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February 14, 1997

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

RE: Reply Comments in CC Docket 96-262, to Comments on Access Charge Reform Notice of Proposed Rulemaking

Enclosed herewith please find the original and sixteen (16) of the reply comments of the Georgia Public Service Commission ("GPSC") in the above-referenced matter. In addition, a copy on 3.5" diskette in Word Perfect 5.1 for Windows format is also enclosed.

Also enclosed are two extra copies. Please file stamp these two extra copies to verify your receipt, and return them in the enclosed postage-prepaid, return addressed envelope.

Service copies have been sent to all the persons shown on the Commission's service list. Finally, copies have been sent to each party who filed comments to which the GPSC has responded in these reply comments.

Thank you for your consideration.

Respectfully submitted,

Terri M. Lyndall /TZS

Terri M. Lyndall
Executive Secretary

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

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

GEORGIA PUBLIC SERVICE COMMISSION'S REPLY COMMENTS ON ACCESS CHARGE REFORM

February 14, 1997

Georgia Public Service Commission
244 Washington Street, S.W.
Atlanta, Georgia 30334-5701
(404) 656-4501

SUMMARY

The Georgia Public Service Commission ("GPSC") submits these comments in reply to comments filed January 28, 1997, regarding the Notice of Proposed Rulemaking on Access Charge Reform released by the Federal Communications Commission ("Commission" or "FCC") on December 24, 1996. Access charge reform is the third in the Commission's trilogy for moving toward a more fully competitive telecommunications industry pursuant to the Telecommunications Act of 1996 ("1996 Act").

The GPSC is disappointed, and even surprised, by comments in favor of increasing the subscriber line charge ("SLC") cap for many subscriber lines. The SLC is a regulatory relic that, as discussed in these reply comments, should be used less rather than more in the transition to fuller competition. The GPSC's reply comments on this and other issues respond to comments filed by AT&T, BellSouth Telecommunications ("BellSouth"), the Florida Public Service Commission ("FPSC"), MCI Telecommunications ("MCI"), the National Association of Regulatory Utility Commissioners ("NARUC"), the New York Department of Public Service ("NYDPS"),South Dakota Public Utilities Commission ("SDPUC"), Southwestern Bell Telephone ("SWBT"), and State Consumer Advocates ("SCA").

As to the broad question of a "market" versus a "prescriptive" approach, it would be premature for the GPSC to provide an opinion. However, the GPSC offers some general comments in reply to various proposals by commentors. One of these is that a pricing methodology should result in an entire set of cost-based rates, without overlooked costs that are then shifted to non-cost based, residually-priced rates. The basic approach governing a transition toward fuller competition should focus primarily on avoiding or preventing anti-competitive practices such as cross-subsidies and predatory pricing. Any prices set by regulators, rather than by monopoly providers or by a competitive market, should similarly avoid cross-subsidies or other inappropriate, anti-competitive pricing.

The comments also reflect fundamental contradictions among various proposals for the reform and restructuring of access charges. A prime GPSC concern in this area is that whatever approach the Commission adopts should be consistent and should facilitate rather than complicate the transition to fuller competition. The GPSC is equally concerned that the Commission should not attempt to restrict the States in their movement toward more competitive telecommunications markets.

A few commentors correctly pointed out that the fundamental job to be done before any rate restructuring is the verification of the costs to be recovered. Similarly, once the costs are verified, the resulting rates should be cost-based using consistent methodologies that avoid inappropriate cross-subsidies. Inappropriate cross-subsidies can manifest as residually-priced rates, to name but one example. Cost-shifting does not substitute for cost analysis.

In this regard, the GPSC asks the Commission to consider the approach recommended by the New York Department of Public Service ("NYDPS"), which calls for limited regulatory intervention in pricing but careful examination of cost factors which should cause access rates to decline.

In evaluating proposals for action, it is helpful to ask whether those proposals are consistent with the principles upon which they are premised. Thus the GPSC asks the Commission to examine critically whether the proposals before it are theoretically consistent with enabling the marketplace to become more competitive, and thus are likely to have the intended results. It would be truly untoward if the Commission set in motion pricing methodologies that provide incumbents with pricing advantages and prevent end users from experiencing the benefits of competition.

Dated: February 14, 1997

TABLE OF CONTENTS

Page

SUMMARY ii

INTRODUCTION AND OVERVIEW 1

II. GENERAL ISSUES IN ACCESS CHARGE REFORM 3
- A. Goals and Principles 3
- B. Market-Premised and Prescriptive Approaches to Access Reform 4
- C. General Issues Regarding Rate Structure Changes 7
- D. Transition Issues - Recovery of a Depreciation Reserve Deficiency 8

III. RATE STRUCTURE ISSUES 10
- A. Recovery of Common Line Costs Through Carrier Common Line (CCL) Rates and the Subscriber Line Charges (SLCs) 12
  - 4. Alternative Methods of Recovery of CCL Portion 13
  - 5. Increasing or Eliminating the SLC Cap for "Extra" Lines 18
  - 6. Assessment of SLCs on Derived Channels (ISDN) 20
- B. Local Switching 21
  - 1. Non-Traffic Sensitive Local Switching Costs 21
  - 2. Traffic-Sensitive Local Switching Costs 21
  - 3. Peak/Off-Peak Pricing 23
- C. Transport 23
  - 1. Entrance Facilities and Direct-Trunked Transport Services 23
    - a. Tandem-Switched Transport Services 25
  - 2. Transport Interconnect Charge (TIC) 27
  - 3. SS7 Signaling Rate Structure 33

