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Federal Communications Commission
Office of Secretary

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

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

ERRATA

BellSouth Corporation and BellSouth Telecommunications ("BellSouth") hereby submit the following errata to their Comments filed on January 29, 1997 in the above referenced proceeding.

Subsequent to the filing of the comments, it was discovered that the footnotes in the pleading commenced with footnote number 3 instead of footnote number 1. With this errata BellSouth is refiling its comments and attachments with the correct footnote numbers. The text in the comments and attachments are unchanged from the original filing.

Respectfully submitted,

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Date: January 30, 1997

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DATE: January 29, 1997

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SUMMARY

In the NPRM, the Commission recognizes that the current access charge rules are out of step with the competitive environment. The rules never contemplated the potential effects of competition in the local exchange and exchange access market. The assumption that exchange access, like local exchange service, was a natural monopoly enabled the Commission, by regulatory fiat, to establish access rules that incorporated implicit subsidies and inefficient rate structures. The invalidity of this assumption became apparent quite soon after the access charge rules took effect. Although uneconomic bypass and the emergence of alternative access providers formed a sufficient basis to rethink access charges, a comprehensive review of the access charge system was subordinate to other issues pressing for Commission action.

The new competitive paradigm established by the Telecommunications Act "necessitate(s) that the Commission review its existing access charge regulations." Reformation of the access charge rules affords the Commission an opportunity to put in place an adaptive regulatory framework. Such a framework would form the basis for a transition of a LEC out of regulation and would set the stage for Commission forbearance and deregulation. The proper framework can be viewed as being composed of two parts: (1) baseline and (2) market-based access reform. Baseline refers to the starting point which should be a set of regulations that is conducive to the development of competition but, nonetheless, should be put in place irrespective of the level of competition. The baseline changes are needed to bring the outmoded rules up to date. Market-based access reform are additional changes to the Commission's rules that recognize that competition is emerging and, as a result, detailed economic regulation should be relaxed to

recognize that the competitive environment can operate as a sufficient check on the market conduct of incumbent local exchange carriers ("ILECs").

Before consideration can be given to the question of what the Commission's rules should be in light of competition, the correct foundation should be established. This foundation is the baseline set of rules from which changes should be made to accommodate the presence of competition. The baseline changes are intended to make the Commission's rules more closely emulate competitive outcomes.

The baseline changes would make the Commission's rules more efficient. As the Commission recognizes, the current access charge rules incorporate cost recovery mechanisms that are inefficient. Specifically, there are three areas where more efficient recovery mechanisms should be established: (1) recovery of nontraffic sensitive costs (both loop and switch); (2) the recovery of reserve deficiencies associated with under-depreciated plant; and (3) realignment of the transport interconnection charges. The origin of these inefficiencies are rooted in regulatory policies and, thus, are regulatory inefficiencies and not ILEC inefficiencies. Hence, the recovery should be disassociated from the core rate structure of interstate access services.

With respect to nontraffic sensitive costs, the Commission should create a recovery mechanism so that any amounts not recovered through the federal universal service fund are recovered on a per-line basis from interexchange carriers on the basis of the number of presubscribed lines. The depreciation reserve deficiency, which BellSouth estimates to be approximately $579.4 million, should be recovered through an explicit, bulk-billed charge that is assessed to interexchange carriers on the basis of their share of interstate revenues over the last 3 years. For BellSouth, the reserve imbalance would be recovered over a period of 8 years which

is the approximate composite average remaining life, based on the FCC's currently prescribed deprecation parameters. Thus, at the end of the 8 years, the explicit reserve deficiency charge would be discontinued. The final recovery mechanism is associated with the transport interconnection charge (TIC). An issue in this proceeding is what adjustments should be made to the recovery of the TIC. Based on its analysis of the components of the TIC, BellSouth recommends that portions of the TIC should be reassigned to other access services. While such reassignments would account for over forty percent of the TIC, the remainder is not reassignable to other access services, but rather stem from excessive interstate separations allocations and historical averaging. As to the amount that remains in the TIC, BellSouth proposes that it be recovered on a per prescribed line basis from interexchange carriers.

