate relationships between different quantities of direct trunked transport -- particularly DS3s as compared with DS1s -- are cost-based. As explained at length in Sprint's previous submissions in CC Docket No. 91-213, a failure to require cost-based rate relationships can skew long distance competition by giving an artificial advantage to large carriers that can efficiently utilize DS3s, at the expense of smaller IXC's that must rely, because of their lower traffic volumes, on DS1 direct trunks. There is no reason to deny the large carriers the true economies of DS3s, but there is equally

no reason to entitle them to false economies through DS3 rates that, on a per-voice-grade-circuit basis are not justified by the relative costs vis-à-vis DS1s. Sprint also sees no inconsistency between having rate structure rules for transport and the goal of moving rates towards forward-looking costs. In fact some of the proposals discussed above -- such as basing rates for direct-trunked transport more on the number of rings traversed than on airline distance, and adopting a utilization factor for tandem switched transport reflecting reasonably efficient utilization -- further the goal of establishing a transport rate structure that reflects forward-looking costs.

**E. Transport Interconnection Charge (§§96-122)**

Sprint shares the Commission's concern about the magnitude of the TIC. Some of the TIC obviously is comprised of tandem switching and SS7 costs which, if recovered through a cost-based tandem switching charge and separate rates elements for signaling, discussed elsewhere in this section, may reduce the size of the TIC somewhat (see §§102-103).<sup>15</sup> To the extent that the TIC is the result of overallocation of costs to interstate switched transport through the Part 36 and Part 69 separations and allocations rules (see §§108-111), corrective appropriate action obviously should be taken. However, after such adjustments are made, it is difficult to say with any certainty what costs are really in the TIC. Some ILECs have pointed out in the past that special access demand is far more concentrated in high-density areas than switched access traffic, and thus basing direct-trunked transport rates on special access rates may understate the costs of transport in less-dense areas. To the extent this is the case, it is

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<sup>15</sup>However, Sprint would expect a TELRIC-based tandem switching charge to differ little from today's tandem switching charges.

easily solved by allowing density-based deaveraging of direct-trunked transport rates, without the constraints that presently exist, so that cost-based rates can be established in each density zone. It may also be the case that with the passage of time and the greater use of low-cost fiber in less-dense areas, special access rates are more reflective of rural switched transport costs than may have been the case when this contention was advanced in CC Docket No. 91-213.

In any case, the TIC must be phased out, and its current anti-competitive effects (ILECs are guaranteed recovery of these transport costs even when their transport networks are not used) must be eliminated. An increase in explicit universal service funding is one possible source of reductions in the TIC. As will be discussed in Section VII, Sprint believes that any increased explicit universal service funds received by any ILEC should be offset, dollar for dollar, by decreases in interstate access charges. If the SLC is not increased to more appropriately recover the carrier common line charge, then such universal service offsets should be directed first against the CCLC. However, if as Sprint recommends, the CCLC is eliminated, then a substantial portion of such offsets should be directed at the TIC.

In addition, in order to ensure phase-out of the TIC within a reasonable period, all of the price cap productivity adjustment should be targeted at the TIC, until it is eliminated altogether. Even assuming no reductions in the TIC from universal service offsets, changes in cost allocations and separations rules, or offsets from signaling unbundling, targeting the price cap productivity factor would eliminate the TIC in five years or less for all but three price cap LECs. See Exhibit 8.

In any case, the Commission should prohibit ILECs from imposing the TIC in instances where the IXC uses an alternative access vendor for transport. Allowing ILECs to impose a TIC to recover transport costs, even when they are not providing the transport, is simply a make-whole approach that has no place in a competitive local market. To the extent (as some ILECs have argued) that the TIC is a source of support for universal service, recovering such support from the ILECs' competitors, when the ILEC facilities in question are being bypassed because the competitor offers a superior service or lower prices to the IXC, is clearly antithetical to the requirement for explicit and competitively neutral funding of universal service under Section 254 of the Act. Furthermore, removing the ILECs' guaranteed recovery of transport costs even when their transport networks are bypassed will induce them to become more efficient and more competitive, and may result in a more rapid voluntary phase-out of the TIC. Thus, Sprint recommends that the Commission immediately preclude the ILECs from assessing the TIC on traffic that is carried to or from their end offices on the facilities of a competitor.