IV. OTHER ISSUES 35
- A. Regulation of Terminating Access 35
- B. Treatment of Interstate Information Services (Internet, Etc.) 39
- C. Other Part 69 Revisions 40
  - 1. Equal Access Network Reconfiguration Costs 40

2. Part 69 Allocation Rules 42
3. Other Proposed Part 69 Changes 43

V. THE COMMISSION MUST RESPECT STATES' RIGHTS 44

VI. CONCLUSION 47

I. INTRODUCTION AND OVERVIEW

The Georgia Public Service Commission ("GPSC")[1] submits these reply comments to many of the comments filed on January 28, 1997, regarding the Notice of Proposed Rulemaking on Access Charge Reform released on December 24, 1997. Access charge reform is the third in the trilogy of initiatives by the Federal Communications Commission ("Commission" or "FCC") pursuant to the Telecommunications Act of 1996 ("Act") to move the telecommunications industry toward greater competition.

The GPSC is disappointed, and even surprised, by comments in favor of increasing the subscriber line charge ("SLC") cap for many subscriber lines. The SLC is a regulatory relic that, as discussed in these reply comments, should be used less rather than more in the transition to fuller competition. The GPSC's reply comments on this and other issues respond to comments filed by AT&T, BellSouth Telecommunications ("BellSouth"), the Florida Public Service Commission ("FPSC"), MCI Telecommunications ("MCI"), the National Association of Regulatory Utility Commissioners ("NARUC"), the New York Department of Public Service ("NYDPS"),South Dakota Public Utilities Division ("SDPUC"), Southwestern Bell Telephone ("SWBT"), and State Consumer Advocates ("SCA").

As to the broad question of a "market" versus a "prescriptive" approach, it would be premature for the GPSC to provide an opinion. The GPSC has not yet concluded its own review of cost methodologies for interconnection and access to unbundled network elements (GPSC Docket No. 7061-U). The Eighth Circuit may also issue rulings touching on this controversy as part of its decision on the appeal of the August 8, 1996 First Report and Order. However, the GPSC offers some general comments in reply to various proposals by commentors. One of these is that a pricing methodology should result in an entire set of cost-based rates, without overlooked costs that are then shifted to non-cost based, residually-priced rates. The basic approach governing a transition toward

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[1] The Georgia Public Service Commission is a "State commission" as that term is defined in Section 3(41) of the Communications Act of 1934, 47 U.S.C. § 153(41), and is the State agency vested with jurisdiction to regulate telephone corporations in the State of Georgia. The GPSC has specific authority to petition, intervene, or otherwise commence proceedings before the appropriate federal agencies and courts having specific jurisdiction over the regulation of telecommunications seeking to enhance the competitive market for telecommunications services within the State. Official Code of Georgia Annotated ("O.C.G.A.") § 46-5-168(f).

fuller competition should focus primarily on avoiding or preventing anti-competitive practices such as cross-subsidies and predatory pricing. Any prices set by regulators, rather than by monopoly providers or by a competitive market, should similarly avoid cross-subsidies or other inappropriate, anti-competitive pricing.

The use of cost models may appear more convenient than the traditional regulatory role of examining the costs of monopoly services to ensure that the resulting rates are fair, just and reasonable. However, the GPSC submits that the Commission should select its approach not upon any comparison of regulatory convenience, but rather on the basis of facilitating the transition to fuller competition. Facilitating rather than complicating the transition includes resisting the panacea of special charges, even "transitional" charges, devised to absorb costs that are not covered by "cost-based rates." Although the latter statement may appear to be a rate structure issue, the point is that the Commission's approach must be thoroughly consistent because otherwise, for example, one pricing methodology could result in costs being shifted to residually-priced rates.

The comments also reflect fundamental contradictions among various proposals for the reform and restructuring of access charges. A prime GPSC concern in this area is that whatever approach the Commission adopts should be consistent and should facilitate rather than complicate the transition to fuller competition. The GPSC is equally concerned that the Commission should not attempt to restrict the States in their movement toward more competitive telecommunications markets. This includes, but is not limited to, the GPSC's concern about State commissions being required to evaluate TSLRIC studies on behalf of the FCC's for its use in reinitializing LEC price caps. Further, even where the Commission does not directly dictate methodologies for intrastate rates, the Commission should be aware of the example it sets and of other complications that can be injected into the separations process, thus affecting intrastate rates.

A few commentors correctly pointed out that the fundamental job to be done before any rate restructuring is the verification of the costs to be recovered. Similarly, once the costs are verified, the resulting rates should be cost-based using consistent methodologies that avoid inappropriate cross-subsidies. Inappropriate cross-subsidies can manifest as residually-priced rates, to name but one example. Cost-shifting does not substitute for cost analysis.

For example, the GPSC asks the Commission to consider the approach recommended by the New York Department of Public Service ("NYDPS"), which calls for limited regulatory intervention in pricing but careful examination of cost factors which should cause access rates to decline. The NYDPS analyzed several factors and concluded that they are likely to reduce access rates to close to one cent per minute over a period of several years. The primary regulatory role would be re-establishing price caps.

