

ORIGINAL

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
AMERICAN COMMUNICATIONS SERVICES, INC.**

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FEDERAL COMMUNICATIONS COMMISSION
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Riley M. Murphy
Charles H. N. Kallenbach
James C. Falvey
AMERICAN COMMUNICATIONS
SERVICES, INC.
131 National Business Parkway
Suite 100
Annapolis Junction, MD 20701

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SUMMARY

American Communications Services, Inc. ("ACSI") is an alternative access vendor and a provider of competitive switched local exchange services and, as such, has an obvious and considerable interest in this rulemaking. ACSI has more than 200 employees operating 21 digital fiber networks in small to medium-sized markets throughout the southern United States, with 15 additional networks under construction.

ACCESS REFORM SHOULD FOLLOW A MODIFIED MARKET-BASED APPROACH

ACSI agrees with those commenters that criticize the prescriptive approach to access reform for being overly regulatory and insufficiently focused on the development of a proper competitive marketplace structure. The record in this proceeding does not support the conclusion that the prescriptive approach will lead more quickly to the development of competitive markets and rational pricing. The Commission's prior experience with the long distance industry aptly illustrates that the transition from monopoly to competition cannot be accomplished merely through a flash-cut prescription of lower rates for the monopoly provider.

Instead, the Commission should pursue a modified marketplace approach to access reform. Rather than prescribe incumbent LEC prices, the Commission should establish a set of marketplace incentives that motivates the incumbent LECs to reform their rates in a manner consistent with the operation of a competitive market for access services.

The first step in this process should be the removal of barriers to entry. As ALTS explained in its comments, this requires three basic actions. First, the *Expanded Interconnection* docket must be completed, with resolution of the rates and rules for collocation and term and volume discounts. Second, the interconnection rules must be finalized, a process now largely in the hands of the Court of Appeals. Third, other barriers to entry must be removed, such as state and local rules which burden entrants with discriminatory costs or requirements.

ACSI also agrees with ALTS that a "fresh look" period should be provided to ensure that the delay in establishing effective local competition has not impaired its long term development. ALTS also is correct in urging the Commission to coordinate access reform with changes in the universal service and separations policies.

ACSI supports a "modified" marketplace approach because the Commission's proposed plan is insufficient. The proposal in the *NPRM* lacks adequate incentives for incumbent LECs to avoid anticompetitive and discriminatory pricing and moves toward deregulation too quickly. The plan needs to have more specific criteria for the incumbent LECs to meet before they are rewarded with reduced regulation. Pricing flexibility and related deregulatory measures should be granted incrementally following pro-competitive incumbent LEC actions. In particular, ACSI agrees with WorldCom that the initial threshold for pricing flexibility must be sufficient to motivate incumbent LECs to take all needed measures to stimulate competition and to avoid actions that could impede the transition to competition. Thus, for example, growth discounts, contract tariffs, competitive response tariffs and volume discounts should not be permitted in Phase I.

RATE STRUCTURE CHANGES SHOULD FOLLOW COST CAUSATION

While the comments show substantial agreement on rate structure issues, ACSI urges the Commission to be especially cautious on two fronts. First, the Commission should take care not to inadvertently create new barriers to competitive entry in the process of making rate structure reforms. Second, all incumbent LEC requests to make implementation of the reforms discretionary should be rejected.

As for specific reform issues, ACSI offers the following comments:

- the CCL charge should be a flat per-line charge assigned to each end user's presubscribed interexchange carrier;
- the cap on the subscriber line charge should be removed and the distinction between residential and business eliminated;
- a new flat rate element should be created to cover non-traffic sensitive *and* traffic sensitive local switching costs;
- no rate structure changes are necessary for special access or tandem switched transport services;
- tandem switching rates should be made subject to a uniform proxy ceiling, as proposed by WorldCom; and
- all correctable cost misallocations in the TIC should be quantified and removed.

Finally, ACSI agrees with those commenters who believe there should be no regulation of terminating access services provided by new entrants. Since competitive

providers lack market power, regulation of their terminating access services is unnecessarily regulatory.

