

GVNW

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February 14, 1997

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

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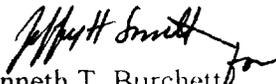
Dear Mr. Caton:

Enclosed are the original and sixteen copies of the reply comments of GVNW Inc./Management in response to the Commission's Public Notice in CC Docket 96-262 (Reference FCC No. 96-488) released December 24, 1996. A diskette containing the filing is also enclosed.

Also enclosed is one copy of our comments to be stamped and returned in the enclosed self addressed stamped envelope.

Any questions regarding this filing may be directed to me at (503) 624-7075.

Sincerely,


Kenneth T. Burchett
Vice President

cc: International Transcription Service
2100 M Street N.W.
Room 140
Washington, DC 20037

Competitive Pricing Division (2 Copies)
Common Carrier Bureau
Room 518
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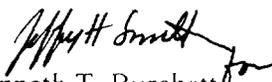
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

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REPLY COMMENTS OF GVNW INC./MANAGEMENT

I. Introduction

GVNW Inc./Management (GVNW) is a management consulting firm which provides financial and regulatory consulting services to independent telephone companies. These reply comments focus primarily on the impact that the issues raised in the Notice of Proposed Rulemaking (NPRM) may have on small LECs and, ultimately, on the provision of quality universal service at affordable prices throughout rural America. As is requested in paragraph 341 that all parties clearly identify the specific portion of this NPRM to which a particular reply comment is responsive, we have organized these reply comments to follow the presentation of the NPRM. We were pleased that the Commission has recognized, in its comments at the 8th Circuit, "that embedded costs should be addressed in the access and universal service proceedings."

Summary of Comments

1. GVNW remains concerned about the precedential nature of decisions in this proceeding with respect to future access charge revisions for rate of return local exchange carriers.
2. The Commission should establish a Network Ubiquity Policy Element (NUPE) to recognize the prior contract that developed the public switched network.
3. In situations where carriers attempt to avoid resale provisions through rebundling, access charges should continue to apply.
4. Residual TIC dollars assigned to the transport category should not be phased out or eliminated until these costs have been assigned to other transport elements, universal service element, or a network ubiquity policy element. Full recovery of the TIC should continue on an interim basis.
5. LECs are entitled to recover all of the difference between interstate-allocated embedded costs and forward-looking economic costs.
6. Rate of return local exchange carriers should use any revenues received from universal service support mechanisms to offset the cost of providing universal service. If any excess universal service revenues exist, they should be used to offset other implicit and explicit universal service requirements.

II. Access Reform for Incumbent Local Exchange Carriers

A. Application of Reforms to Price Cap Carriers and Non-Price Cap Carriers

Many parties agreed with our comment that the access charge reform portion (CC Docket No. 96-262) of this Notice of Proposed Rulemaking will significantly shape the national policy framework necessitated by the Telecommunications Act of 1996. As the Commission considers access reform in this and future proceedings for rate-of-return LECs, it should make certain that any resulting rules include the provision of "sufficient and predictable universal service mechanisms" as mandated in Section 254 (b) (5) of the Communications Act. It is necessary to repeat this policy directive in light of AT&T's comments¹: "*...the same legal and economic bases require reducing the access rates for rate-of-return LECs to efficient cost-based levels...*".

We remain concerned with the precedential nature of any decisions the Commission may reach in this proceeding. Until a Joint Board recommends, and the Commission adopts, changes to the Part 36 separations rules, incumbent local exchange carriers should be permitted to recover the portion of these costs that are assigned to the appropriate access elements.

¹ AT&T comments at page 20, including footnote 31.

B. Applicability of Part 69 to Unbundled Elements

We join other parties in disagreeing with the Commission's tentative conclusion that unbundled network elements should be excluded from the access charge regime. The Interconnection Order creates arbitrage potential for competitors to rebundle elements and avoid access charges.

In situations where a carrier attempts to avoid resale provisions through rebundling, access charges should continue to apply. In a recent arbitration decision, the Louisiana Public Service Commission agrees with this position as they state in part "if AT&T combines all the elements to create services identical to Bell South's retail offerings, AT&T must pay Bell South the same price it would pay if it were reselling the telephone company's services..."

The costs related to providing interstate access services remain allocated to the interstate jurisdiction and all LECs are entitled to their statutory recovery.