In evaluating proposals for action, it is helpful to ask whether those proposals are consistent with the principles upon which they are premised. Thus the GPSC asks the Commission to examine critically whether the proposals before it are theoretically consistent with enabling the marketplace to become more competitive, and thus are likely to have the intended results. It would be truly untoward if the Commission set in motion pricing methodologies that provide incumbents with pricing advantages and prevent end users from experiencing the benefits of competition.

II. GENERAL ISSUES IN ACCESS CHARGE REFORM

A. Goals and Principles

The GPSC agrees that access charges should be restructured to some extent, in order to facilitate the development of competition. However, the GPSC strongly disagrees with certain of the specific proposals on the basis that they do not represent needed steps conducive to competition.

The GPSC submits the following fundamental principles (similar to its principles for the Universal Service Fund proceeding in CC Docket No. 96-45):

1. The transition approach should be as narrowly focused as possible, with the least amount of regulatory intervention, to accomplish its statutory objectives.
2. Any special recovery measures in the transition approach should be reserved for legitimate costs such as true "deficiencies" caused by past regulatory actions, not costs left unrecovered due to genuine competition or costs of facilities for future and new services.
3. Prices set by regulation should be cost based, and provide price signals that facilitate rather than squelch competition. Regulators should help assure that prices do not allow cross-subsidies or other forms of anti-competitive pricing.

4. The transition approach should not favor one provider or set of providers over others (competitive neutrality).
5. The transition approach should not favor one technology over another (technological neutrality).
6. The transition approach must result in benefits to the subscribers, i.e., result in more choices and options for the end users.

The GPSC asks the Commission to follow these principles in facilitating the transition to a more competitive marketplace.

In evaluating proposals for action, it is helpful to examine such underlying principles. Equally important, one must then determine whether the proposals are suited to the principles. The GPSC urges the Commission to examine these matters critically before taking action. If the premise is that competition is increasing, for example, and regulators force the monopoly's prices down (below the rates yielded by traditional cost-based regulation), then the price incentive for competitive new investment shrinks. If the regulators then allow the monopoly's residual costs to be recovered in special mandatory charges to end users who have no vendor choices associated with those charges, then new competitors are again disadvantaged, and end users continue to shoulder the monopoly's costs without seeing the benefits of competition. Surely the Commission does not intend such results.

B. Market-Premised and Prescriptive Approaches to Access Reform

The Commission discussed a market-based approach (NPRM at ¶¶ 161-217) and a prescriptive approach (NPRM at ¶¶ 218-240) to access reform.

The Florida Public Service Commission ("FPSC") noted that the FCC asked for comments, under the topic of a prescriptive approach, on whether the FCC should rely on the State commissions for cost study data to help in reinitializing the Price Cap Index ("PCI") for each "price basket." (NPRM at ¶ 224.) The FPSC stated that, to the extent that the cost data used would be that which the States were in the process of evaluating anyway, it would probably not be a significant additional burden to send a copy of the State orders to the FCC. However, the FPSC also pointed out:

> What might be problematical is how the FCC would deal with a situation in which one state, for example, would endorse a particular approach or methodology and another would reject it. Would the

> FCC follow whatever the state decided? Would the resulting "patchwork" of interstate access rates based on differing cost studies be acceptable? If not, would the FCC have to reevaluate all the studies or methodologies anyway? In that event, it is not clear whether the FCC would then place itself in an appellate role with respect to the states' decisions, thereby creating a legal framework not envisioned by the Telecommunications Act of 1996. Perhaps, as suggested in ¶ 226, it might be useful to develop a "default" model, or even a set or range of rates, which, in the absence of state specific data, could reasonably be used for interstate purposes.[2]

The GPSC is even more concerned about this proposal. In addition to the concerns the FPSC noted, the FCC should not assume that the States will be engaging in the types of Total Service Long Run Incremental Cost ("TSLRIC") based studies the Commission envisions. (NPRM at ¶ 224 ("state commissions might be better suited to evaluate TSLRIC-based studies because state commissions generally have more experience with cost studies").) After all, if the States are following the Commission's previous mandates to use Total Element Long Run Incremental Cost ("TELRIC") studies (as would be required under the stayed interconnection rules), then the States are not necessarily studying TSLRIC. The Commission stated that evaluating the incumbent LECs' TSLRIC studies "could impose significant and potentially costly burdens on the FCC, incumbent LECs, and interested parties." (*Id.*) The GPSC asks the Commission to avoid shifting these unfunded burdens on the State commissions.

The GPSC also shares the other concerns raised by the FPSC. The States should not be forced to use cost methodologies dictated by the FCC, even for intrastate rates and charges, let alone for determining interstate rates and charges.

As to the broad question of a "market" versus a "prescriptive" approach, it would be premature for the GPSC to provide an opinion. However, the GPSC can offer some general comments in reply to various proposals by commentors. Use of models may be easier than the traditional regulatory role of examining the costs of monopoly services to ensure that the resulting rates are fair, just and reasonable. However, the GPSC submits that the Commission should not select its approach upon any comparison of regulatory convenience, but rather on the basis of

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[2] FPSC Comments at 8-9.

facilitating the transition to fuller competition.[3] Facilitating rather than complicating the transition includes resisting the panacea of special charges, even "transitional" charges, devised to absorb costs that are not covered by "cost-based rates." Although the latter statement may appear to be a rate structure issue, the point is that the Commission's approach must be thoroughly consistent because otherwise, for example, one pricing methodology could result in costs being shifted to residually-priced rates.

