analysis to justify its decision to eliminate the lower SBIs for the ILECs (at ¶ 305, citing Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986)). Quite obviously, this analytic "sauce" applies equally to the IXCs.

D. Miscellaneous Claims Raised in Defense of a Prescriptive Approach by the IXCs Lack Merit.

Various assertions are made by the IXCs in defense of a prescriptive approach. However, none of these contentions are persuasive.

Stand-Alone IXCs -- CompTel argues that unbundled network elements fail to provide competition to ILEC access charges for "stand-alone" IXCs -- i.e., those without local operations (CompTel at 5-6). But this makes no sense. Once integrated IXCs have access to unbundled network elements for origination and termination, there is no question that they would no longer be dependent on the underlying ILEC for access (see Sprint at 33). And since multiple integrated IXCs would be gaining access in this manner, there would be competition among them to supply cheap access to "stand alone" IXCs. Indeed, the IXCs would be hard pressed to argue now that the resale of unbundled network elements would fail to provide adequate competition given their general contentions about the efficacy of resale in comparison to facilities-based competition.

"Inefficient CLEC Entry" -- MCI's concern about "inefficient entry in the access market" absent a prescriptive approach is

also profoundly puzzling. Assuming for the sake of argument that Part 69 has the ability to lure competitive companies into "inefficient entry" (an assumption which ALTS vehemently disputes), how could prevention of that entry ever benefit an access consumer? No doubt some gas station owners could come to regret having moved to a street corner across from a gas station that already exists. But no motorist has even regretted such an event, or has been hurt by any resulting price competition.

It may well be that the <u>investors</u> in a competitive entity, or in the ILEC it chooses to compete with, might well be harmed as a result of an imprudent decision to enter a market. But the Commission does not exist to shelter investors from the consequences of highly-specific investment decisions. While the Commission needs to provide predictability and fair competition in order to assure adequate investor confidence, its ultimate concern must be consumer welfare, and it is manifest that consumers always benefit from competitive entry, no matter how imprudent any particular entry decision proves to be.

Beyond MCI's confusion of <u>investor</u> welfare with <u>consumer</u> welfare, it is also mistaken in its belief that inflated Part 69 rates could somehow "lure" competitors into "inefficient" entry. There is no theoretical basis for such a belief. Robert Lucas won the Nobel Prize in Economics two years ago for his work demonstrating that the economic consequences of public policy

cannot be kept "secret" from rational private parties which possess adequate incentives to discover the truth. While Lucas' work was directed at the Keynesian theory of economic macromanagement through governmental fiscal policy, it is just as true concerning the Commission's regulation of access rates. The Commission could not have successfully concealed the fact that access charges will eventually be deregulated, and thereby dupe some competitive providers to engage in "inefficient entry" based on the assumption that regulated rate levels would continue indefinitely.

RBOC Resistance to Proper Provisioning of Unbundled Network Elements Is Best Handled Through Strict Section 271 Enforcement, Not Access Charge Reductions - The proper approach to RBOCs' failure to provision certain network elements (see CompTel at 6-11) is to enforce the Section 271 checklist strictly, not to adopt the prescriptive approach.[6]

III. RATE STRUCTURE ISSUES

A. The Lack of Tandem Competition Is the Result of Attempts to Handicap Long Distance Competition.

CompTel complains in its initial comments about the absence of tandem competition (CompTel comments at 15-16). The reason should be all too clear. As the Access Charge Reform NPRM openly admits (at ¶ 102): "We took this action [creation of the TIC]

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[6] Furthermore, no geographic averaging should be allowed if prescriptive approach is adopted except to extent paralleled by interconnection deaveraging (AT&T at n. 45).

because of our uncertainty about the specific sources of the costs that were in the tandem switching revenue requirement and because of our concern of possible adverse impacts on small and medium IXCs as the new rate structure was introduced;" (emphasis supplied). The Commission's effort to "strike a balance" among IXCs of different sizes has created underpriced ILEC tandem facilities, thereby increasing the barriers to tandem competition.

Nor is CompTel correct about the extinction of "dedicated" versus "common" transportation (CompTel comments at 25-26; see also Sprint comments at 24-25). While modern network architectures may indeed be narrowing cost difference between common and dedicated transport, they have hardly eliminated the distinction. And where cost-based rate distinctions do exist, price differences based on those distinctions are not necessarily discriminatory (see Sprint comments at 20; contra CompTel comments at 26-27;).

Nor is Sprint correct that ILEC rate structures for tandem transport should be based on airline miles rather than actual mileage. Assuming, rather than demanding maximum efficiency of the ILEC networks would create a tremendous barrier to entry. Circuity of ILEC interoffice network reflects real network efficiencies -- or inefficiencies -- and thus underlying cost structures. Actual mileage should be reflected in the ILECs' rate structure so as to permit meaningful competition by CLECs.

