STATE OF CALIFORNIA PETE WILSON, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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February 13, 1997

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street NW, Room 222
Washington, D.C. 20554

Re: CC Dockets 96-262; 94-1; 91-213; and 96-263

Dear Mr. Caton::

Enclosed you will find an original plus 17 copies of the REPLY COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA ON THE NOTICE OF PROPOSED RULEMAKING.

Please return a conformed copy to me in the enclosed, self-addressed envelope.

Sincerely,

Helen M. Mickiewicz

Helen M. Mickiewicz
Principal Counsel

No. of Copies rec'd 0+16
List ABCDE

ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| In the Matter of<br>Access Charge Reform | ) | CC Docket No. 92-262 |
| Price Cap Performance Review for<br>Local Exchange Carriers | ) | CC Docket No. 94-1 |
| Transport Rate Structure and Pricing | ) | CC Docket No. 91-213 |
| Usage of the Public Switched Network<br>by Information Service and Internet<br>Access Providers. | ) | CC Docket No. 96-263 |

**REPLY COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA ON THE NOTICE OF PROPOSED RULEMAKING**

## I. INTRODUCTION AND SUMMARY

The People of the State of California and the Public Utilities Commission of the State of California (California or CPUC) respectfully submit these reply comments to the Federal Communications Commission (FCC or Commission) on the Notice of Proposed Rulemaking (NPRM). In these reply comments, the CPUC responds on limited issues.

## II. RATE ELEMENTS

The NPRM proposes specific treatment for various access charge rate elements. In its opening comments, California addressed several of these in some detail, and will not repeat that discussion here. Rather, the CPUC wishes to address in these comments two specific rate issues.

### *A. Call Set-Up Charges*

In opening comments, California supported the establishment of a call-setup charge, and indicated that it had already adopted call-setup charges for Pacific Bell's intrastate switched access service. Several parties raised concerns with a call-setup charge, and California here responds to some of those specific concerns.

A number of commenters suggested that <u>any</u> call-setup charge should be based exclusively upon completed calls. America's Carriers Telecommunication Association (ACTA), however, indicated that the mere existence of a call-setup charge would leave the field open for "fraud and duplicity", further suggesting that it could become profitable for a carrier to generate incomplete calls on lines presubscribed to a competitor. (ACTA's Comments, p. 9.) In a similar vein, MCI Communications Corporation (MCI) proposes that if the FCC does adopt a per-call rate element, it should be assessed only on calls, not call attempts. (MCI's Comments, p. 76.)

California disagrees with those parties urging that setup charges should <u>not</u> apply to uncompleted calls. Regardless of whether or not a called party answers, the call-setup charge is reasonably assessed as soon as the call is handed off to the interexchange carrier (IXC), because at that point the LEC switch has performed its switching function, and the cost has been incurred.[1] Just over two years ago, the CPUC adopted a call-setup charge for Pacific Bell.

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[1] As Telesis notes, "<u>all</u> <u>originating</u> attempts are billed . . . For <u>terminating</u> access, we bill only when the call completes to an end user". (Telesis' Comments, p. 69, emphasis

Since that charge went into effect, California has had no experience with the sort of duplicity ACTA describes. It strikes California that any carrier engaging in such conduct could be subject to sanctions by the appropriate regulatory body or the courts. The threat of unscrupulous behavior should not prevent the adoption of a cost-causative rate design.

MCI also expresses concerns that dividing the traffic sensitive portion of switching into two elements might require the FCC to make arbitrary assumptions. MCI goes on to state that only if the Commission can separately identify the costs of the two elements should it adopt such a rate structure.

The CPUC can offer the FCC the benefit of California's experience in establishing a call set-up charge for Pacific Bell (Pacific). Before instituting the charge, the CPUC thoroughly reviewed Pacific's proposal. Pacific used an industry average call duration of 3.86 minutes to calculate a call-setup charge that would maintain local switching revenues at then-current levels. In other words, the call-setup charge was balanced by lower switching charges. No party to the proceeding disputed Pacific's assertion that it costs five times more to set up than to maintain a call. Indeed, AT&T commented that, without a call-setup charge, short-duration calls are subsidized by longer-than-average-duration calls. For all of these reasons, California continues to support adoption of a call-setup charge.

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added.)

### *B. Pricing*

A number of commenters, particularly LECs, suggest that the FCC should base access charges on direct embedded costs (DEC). (See for example, Pacific Telesis' Comments, pp. 37-38.) In its comments, Pacific Telesis Group further argues that the FCC should not employ total service long-run incremental costs (TSLRIC) or total element long-run incremental costs (TELRIC) because doing so would prevent the LECs from recovering all of their costs, including operating expenses, capital costs, debt and dividends. (Telesis' Comments, p. 37.)