For those parts of the network that are still monopoly - traditional cost-based principles still apply. Essentially FCC is trying to reprice monopoly networks - in traditional regulation, this would be considered attempting to disallow investment on the basis of excessive costs (but the FCC is not trying to show that the "excessive" investments/costs were imprudent).

In a few years, the IXCs, ILECs, and any other telecommunications service providers will be competing on the basis of one-stop shopping and service combinations, with facilities-based alternatives providing the economic and technological foundation for truly competitive marketplace options. Pricing between now and then must not discourage facilities investment.

The State Consumer Advocates proposed what appears to be a form of pricing flexibility between price caps and floors. The price caps would be set at embedded costs; the price floors would be at some form of incremental costs. Perhaps competitors who can build facilities alternatives would be able to negotiate for prices within this range. Competitors who cannot (and end users) would be protected, initially by the price cap of embedded costs and later by the ability to choose between facilities-based competitors.[4]

The GPSC recommends that the Commission proceed cautiously, and maintain a close understanding of the industry costs. Only a solid foundation of knowledge about the industry costs

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[3] The Commission might also consider the practical effects upon the transition efforts if a novel approach which tests the limits of the Act is itself tested on (and stayed pending) any appeals.

[4] Perhaps CLECs or service providers generally with no intention of building their own facilities would not be able to use a "pick and choose" rule to take advantage of lower rates negotiated by those who realistically "threaten" to build their own network alternatives, if incumbents' prices provide any price signals affecting the incentive to build new facilities. There may be costs of building network facilities, versus renting others' facilities, that may justify different outcomes in a fully competitive marketplace.

will enable the Commission to avoid the pitfalls of regulatory intervention in a market that is making the transition from monopoly to competition. This is another reason why the Commission should not "farm out" to the State commissions the tasks associated with cost studies for the industry (NPRM at ¶ 224).

Similarly, the GPSC is concerned and asks the Commission to be careful, in any regulatory approach, to avoid continuation or creation of new residually-priced charges that do not reflect the costs of particular services received by those who pay the charges. This could happen either with a "market-based" approach or a "prescriptive" approach.

In general, the GPSC submits that the Commission should be primarily concerned with ensuring that cost methodologies and pricing structures facilitate market entry and avoid cross-subsidies or other anti-competitive practices. This means that the focus on price levels is secondary. The Commission should first concern itself with ensuring that competitive entry and fair competition are facilitated, and let the increasingly competitive markets become the primary driver of price levels. The regulator's main concerns with price levels should be ensuring that monopoly services are not priced too high, and that monopoly revenues are not used to cross-subsidize predatorily low prices (below incremental costs) of competitive services.

Access was one of the earliest forms of competitive entry, and is an increasingly competitive market. Yet forcing prices down by regulatory decree will only discourage additional infrastructure investment, because companies will find it more attractive to purchase on a short-term basis rather than to invest in capital assets.

C. General Issues Regarding Rate Structure Changes

BellSouth Telecommunications ("BellSouth") commented that it should be sufficient for the Commission to merely authorize LECs to adopt these proposed rate structure changes, rather than to prescribe them. However, if the Commission deems it necessary to prescribe these changes, then BellSouth advocated that the new rate structure should be viewed as a "core" rate structure ("CRS") for all LECs. Under a CRS approach, LECs would be required to offer their switched access services under the CRS as a backstop protection, thus assuring the availability of a uniform rate structure for existing services that is available from all LECs. As the required core rate structure, the CRS would

be implemented immediately and would assure a more efficient recovery of certain elements that may not be covered by the still to be established Universal Service Fund. At the same time, the CRS approach would not impede the LEC's ability to utilize alternative rate structures, *e.g.*, for new services, for packaging of existing services and for alternative rate plans for existing services. As LECs offer new services and alternative rate structures, customers could choose from among services offered under the CRS and new services and alternative rate structures also made available by the LEC. In this manner, the LEC would have the flexibility to respond quickly to customers demands without the need for a waiver proceeding, while customers would be protected by the continued availability of the CRS approved by the Commission.[5]

The GPSC's general response to BellSouth's proposal is that it does not obviate the need for a threshold verification of the costs to be recovered as part of any "core rate structure." More specifically, the GPSC notes that BellSouth's proposal would allow the ILEC to price its services down to a lower "market" value in certain situations. Such pricing may be a natural response to competition. Two appropriate concerns of the regulator in such situations should be: (1) ensuring that downward pricing flexibility does not become "predatory pricing" (thus the competitively-priced rate should not fall below an appropriate measure of incremental costs); and (2) costs left "unrecovered" as a result of competitive lower prices must not be flowed back to be subsidized by purchasers of non-competitive services.

D. Transition Issues - Recovery of a Depreciation Reserve Deficiency

The GPSC opposes comments which would allow any claimed depreciation reserve "deficiency" to be summed and recovered, unreviewed and unverified. Again, the Commission must perform the threshold tasks of verifying the costs and, in the special case of depreciation, ensuring that no amount of the "deficiency" to be recovered resulted from competitive forces.

BellSouth estimated the depreciation reserve deficiency to be approximately $579.4 million, and proposed that it 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

[5] BellSouth Comments at 68.

