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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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

Reply Comments of the Internet Access Coalition

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SUMMARY

A broad range of commenters -- including interexchange carriers, local exchange carriers, the cable industry, information technology companies, electronic publishers, and consumer organizations -- joined with the Internet Access Coalition to support the Commission's tentative decision not to extend carrier access charges to ESPs/ISPs. Although these commenters advanced a wide variety of well-founded arguments, most focused on the adverse effect that imposition of carrier access charges would have on the development and use of the Internet and other enhanced services

In contrast, a relatively small number of parties -- consisting principally of some (but not all) incumbent local exchange carriers -- oppose the Commission's tentative conclusion. These parties assert that the carrier access charge regime should be extended to ESPs/ISPs because the enhanced service industry is no longer an "infant industry"; that imposition of access charges is necessary to enable ILECs to recover the costs of providing service to ESPs/ISPs; and that allowing ESPs/ISPS to use state-tariffed business lines and similar access arrangements, rather than paying federal carrier access charges, is unlawfully discriminatory. These arguments are factually and legally incorrect.

- The fact that the information services industry is no longer an "infant industry" does not provide a basis for requiring ESPs/ISPs to pay carrier access charges, which are intended to recover the cost of network features and functions designed for circuit-switched voice traffic that ESPs/ISPs neither want nor need.

- Moreover, to the extent that the growth of the Internet and other enhanced services has resulted in the ILECs' incurring some additional expenses, revenue increases directly attributable to that growth offsets the additional costs by a factor of more than <u>six-to-one</u>.

- Finally, there is nothing discriminatory about applying a regulatory regime to ESPs/ISPs that is different from the Part 69 regime, which was created specifically to address interexchange carriers' use of the local exchange to originate and terminate circuit-switched voice traffic. To the contrary, what would be unlawfully discriminatory is for the Commission to require ESPs/ISPs -- alone among all business users -- to pay carrier access charges.

Rather than accepting the risks and rewards of the competitive market by deploying data-oriented technologies at economically rational prices, the carriers ask the Commission to guarantee them a source of revenue "up front" by allowing them to impose carrier access charges on ESPs/ISPs. There is no reason to assume, however, that extending carrier access charges to ESPs/ISPs would provide the ILECs with any incentive to deploy appropriate "data-friendly" network technology. Indeed, given the significant new source of revenue that would be created by imposing per-minute access charges on ESPs/ISPs, there is every reason to assume that the ILECs would continue to invest in the current circuit switched infrastructure. Moreover, the ILECs' ability to obtain these revenues could make it more difficult for new competitors to enter local markets, thereby impeding the deployment of new data-oriented facilities and services.

As the Commission has recognized, its upcoming inquiry will provide the appropriate opportunity to identify the most effective means to create incentives for the deployment of services and facilities that will allow more efficient transport of data traffic to and from end users. Pending the outcome of that inquiry, however, the Commission should continue to treat ESPs/ISPs like other end-users, rather than requiring them to pay federal carrier access charges.

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Reply Comments of the Internet Access Coalition

The Internet Access Coalition ("Coalition") hereby replies to the comments filed in response to the Notice of Proposed Rulemaking in the present proceeding.[1] As demonstrated below, the comments provide strong support for the Commission's tentative conclusion that Internet and other Enhanced Service Providers ("ESPs/ISPs") should not be required to pay carrier access charges.

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1 Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, Usage of the Public Switched Network by Information Service and Internet Access Providers, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, CC Docket Nos. 96-262, 94-1, 91-213, 96-263, FCC 96-488 (rel. Dec. 24, 1996) ("Notice").

STATEMENT OF INTEREST

The Internet Access Coalition is dedicated to maintaining the affordability of consumer access to the Internet via analog, circuit-switched telephone lines, and accelerating the availability of affordable, data-friendly consumer connections to the Internet. The Coalition's member associations[2] and companies[3] represent all segments -- hardware, software, and service -- of the information technology industry. The Coalition was formed in the fall of 1996 to provide information on Internet access and technology to policy makers and the public.