In our Open Access Network Architecture and Development (OANAD)[2] proceeding, California has decided to employ TSLRIC studies to determine the costs of the LECs' network elements. The CPUC anticipates subsequently setting prices for monopoly elements based on, but not necessarily at, the network costs derived in the OANAD proceeding. The FCC's proposal to revise access charges based on TSLRIC-type studies is consistent with the CPUC's approach.

Telesis incorrectly attributes to the Eighth Circuit the conclusion that "pricing ILEC services and facilities at TSLRIC or even the FCC's version of TELRIC will fail to compensate ILECs adequately for those resources". (Telesis' Comments, p. 37.) The Eighth Circuit has yet to decide this issue. Rather, the court has heard arguments on this question, and presumably will be rendering an opinion in the spring.

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[2] CPUC Docket R.93-04-003/I.93-04-002.

## III. PRESCRIPTIVE VS. MARKET-BASED APPROACH TO ACCESS CHARGE REFORM

The NPRM sought comment on two proposals for access charge reform - the prescriptive approach and the market-based approach. California urged the Commission to consider combining elements of the two approaches, and explained its suggestion in some detail. The CPUC has no refinements to offer here on the proposal contained in its opening comments. California does wish, however, to respond to the comments of other parties on how the FCC should apply the two proposed approaches.

### *A. The State Of Competition In California Local Markets*

In its comments, Telesis asserts that "substantial competition already exists in California", and that "[t]he FCC needs to recognize that competition in California is already very robust both in the access market and the local market". (Telesis' Comments, pp. 12-13.) Telesis has made similar assertions in proceedings before the CPUC.

To date, California has made no finding on the status of competition in its access and local exchange markets. Certainly, the access market has benefited from the entry of numerous competitors in the past decade. Similarly, as Telesis notes in its comments, close to 100 companies have received or are seeking authority to provide local exchange service in California, and roughly half of that number are facilities-based carriers. This fact alone, however, provides limited insight to the FCC on the actual development of competition in California. The

CPUC has yet to review formally the state of competition in California. The CPUC anticipates, however, evaluating this issue in the expected application by Pacific Bell to enter the long distance market. Section 271 of the 1996 Telecommunications Act requires the FCC to consult with the CPUC in order to verify Pacific Bell's compliance with relevant provisions of that section. In providing that consultation, the CPUC expects to consider, among other data, the factual assertions Telesis included in its comments.

### *B. Retention of the Sharing Mechanism*

In its comments, Telesis argues that "sharing should be eliminated from the price cap plan". (Telesis' Comments, p. 43.) The United States Telephone Association (USTA) makes a similar recommendation, asserting that sharing defeats the goals of price cap regulation, and blunts the LECs' incentives to reduce costs, make infrastructure investments, and introduce new services. (USTA's Comments, p. 118.)

California has addressed this issue in the past few years in connection with our periodic review of the New Regulatory Framework (NRF), the incentive-based regulatory scheme applied to Pacific Bell and GTE California (GTEC). In our 1992 NRF Review, we adopted a settlement between GTEC and a number of other parties. The settlement provided for elimination of sharing between the "benchmark" rate of return, and the earnings ceiling, both of which are components of our price cap plan.[3] In that same review, but in a separate

[3] Re GTE California Inc., 50 CPUC 2d 684, 689 (1993). The settlement retained the

decision, we declined to eliminate sharing for Pacific Bell.[4] Subsequently, in our 1995 NRF Review, we postponed further consideration of the sharing issue until the next NRF Review, currently scheduled to commence in 1998.

## IV. THE FCC SHOULD NOT IMPOSE INTERSTATE ACCESS CHARGES ON INTERNET SERVICE PROVIDERS

The NPRM notes the historical exemption from interstate access charges the FCC has accorded enhanced service providers (ESPs). (NPRM ¶ 284.) Based on that fact, plus its assumption that the Internet and other information services would likely not have developed had access charges been assessed against ESPs, the NPRM tentatively concludes that "information service providers should not be required to pay interstate access charges as currently constituted". (NPRM ¶ 288.)

Numerous parties addressed this issue in opening comments, and having reviewed those comments, California agrees with the NPRM's tentative conclusion. To the extent that ESPs are not classified as telecommunications carriers, it would be inappropriate to require them to pay interstate access charges "as currently constituted". The CPUC agrees further with those commenters who urge the FCC to examine the question of whether Internet usage is, indeed, causing costs to the LECs' networks which cannot be recovered.[5] (See Comments of America Online, p. 13; Microsoft, p. 7;

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element we adopted in our original 1989 NRF decision providing that 100% of earnings over the earnings ceiling are returned to ratepayers. (33 CPUC 2d 43, 140 (1989).)