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.[6]

The GPSC questions whether BellSouth's proposal would be competitively neutral. For example, BellSouth is expected to file an application with the Commission soon in order to provide in-region interLATA services (initially as a switchless reseller). The Commission should investigate whether BellSouth's proposal could result in BellSouth paying less of the deficiency relative to its interLATA service revenues. If there must be charges to recover a depreciation reserve deficiency, the Commission must ensure that they are imposed on a competitively neutral basis. More fundamentally, allowing such a special recovery does not appear to be competitively neutral because it allows special cost support for the incumbent not enjoyed by potential facilities-based competitors. Allowing any recovery of past depreciation reserves is only permissible if the regulators have verified the costs (as discussed elsewhere in these reply comments) and if the reason for past non-recovery was regulatory restriction rather than price competition.

The comments filed by State Consumer Advocates counter RBOC claims of depreciation reserve deficiencies. According to ARMIS data they compiled, the RBOCs' depreciation reserves have been increasing. Their data compilation shows BellSouth's reserve deficiency climbing from 34% for 1989 to 45% for 1995.[7] This is the type of investigation and verification which the Commission perform.

Besides, the ILECs will have new opportunities to obtain revenues and cover costs. BellSouth will be entering the interLATA market, at least at some point. So the ILECs also benefit from the new economic competition and will have new chances to recover their costs with new services.

The Commission should not accept depreciation reserve deficiency claims at face value. Before allowing special recovery through extraordinary rate mechanisms, the Commission must

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[6] BellSouth Comments at 2.

[7] State Consumer Advocates Comments at 38.

perform at least two regulatory functions. The first is conducting an independent verification of the true amount of costs that should be eligible for such extraordinary recovery. For example, the Commission should examine whether investments for which the depreciation is claimed were necessary to provide existing services, or include extra capacity, etc. designed to enable the provision of new services in the future. The revenues from new services should be the source of recovering costs (including depreciation) of investing in facilities designed for future use. This type of verification will require close scrutiny of actual engineering standards for facilities, not mere review of the books.

The second regulatory job to be done is an independent evaluation of the resulting amounts which remain unrecovered due to past regulatory restrictions on recovery, rather than price competition.[8] Regulators must learn to trust the invisible hand of a competitive marketplace, and avoid intervening with the heavy hand of regulation. When a competitive marketplace forces prices down, unrecovered depreciation must be written off. Using regulatory intervention to allow recovery of such amounts (rather than amounts that may be unrecovered as a result purely of past regulatory actions) will only delay the development of true competition.

III. RATE STRUCTURE ISSUES

The GPSC believes that some history especially pertaining to the SLC is appropriate. In the Universal Service Fund proceeding (CC Docket No. 96-45), the National Association of State Utility Consumer Advocates ("NASUCA") supported reducing the SLC, believing that such a reduction is necessary under Sections 254(b) and (k) of the 1996 Act. Further, the Joint Board recommended that the SLC cap be reduced (although the Recommended Decision tied reduction of the SLC cap to the adoption of a universal service fund revenue base comprising interstate and intrastate services (which the GPSC opposes), and to the recovery of pay telephone costs (para. 754). NASUCA believes that, through the SLC, basic exchange service customers are bearing an unreasonable share of interstate common loop costs, and so the Commission is required by the Act to reduce the SLC cap, regardless

[8] For example, BellSouth took a substantial write-down of its depreciation in August 1995 after electing alternative regulation under Georgia's Telecommunications and Competition Development Act of 1995.

of the revenue base that is adopted for the universal service fund or any determination about the recovery of pay telephone costs.[9]

The Commission last addressed the SLC in 1987, accepting the finding of the Joint Board that a "fair share" of revenues to be recovered by IXCs through the CCLC would be approximately 50% of interstate allocated loop costs,[10] with the remaining 50% to be recovered through the SLC. NASUCA submitted that a maximum SLC recovery of 50% of interstate common line costs (compared with the 66% that SLC revenues presently represent) would be a "reasonable share," provided, consistent with the Universal Service Joint Board's recommendation (para. 273) that the costs being recovered are the costs of a loop designed for voice grade service and not costs incurred to provide broadband and other enhanced services that are not part of basic telephone service.[11]

The SLC is assessed to local exchange service customers to recover a portion of local exchange carrier interstate local loop costs. (Recommended Decision, para. 188.) The local loop represents the "common line" that is necessary for the provision of virtually any service that relies on the local telephone network to reach subscribers. (*Id.*, para. 273.) Therefore it is not a facility or cost that should be assigned exclusively to any one service. Rather, it is a joint and common or shared cost that should be recovered from many services.

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[9] NASUCA Comments at 2-8, CC Docket No. 96-45. NASUCA added that the Commission is obligated under Section 254(k) to reduce the SLC, and this obligation is not negated or altered in any way by changes to the Lifeline programs. The Joint Board recommended (para. 423) that the SLC be delinked from Lifeline and Link Up. By adopting this recommendation, the Commission would remove any connection between changes to Lifeline programs and reductions to the SLC. NASUCA argued that changes to the low income support programs have no bearing whatsoever on SLC reductions that are required pursuant to the Act. NASUCA Comments at 9.

[10] MTS and WATS Market Structure, Amendment to part 67 of the Commission's Rules and Establishment of a Joint-Board, *Report and Order*, 2 FCC Rcd 2953, 2958 & n.36 (1987).

[11] NASUCA Comments at 7 in CC Docket No. 96-45, citing Ex parte letter filed by Kathryn Falk, Director of Government Relations, NECA, September 4, 1996.