III. Rate Structure Modifications

A. Overview

At paragraphs 55 and 56 of the NPRM, the Commission states "... *We seek through these changes to establish rate structures for interstate access services that send more accurate pricing signals to both consumers and competitors.*" While the Commission notes that "rate structure revisions for non-price cap incumbent LECs will be

addressed in a separate proceeding”, we are concerned the Commission may not utilize appropriate institutional memory in taking into account how the rates for interstate access reached their current levels. As stated in their affidavit², Halprin et al note that: *“Through a long series of decisions spanning six decades, federal and state regulators decided to allocate a large share of these costs to the interstate jurisdiction, in order to further explicit public policy objectives, notably the promotion of universal service and the maintenance of low local telephone service rates.”*

Interstate access charges recover both the costs associated with the categories of service reflected in Part 69 of the Commission’s rules, as well as the means by which to compensate LECs for the costs related to developing, maintaining, and updating the ubiquitous public switched network. As Halprin, et al state at page 9: *“Moreover, the LECs are required under the FCC’s separations rules to allocate these costs to the interstate jurisdiction, and are prohibited from recovering the amount allocated to the interstate jurisdiction through intrastate rates.”* To this end, an obligation exists under the Act to provide for the remaining costs and permit the recovery for these costs of ubiquity for all existing rate-of-return LECs.

The underlying rationale for this recovery is stated in the affidavit of Sidak and Spulber³ where they state: *“the Commission’s adoption of pricing for interstate access at TSLRIC or TELRIC would - unless accompanied by a competitively neutral,*

² USTA comments, CC Docket No. 96-262, Attachment 2, “Implications of the Separations Legacy for Implementation of the Telecommunications Act of 1996”, Affidavit of James M. Fischer, Albert P. Halprin, Henry M. Rivera, and Marvin R. Weatherly, page 2 (hereafter Halprin, et al).

³ Affidavit of J. Gregory Sidak & Daniel F. Spulber, USTA Initial Comments, January 29, 1997, page 5, paragraph 13 (hereafter Sidak & Spulber).

nonbypassable charge, such as one placed on interexchange carriers - guaranty that the incumbent LEC could not recover even its forward-looking economic costs."

If the cost of this ubiquity is not to be included with the other network elements, it will be necessary and appropriate to include these costs as a separate element. To this end, we have included as Appendix A, as we did in our comments, proposed Part 69 rule changes related to establishing as a separate access element the cost of universal availability.

B. Common Line

GVNW joins the many other commenters⁴ in support of changing the recovery of the non-traffic sensitive portion of the local loop from a per-minute basis to a bulk-billed basis, assessed to and paid by interexchange carriers.

We do not agree, as is the case with a number of commenters, with the proposal to increase the subscriber line charge cap for secondary residential lines and for multiline businesses in rural areas. We agree with the Illinois Commerce Commission⁵ that such a proposal would provide incentives for customers to avoid such charges by simply purchasing second lines under a different name or by purchasing additional lines from other carriers. The monthly impact for customers of 79 local exchange carriers is demonstrated in Exhibit A of the GVNW comments in this instant proceeding (e.g., Dell Telephone = \$65.41; Peetz = \$63.78; Dubois = \$51.57; Trans-Cascades = \$105.98).

⁴ See e.g., Ad Hoc at 12-13; MCI at 76; NARUC at 12-14; NECA at 10-12.

⁵ Illinois Commerce Commission at 9.

C. Local Switching

GVNW recommends that any changes must allow recovery of the entire interstate portion of costs as allocated per the Part 36 rules.

D. Transport

At paragraph 94, the Commission includes a discussion that initial tandem-switched transport rates were presumed reasonable if set as a weighted average of the per-minute cost of DS3 and DS1 rates calculated using 9000 minutes of use per month. For many non-price cap companies, the actual minutes traversing the tandem circuits is significantly below this level. In its report last February⁶, the Common Carrier Bureau acknowledged that even for some of the nation's largest LECs, the 9000 MOU per month is not reflective of actual usage on those circuits⁷.

In addition, the provision of special access DS3 for most non-price cap companies is a very rare event and even the provision of special access DS1 circuits is relatively uncommon. Thus, the costs for these special access services are impacted by specific customer situations such as the exchange they are provided in and the specific customer location. For small companies, it is inappropriate to tie the pricing of transport to the pricing for special access circuits since special access pricing may be substantially impacted by individual customer provisioning situations. For small companies, the initial

⁶ Preparation for Addressing Universal Service Issues: A Review of the Current Interstate Support Mechanisms, Common Carrier Bureau, Federal Communications Commission, February 23, 1996, Page 120, footnote 394.