BellSouth's recovery mechanisms isolate regulatory inefficiencies from access rates. Currently, interstate switched access charges, on an industry wide basis for Tier I LECs, generate $10.8 billion, which is the equivalent of $.027 per minute. If the Commission were to adopt BellSouth's proposals, not only would more efficient recovery mechanisms be established, but also switched access charges could be reduced. Thus, for example, assuming a universal service high cost fund of $4 billion for Tier I LECs, a per line recovery mechanism for carrier common line and switching nontraffic sensitive costs, a bulk-billed depreciation reserve deficiency recovery mechanism, and a per line TIC recovery mechanism, usage sensitive switched access charges would be reduced to $.010 per minute. From 1994 to 1995, switched access minutes for price cap LECs grew by approximately 26.3 billion minutes. Assuming that minutes grow by the same absolute amount in 1997, if BellSouth's recovery mechanisms were in place for the entire year, access customers would save approximately $200 million in switched access charges. Whether or

not minutes of use will grow will be largely dependent on whether interexchange carriers flow through to their rates the access charge reductions they receive.

The Commission's overriding goal for access reform is to adopt a set of rules that are consistent with, and will foster competition for, access services and have a framework in place that will enable regulation, particularly price regulation, to give way to marketplace forces. BellSouth shares the Commission's objective. In order to achieve this objective, a market-based, adaptive regulatory approach should be adopted by the Commission. Such a market-based approach recognizes that conditions are changing so rapidly that the Commission no longer has the luxury to engage in protracted proceedings to review and revise its rules. The rules themselves must be sufficiently flexible to adapt to the changing conditions. A market-based approach incorporates a variety of metrics that define points where a given regulation or set of regulations can be relaxed. In this way, the regulatory system can keep pace with the external marketplace changes.

To the same degree that the adaptability of a market-based approach is its strength, a fundamental weakness of a prescriptive approach is its inflexibility. It must be recognized at the outset that the very essence of a prescriptive approach is a set of rules based on a set of conclusions reached at a point in time. If these conclusions are incorrect or circumstances change, a prescriptive approach is simply unresponsive. Indeed, the Commission need only consider the genesis of the instant proceeding. The Telecommunications Act is not the cause of access reform but rather was the final changed circumstance that precluded any further postponement by the Commission to change these out-of-date rules. The need for reform has long been known. Incentive regulation has resulted in lower rates to consumers, and the use of a

market-based approach to access reform would continue the trend. Moreover, to the extent that access rates do not comport with market-based, competitive levels, the cause can be traced to regulatory policies that have used exchange access to support public policy goals such as universal service. A prescriptive approach does not remedy these regulatory inefficiencies. The Commission cannot lawfully "prescribe" them away. LECs, as a matter of law, are entitled to have an opportunity to recover their full costs assigned to the interstate jurisdiction, and a prescriptive approach does not alter this fundamental principle.

Equally important is that a market-based approach would avoid the pitfall of the Commission improperly setting rates. At best, the Commission could only obtain imperfect information upon which it would have to base its determinations, essentially leaving a prescriptive approach to chance. Indeed, the Commission cannot reasonably expect that it can keep up with the rapidly changing market environment. The Commission, in the NPRM, recognizes that if it misspecifies the prices, competition will suffer. Not only will competition be adversely affected, but also misspecification can chill incentives to invest in the telecommunications infrastructure that are essential to the widespread deployment of advanced telecommunications capabilities. Indeed, the current proceeding is attempting to remedy inefficiencies that were prescribed twelve years ago. This experience alone is a sufficient reason for the Commission to abandon any notion of using a prescriptive approach to access reform.

A market-based approach is consistent with the incentive regulation such as price caps that the Commission has found to be superior to traditional prescriptive regulatory approaches such as rate-of-return. Such an approach would complement the price cap incentives for a LEC to invest in its network, deploy new technologies and introduce new services to its customers.