[4] Re GTE California Inc., 55 CPUC 2d 1, 33 (1994). We did, however, modify the sharing mechanism to provide for a return of 70% of earnings above the ceiling to Pacific Bell's

Commercial Internet Exchange Assoc., p. 3.) Certainly, the place to begin the inquiry is in the companion NOI, and the CPUC expects to address this issue further in comments there.

## V. TERMINATING ACCESS

In reviewing our opening comments, the CPUC has determined that some of its statements pertaining to the FCC's proposed treatment of terminating access may not have effectively conveyed our intent. (California's Comments, pp. 17-18.) To clarify, California intended to suggest that the rates for terminating and originating access should be the same. California notes that § 252(d) of the 1996 Act requires that the charges for interconnection be both reciprocal and symmetrical. In keeping with the underlying philosophy which governs the Act's policies, the FCC should consider adopting symmetrical rates for the incumbent LECs' terminating and originating access. Indeed, in setting rates for terminating access in its open network access proceeding (OANAD), the CPUC also expects to consider whether the rates for originating and terminating access should be identical.

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shareholders, and 30% to ratepayers.

[5] For example, some commenters assert that the LECs are more than recovering, in additional revenues gleaned from providing ancillary services, whatever extra costs they may be incurring to accommodate Internet traffic. (See Comments of Compuserve and Prodigy, pp. 13-14; America Online, pp. 12-15.)

## VI. CONCLUSION

The CPUC respectfully submits these reply comments on the FCC's access charge reform NPRM for consideration in this docket.

February 13, 1997

Respectfully submitted,

PETER ARTH, JR.
LIONEL B. WILSON
MARY MACK ADU
HELEN M. MICKIEWICZ

By: Helen M. Mickiewicz
Helen M. Mickiewicz

Attorneys for the People of
the State of California and
the Public Utilities Commission
of the State of California

505 Van Ness Avenue
San Francisco, CA 94102
(415) 703-1319

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Prodigy, pp. 13-14; America Online, pp. 12-15.)

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document entitled **REPLY COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA ON THE NOTICE OF PROPOSED RULEMAKING** upon all known parties of record in this proceeding by mailing by first-class a copy thereof properly addressed to each party on the attached list.

Dated at San Francisco, California this 13th day of February, 1997.

Helen M. Mickiewicz/cyp

HELEN M. MICKIEWICZ

Michael A. McRae
D.C. Office of the People's Counsel
1133 15th St., NW -- Suite 500
Washington, DC 20005

Rafi Mohammed
Federal Communications Commission
2000 L St., NW -- Suite 812
Washington, DC 20036

Terry Monroe
New York Public Service Commission
Three Empire Plaza
Albany, NY 12223

Andrew Mulitz
Federal Communications Commission
2000 L St., NW -- Suite 257
Washington, DC 20036

Mark Nadel
Federal Communications Commission
1919 M St., NW -- Room 542
Washington, DC 20554

Gary Oddi
Federal Communications Commission
2000 L St., NW -- Suite 257
Washington, DC 20036

Teresa Pitts
Washington Utilities and Transporation Commission
P.O. Box 47250
Olympia, WA 98504-7250

Jeanine Poltronieri
Federal Communications Commission
2000 L St., NW -- Suite 257
Washington, DC 20036

James Bradford Ramsay
National Assoc. of Reg. Util. Commissioners
1201 Constitution Ave., NW
Washington, DC 20423

Jonathan Reel
Federal Communications Commission
2000 L St., NW -- Suite 257
Washington, DC 20036

Gary Seigel
Federal Communications Commission
2000 L St., NW -- Suite 812
Washington, DC 20036

Pamela Szymczak
Federal Communications Commission
2000 L St., NW -- Suite 257
Washington, DC 20036

Whiting Thayer
Federal Communications Commission
2000 L St., NW -- Suite 812
Washington, DC 20036

Deboarh S. Waldbaum
Colorado Office of Consumer Counsel
1580 Logan St., Suite 610
Denver, CO 80203

Alex Blinfante
Federal Communications Commission
1919 M. St., NW
Washington, DC 20554

Larry Povich
Federal Communications Commission
1919 M. St., NW
Washington, DC 20554

Jeffrey Sinsheimer
California Cable Television Association
P.O. Box 11080
Oakland, CA 94611