A. Recovery of Common Line Costs Through Carrier Common Line (CCL) Rates and the Subscriber Line Charges (SLCs)

The GPSC agrees with commentors who stated that increasing SLCs is anti-consumer, removes industry responsibility for cost efficiency and for providing value in exchange for guaranteed cost recovery, and is a regulatory relic that provides end users no competitive benefits. The GPSC is very concerned about the potential of increasing, by regulatory fiat, mandatory retail prices in the name of moving the industry toward a competitive marketplace that is supposed to provide consumers with more service choices and pricing options. Support among the ILECs and IXCs for increasing the SLC, despite other industry requests for increased pricing flexibility, must spring from the industry's perception that the SLC provides guaranteed cost recovery through a charge that end users do not associate with their telecommunications service providers. It is difficult if not impossible to envision how this type of pricing could occur in a truly competitive market.

In addition, it appears inappropriate to charge any SLC to toll-blocked customers, if the SLC is justified by the theory that the SLC covers costs of connecting to the interstate network shows they receive no such value. This issue may appropriately be addressed in separate proceedings on toll-blocked service, or may be addressed in this rulemaking.

The GPSC agrees with the comments of the South Dakota Public Utilities Commission ("SDPUC"), which stated that even if CCL costs should not be recovered on a per-minute basis, the alternative is not to effectively impose additional flat monthly charges directly on the end user, even for second residential lines. The SDPUC also opposes increasing or eliminating the cap on SLCs, and noted that the Joint Board did not recommend increasing the SLC or imposing additional flat charges on end users. Interexchange carriers should pay their portion of the NTS loop costs since they use and need the LECs' loops to provide their services.[12]

The State Consumer Advocates ("SCA") submitted comments that should be considered on this issue. They stated that if the SLC and per-minute CCLCs were eliminated altogether, the LECs would bill the IXCs collectively for their interstate common line costs. The total amount billed would be equal to the amount that would otherwise be generated from the sum of the SLCs plus the

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[12] SDPUC Comments at 2-3.

interstate CCLCs. Although the exact amount would depend upon the adjustments made for the removal of payphones, local transport service (LTS) or other FCC adjustments to the common line costs, the present total interstate common line revenues to be recovered total approximately $5 to $5.50 per month per line. The SCA recommended that the LECs bill these amounts to the various IXCs through various methods (*e.g.*, based upon presubscribed lines, or a combination of the presubscribed lines and interstate CCLC minutes of use) or other reasonable method as specified by the FCC. Neither the FCC nor the LEC would specify to the individual IXCs how they would recover these or other costs from their end user customers.[13]

The GPSC agrees that it is preferable to allow the IXCs to determine, in the competitive marketplace, how to recover these costs in retail rates to the end users. This process would support the creation of more options and choices for end users. By contrast, the direct imposition of the SLC places fixed charges on end users without giving them any corresponding ability to make service selections. It also relieves many players in the industry of any competitive price pressures as to the costs being recovered through the SLC.

4. Alternative Methods of Recovery of CCL Portion

The Commission requested comments regarding the alternative methods of recovery of the CCL portion of subscriber loop costs (NPRM at ¶¶ 59-63). Subscriber loop costs have been recovered partly through the carrier common line (CCL) rates, and partly through subscriber line charges (SLCs). Common line costs represent the interstate portion of the subscriber loop costs for connecting the end user's premises with the carrier's switch. A portion of common line costs are recovered through the application of the subscriber line charge ("SLC") to end-users. The remainder of common line costs, subject to price cap constraints, are recovered from IXCs through the application of the CCL charge. Commentors discussed the relationship of the CCL to the SLC, and also the method(s) of recovery including possible change to a per-line charge which was mentioned in the Commission's NPRM.

Southwestern Bell Telephone ("SWBT") commented that carrier common line ("CCL") charges represent an implicit support flow from access to local exchange service, and therefore that

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[13] SCA Comments at 26.

the amount of interstate high cost support ILECs receive from the new federal Universal Service Fund ("NUSF") should be used to reduce ILECs' interstate CCL rates.[14]

According to SWBT, interstate CCL rates should also be reduced by the amount of Long Term Support ("LTS") that will be explicitly recovered from the NUSF. (ILECs that receive weighted DEM support could reduce their interstate local switching charges by the amount of weighted DEM support they explicitly receive from the new federal fund.) CCL rates will also be reduced to reflect the requirements of the FCC's September 20, 1996 Payphone Order in CC Docket No. 96-128. SWBT also added that interstate local switching charges for certain ILECs should be reduced by the amount of interstate weighted dial equipment minute ("DEM") support provided explicitly by the NUSF.[15]

SWBT further requested that ILECs be granted the flexibility to eliminate any interstate CCL that remains after adjustment for the effects of NUSF, LTS, payphone, marketing expense, and reallocations to reduce the transport interconnection charge ("TIC"). SWBT proposed that initially, these remaining interstate common line costs be recovered using a flat-rated "public policy element" billed to IXCs on a presubscribed line basis.[16] SWBT proposed to eliminate this "public policy element" charge over a two-year period by incrementally increasing the SLC for residence and single-line business lines. SWBT anticipated nominal SLC increases of approximately $0.65 at the end of the first year and $0.65 at the end of the second year. (These amounts do not reflect the effect of receiving interstate support from the federal NUSF.) The SLC for residence and single-line business