**F. SS7 Signaling (§§ 123-138)**

In §127, the Commission invites comment on applying the unbundled rate structure for SS7 signaling, employed by Ameritech as a result of a waiver, to the industry as a whole. Sprint objects to such a mandatory unbundling. In the case of the Sprint LECs, the additional investment required in order to measure and bill for SS7 traffic using the type of unbundled structure employed by Ameritech would cost \$15-20 million. These additional costs are simply not worth the benefits of a more refined basis for charging for SS7. ILECs should be free to unbundle their charges for signaling using, with the exception and caveat discussed

below, the Ameritech model. However, there may be other approaches to SS7 signaling unbundling that are equally valid means of cost recovery and that may not impose such a great cost burden on the ILECs in terms of measurement and billing.

At the same time, it would be quite burdensome for IXCs to have to adapt to a different signaling structure for each ILEC. Thus, if an ILEC proposes an alternative to the Ameritech rate structure, at that point the issue should be referred to an appropriate industry forum to develop an optimum structure for unbundling that could be applied to any ILEC that chooses to unbundle.

In addition, Sprint objects to the Ameritech structure in one respect: Ameritech asserts the right to impose both non-recurring and recurring charges for passing optional parameters in the initial address message (IAM) onto interconnecting carriers. When an ILEC decides, for its own reasons, to populate these parameters, it incurs no additional cost of any significance in passing these parameters onto interconnecting carriers. Even though such passage may provide value to other carriers, the Commission's Caller ID decision,<sup>16</sup> in analogous circumstances, required IXCs to pass, free of charge, the calling party number parameter onto other interconnecting carriers. Sprint is not prepared to say that there is no circumstance under which it would be appropriate to charge for passage of an optional parameter. However, there should be a presumption that the passage of such optional parameters should be a non-chargeable option, and the burden should be on an ILEC wishing

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<sup>16</sup>Rules and Policies Regarding Calling Number Identification Service -- Caller ID, 9 FCC Rcd 1764 (1994), reconsideration denied, 10 FCC Rcd 11700 (1995), affirmed sub nom., People of the State of California v. FCC, 75 F.3rd 1350 (9th Cir. 1996).

to impose a charge to demonstrate that such a charge is warranted and consistent with the Caller ID precedent.

A final consideration with respect to signaling unbundling is that carriers that unbundle should be required to demonstrate that their charges for unbundled elements must be cost-based and revenue-neutral. Sprint pays Ameritech nearly three times as much for signaling as it pays to Pacific Bell (which has not unbundled its charges), even though Sprint's traffic volume is higher in Pacific's region. Thus, the Commission should be prepared to ensure that the rates for the unbundled elements are cost-based and that, if the unbundled structure results in higher signaling revenues for the ILEC, appropriate offsetting reductions are made in other existing rates (e.g., the local switching charge and the TIC).

**G. New Technologies (§139)**

ILECs should always be encouraged to offer access services using the most efficient and innovative technologies at their disposal, and as new technologies become deployed, the Commission should be sensitive to the need to ensure that the rate structure mirrors the cost characteristics of the new technologies. One example of this is the impact of the greater use of SONET rings in the local network on the distance-sensitivity of direct-trunked transport charges, discussed in Section IIIA. above. Revisions made in the procedures for introducing new services should facilitate establishment of new rate elements for new technologies. However, these revisions may not be sufficient to guarantee that the rate structure mirrors the costs structure when new technologies are used to provide existing services. Thus, the Commission should be responsive to requests to reexamine the existing rate structure on a showing that the rate structure no longer optimally mirrors cost-causation.

**IV. APPROACHES TO ACCESS RATE REFORM AND DEREGULATION  
(¶¶140-60)**

In Section IV of the NPRM, the Commission describes its market-based and prescriptive approaches to access reform -- addressed in more detail in Sections V and VI below -- and seeks comment on whether it should select one of these approaches as its exclusive method of reforming access charges, adopt both approaches, or attempt to merge them into one. Sprint will address the specifics of these approaches in Sections V and VI below. However, as a threshold matter, Sprint does not believe the Commission should assume that within the next few years, local competition will suffice to ensure that all access charges will be driven to forward-looking cost levels.