Ginger Taylor, Staff Counsel
Dept. of Consumer Affairs
400 "R" Street, Ste. 3090
Sacramento, CA 95814

Mark Savage
Public Advocates
1535 Mission Street
San Francisco, CA 94103

Rob Vandiver
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Mary E. Burgess
State of New York Department of Public Service
Three Empire Plaza
Albany, NY 12223-1350

Phyllis Whitten
SPRINT
1850 "M" St., STE. 1110
Washington, D.C. 20036

Paul Rodgers
James Bradford Ramsay
NARUC
1102 ICC Bldg.
P.O. Box 684
Washington, D.C. 20044

Randy Cape
Pacific Bell
140 New Montgomery St., Room 1525
San Francisco, CA 94105

Whitney Hatch
GTE Service Corporation
1850 "M" St., NW, Ste. 1200
Washington, D.C. 20036

MCI Telecommunications Corp.
1801 Pennsylvania Ave. NW
Washington, D.C. 20006

David F. Brown
Southwestern Bell Telephone COmpany
175 E. Houston, Room 1250
San Antonio, TX 78205

Myra Karegianes
Illinois Commerce Commission
160 North La Salle St., Ste. C-800
Chicago, IL 60601

R. M. Sbaratta
Bell South Corp.
1155 Peachtree St., N.E.
Ste. 1700
Atlanta, GA 30309-3610

Michael K. Kellogg
Jeffrey A. Lamken
Keving J. Cameron
Kellogg, Huber, Hansen, Todd &
Evans
1301 K St., N.W.
Suite 1000 West
Washington, DC 20005

Martin A. Mattes
Graham & James
One Maritime Plaza, Suite 300
San Francisco, CA 94111

Robert M. Lynch
Durward D. Dupre
Mary W. Marks
J. Paul Walters, Jr.
One Bell Center, Room 3536
St. Louis, MO 63101

Mark C. Rosenblum
Peter H. Jacoby
Richard H. Rubin
AT&T Corp.
Room 32444J1
295 North Maple Ave.
Basking Ridge, NJ 07920

Albert H. Karmer
Robert F. Aldrich
Dickstein, Shapiro, Morin &
Oshinsky, L.L.P.
2101 L Street, N.W.
Washington, D.C. 20037-1526

The Honorable Reed E. Hundt, Chairman
Federal Communications Commission
1919 M St., NW Room 814
Washington, DC 20554

The Honorable Susan Ness, Commissioner
Federal Communications Commission
1919 M St., NW Room 832
Washington, DC 20554

The Honorable Julia Johnson, Commissioner
Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

The Honorable Kenneth McClure, Vice Chairman
Missouri Public Service Commission
301 W. High Street, S u ite 530
Jefferson City, MO 65102

The Honorable Sharon L. Nelson, Chairman
Washington Utilities & Transporation Commission
P.O. Box 47250
Olympia, WA 98504-7250

The Honorable Laska Schoenfelder, Commissioner
South Dakota Public Utilities Commission
500 E. Capital Ave.
Pierre, SD 57501

Martha S. Hogerty
Public Counsel for the State of Missouri
P.O. Box 7800
Harry S. Truman Bldg., Room 250
Jefferson City, MO 65102

Deborah Dupont, Federal Staff Chair
Federal Ccommunications Commission
2000 L St., NW Suite 257
Washington, DC 20036

Paul E. Pederson, State Staff Chair
Missouri Public Service Commission
P.O. Box 360
Truman State Office Bldg.
Jefferson City, MO 65102

Eileen Benner
Idaho Public Utilities Commission
P.O. Box 83720
Boise, ID 83720-0074

Charles Bolle
South Dakota Public Utilities Commission
State Capitol, 500 E. Capital Ave.
Pierre, SD 57501-5070

William Howden
Federal Communicatioons Commission
2000 L St., NW Suite 812
Washington, DC 20036

Lorraine Kenyon
Alaska Public Utilities Commission
1016 West Sixth Ave., Suite 400
Anchorage, AK 99501

Debra M. Kriete
Pennsylvania Public Utilities Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Clara Kuehn
Federal Communications Commission
2000 L St., NW Suite 257
Washington, DC 20036

Mark Long
Florida Public Service Commission
2540 Shumard Oak Blvd.
Gerald Gunter Bldg.
Tallahassee, FL 32399-0850

Samual Loudenslager
Arkansas Public Service Commission
P.O. Box 400
Little Rock, AK 72203-0400

Sandra Makeeff
Iowa Utilities Board
Lucas State Office Bldg.
Des Moines, IA 50319

Philip F. McClelland
Pennsylvania Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120