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[14] SWBT proposed that the required access charge reduction depend on the method used to recover carrier contributions to the federal NUSF. If carrier contributions to the federal NUSF are recovered through a mandatory surcharge (as SWBT proposed in its April 12, 1996 comments in CC Docket No. 96-45), then SWBT proposed to use the entire amount of interstate high cost support that it receives to reduce its interstate CCL charges on a revenue-neutral basis. SWBT would use any remaining interstate high cost support it receives to reduce its interstate switching charges on a revenue-neutral basis. If carriers' contributions to the federal NUSF are not recovered through a mandatory surcharge, and remain implicit, then SWBT proposed that only the interstate high cost support it nets on a positive basis after payments to the fund (i.e., NUSF high cost support received less fund contribution) be used to reduce its interstate CCL charges on a revenue-neutral basis. SWBT Comments at 6.

[15] SWBT Comments at 6-7.

[16] In the event an end-user did not have a presubscribed carrier, this charge would be billed directly to the end-user.

customers would be capped at $4.15 as a result of the first increase and capped at a company-wide average rate of approximately $4.80 after the final increase. Multi-line business SLCs, which are currently higher than $4.80, would be reduced immediately to that same cap.[17]

The GPSC finds it interesting that SWBT's comments imply that the CCL charges are not cost-based. However, the GPSC vigorously opposes shifting these charges from IXCs to end users by way of direct monthly charges. This is a fundamental fairness issue. Additionally, the CCL has never been a cost-based rate; it was simply a make-whole element established at divestiture to maintaining existing revenue streams. The GPSC is very concerned about the lack of interest in determining the actual cost to provide switched access for the various components, and determining all rates and charges using consistent cost principles. The fundamental focus on cost is being lost in the rush to reallocate existing revenue streams, yet a transition to competition is not about protecting revenues but establishing wholesale cost principles that are competitively neutral. The retail market should competitively drive the retail prices paid by end users.

The position of SWBT and many others that the SLC may be increased rationalizes that the local loop enables subscribers to connect to the interstate network. The entire telecommunications network can be described as providing such connections between end users; and of course, end users are the ones who will pay all the rates and charges ultimately (including USF or NUSF costs that are recovered, implicitly or explicitly, from end users). Again, this does not justify recovering incumbent LECs' common line costs directly from end users.

The GPSC submits that the actual cost methodology and resultant cost should first be determined. Rate structures necessary to recover the "costs" found by that process should be driven by the manner in which the costs are incurred.

BellSouth commented that CCL revenues should be recovered by means of the first alternative mechanism mentioned by the Commission (NPRM at ¶ 60): a per line charge assessed to each interexchange carrier based upon the number of lines presubscribed to that carrier. In the event that the end user has not chosen a primary interexchange carrier, a per line charge should be assessed on the end user directly. BellSouth asserted that the "dial-around" problem discussed in the NPRM (at

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[17] SWBT Comments at 7.

¶ 60) should not be a problem because interexchange carriers, given their non-dominant status and the Commission's forbearance policies, will be free to recover their assessed per presubscribed line charges by any number of means.[18]

BellSouth added that amounts received from the new Universal Service Fund would first be used to reduce CCL charges; thus, CCL long-term support amounts should be removed from CCL charges and recovered as a part of the new universal service support, in accordance with the Universal Service Federal-State Joint Board recommendations.[19] Any amounts in excess of long term support would also be used to offset CCL charges. If the Universal Service Fund is insufficient to reduce CCL charges to zero, BellSouth stated that the remaining CCL charge amount should be recovered on a per line basis. BellSouth noted that the common line price cap index will already have been reduced by removal of payphone costs. In addition, BellSouth stated, the Commission should permit LECs the flexibility to deaverage the CCL per line charge. Finally, BellSouth noted that if the SLC is reduced per the Joint Board's recommendation (which BellSouth does not support), then that reduction would need to be reflected in increased recovery from other common line cost recovery mechanisms.[20]

Again, the GPSC urges the Commission to address the threshold issue of costs first before determining the method(s) of cost recovery.

For some of the same reasons that the GPSC opposes the SLC, the GPSC opposes the suggestion that end users who have not chosen a primary interexchange carrier should be assessed a per line charge. Retail rates by the IXCs, not direct, mandatory flow-throughs to subscribers, should be the method of recovering LECs' access costs.

Southwestern Bell Telephone (SWBT) asserted that the only corrective measure to end common line cost inefficiencies is for the Commission to eliminate the CCL and shift recovery so loop costs are recovered through increases to the primary single-line SLC. SWBT proposed only one

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[18] BellSouth Comments at 68.

[19] Joint Board Recommended Decision at ¶ 753.

[20] BellSouth Comments at 68.

uniform SLC, the same for residence, single- and multiline business subscribers (because underlying loop costs do not vary by customer class). Similarly, SWBT stated that SLC increases should be allowed unless the Commission finds an increase to be "unaffordable" for end users. SWBT referred to its April 12, 1996 comments in the universal service proceeding (CC Docket No. 96-45) to the effect that the gradual elimination of the interstate CCL charge and the phased-in shift of its recovery to end users will lead to substantial economic gains for consumers as access price reductions generate toll reductions. SWBT added that adverse impacts of SLC increases on telephone subscribership levels seem more remote when coupled with the federal-state Joint Board's recommendations to enhance assistance for lower income participants in the Lifeline program.[21] The Joint Board recommendation was to increase the federal Lifeline benefit from $3.50 to a maximum of $7.00. A federal Lifeline benefit of $7.00 would more than offset Lifeline customers' potential bill increases associated with SWBT's proposal to raise the SLC by $1.30 and to institute a $0.35 port charge.