Incentive regulation has resulted in lower rates to consumers, and the use of a market-based approach to access reform would continue the trend. Moreover, to the extent that access rates do not comport with market-based, competitive levels, the cause can be traced to regulatory policies that have used exchange access to support public policy goals such as universal service. A prescriptive approach does not remedy these regulatory inefficiencies. The Commission cannot lawfully "prescribe" them away. LECs, as a matter of law, are entitled to have an opportunity to recover their full costs assigned to the interstate jurisdiction, and a prescriptive approach does not alter this fundamental principle.

BellSouth **January 29, 1997**

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COMMENTS

BellSouth Corporation and BellSouth Telecommunications ("BellSouth") hereby submit their comments on the Commission's Notice of Proposed Rulemaking concerning proposed revision to the Commission's access charge rules to conform those rules to the competitive environment that characterizes the exchange access marketplace.[1]

I. INTRODUCTION

The NPRM represents the third in a trilogy of Commission proceedings all of which, in concert with the Telecommunications Act of 1996,[2] are intended to foster and accelerate the

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[1] *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, *Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry*, FCC 96-488, released December 24, 1996 (hereinafter referred to as the "NPRM")

[2] Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56, to be codified at 47 U.S.C. §§ 151 *et. seq* (Telecommunications Act). Citations to the Telecommunications Act will be the sections as codified in the United States Code.

introduction of efficient competition in all telecommunications markets.[3] The principal purpose of this proceeding is to reform the Commission's rules regarding interstate access charges in order to make them congruous with the competitive environment that exists.

It is beyond dispute that the enactment of the Telecommunications Act heightened the need to reform the Commission's access charge rules. Nevertheless, the circumstances that compel change have long existed. From the inception of the access charge rules, the Commission recognized that misspecification of the access charge rules could artificially direct interexchange traffic away from the public switched network. While, initially, alternatives were limited to special access services offered by local exchange carriers ("LECs") and private networks, it was not long before alternative access providers established competitive networks in competition with existing local networks.[4] The Telecommunications Act hastens and expands the ease with which access services provided by LECs can be replaced.

In the NPRM, the Commission recognizes that the current access charge rules are out of step with the competitive environment. The rules never contemplated the potential effects of competition in the local exchange and exchange access market.[5] The assumption that exchange access, like local exchange service, was a natural monopoly enabled the Commission, by regulatory fiat, to establish access rules that incorporated implicit subsidies[6] and inefficient rate

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[3] NPRM at ¶ 1.

[4] In Attachment 1, BellSouth provides an analysis of competitive networks that have been deployed in its nine states. As the Attachment shows, by the end of 1996, there were a total of 94 operational competitive networks operating in 50 different cities. Twenty-four additional networks have either been announced or are under development, some of which have scheduled to provide service in 1997.

[5] NPRM at ¶ 6.

[6] *Id.*

structures.[7] The invalidity of this assumption became apparent quite soon after the access charge rules took effect. Although uneconomic bypass and the emergence of alternative access providers formed a sufficient basis to rethink access charges, a comprehensive review of the access charge system was subordinate to other issues pressing for Commission action.

The new competitive paradigm established by the Telecommunications Act "necessitate(s) that the Commission review its existing access charge regulations."[8] Reformation of the access charge rules affords the Commission an opportunity to put in place an adaptive regulatory framework. Such a framework would form the basis for a transition of a LEC out of regulation and would set the stage for Commission forbearance and deregulation. The proper framework can be viewed as being composed of two parts: (1) baseline and (2) market-based access reform. Baseline refers to the starting point which should be a set of regulations that is conducive to the development of competition but, nonetheless, should be put in place irrespective of the level of competition. The baseline changes are needed to bring the outmoded rules up to date. Market-based access reform are additional changes to the Commission's rules that recognize that competition is emerging and, as a result, detailed economic regulation should be relaxed to recognize that the competitive environment can operate as a sufficient check on the market conduct of incumbent local exchange carriers ("ILECs").

A. Baseline Changes

Before consideration can be given to the question of what the Commission's rules should be in light of competition, the correct foundation should be established. This foundation is the

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7 NPRM at ¶ 7.

