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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

IN THE MATTER OF	)	
ACCESS CHARGE REFORM	)	**CC Docket No. 96-262**
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**

COMMENTS OF MICROSOFT CORPORATION IN RESPONSE TO THE COMMISSION'S NOTICE OF PROPOSED RULEMAKING

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January 29, 1997

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COMMENTS OF MICROSOFT CORPORATION

Microsoft Corporation (Microsoft) submits these limited comments in response to the Commission's Notice of Proposed Rulemaking (NPRM) released on December 24, 1996.[1] Microsoft applauds the Commission's tentative conclusion that information service providers should not be required to pay interstate access charges. The Commission has correctly observed that imposing access charges on information service providers could dramatically retard the growth of this still-developing industry. Moreover, any such imposition of charges would be inconsistent with the deregulatory thrust of the Telecommunications Act of 1996 (the 1996 Act).

[1] Microsoft is a member of the Internet Access Coalition (IAC) and joins substantially in the views expressed in the IAC's comments also filed today.

For the same reasons, however, Microsoft opposes the Commission's proposal to raise or eliminate the cap on the Subscriber Line Charge (SLC) for residential connections beyond the primary connection. As we explain below, this proposal contradicts the deregulatory and pro-competitive intent of the 1996 Act and could have a significant disparate impact on the information services industry, a result the Commission clearly wishes to avoid.

Microsoft also reaffirms its belief that the Commission should utilize a per-facility approach in assessing SLCs on Integrated Services Digital Network ("ISDN") services and other derived-channel technologies. As Microsoft stated in its comments in response to the Commission's Notice of Proposed Rulemaking in the *ISDN SLC NPRM*,[2] ISDN is an interim technology that is an important building block in the development of the information services industry and the realization of the benefits those services offer. If the Commission adopts any other method of assessing the SLC on ISDN it could price the technology beyond the reach of virtually all consumers.

Moreover, before imposing any SLC rate structure or cap for ISDN or similar services, the Commission should obtain an objective, third-party analysis of the non-traffic sensitive costs generated by such services. Without an independent assessment of the actual economic costs created by these services, the Commission should err on the side of caution and forbear the imposition of any additional fees.

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

DISCUSSION

The current access charge regime is sorely in need of reform. The enactment of the 1996 Act, together with changes in the telecommunications and related industries, has brought into sharp relief the inefficiencies and anti-competitive nature of the present system. In order to correct these defects, the new system of access charges must be pro-competitive, forward-looking, and driven by market forces rather than government regulation. Moreover, in the guise of reform the Commission must not extend the regulatory access charge regime or skew marketplace outcomes to slow innovation. Microsoft's comments are based on these fundamental principles.

I. The Commission Correctly Declined To Expand Its Access Charge Regime To Include Information Service Providers.

Microsoft agrees with the Commission's tentative conclusion that information service providers should not be subject to the interstate access charge system. (NPRM ¶288.) As the Commission recognizes, the true economic costs on the public switched network generated by information services and technology are hotly disputed. (¶¶ 286-87.) The purpose of access charge reform as a whole, however, is to make access charges -- to the extent they are required at all -- more accurately reflect those true costs. (¶¶ 41-49.)

Accordingly, as alternatives to the LEC network become available during this transition period, the level and scope of access charges should decline rather than expand. Competition rather than regulation must set the price of access. Imposing access charges on information services, however, would contradict the 1996 Act's goal of eliminating

regulation and encouraging competition. The Commission therefore must be extremely skeptical of the suggested imposition of access charges on any new service or technology.

Indeed, the Commission notes that it has already twice considered and rejected the imposition of access charges on enhanced service providers.[3] (¶ 284.) In those decisions, the Commission stated that the enhanced services industry should remain exempt from access charges as long as the industry "remains in the current state of change and uncertainty."[4]

That point remains true. Although competition in the information service industry is vigorous, the industry as a whole is still evolving. As the Commission observes, usage of interstate information services -- particularly the Internet and other interactive computer networks -- has increased dramatically in recent years. (¶ 282 & n.373.) This growth, however, might be curtailed or even reversed if information service providers are forced to pay interstate access charges. According to the NPRM, "[i]t is extremely likely that, had per-minute interstate access rates applied to ESPs [Enhanced Service Providers] over the past 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." (¶ 285.) The Commission therefore should adopt its tentative conclusion that information service providers are not subject to the interstate access charge system.