To begin with, Sprint would expect that much of whatever local entry occurs in the near term will take the form of pure resale of existing LEC services. This form of competition will do nothing to reduce access charges, because the local competitors relying on resale will not be able to offer access services of their own, and ILECs will continue to charge for access to and from resold local customers. Local entry through the purchase of unbundled network elements and facilities-based local entry both will put economic pressure on ILECs, particularly as long as non-cost-based access charges continue to exist. As discussed in Section I above, under today's non-cost-based level and structure of access charges, an IXC could achieve enormous savings in the cost of providing toll services to a high-volume customer by becoming that customer's local carrier through purchase of unbundled elements (or through deployment of its own facilities).

However, it is unclear whether these forms of entry will result in rapid and widespread reductions in access charges. The new local entrants are likely to concentrate primarily on the

provision of retail services -- offering local services and a bundle of local and long distance services to business and residential customers. These entities, like any other start-up business, will be facing high initial costs of establishing themselves in the marketplace, both in terms of the fixed cost of entry and the substantial marketing and sales expense that it will take to persuade local customers to try a new carrier. To the extent these local entrants provide access services to unaffiliated IXCs -- for example on the terminating end of long distance calls, or originating access in instances where the local competitor does not also offer toll services (or, if it does, the local customer elects to utilize a different toll carrier in any case) -- they may have little incentive to reduce access charges to a mature, forward-looking cost level. Instead, they may view the revenue they can receive from above-cost access charges as a source of funds to offset some of the high initial entry costs they will face. In this regard, even before local service competition became a realistic possibility, it was Sprint's experience with alternative access vendors -- carriers that concentrated on the access market instead of the retail switched service market -- that these carriers did not price significantly below the incumbent LECs, but instead priced just enough below the ILEC pricing umbrella to attract the IXCs' attention.

ILECs, facing the loss of local service customers, and the access revenues they generate, will also have mixed incentives with respect to their access charges. They may wish to use whatever pricing flexibility they have to target access charge reductions to customers or geographic regions they perceive to be most vulnerable to competition. However, they may have little interest or incentive to lower their charges overall, and may even try to raise their charges on traffic to and from customers less vulnerable to competition in order to minimize

the overall revenue loss to the firm. And, as long as the ILECs' local service rates are kept below costs, competitors using either unbundled elements or their own facilities could not profitably serve customers whose toll usage is only average or below average, because the savings in access costs would not offset the difference between the cost-based charges for unbundled elements (or the cost of installing their own facilities) and the below-cost local service rates of their ILEC competitors. On the contrary, the economically rational response would be to use whatever pricing flexibility they can to increase access charges to lower volume end users in order to minimize overall revenue losses as the local market becomes more competitive.

Moreover, to the extent local entry in a form other than pure resale does occur, it is likely to appear in large metropolitan areas far earlier than in medium and small-sized communities. The most likely source of facilities-based entry in smaller markets -- the cable TV industry -- seems less and less capable of or interested in providing telephony on a widespread basis, and it is unclear whether wireless services constitute an economic and marketable alternative to the wireline loop.

In short, Sprint believes that the Commission cannot rely on market forces as a comprehensive means of reducing access charges to costs during the next several years. Sprint supports lessening the strictures on ILEC pricing of access in phase with the development of actual competition, and will address the measures it believes are appropriate in Section V below. Sprint does not believe the Commission's proposed prescriptive approach has it quite right, either. Instead, as described in more detail in Section VI, what is needed is a

combination of cost-based rate restructuring and measured steps to reduce access charges to TELRIC levels.

Although the eventual total deregulation of access, and the removal of access from price regulation, may be laudable goals, such actions should be contemplated only if and when there is sufficiently robust competition, in the form of ubiquitous facilities-based alternatives to the ILECs, to ensure that no carrier can attempt to charge access rates that are above economic costs. Because of the inherent bottleneck nature of access, partially recognized by the Commission in Section VIII of the NPRM, this may never in fact be the case. In the meantime, so long as ILECs retain significant power in the local market, it is the Commission's duty, in order to promote competition in all segments of the telecommunications marketplace, to continue to regulate in a fashion designed to ensure cost-based rates for access.