8 *Id.* at ¶ 5.

baseline set of rules from which changes should be made to accommodate the presence of competition. At the outset, it must be recognized that the current rules do not constitute the appropriate baseline. Additional changes to the Commission's rules should be made to improve their performance and the efficiency of regulation. These baseline changes are unrelated to the status of competition and should be made irrespective of the level of competition in the access or local exchange markets. These changes should be made because they more accurately tailor the regulatory process to the competitive model, allow LECs to move the prices toward a market determined price and facilitate a quick LEC response to customer demand. In other words, the baseline changes are intended to make the Commission's rules more closely emulate competitive outcomes.[9]

The Commission took an initial step by making selected baseline changes in its Third Report and Order in the LEC Price Cap Performance Review proceeding that was included with this NPRM. The Commission modified its price cap rules by eliminating the lower service band pricing constraints, thereby affording LECs the flexibility to reduce their rates as may be warranted by the marketplace. Because the purpose of regulation is to replicate competitive outcomes, the additional pricing flexibility granted by the Commission appropriately did not turn on competitiveness of the marketplace. Given the Commission's expectation that competition will cause prices to decline, it made no sense to have a regulatory regime that prevented LECs from reducing prices or to suggest that LECs should not be afforded the flexibility to reduce prices until there is competition.

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[9] The purpose of economic regulation is, in the absence of a competitive market, to have in place regulations that mimic the outcomes that would occur if the market were in fact fully competitive.

There are other changes the Commission should make regardless of the level of competition, that would improve the efficiency of the Commission's rules. As the Commission recognizes, the current access charge rules incorporate cost recovery mechanisms that are inefficient.[10] Specifically, there are three areas where more efficient recovery mechanisms should be established: (1) recovery of nontraffic sensitive costs (both loop and switch); (2) the recovery of reserve deficiencies associated with under-depreciated plant; and (3) realignment of the transport interconnection charges. The origin of these inefficiencies are rooted in regulatory policies and, thus, are regulatory inefficiencies and not ILEC inefficiencies. Hence, the recovery should be disassociated from the core rate structure of interstate access services. By so doing, the Commission and customers obtain a view regarding access prices without built-in regulatory inefficiencies.

With respect to recovery of nontraffic sensitive costs, the current rules require that LECs recover a portion of their loop costs allocated to the interstate jurisdiction through usage sensitive charges. Likewise certain nontraffic sensitive costs associated with the switch port are also recovered on a usage sensitive basis. While BellSouth believes that such costs should be recovered through a federal universal service fund, to the extent that the universal service fund is insufficient in size to permit full recovery of these interstate costs, the Commission should create a recovery mechanism so that any amounts not recovered through the federal universal service fund are recovered on a per-line basis from interexchange carriers on the basis of the number of

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[10] *See, e.g.*, NPRM at ¶ 7.

presubscribed lines.[11] This recovery approach would eliminate the inefficient usage sensitive recovery mechanism and substitute a superior and more efficient flat rate recovery system for interstate nontraffic sensitive costs. This approach is also consistent with establishing a foundation for competition. As competition develops and the ILEC loses customers (i.e., loses lines), then the ILEC would cease assessing the charge.

The second recovery mechanism that needs to be established is associated with reserve deficiencies related to under-depreciated plant. BellSouth, as well as all the other ILECs, have had their depreciation rates established by the Commission. Historically, the Commission has prescribed long asset lives in an effort to keep rates low. These prescribed lives, however, have been too long and do not appropriately reflect the decline in economic value of assets, particularly for those accounts in which technology changes have had their biggest impact. The effect over time of the failure of depreciation rates to keep pace with the rapid technological displacements and the loss in economic value, has been depreciation accruals set at inappropriately low levels causing the depreciation reserve to be far short of what is actually necessary. BellSouth quantified its under-depreciation by calculating the depreciation reserve imbalance. The imbalance is the difference between BellSouth's actual reserve requirements (theoretical reserve)

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[11] Attachment 2 to these Comments is a paper entitle "Economic Perspectives on Access Reform" prepared by John Haring and Jeffrey Rohlfs (Haring and Rohlfs). Haring and Rohlfs identify the current usage sensitive recovery of nontraffic sensitive costs as a serious economic defect of the access rules (p. 3). They urge the Commission to adopt a more rational recovery mechanism. To the extent that the access reforms made by the Commission do not recover these nontraffic sensitive costs from end users, Haring and Rohlfs identify a per line recovery mechanism as a reasonable alternative (pp. 21-22).