⁷ See, e.g., Ameritech Transport Comments, *supra* note 392, at 18-19; Comments of Southwestern Bell, to First Transport Order, *supra* note 371, at 28.

“fix” for local transport pricing should be to remove the specific pricing parameter restrictions that have been imposed by the Part 69 rules. This will allow small companies to more appropriately price tandem switched transport and direct transport and relieve a substantial portion of the cost recovery currently made through the TIC element.

E. Local Exchange Carriers are Entitled to Recovery of Costs Assigned to the Transport Interconnection Charge (TIC)

Local exchange carriers should be permitted to realize a full recovery of the costs that have been allocated to the interstate jurisdiction through the application of the Commission’s Part 36 Separation Rules and to the local transport element through the proper application of the current Part 69 Access Rules.

GVNW recommends that the Commission consider the following in order to reduce the amount in any TIC-type charge: 1) recovery of the tandem switching costs should be fully recovered from the tandem switching rate element; 2) to the extent that Part 69 is inappropriately allocating costs to local transport, changes should be made to correct these cost allocation problems; 3) existing pricing rules in Part 69 such as the 9000 minute rule, relationships to special access pricing, and required usage of DS3/DS1 relationships be dropped for rate of return companies to allow them to price the existing transport rate elements at actual cost levels.

Joint Board action would be required to implement these changes. As there is an inherent regulatory lag in this process, GVNW recommends that the TIC costs should be bulk-billed to interexchange carriers.

IV. Approaches to Access Reform and Deregulation

In paragraph 143, the Commission, in discussing approaches to access reform, states in part: ". . . *in the event an incumbent LEC can show its embedded costs are significantly higher than its forward-looking costs, the Commission would be required to determine how much of the difference incumbent LECs should be given a reasonable opportunity to recover and the method for that recovery.*"

As we state throughout these reply comments, LECs should be afforded the opportunity to recover this entire difference, in a competitively neutral manner. If the Commission were to change access rules without regard to the fact that the Part 36 separations rules still allocate a portion of these public switched network costs to the interstate jurisdiction, they would not be permitting compensatory recovery to the incumbent local exchange carrier.

As stated in the NERA attachment⁸: "*While TELRIC/TSLRIC may be an appropriate starting point as a price floor, it is not a good estimate of the market price of access in a competitive, unregulated market. For a multiproduct firm with substantial fixed costs, incremental cost pricing is unsustainable in the long run and does not allow a firm to recover all of its economic costs of production.*"

⁸ USTA Comments, Attachment 1, "Economic Aspects of Access Reform", National Economic Research Associates, page 17 (hereafter NERA).

V. Market-Based and VI. Prescriptive Approach to Access Reform

While the interexchange carrier comments propose that utilizing interstate access rates as a mechanism to subsidize rates for other services is not sustainable in a competitive marketplace, it is imprudent public policy to disregard the past commitments made to the LECs that have assisted in the development of an ubiquitous public switched network.

B. Goal of Prescriptive Access Reform

It appears clear that a primary objective of the Commission in these proceedings is to initiate significant reductions in local exchange carrier access rate levels. For rate of return LECs, access rate levels today reflect the costs of providing universal service.

The simple fact remains that small LECs are efficient operations, providing universal service where others chose not to serve. To maintain the Congressionally-mandated level of universal service, reductions in access charges must be accompanied by an assured level of sufficient and predictable support from explicit funding sources. It is only through providing this sufficient support that the Commission will enable the continuation of **affordable** telecommunications service to rural Americans.

Despite the claims of the various access customers, no party has refuted one of the irrefutable facts of economics: **If all of the firm's services were sold at TSLRIC/TELRIC, the firm would not recover all of its costs.** AT&T is incorrect in

their assertion⁹ that a "great deal" of demand would be stimulated if access prices were set at TELRIC. Such an assertion assumes that such price changes will be reflected in long-distance prices. GVNW agrees with the statement by Roy Neel, USTA CEO, in a December, 1996, press conference: "LECs have reduced access charges by more than \$9 Billion over the past five years, while long-distance rates have increased more than six times over the same period."

VII. Transition Issues

A. Universal Service Joint Board Recommended Decision

In paragraph 246, the Commission requests comment on how rate-of-return incumbent LECs should treat revenues received from any new universal service support mechanisms to the extent allocated to the interstate jurisdiction.