In ¶148, the Commission seeks comment on how ILEC provision of in-region interLATA service should affect its choice of a market-based or prescriptive approach to access reform and how its choice of one or the other should impact its consideration of BOC applications for in-region authority under Section 271.

As a threshold consideration, Sprint believes it is entirely appropriate to distinguish between the RBOCs, on the one hand, and other LECs, on the other. Congress clearly did so by allowing GTE (which is on a par with the RBOCs in terms of the number of access lines) to offer in-region long distance service immediately after passage of the Act. The fact is that no LECs other than the RBOCs have the geographic concentration that gives RBOCs unique advantages in exploiting their local market power in the long distance market. The simple answer to the questions posed by the Commission is that no RBOC should be allowed to enter

the long distance market in-region until its access charges -- both interstate and intrastate -- have been reduced to economic costs. Otherwise, as discussed in Section I above, the RBOCs' long distance competitors will be at a serious competitive disadvantage. The RBOCs will have an inherent advantage in facing lower internal costs for access for their own long distance services than they impose on others, and such an advantage can impair not only long distance competition but weaken the ability of long distance carriers to enter the local market as well. The Commission already recognized that above-cost access charges are incompatible with RBOC in-region entry when it determined, in the Interconnection Order (§724) that:

BOCs should not be able to charge the CCLC and the TIC, which are not based on forward-looking economic costs, to competitors that use unbundled elements under §251 once they are authorized to provide in-region interLATA service.

It makes no more sense to allow an RBOC to charge the CCLC to a long distance competitor than to a local competitor, and it makes no more sense to allow the RBOCs to charge its competitors above-cost rates for transport or switching than to charge the above-cost TIC or CCLC.

Consideration of whether and when to deregulate or remove from price cap and tariff regulation various access services (§§149-160) is clearly premature. There is virtually no local service competition today, and alternative access vendors have made few inroads in the access market despite the fact that they have been in business for more than a decade. In 1996, alternative access vendors received less than two percent of Sprint's total payments for special and switched access. Even focusing solely on special access, where the AAVs have made their largest competitive inroad, AAVs received less than nine cents of every special access

dollar spent by Sprint. Thus, it is far too early in the local competitive process to decide when and what circumstances would warrant deregulation of access services.

**V. MARKET-BASED APPROACH TO ACCESS REFORM (¶¶161-217)**

As indicated in the preceding section, Sprint does not believe that the Commission can safely rely on market forces to drive access charges to cost-based levels within the next several years. In response to the questions raised in ¶170, the mere availability of unbundled network elements at prices based on forward-looking economic costs -- and even the presence of facilities-based local service competition in selected geographic areas -- may not suffice to result in cost-based access charges for the reasons discussed in the preceding section.

In view of Sprint's skepticism about the ability of the market-based approach to result quickly in a cost-based level and structure of access charges, Sprint urges the Commission instead to direct the market-based approach towards giving ILECs the appropriate amount of pricing flexibility as competition develops. At the same time, great care must be taken to avoid giving ILECs too much too soon. If they are given significant pricing flexibility in advance of the development of any meaningful local competition, they will be in a position to make preemptive strikes that could forestall the development of local competition. A closely related concern that should be in the forefront of the Commission's thinking as it frames its market-based approach is the ability of the RBOCs to give their long distance operations advantageous access rates that no other significant local competitor can take advantage of.

**A. Phase One -- Potential Competition (¶¶168-200)**

Obviously, there is an interrelationship between the triggers employed for allowing a particular level of pricing flexibility and the amount of pricing flexibility allowed. If a

combination of triggers and pricing flexibility results in too much flexibility too soon, that could be solved either by redefining the triggers or reducing the amount of flexibility allowed once those triggers have been satisfied.