and its booked depreciation reserve. The reserve imbalance or reserve deficiency is more than $2.6 billion on an unseparated basis. The interstate portion is $579.4 million.[12]

ILECs have been expected to recover this imbalance over time in their access rates. This expectation was predicated on the ILECs operating in a monopoly environment. The advent of competition makes such an expectation unattainable. In addition, it is an inefficient recovery mechanism and does not establish a proper foundation for competition. Because the reserve imbalance is due to regulatory policy, its recovery should be distinct from core access charges. The amount should be recovered through an explicit, bulk-billed charge that is assessed to interexchange carriers on the basis of their share of interstate revenues over the last 3 years. For BellSouth, the reserve imbalance would be recovered over a period of 8 years which is the approximate composite average remaining life, based on the FCC's currently prescribed deprecation parameters. Thus, at the end of the 8 years, the explicit reserve deficiency charge would be discontinued. In establishing this bulk-billed mechanism, BellSouth is not proposing that it receive additional revenues. Instead the amounts received from the reserve deficiency mechanism would be removed from the charges for core access services through a price cap exogenous change.[13]

The final recovery mechanism is associated with the transport interconnection charge (TIC). An issue in this proceeding is what adjustments should be made to the recovery of the

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[12] BellSouth's quantification of its depreciation reserve imbalance is set forth in Attachment 3.

[13] The reserve deficiency recovery mechanism, however, recognizes that because the imbalance is attributable to regulatory policy, the recovery of the deficiency should not be subject to the vagaries of competition.

TIC. Based on its analysis of the components of the TIC, BellSouth recommends that portions of the TIC should be reassigned to other access services.[14] While such reassignments would account for over fifty percent of the TIC, the remainder is not reassignable to other access services, but rather stem from excessive interstate separations allocations and historical averaging.[15] As to the amount that remains in the TIC, BellSouth proposes that it be recovered on a per prescribed line basis from interexchange carriers. The advantage of BellSouth's TIC proposal is that it converts the TIC to a non-usage based recovery mechanism.

BellSouth's recovery mechanisms isolate regulatory inefficiencies from access rates. Currently, interstate switched access charges, on an industry wide basis for Tier I LECs, generate $10.8 billion, which is the equivalent of $.027 per minute. If the Commission were to adopt BellSouth's proposals, not only would more efficient recovery mechanisms be established, but also switched access charges could be reduced. Thus, for example, assuming a universal service high cost fund of $4.6 billion for Tier I LECs,[16] a per line recovery mechanism for carrier common line and switching nontraffic sensitive costs, a bulk-billed depreciation reserve deficiency recovery mechanism, and a per line TIC recovery mechanism, usage sensitive switched access charges would be reduced to $.010 per minute.[17] From 1994 to 1995, switched access minutes for price

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[14] A complete discussion of the reassignment of the TIC is set forth in Section VII.A.4.b., *infra*.

[15] *See* discussion in Section VII.A.4.b.ii, *infra*.

[16] BellSouth has advocated in the universal service proceeding that an adequately sized federal universal service fund would be sufficient to displace both the carrier common line and residual TIC making recovery mechanisms unnecessary. The example, above, illustrates the situation where the universal service fund is not adequately sized, and, therefore requires the Commission to provide for additional recovery mechanisms in this proceeding.

[17] For price cap LECs, in addition to the universal service fund, the per line nontraffic sensitive mechanism would recover $.6 billion, the bulk-billed depreciation reserve deficiency (Footnote Continued.....)

cap LECs grew by approximately 26.3 billion minutes. Assuming that minutes grow by the same absolute amount in 1997, if BellSouth's recovery mechanisms were in place for the entire year, access customers would save approximately $200 million in switched access charges. Whether or not minutes of use will grow will be largely dependent on whether interexchange carriers flow through to their rates the access charge reductions they receive.