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[3] *See* Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, CC Docket No. 87-215, Order, 3 FCC 2631 (1988) (*ESP Exemption Order)*; MTS and WATS Market Structure, Memorandum Opinion and Order, Docket No. 78-72, 97 FCC 2d 682, 711-712 (1983) *(Access Charge Reconsideration Order).*

[4] *ESP Exemption Order* at ¶¶ 1, 13-17.

II. The Commission Should Not Increase Or Eliminate The Cap On Subscriber Line Charges For Residential Multiple Line Users.

Under the current system of interstate access charges, common line costs for the local loop are recovered through a combination of per-line and per-minute fees paid by consumers. (¶ 57.) According to the Commission, however, these fees may not recover the actual costs to the local loop of end-user customers with multi-line business and multiple-line residential services. (¶ 64.)

The Commission therefore proposes increasing the cap on the flat, per-line charge (known as the "Subscriber Line Charge" or "SLC") for the second and additional lines for residential customers and for all lines for multi-line business customers. (¶ 65.) The new cap would be based on the per-line loop costs assigned to the interstate jurisdiction. Alternatively, the Commission proposes to eliminate the SLC cap altogether for such customers, particularly where the local network is open to competition. (*Id.*)

But the NPRM fails to identify any evidence that the current SLC does not recapture the actual economic cost of the additional lines. Indeed, the Commission acknowledges that cost of local loop access remains uncertain. (*See* ¶¶ 140-240).

Moreover, local exchange competition is in its initial stages, and incumbent LECs could easily increase fees for additional lines in the short term. Since a large percentage of consumers use additional lines for access to information services, however, removing the existing cap on SLCs will have a disparate impact on the cost of using information services. Such a result would be tantamount to imposing access charges on information services -- the same policy that the Commission has expressly declined to impose.

A SLC increase for multiple-line users could substantially reduce demand for information services. These services are -- for the time being -- often a "discretionary" expense for many users. In such cases, users might simply opt to end their service, rather than pay the higher SLC. Consequently, even if competition eventually lowers multiple-line SLCs, many information service providers -- for example, Internet service providers -- may not be around to enjoy it. Accordingly, the existing *cap* on SLCs should not yet be removed for multiple-line residential customers.

III. The Per-Facility Charge Structure Will Best Recover The Cost Of The Local Loop From ISDN And Other Derived Channel Services.

The Commission requests comment on the 1996 Act's impact on the application of SLCs to ISDN and other derived channel services. (¶ 70.) Microsoft believes that the principles underlying the 1996 Act strongly point toward the adoption of a per-facility charge structure for ISDN services. Support for the development of new services and technology was at the heart of the 1996 Act, and ISDN is a key short-term building-block to this progress in the information services industry.[5] The Commission therefore should adopt the SLC policy that will most encourage ISDN's use -- a per-facility charge structure.[6]

According to the Commission, "ISDN offers data transmission at higher speeds and with greater reliability than standard analog service." (¶ 68.) Because the

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[5] *See* Microsoft Comments in End User Common Line Charges, CC Docket No. 95-72, Notice of Proposed Rulemaking, 10 FCC Rcd. 8565 (1995) (*ISDN SLC NPRM*), filed June 29, 1995, at 1-2. A copy of these comments is attached as Exhibit 1.

[6] As stated in these comments, *infra* at 7-8, any such structure should be based on an objective, third-party analysis of the relevant cost data.

information service industry depends heavily on the transmission of an ever-increasing amount of data, as ISDN becomes more available, the industry will continue to grow.

As Microsoft stated in its comments to the *ISDN SLC NPRM*,[7] the per-facility approach will best encourage the deployment of ISDN, and by extension, the growth of information services.[8] By contrast, alternatives like the per-line or per-derived channel formulas will discourage the use of ISDN services and ultimately undermine the information services industry. The Commission should therefore adopt the per-facility SLC charge approach.

IV. Before Imposing Any SLC Rate Structure Or Rate Cap On ISDN Or Similar Services, The Commission Should Obtain An Objective, Third-Party Analysis Of The Non-Traffic Sensitive Costs Of Such Services.