Sprint accepts the Commission's proposed Phase One triggers (§§169-79) as a given, and then will discuss how much pricing flexibility is appropriate for carriers that have met these triggers. The proposed triggers -- geographically deaveraged prices for unbundled network elements based on TELRIC plus a reasonable allocation of common costs, availability of transport and termination at cost-based rates, wholesale prices available to resellers based on the reasonably avoidable cost of providing wholesale service, availability of elements and services without provisioning limits or delays, dialing parity, access to rights of way, and open, non-discriminatory network standards -- are objective criteria that have been rather well-defined by the Commission's Interconnection decision, and thus should be relatively easy to administer. Furthermore, they all embody requirements of the Act that all ILECs (except rural carriers) are required to satisfy in any event.

Sprint agrees with the proposal to consider whether the Phase One triggers have been met on a state-by-state basis. In view of the nature of the proposed triggers, particularly the requirement that unbundled network element rates be geographically deaveraged, there is little likelihood that the proposed triggers could be satisfied in only one part of the state without being satisfied on a statewide basis. Consideration on a state-by-state basis will minimize the number of proceedings needed to determine Phase One status as well.

In determining whether the Phase One criteria have been attained, the Commission needs to satisfy itself that its own view of the appropriate pricing standards has been met,

particularly if the Commission's Interconnection decision is remanded by the 8th Circuit.

Regardless of whether the courts ultimately uphold the Commission's authority to establish standards to be used by the states in Section 252 proceedings, and whether the courts uphold the standards adopted by the Commission as appropriate for those purposes, the Commission is well within its rights, for the very different purpose of deciding when to allow more pricing flexibility for interstate access, to utilize whatever standards it believes are appropriate. If a petitioning ILEC can demonstrate that the rates in effect for unbundled elements, transport and termination, and wholesale discounts, were established by, or approved by, the state using the same criteria the Commission adopted in its Interconnection Order, that should be prima facie evidence that it has met those triggers. However, opposing parties should be entitled to show that the state either did not apply, or incorrectly applied, the Commission's criteria. Thus, ultimately, the Commission should determine compliance with these criteria de novo.

The Commission seeks comment (§179) on what actions it should take in the event that a LEC that has qualified for either Phase One or Phase Two relief no longer satisfies the applicable criteria, and the procedures used to make such determinations. Obviously, if the criteria are no longer met, then whatever pricing flexibility is dependent on those criteria should be disallowed forthwith. With respect to the procedures used to make such determination, Sprint believes that an aggrieved access competitor or access customer should initiate a proceeding through the filing of a petition before the Commission. The petitioner should be required to demonstrate a reasonable factual basis for believing that the triggers have no longer been met. However, the formal complaint process, suggested in §179, should not be the sole vehicle for these determinations. The Commission's complaint procedures

place heavy emphasis on negotiated settlements and consent decrees, and the negotiating process is hardly likely to be a fruitful one when one party is trying to deprive another of pricing flexibility tools. Thus, although the Commission should not foreclose the complaint process from being used for this purpose, it should not require that process to be used.

Although, as discussed above, Sprint believes that the proposed Phase One triggers offer a useful set of criteria, the satisfaction of which should lead to further pricing flexibility by ILECs, it believes that the pricing flexibility the Commission has proposed for Phase One (¶¶180-200) would give ILECs unwarranted pricing flexibility in advance of the emergence of any actual competition. All that the satisfaction of the Phase One triggers guarantees is that legal and regulatory barriers to competitive local entry have been removed, not that new entry is economically feasible or that it will actually occur.

Giving ILECs virtually unlimited pricing flexibility, as the Commission has proposed for Phase One, would empower ILECs to lock up favored access customers and advantage their own long distance operations, thus impairing their long distance competitors and making it difficult for new entrants in the local market to compete on fair terms. Given the uncertainty as to when and how extensively new local entry will emerge, the Commission should limit its Phase One pricing reforms to those that make sense -- and would be warranted -- even if no local competition for access ever were to develop.

Of the four reforms proposed by the Commission, Sprint wholeheartedly supports geographic deaveraging of all access elements. The best way to discourage local access competition that is induced by artificial and uneconomic pricing of access -- and at the same time to give ILECs a reasonable opportunity to respond to developing local competition -- is

to let ILECs set cost-based prices for all access elements on a geographically deaveraged basis, so that prices can reflect the economics that the ILEC actually faces -- and new entrant will face -- in a particular portion of a state. In order to make geographically deaveraged rates achieve their intended purpose, the Commission should not require -- as it did when it allowed density-based deaveraging of transport rates -- that the initial price cap index in each geographic zone be the same. Rather, the LECs should be allowed to file initial rates for each zone that reflect the underlying cost characteristics of that zone.