Even with implementation of these three recovery mechanisms, the Part 69 access charge rules still require further modification before an adequate baseline is established. In the NPRM, the Commission proposes revisions to the Part 69 rate structure.[18] While rate structure revisions are certainly in order, the fundamental flaw with the Commission's proposal is that it would not permit any deviation from the core rate structure for switched access services. ILECs would continue to be constrained by the Part 69 rate structure. Such regulatory limitations are unnecessary. There is absolutely no rational legal, economic or policy reason to prevent ILECs from offering alternative rate structures or introducing new services to meet customer demand. Indeed, any limiting rule not only harms ILECs but also harms access customers.

If the Commission believes that the public interest is served by a core switched access rate structure that is uniformly available across the nation, then all that is necessary is that all LECs be required to provide the core elements. Such a required rate structure should not, nor is it

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mechanism would recover $.6 billion and the per line TIC mechanism would recover $1.7 billion that are currently recovered through usage sensitive charges.

[18] In Section VII, *infra*, BellSouth discusses proposed rate structure modifications.

necessary, to preclude LECs from offering new services or assembling existing services into packages that respond to customer demand.[19]

Thus, if a Part 69 rate structure is retained, then the baseline could specify a required rate structure composed of a series of core access elements that the LEC must provide. Such a requirement, however, would not in any way affect a LEC's ability to introduce alternative rate structures or new services. Such a baseline approach would lay the proper foundation for competition in that all LECs would be permitted to innovate and respond to market demand. At the same time, to the extent that the Commission believes that until competition takes place, access customers ought to have the ability to obtain access services under a comparable rate structure on a nationwide basis, a required core rate structure will satisfy this concern.

B. Market-based Access Reform

The Commission's overall objective in this proceeding is to insure that its economic regulation of ILECs operates in a way as that is consistent with a competitive market for exchange access that has been created by the Telecommunications Act. In order to achieve this objective, the Commission must be prepared to allow the marketplace to function and act as the check on the economic behavior and conduct of the participant. Thus, it is necessary for the Commission to modify its regulatory processes as competition develops and to permit competitive forces to determine which services are offered and under what conditions and at what price.

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[19] As discussed in Section IV. A., *infra*, any rule promulgated by the Commission that attempts to limit a LEC's ability to file new services would run afoul of Section 204(a)(3) of the Communications Act. This new provision, which becomes effective on February 8, 1997, enables LECs to file new and revised services on a streamlined basis.

The best approach for maintaining a balance between regulation and competition is the market-based approach to access reform. In Section V of these comments, BellSouth sets forth its specific proposals for a market-based access reform approach. The strength of the market-based approach is its adaptability to rapidly changing market conditions. By using competitive triggers which result in automatic modification of the Commission's economic regulation of ILECs, a market-based approach to access reform avoids the pitfall of regulatory lag and inaction. It also avoids shifting the forum for competitive rivalry from the marketplace to the regulatory arena.

An appropriately designed market-based approach to access reform will see regulation give way to competitive forces as it is demonstrated that self -policing competition is taking place. The adjustments to the Commission's rules and the additional flexibilities that will be provided to ILECs will coincide with the level of competition that is present. When the market-based approach is appropriately designed, the Commission is assured that it will provide a regulatory environment that fosters competition and sets in motion the types of change that will ultimately lead to deregulation.

II. ACCESS REFORM FOR INCUMBENT LOCAL EXCHANGE CARRIERS (Paras. 50-54)

In its NPRM, the Commission observes that its current Part 69 rules only apply to dominant LECs.[20] More to the point, the rules apply to all telephone companies and telephone companies are those common carriers that provide telephone exchange service. Over time, telephone companies have come to be referred to as LECs. To the extent the Part 69 rules apply

[20] NPRM at ¶ 50.

to dominant LECs, such application is not one of rule, but rather the Commission's view that all local exchange carriers are dominant.[21] The Commission has not altered that determination nor, since the enactment of the Telecommunications Act, has it determined to forebear from applying its Part 69 rules to any LEC, incumbent or otherwise.