GVNW submits that it is the intent of the Act that rate of return local exchange carriers should use revenues received from universal service support mechanisms to offset the costs of providing universal service in rural America. If any excess universal service revenues exist, they should be used to offset other implicit and explicit mechanisms.

B. 2. Recovery of Remaining Interstate-Allocated Embedded Costs

Incumbent LECs are indeed entitled and should be permitted an opportunity to recover all of the difference between interstate-allocated embedded costs and forward-looking economic costs that could be created by access reform proposals.

⁹ AT&T, pg. 71.

The rates allowed by a regulatory body for a LECs services must be sufficient to provide a reasonable return to investors. If LECs are not permitted to recover these costs, such actions would be deemed confiscatory and would be subject to review under the Takings Clause.

In their 110-page affidavit, a compendium of relevant court decisions with respect to utility confiscation issues, the seminal cases cited include *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 308-10 (1989); *Bluefield Water Works and Improvement Co. v. PSC of West Virginia*, 262 U.S. 679 (1923); and *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944). Any changes to access rates that result in revenues that do not recover total costs associated with past investment decisions reviewed by regulators do not comport to the intent of the Communications Act of 1996.

In their affidavit, Sidak and Spulber note the particular applicability of the Supreme Court's decision in *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), with respect to the issue of the under recovery of LEC costs due to regulator-imposed pricing of interstate access. Sidak and Spulber also note that a taking may occur in the case of a regulatory agency redefining the intended use of LEC property, unless a reasonable opportunity to recover full costs is preserved. The requirement to unbundle LEC property into network elements clearly redefines the purpose for which the investment was placed, especially in the case of rural LECs. Sidak and Spulber cite the Supreme Court finding in *Northern Pacific Railway Co. v. North Dakota*, 236 U.S. 585 (1915) wherein the court found that if the regulated company has offered itself as an integrated network providing service directly to customers, it cannot be forced to

rededicate those assets to provide service to competitors at price levels that do not afford an opportunity to recover the full economic costs.

Any Commission decisions to prevent a LEC from a compensatory return would violate the LECs due process under the law and undermine its legitimate, investment-backed expectations.

A dual responsibility exists between the federal regulators and state regulators to ensure recovery of embedded investments

Embedded investments have been reviewed and scrutinized by both the federal and the various state commissions. It would be inequitable to review such investments after the fact and reach a different conclusion without a full and fair hearing. In Alfred Kahn's January 14, 1997, letter to Chairman Hundt, Professor Kahn states in part: " *In either event, the Commission's prescription reflects a presumption all too typical of regulators - declaring, in effect, 'we will determine not what your costs are but what they ought to be.'*"

VIII. Other Issues

A. Regulation of Terminating Access

GVNW is opposed to any access charge policy changes which shifts the burden of terminating access charges directly to the end-user customer. We agree with the comments of the Rural Telephone Coalition : " there is no justified reason to treat

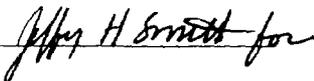
incumbent LECs and competing LECs differently with regard to terminating access. The FCC should not 1) adopt an approach that transfers all recovery for terminating access to the originating caller without adopting universal service mechanisms that would maintain interexchange rate averaging and rural long-distance competition incentives, or 2) discourage call acceptance by charging the calling party.”

CONCLUSION

In conclusion, it is essential that decisions reached with respect to access reform provide for adequate and compensatory cost recovery mechanisms for non-price cap local exchange carriers. In other words, for any access charge reforms to meet with the requirements of the Communications Act, the current implicit subsidies embodied in existing access charge rates will need to be recovered, to the extent possible, through explicit means.

Respectfully submitted

GVNW Inc./Management

By: 

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APPENDIX A

PROPOSED PART 69 RULE CHANGES

Add as Part 69.130 Network Ubiquity Policy Element

A charge that is expressed in dollars and cents shall be assessed upon all presubscribed interexchange carriers by a local telephone company for the provision of universal availability and network ubiquity on the basis of presubscribed lines.

This element is calculated as the difference between the total interstate access revenue requirement and the sum of the revised access charge elements for the same base period, with historical demand levels, as prescribed in CC Docket No. 97-Xxx.

NOTE: Concomitant changes would be required in Part 69.4 and throughout subparts D and E to enable such a change to occur. These will be provided in their entirety in the pending Commission proceeding on access reform for non price cap LECs (CC Docket No. 97-Xxx).