Furthermore, geographic deaveraging should include the SLC (or, under Sprint's plan, the Subscriber Charge). Loop costs may be the element of cost that varies the greatest with geographical factors. Loop costs vary directly with the length of the loop, and loops tend to be of longer length in lower density areas. It is blinking reality -- and a violation of Section 254(e) -- to preclude geographic deaveraging of the SLC, or to allow (as is suggested in ¶180) only geographically-based reductions in the SLC. If the Commission wishes to place some cap on the level of the SLC in higher-cost areas, then it should be prepared to make up the difference between the capped rate and actual costs in its universal service plan.

Local switching costs also vary substantially with density. Exhibits 9 and 10 illustrate these relationships for usage-sensitive switching costs and total switching costs, respectively. These exhibits show scatter diagrams, and a least-squares regression curve, that plot costs per line against the number of lines connected to the switch.<sup>17</sup> These data show that unit costs rise sharply as the number of lines connected to the switch falls below 20,000.

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<sup>17</sup> Each point on the scatter diagrams represents a host switch together with any remotes that subtend the host. The data include all of the Sprint LECs' switches.

The Commission (§185) also asks for comment on the number of zones. Sprint believes that three is an absolute minimum, but that individual carriers should be free to propose a larger number of zones if they wish.

Sprint also believes that the changes made in the Price Cap Performance Review Third Report and Order (released with the NPRM herein), that allow the introduction of a new service on the showing that it is consistent with the public interest (rather than the more onerous showing that a waiver of existing rules is warranted), and that allow other carriers to follow suit on an expedited basis, also address legitimate ILEC needs for additional pricing flexibility for access in advance of significant actual competition. However, the further deregulation of new services proposed for Phase One in §§197-200, including allowing such services to be introduced merely by a tariff filing and possibly eliminating the new service costing test and removing such services from price cap regulation, may be going a bit too far at that stage of the competitive process. This degree of flexibility could easily give RBOCs the flexibility to define new services in such a way that their own long distance affiliates may be the only carriers that can avail themselves of the new services. This is a problem not only with respect to in-region entry, but also with respect to the terminating access they take from themselves for their out-of-region long distance services.

The other forms of flexibility proposed for Phase One, in Sprint's view, give ILECs an unwarranted amount of pricing flexibility before significant local competition emerges and can be shown to moderate ILEC pricing incentives. First, Sprint opposes giving the ILECs any additional volume and term discount flexibility at this time. Although volume and term discounts may be cost-based, there is no guarantee that in the brief span of time afforded by

the tariff review process, the Commission will be able to ensure that all such discounts the ILECs propose will be cost-based. In addition, the Commission appropriately expresses concern (§190) that such discounts could be employed by ILECs to lock in customers before competitors can compete with volume and term discounts of their own. The mere removal of barriers to new entry, as represented by the Phase One triggers, does not guarantee that entry can or will occur rapidly after those triggers are met. The only way the Commission can be sure that the ILECs do not use such discounting flexibility to lock in new customers before competitors have a chance to enter the market is to await the granting of such flexibility until significant competition exists.

The same is equally true for contract tariffs and responses to individual RFPs. These devices, even more than volume and term discounts, allow ILECs with market power substantial flexibility to price discriminate to maintain their control of the market. Until there is sufficient competition in the access market that the ILECs' market power shows a substantial sign of weakening, this type of pricing flexibility could be used to impede the development of competition. Cost-based density-zone deaveraging of access rates gives ILECs a legitimate tool to respond to competition while averting the discrimination problems created by excessive pricing flexibility.

The NPRM also overlooks the very real danger that volume and term discounts, and individual customer pricing arrangements, could be used by the RBOCs to favor their own long distance operations. It is not at all difficult to imagine that an RBOC could come up with a deeply discounted, very long-term discount that would be appealing only to its captive long distance carrier. In view of possible changes in the local competitive landscape, IXCs today