The Commission has not enforced its Part 69 and other rules with respect to new competing local exchange carriers ("CLECs"), and it would appear that it will continue to follow this non-enforcement policy. Thus, the Commission is correct that the need for a market-based, adaptive regulatory approach is most needed by the price cap LECs, i.e., the ILECs that are currently facing competition from CLECs.[22]

While BellSouth concurs that the priority for a market-based regulatory approach should be focused on the price cap LECs, BellSouth has proposed a number of baseline adjustments that it views should be made to the Part 69 rules, irrespective of the level of competition. The baseline adjustments either remove regulatory barriers to efficient and procompetitive behavior and performance, or correct, to the extent possible, embedded regulatory inefficiencies. Most of the baseline changes described above could be extended to all LECs and would form a firm foundation upon which to update the remainder of the Part 69 rules.[23]

The Commission also tentatively concludes that nothing in Section 201-205 of the Communications Act compels a telecommunications carrier which uses unbundled elements to pay

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[21] *In the Matter of Policy and Rules Concerning Rates For Competitive Common Carrier Services and Facilities Authorizations Therefor*, 85 FCC 2d 1, 21-23 (1980).

[22] NPRM at ¶ 52.

[23] Some of the baseline adjustments proposed by BellSouth pertain to the Part 61 price cap rules which, by definition, would be inapplicable to non-price cap LECs.

interstate access charges. Whether the Act would compel the application of access charges is a fact based determination. For example, if the prices for unbundled elements are based on actual costs[24] and ILECs have an opportunity to recover interstate costs from interstate services, then the Commission's conclusion would appear to stand. If these circumstances change, however, then it may be appropriate and, indeed, necessary to permit recovery of interstate costs from purchasers of UNEs.

Further, the Commission must distinguish between the application of access charges to UNEs from the situation where UNEs are rebundled so as to constitute the underlying retail service provided by the ILEC. In the latter circumstance, the CLEC is engaged in nothing more than resale of existing services. In a resale situation, access charges would apply. Indeed, not to do so would operate as a discrimination against other resellers of local exchange services who do not engage in the bogus exercise of obtaining resold services by requesting the ILEC to assemble unbundled elements to provide the same functionality as the retail service. Further, the Commission would not want to create rules that would reward such bogus behavior by exempting such rebundled arrangements from access charges.

III. APPROACHES TO ACCESS REFORM AND DEREGULATION

A. Different Approaches To Access Reform (Paras. 140-148)

The Commission's overriding goal for access reform is to adopt a set of rules that are consistent with, and will foster competition for, access services and have a framework in place

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[24] Failure to base the price of UNEs on actual costs would result in UNEs being subsidized by other services. Under the separations process a portion of the actual costs not recovered from UNEs would flow to the interstate jurisdiction. In these circumstances, it would not be inappropriate to recover such costs from the purchasers of UNEs.

that will enable regulation, particularly price regulation, to give way to marketplace forces.[25] BellSouth shares the Commission's objective. In order to achieve this objective, a market-based, adaptive regulatory approach should be adopted by the Commission. Such a market-based approach recognizes that conditions are changing so rapidly that the Commission no longer has the luxury to engage in protracted proceedings to review and revise its rules. The rules themselves must be sufficiently flexible to adapt to the changing conditions. A market-based approach incorporates a variety of metrics that define points where a given regulation or set of regulations can be relaxed. In this way, the regulatory system can keep pace with the external marketplace changes.

To the same degree that the adaptability of a market-based approach is its strength, a fundamental weakness of a prescriptive approach is its inflexibility. While BellSouth will fully comment on the infirmities of the prescriptive approach in Section VI, it must be recognized at the outset that the very essence of a prescriptive approach is a set of rules based on a set of conclusions reached at a point in time. If these conclusions are incorrect or circumstances change, a prescriptive approach is simply unresponsive. Indeed, the Commission need only consider the genesis of the instant proceeding. The Telecommunications Act is not the cause of access reform but rather was the final changed circumstance that precluded any further postponement by the Commission to change these out-of-date rules. The need for reform has long been known, and petitions formally requesting Commission action were filed nearly six years

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[25] NPRM at ¶ 140.