B. In Adopting New Mechanisms for Recovering NTS Costs that Remain After SLC Revenues, the Commission Should Avoid Bulk Billing Mechanisms, Nor Should It Permit Deaveraging of Any NTS Recovery, Including SLCs.

ALTS noted in its initial comments that bulk billing mechanism should be avoided by the Commission as a means of recovering any interstate NTS revenue requirement that remains after all SLC revenues are recovered. This reduces the incentive for an IXC to switch to a competitive access provider. Sprint agrees with ALTS on this point (Sprint comments at 14; see also MCI comments at 77).

At a more general level, ALTS would have thought it obvious that ILEC NTS cost recovery would be the very last ILEC access element to be deaveraged, given that these costs reflect the paradigmatic bottleneck, the local loop, and thereby pose a tremendous opportunity for anti-competitive price discrimination. Unfortunately, some ILECs are now attempting to float this idea (see USTA comments at 52, n.86). ILECs must not be allowed to deaverage NTS cost recovery until effective competition is virtually ubiquitous (MCI comments at 77-78; contra Sprint comments at 17, 42-43).

C. The Identifiable Cost Misallocations in the TIC Should Be Corrected, and the Remaining TIC Should Be Eliminated Via Tandem Competition.

Sprint proposes in its initial comments that the TIC should be reduced by applying the productivity factor against it solely(Sprint comments at 8, 29-30). But this proposal would

undercut the fundamental rationale for the "just and reasonable" status of all price cap rates -- the widespread application of the productivity adjustment. Nor is there any sound policy basis for such an approach. As ALTS pointed out in its initial comments, identifiable cost misallocations in the TIC should first be cured, and then the remainder should be reduced via competition in the tandem market.

D. Miscellaneous Structural Issues

Peak/Off-Peak Pricing - The many initial comments filed in opposition to peak/off-peak pricing point out that this concept should be rejected for same reasons as it was rejected in the Local Competition proceeding (CompTel comments at 27-28; MCI comments at 83; Sprint comments at 19-20). Given the remarkable changes and volatility in traffic created by the expansion of the Internet, it would be almost impossible to attempt to implement peak/off-peak ILEC access pricing at the present time.

New Services Must Remain In Price Caps - USTA asserts in its initial comments that new services need to be removed from price caps(USTA comments at 49-50). According to USTA (id. at 49): "Introduction of new services is in the public interest. Congress clearly stated that telecommunications policy should encourage the provision of new technologies and services and that any person or party opposing a new technology or service must bear the burden of demonstrating that the technology or service is not in the public interest."

ALTS is perfectly happy to bear a heavy burden if it were to oppose introduction of a genuinely new technology. What ALTS vehemently opposes is the ILECs' constant efforts to glue tailfins on some existing service, and attempt to pull it out of price cap regulation on the grounds it is somehow "new." No one wishes to oppose genuine innovation, but the telecommunications industry has too many incremental technological changes going on to permit an accurate and predictable application of such a freedom now.

If the Commission believes that USTA's claims have any merit, it should commence a separate NPRM on this issue, and require the ILECs to formulate appropriate and understandable definitions that cannot be gamed.

SONET, AIN, and Signaling - AT&T is correct that the Commission should adopt cost-causative rate structures for SONET and AIN (AT&T comments at 62-63). These technologies are sufficiently mature to permit identification of cost structures in the ILECs, and replication of those structures in Part 69 rates.

Concerning signaling, Sprint is correct that an ILEC's passage of optional signaling parameters should never be chargeable (Sprint comments at 31).

IV. CONSTITUTIONAL TAKINGS ISSUES

MCI correctly points out in its initial comments that any constitutional "takings" under the Fifth Amendment effected by the Telecommunications Act of 1996 Act can only be assessed as a whole (MCI comments at 30). The ILECs are not entitled to wail and moan about revenue losses they might incur in their access markets without also figuring in the revenues they will gain through the new services permitted by the 1996 Act, and the decision of the 1996 Act not to reauction the immensely valuable cellular spectrum that had been doled out to the ILECs as "wireline" cellular carriers for free. In short, Fifth Amendment claims by regulated entities requires that they include the wheat with the chaff.

As AT&T notes, most of the ILEC underrecovery claims here are entirely unsubstantiated (AT&T comments at 29-42; contra USTA comments at 68-80). However, as ALTS remarked in its initial comment, ILECs which comprehensively document the effect of the 1996 Act upon their overall revenues should be permitted to charge end users for those amounts if they supply the underlying data, and clearly identify the charges to the end users (contra AT&T comments at 29-42). This mechanism would insure that the ILECs could not mount a facial constitutional challenge to the present proceeding.

CONCLUSION

For the foregoing reasons, ALTS requests that the Commission reform the current ILEC access charge regime consistent with the pro-competitive intent of Congress reflected throughout the 1996 Act as detailed in ALTS's initial and reply comments.

Respectfully submitted,

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February 14, 1997

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Replies by the Association for Local Telecommunications Services was served February 14, 1997, on the following persons by First-Class Mail or by hand service, as indicated.

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