In its discussion of the non-traffic sensitive (NTS) costs caused by ISDN and other derived channel services, the Commission cites cost data provided by the Bell Operating Companies (BOCs). (¶ 70.) That data is likely to be viewed skeptically by those opposing the BOC's position. Indeed, as the Commission acknowledges throughout its NPRM, estimates of NTS costs remain highly debatable. Given this uncertainty, the Commission should approach any "cost data" provided by any interested parties with extreme caution. Rather than relying on the cost estimates provided by the BOCs themselves, the Commission should have an objective third party analyze the raw

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[7] *Id.*

[8] "It [the per-facility approach] is most likely to promote the use of ISDN, other derived channel technologies, and ultimately the NII [National Information Infrastructure.]" Microsoft Comments to *ISDN SLC NPRM* at 4.

data according to clearly delineated and competitively neutral criteria.[9] Such an objective non-partisan study will provide a better regulatory basis for determining a per-facility charge. Until that is accomplished, however, no additional changes in the existing ISDN SLC pricing arrangement should be made.

[9] *See* S. Rep. No. 230, 104th Cong., 2d Sess. 131 at 113 (1996) (Joint Explanatory Statement) (purpose of 1996 Act was "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition. . ."). *See also* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, FCC 96J-3 (released Nov. 8, 1996) at 16 (embracing principle of competitive neutrality as basis for universal service policy).

CONCLUSION

For the foregoing reasons, Microsoft respectfully recommends: 1) that the Commission adopt its tentative conclusion not to expand access charges to information service providers; 2) leave the SLC for multiple-line users unchanged; 3) use a per-facility approach towards the SLC for ISDN services; and 4) obtain an independent assessment of non-traffic sensitive costs generated by ISDN services.

Respectfully submitted,

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January 29, 1997

EXHIBIT 1

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

IN THE MATTER OF END USER COMMON LINE CHARGES	)))))	CC Docket No. 95-72

REPLY COMMENTS OF MICROSOFT CORPORATION

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July 14, 1995

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

IN THE MATTER OF END USER COMMON LINE CHARGES	)))))	**CC Docket No. 95-72**

REPLY COMMENTS OF MICROSOFT CORPORATION

In our opening comments, Microsoft Corporation proposed that the Commission utilize a per facility charge for Integrated Systems Digital Network ("ISDN") subscriber line charges. To forestall any concerns about an increase in the Carrier Common Line Charge ("CCL"), the CCL should be frozen in place pending a general review of the entire access charge mechanism.

Many of the comments filed support the same approach and for much the same reason -- *i.e.*, that access charges for ISDN and other derived channel services must be kept low to encourage innovation. Moreover, if competition is increasing in the local exchange, then the marketplace, rather than regulation, will determine cost recovery by local exchange carriers.

These Reply Comments are accordingly limited to a few specific points raised by one commenter.

IT WOULD STIFLE INNOVATION TO USE A PER-FACILITY CHARGE ONLY ON BRI SERVICE

AT&T has proposed that the per-facility charge be restricted only to Basic Rate Interface ("BRI") service. Primary Rate Interface ("PRI") service would be charged on a per-channel basis. In addition, AT&T proposes a 25¢ increase in the residential and single-line SLC. AT&T claims this will not forestall innovation because "Business ISDN users are typically large companies that desire ISDN service and are currently buying these services on a per-derived channel basis." (AT&T Comments at 9). AT&T's reason for advancing this proposal is to avoid any increase in the CCL.

AT&T, however, misses the point. Unless costs are minimized on derived channel service, there is little incentive to use ISDN and other services. Size of the user is not the decisive factor. Rather, the essential factor is use of the technology in an economic manner. AT&T's basic fear -- increase in the CCL -- can be accommodated by the temporary freeze Microsoft advocates pending a review of access charges which AT&T also supports. Moreover, in promoting increased ISDN usage, application of the per-facility approach to both BRI and PRI services could well increase total usage and thereby reduce the CCL.

AT&T's proposal might have an adverse impact on at least some new competitors in the local exchange market. As the Comments of Time Warner Communications Holdings, Inc. ("TW Comm.") illustrate, additional SLC's calculated on a per-channel basis could result in a 16 percent increase in TW Comm.'s digital PBX trunk offering in Rochester, New York. (TW Comm. Comments at 3; *see also* Rochester Telephone Comments at 2).

CONCLUSION

Microsoft urges the Commission to adopt the facility-based SLC charge since that is essential to the growth of new services under the current access charge structure.

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CERTIFICATE OF SERVICE

I, Sharon Agranov, do hereby certify that copies of Microsoft Corporation's Comments in Response to the Commission's Notice of Proposed Rulemaking have been served on the parties listed below via hand delivery on this 29th day of January, 1997.

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