The GPSC notes that it opposed increasing the federal Lifeline benefit in its reply comments in CC Docket No. 96-45. The GPSC also opposes SWBT's proposal to use the Lifeline program in this fashion. This is a variant of the BellSouth proposal, which the GPSC also opposes, of looking to the universal service fund as a primary source of underwriting incumbent LECs' common line costs.

SWBT's proposed $1.30 increase in the SLC, along with its proposed $0.35 switching port charge, would increase the average SWBT residence customer's total state and interstate billing for basic flat rate local exchange service from $14.28 to $15.88. SWBT's proposal would eliminate continued reliance on interexchange carriers for common line cost recovery. SWBT stated that there is simply no compelling reason for the Commission to be reluctant to allow ILECs the flexibility to eliminate the CCL and to phase in a SLC increase for residential and single-line business lines.[22]

The GPSC's response is that such proposals continue to ignore the threshold need to verify cost levels, prior to addressing the methods of cost recovery, such as continuing certain types of charges to the IXCs, modifying the structure of rates to IXCs, or shifting the costs to the SLC.

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[21] Federal-State Joint Board on Universal Service, *Recommended Decision*, CC Docket No. 96-45, released Nov. 8. 1996, para. 771.

[22] SWBT Comments at 37-38.

5. Increasing or Eliminating the SLC Cap for "Extra" Lines

The GPSC opposes increasing the SLC cap. Recognizing that the Commission proposes to do so only for "extra" lines, such as the second line to a home and multi-line businesses, the Commission still should refrain from increasing end users' flat-rated charges.

In the GPSC's December 4, 1996 Order ruling on the Section 252 arbitration between AT&T and BellSouth, the Commission's Order reflects statements by BellSouth as follows:

> BellSouth believes the local interconnection rate should be based on the intrastate switched access rate to the extent possible. (Tr. 1179.) The components of local interconnection and toll access are functionally equivalent, and therefore, the rate structure should be similar. Basing the local interconnection rate on the switched access rate will facilitate the transition of all interconnection types into a single interconnection rate. As technology changes, competition increases, and interconnection types (e.g., local, toll, independent, cellular/wireless) become more integrated; such a transition is imperative. (Tr. 1179.)
>
> BellSouth has reached agreements with other carriers that include a local interconnection rate based on the current switched access rate minus any non-traffic sensitive rate elements. In Georgia, the resulting negotiated reciprocal compensation rate averages approximately $0.01 per minute. This rate meets the pricing standards of the Act, because it allows for the recovery of BellSouth's costs and is reasonable. The reasonableness of BellSouth's rate is further demonstrated by the agreements that BellSouth has reached with other facilities-based carriers. (Tr. 1180-1181.)

(*In Re: Petition by AT&T for Arbitration of Interconnection Rates, Terms and Conditions with BellSouth Telecommunications, Inc. Under the Telecommunications Act of 1996*, GPSC Docket No. 6801-U, Order Ruling on Arbitration issued December 4, 1996, at 80.)

The GPSC agrees with many of the points raised by the New York Department of Public Service ("NYDPS"). As the NYDPS pointed out, the Joint Board did not, and the Commission should not, find that the recovery of some of the common line costs through interstate carrier access

charges constitutes a universal service support that must be made explicit under the Act. On the contrary, the loop and other "fixed" costs associated with it comprise facilities necessary for creating communication paths between two or more users. Thus the loop benefits not just the subscriber, but all those who use that loop to complete a connection with that subscriber - hence the name "common line." Rates for all services that utilize the loop should recover a portion of its costs.[23]

The NYDPS pointed out that "fixed" costs need not be recovered through non-usage sensitive rates as a pre-condition for competition. Many businesses recover their "fixed" costs through the per-unit prices they charge for goods and services, rather than through up-front subscription fees. Moreover, expecting all services that utilize the loop to recover a portion of its costs may not be inconsistent with efficient pricing, once the relative demand for those services is considered.[24]

Not only did the NYDPS point out that access charge reductions need not result in any SLC increases, its comments also illustrated significant factors which could lead to cutting carrier access charges in half over the next few years.[25] In a nutshell, these factors are: (1) continued growth in interstate access minutes; (2) continued cost savings due to corporate cost-cutting and other efficiencies driven by increasing competitive pressures; and (3) transition to the competitive environment, including revising today's access charge levels to reestablish an appropriate starting point reflecting the competitive environment and the new freedoms accorded LECs to enter new lines of business. The GPSC believes that these factors deserve consideration. Factors such as these would not require the use of controversial prescriptive models or SLC increases.

In sum, the GPSC strongly opposes any increases in the SLC cap because the SLC is a regulatory relic. Any type of increase in the SLC would be a step in the wrong direction.

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[23] NYDPS Comments at 4-5.

[24] NYDPS Comments at 5, also referring to a recent FCC staff analysis which recognized that efficient pricing requires consideration of both demand and costs: "The Use of Computer Models for Estimated Forward Looking Economic Costs," Common Carrier Bureau, January 9, 1997.

[25] NYDPS Comments at 6 & Attachment 1.