I. THE COMMENTS REVEAL WIDESPREAD SUPPORT FOR THE COMMISSION'S TENTATIVE DECISION NOT TO EXTEND CARRIER ACCESS CHARGES TO INTERNET AND OTHER ENHANCED SERVICE PROVIDERS

A broad range of commenters -- including interexchange carriers, local exchange carriers, the cable industry, information technology companies, electronic publishers, and consumer organizations -- joined with the Internet Access Coalition to support the Commission's tentative decision not to extend carrier access charges to ESPs/ISPs. Although these commenters advanced a wide variety of well-founded arguments, most focused on the adverse effect that

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[2] Internet Access Coalition member associations include the American Electronics Association, the Business Software Alliance, the Consumer Electronics Manufacturers Association, the Information Technology Association of America, the Information Technology Industry Council, the Internet Service Providers and Users Association, the Software Publishers Association, and the Voice on the Net Coalition. Collectively, these associations represent more than 12,000 member companies.

[3] Internet Access Coalition member companies include America Online Incorporated, Apple Computer, Inc., Compaq Computer Corporation, CompuServe Incorporated, Digital Equipment Corporation, EarthLink Network, Inc., Eastman Kodak Company, GE Information Services, IBM Corporation, Intel Corporation, Microsoft Corporation, Netscape Communications Corporation, Novell, Inc., Oracle Corporation, and Sun Microsystems, Inc.

imposition of carrier access charges would have on the development and use of the Internet and other enhanced services. As a coalition of consumer groups (consisting of the Media Access Project, Center for Democracy and Technology, the Electronic Frontier Foundation, the Benton Foundation, and the Voters Telecommunication Watch) explained:

> [T]he Internet has assumed an important and growing role in the social, economic, and political life of its users. . . . [Imposing carrier access charges on ESPs/ISPs] would risk quashing the broad participation and high accessibility of what has become a highly important mode of free speech . . . and especially [would] limit use by lower-income citizens.[4]

Other commenters expressed similar views. The Newspaper Association of America, for example, warned that the imposition of carrier access charges on ESPs/ISPs could "impede the complete development of the Internet as a vibrant, competitive communications market-place."[5] Similarly, Microsoft cautioned that the growth of the Internet and other interactive computer networks "might be curtailed or even reversed if information service providers are forced to pay interstate access charges."[6] In light of these potential adverse

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4 Comments of Media Access Project, Center for Democracy and Technology, the Benton Foundation, Electronic Frontier Foundation, and Voters Telecommunications Watch at 2-4 ("Joint Consumer Group Comments"). Another commenter, the Consumer Project on Technology, observed that the "high rates of Internet usage in the United States are the envy of the world" and urged the Commission to maintain "flat rate local telephone rates . . . that encourage[ ] residential Internet usage." Comments of the Consumer Project on Technology at 2.

5 Comments of the Newspaper Association of America at 4 ("Newspaper Comments").

6 Amended Comments of Microsoft at 4; see also Comments of the Interactive Services Association at 2 ("ISA Comments") ("[A]pplying existing access charges to the information services industry could undermine the progress and development of the industry."); Comments of the Commercial Internet eXchange Association at 5, 6 ("CIX

(continued...)

consequences, the National Cable and Television Association correctly concluded that "the last thing the government should do is to take actions that effectively create new costs and entry barriers . . . [that are] likely to have the unfortunate consequence of dampening Internet demand before the full value to consumers of the service is fully realized."[7]

Notably, a significant number of carriers recognize that -- at a minimum -- imposition of the current carrier access charges on ESPs/ISPs would be inappropriate. SNET, for example, explained that "information service providers should not be required to pay current interstate access charges, because they include implicit support and subsidy mechanisms, and are not cost-causative."[8] WorldCom similarly reasoned that "[n]o purpose would be served by imposing the inefficiencies and excessive costs present in current access charges on Internet service providers or other information providers."[9] And BellSouth concluded that extending

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[6](...continued)
Comments") ("[I]mposing access charges on the Internet would set back development of the Internet significantly."); Comments of the Information Industry Association at 3-4 ("IIA Comments") ("Attempts to regulate information services via taxes or inflated access charges will threaten the vitality of the information services market by increasing the costs for information services."); Comments of CompuServe Incorporated and Prodigy Services Corporation at 11 ("CompuServe/Prodigy Comments") ("Any significant increase in the costs for local access likely would deal a devastating blow to the independent consumer information services industry.").

[7] Comments of the National Cable and Television Association at 5 ("NCTA Comments") (emphasis in original).

[8] Comments of Southern New England Telephone Company at 55.

[9] Comments of WorldCom at 104; see also Comments of Sprint Corporation at 58-59 ("[I]nformation service providers should not be required to pay interstate access charges currently, because it would extend a system of non-cost-based rates and inefficient rate structures to an additional class of users with potentially severe detrimental effects on the information industry." (emphasis added)).

access charges to ESPs/ISPs would only disrupt the "marketplace rather than making it operate more efficiently."[10]

II. THE ARGUMENTS ADVANCED BY PARTIES SUPPORTING EXTENSION OF CARRIER ACCESS CHARGES TO ESPs/ISPs ARE FACTUALLY AND LEGALLY WRONG

A relatively small number of parties -- consisting principally of some (but not all) incumbent local exchange carriers -- oppose the Commission's tentative conclusion, and assert that the carrier access charge regime should be extended to ESPs/ISPs. As demonstrated below, the arguments advanced by these parties are factually and legally incorrect. Moreover, many of the issues raised by these parties are more appropriately considered in the Commission's upcoming Inquiry regarding the implications of the use of the public switched network by Internet and other information service providers.

A. The Fact That the Enhanced Services Industry is No Longer an "Infant Industry" Does Not Provide a Basis to Extend Carrier Access Charges to ESPs/ISPs

Several commenters argue that the current regulatory regime -- under which ESPs/ISPs may use the same state-tariffed access arrangements as other business users -- was intended to be a temporary measure to assist the "then-infant" enhanced services industry.[11]

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10 Comments of BellSouth at 87.

11 Comments of Frontier Corporation at 20 ("Frontier Comments"); see Comments of America's Carriers Telecommunication Association at 26-27 ("ACTA Comments"); Comments of Pacific Telesis Group at 75-76 ("Pacific Comments"); Comments of the Telecommunications Resellers Association at 42-43 ("TRA Comments").

Now that "the ESP industry has grown up,"[12] these parties insist, it is too "well developed and too large to be exempt[ed] from access charges."[13]

To be sure, some prior Commission decisions have suggested that the current access treatment of ESPs is "temporary." The Notice in the present proceeding, however, clearly rejects that view. Rather, the Notice expressly recognizes that carrier access charges are part of a "regulatory system designed for circuit-switched interexchange voice telephony."[14] The Notice goes on to tentatively conclude that there is "no reason to extend this regime" to ESPs/ISPs.[15]

The fact that the information services industry has matured plainly does not provide a basis for the Commission to retreat from its tentative conclusion. Indeed, whatever the information services industry's level of development, there is no justification for requiring ESPs/ISPs to pay charges designed to recover the cost of network features and functions that were designed for voice traffic and that ESPs/ISPs neither want nor need.

B. Contrary to the BOCs' Assertions, the Growth of the Internet and Other Enhanced Services has Significantly Increased Local Exchange Carriers' Revenues

Pacific Telesis, joined by Bell Atlantic and NYNEX, assert that the growth of the Internet and other enhanced services has required them to make substantial investments in the

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12 Frontier Comments at 20.

13 Pacific Comments at 76.

14 Notice at ¶ 288.

15 Id.

existing circuit-switched network infrastructure for which they are not receiving adequate compensation.[16] This assertion is entirely unfounded.

ESPs/ISPs are not imposing disproportionate costs on the ILECs. The Coalition recognizes that the growth of the Internet and other enhanced services has imposed some additional costs on the ILECs. However, as the study prepared by the Coalition's consultant Economics and Technology, Inc. ("ETI") demonstrated, these costs are in no way disproportionate to the costs imposed on the ILECs' networks by other end-users. Indeed, the ETI Study showed that Internet and other enhanced service users, as a group, appear to impose less than proportionate costs on the PSTN as a whole.[17]

ESP/ISP use generates significant net revenue for the ILECs. The ETI Study also found that increased revenue from residential second lines used primarily or exclusively to access on-line services exceeds the increased ILEC costs attributable to the growth of these services by a factor of six-to-one.[18] Pacific challenges this conclusion, making the extraordinary

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16 See Joint Comments of Bell Atlantic and NYNEX at 62-63 ("Bell Atlantic/NYNEX Comments"); Pacific Comments at 79-80.

17 See ETI Study at 28-29. Pacific's assertion that 10% of Internet users remain on-line over six hours per day does not provide a basis for the Commission to impose carrier access charges on all ESPs/ISPs. See Pacific Comments at 81. Even if this figure is accurate, it does not demonstrate that users of on-line services as a group impose disproportionate costs on the network. Rather than seeking to limit aggregate demand for on-line services through the imposition of above-cost carrier access charges on all ESPs/ISPs, carriers and ESPs/ISPs need to work together to develop appropriate means to deter inefficient network use by a small minority of on-line customers.

18 ETI Study at 26.

assertion that "the costs of second lines used with Internet access" actually "exceed the flat rate that Pacific Bell receives for the lines."[19] This contention is entirely unfounded.

For several decades, most ILECs (including Pacific) have been deploying multiple lines to each residential customer premises. While the ILECs have had to incur the costs of deploying this capacity, until recently they have realized very little revenue from it. The surge in demand for additional residential access lines caused by the growth of the Internet and other enhanced services, however, has transformed this non-revenue-producing plant into a highly profitable asset. Indeed, as the ETI Study noted, a number of ILECs have expressly attributed their recent high earnings to this development.[20]

Second line revenue, of course, is not the only additional income generated as a result of the growth of the Internet and other enhanced services. Because most business (and some residential) users pay per-minute charges for outgoing calls, increased use of the Internet and other enhanced services by these customers generates additional revenues for the LECs. In addition, some business and residential end-users have purchased ISDN lines, which typically have been priced well above cost, in order to improve their on-line access. Moreover, as the

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19 Pacific Comments at 77 (emphasis added).

20 ETI Study at 25; see also Comments of the Pennsylvania Internet Service Providers on Notice of Proposed Rulemaking at 24-25 ("Pennsylvania ISP Comments") (detailing BOC reports attributing earnings growth to increased second line revenues).

ETI Study demonstrates, ESPs provide additional revenue through their purchases of T-1 lines, ISDN, and a range of "vertical services" -- all of which are provided at premium rates.[21]

Pacific's claim that the growth of the Internet has imposed uncompensated costs on the ILECs directly contradicts statements made by the company's own Chairman and CEO, Philip J. Quigley. In an interview earlier this year he observed that:

> [PacTel is] already making money from the Internet, although many people may not realize it. . . . Internet connection creates a significantly stronger demand for a wide variety of . . . services that Pacific Telesis provides, and that is where our long-term opportunity is. . . . Believe me, it's no coincidence that our voice mail product is doing so well or that 20 percent of our residential customers already have additional access lines.[22]

C. Treating ESPs/ISPs Like Other End-Users is Not Discriminatory

Pacific and U S West also assert that allowing ESPs/ISPs to use state-tariffed business lines, while requiring interexchange carriers to pay federal carrier access charges, constitutes unlawful discrimination.[23] This assertion, however, cannot withstand scrutiny.

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21 ETI Study at 25; see also Comments of America Online, Inc. at 14-15 ("AOL Comments") ("[A]s the LECs themselves have publicized, revenue from second lines and new network uses has increased significantly."); CIX Comments at 4 n.6 (The growth of on-line services "means new revenues [for the ILECs] for additional and second lines of both the Internet end-user and the ISP, as well as additional services (e.g., ISDN) ordered by the ISPs and the end-user." (emphasis in original)); CompuServe/Prodigy Comments 13-14 ("The growth of the Internet actually has produced millions of dollars in new phone company revenues . . . [including] a 285% increase in ISDN lines" in California.).

22 Interview with Philip J. Quigley, Pacific Telesis - Inside Line (Feb. 5, 1997) (www.pactel.com/financial/inside_linei198.html).

23 See Pacific Comments at 74, 77 & 80-82; U S West Comments at 83-85.

Much as U S West may wish it were otherwise, ESPs/ISPs are not "interstate suppliers of telecommunications services."[24] Rather, they are end-users, who use the local exchange to receive calls from subscribers seeking to obtain non-regulated information services. There can be nothing discriminatory about applying a regulatory regime to ESPs/ISPs that is different from the Part 69 regime created specifically to address interexchange carriers' use of the local exchange to originate and terminate circuit-switched voice traffic.

As the Coalition explained in its initial comments, what would be unlawfully discriminatory is for the Commission to "require ESPs/ISPs -- alone among all business users -- to pay carrier access charges."[25] Pacific, however, attempts to avoid this conclusion by trying to distinguish the way in which ESPs/ISPs use the network from that of other large business users.[26] While Pacific is correct that ESPs/ISPs use business lines solely to receive incoming calls, so do numerous other business customers -- such as call centers, mail order providers, radio talk shows, and many financial institutions. Moreover, contrary to Pacific's assertions, ESPs/ISPs do not use "more switch and interoffice network capacity" than other users.[27] Indeed, as the ETI Study demonstrates, the level of traffic carried on the PBX trunk

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24 U S West Comments at 83.

25 Coalition Comments at 17.

26 See Pacific Comments at 77.

27 See id.

of many medium-sized businesses is no different from that carried on the typical ESP/ISP's lines.[28] There is, therefore, no basis to treat ESPs/ISPs differently from other end-users.

III. REQUIRING ILECS TO RESPOND MARKET FORCES -- RATHER THAN ALLOWING THEM TO ASSESS CARRIER ACCESS CHARGES ON ESPs/ISPs -- WILL CREATE INCENTIVES FOR THE DEPLOYMENT OF "DATA FRIENDLY" FACILITIES AND SERVICES

Pacific, Bell Atlantic, and NYNEX assert that the Commission must extend carrier access charges to ESPs/ISPs in order to give incumbent local exchange carriers the incentive to deploy high-speed, high-reliability, "data friendly" networks. If the Commission does not do so, the BOCs insist, there will be no demand for new network technologies because ESPs/ISPs will continue to purchase low-cost, flat-rate business lines.[29] The Commission should not be misled by this argument.

ESPs/ISPs know that their customers want higher speed access to the Internet and other on-line services. In the current intensely competitive market, ESPs/ISPs have a strong economic incentive to meet this consumer demand. For that reason, many ESPs/ISPs would be likely to purchase carrier-provided data services that are widely deployed and priced at economically rational levels. Indeed, any ESP/ISP that continued to purchase flat-rate business line connections into the ILECs' voice-oriented circuit switched network when appropriately priced data-oriented services are available would run the risk of losing customers.

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[28] See ETI Study at 18.

[29] See Pacific Comments at 80; Bell Atlantic/NYNEX Comments at 63,64.

The Commission has stated repeatedly that the goal of its regulations should be to approximate the results that would occur in a competitive market. In such markets, firms raise funds from capital markets and from lenders in order to make the investments necessary to offer new services. If a firm correctly assesses the demand for a new service and prices it correctly, the firm will recover its investment and earn a profit.

Rather than accepting the risks and rewards of the competitive market, however, the carriers ask the Commission to guarantee them a source of revenue "up front." Under this approach, ESPs/ISPs would be required to pay carrier access charges now. The ILECs, in turn, would be given discretion to use this revenue to make the network investments that they deem appropriate. Because ESPs/ISPs would no longer be allowed to purchase state-tariffed business lines, the ILECs would have a "captive audience" for any new data-oriented services they deploy.

The Commission should reject the carriers' approach.[30] There is no reason to assume that allowing ILECs to impose carrier access charges on ESPs/ISPs would provide them with any incentive to deploy appropriate "data-friendly" network technology. To the contrary, given the significant new source of revenue that would be created by imposing per-minute access charges on ESPs/ISPs, there is every reason to assume that the ILECs would continue to invest

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30 See Pennsylvania ISP Comments at 25 ("[I]t is no answer for LECs to say that they want to charge ISPs more (by imposing access charges or per-minute charges on received calls) before the LECs have installed any additional facilities [to meet the demands of data customers]. . . . Once the LEC has installed the equipment that is necessary, then ISPs, like any other customer of the LEC, will pay their fair share of the cost. And, if the cost is unreasonably high, then the ISPs, like any other customer, will look for lower cost alternatives.").

in the current circuit-switched infrastructure. Moreover, the ILECs' ability to obtain these revenues could make it more difficult for new competitors to enter local markets, thereby impeding the deployment of new data-oriented facilities and services.

The Commission need not resolve the question of how its "rules can most effectively create incentives for the deployment of services and facilities [that will] allow more efficient transport of data traffic to and from end users" in the present phase of this proceeding.[31] Rather, as the Commission has recognized, its upcoming inquiry will provide the appropriate opportunity to consider that issue.[32] The Coalition commends the Commission for initiating that inquiry, and intends to play an active role in it. Pending the outcome of the inquiry, however, "the Commission should maintain the status quo and not permit ILECs to impose an access charge on information and Internet access services."[33]

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31 Notice at ¶ 313.

32 See id. at ¶ 283; see also Joint Consumer Group Comments at 4-5 ("[T]here are many broad complex questions surrounding capital investments, technology, and the economics of both voice networks and interactive computer networks. . . . [These issues] merit the careful study of a separate proceeding.").

33 NCTA Comments at 7 (emphasis in original).

CONCLUSION

For the foregoing reasons, the Commission should adopt its tentative conclusion, and continue to treat Internet and other Enhanced Service Providers like other end-users, rather than requiring them to pay federal carrier access charges.

Respectfully submitted,

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