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**REPLY COMMENTS OF
AMERICAN COMMUNICATIONS SERVICES, INC.**

American Communications Services, Inc. ("ACSI"), by its attorneys, hereby submits these Replies to the comments of various parties on the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.¹

I. INTRODUCTION

ACSI is a publicly traded Delaware corporation that provides competitive local access and exchange services through nearly two dozen operating subsidiaries. Headquartered in Annapolis Junction, Maryland, ACSI currently has more than 200 employees operating 21 digital fiber networks in small to medium-sized markets throughout the southern United States. An additional 15 networks presently are under construction.

¹ *Access Charge Reform*, CC Docket Nos. 96-262 *et al.*, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, FCC 96-488 (rel. Dec. 24, 1996).

As an alternative access vendor and a competitive provider of switched local exchange services, ACSI's stake in this rulemaking is considerable. ACSI applauds the Commission's latest initiative to overhaul the current access charge regime. For far too long, access charges have been unrelated to the manner in which costs are incurred and embedded with subsidies that have an alarming potential to create uneconomic and anticompetitive incentives.

While virtually all parties agree on the need to reform the current access charge regime, perhaps the most critical--and most controversial--issue is the way in which such reforms will be achieved. Although the 1996 Act mandates the creation of competitive telecommunications markets at every level, the corresponding transition from regulated prices to market-driven prices cannot be realized overnight. Although theoretically attractive, as proposed, the Commission's market-based plan will not transform magically the current monopolist-dominated market into a competitive arena where real competitive alternatives flourish and thereby drive prices toward costs. The ability of regulators to replicate competitive outcomes through the use of prescriptive regulation is even more suspect.

In light of the current nascent stage of competition and the staying market power of incumbents in the access market, the Commission must be stalwart in its efforts to adopt access reforms that will ensure that the goals of the 1996 Act are achieved in effect and not just in theory. Accordingly, ACSI urges the Commission to adopt a modified--and fortified--version of its market-based approach. In so doing, the Commission will need to resist temptations to substitute theoretical assumptions about effective competition for quantitative measurements of events actually taking place in the access market today. Moreover, to

ensure the most expeditious development of meaningful competition in the access market, a fortified market-based approach must follow regulatory reforms designed to eliminate barriers to entry to the access market and include regulatory measures designed to bring about and respond to competition in an incremental and time-certain manner.

II. NOTHING IN THE RECORD SHOWS THAT THE PRESCRIPTIVE APPROACH IS THE BETTER PLAN (¶¶ 218-240)

ACSI agrees with those commenters that view the Commission's proposed prescriptive approach to access charge reform as being inconsistent with the pro-competitive goals of the 1996 Act and the Commission's corresponding policy goal of transitioning to competitive markets through deregulation.² At best, the prescriptive approach should serve as part of a back-up, market-based plan that incorporates prescriptive pricing as a "stick" to be used in case other regulatory incentives fail to combine with market forces and prove unable to overcome incumbents' strangle hold on local and access markets.³ At worst, the prescriptive approach could set artificially low rates which, rather than fostering competition, could enable incumbent LECs to snuff out entirely the few competitors that already exist.⁴

The record in this proceeding, the Commission's laudable experience in bringing competition to the long distance market, and universally accepted economic principles all

² See, e.g., *Comments of the Association for Local Telecommunications Service (ALTS)*, CC Docket Nos. 96-262 *et al.*, at 21 (filed Jan. 29, 1997)("ALTS"); and *Comments of BellSouth*, CC Docket Nos. 96-262 *et al.*, at 40-42 (filed Jan. 29, 1997)("BellSouth").

³ See *Comments of WorldCom*, CC Docket Nos. 96-262 *et al.*, at 73-74 (filed Jan. 29, 1997)("WorldCom").

⁴ See *ALTS* at 21-22.

point to the fact that the prescriptive option is not the best approach to access charge reform. First, there simply is no evidence in the record that suggests--let alone sufficiently makes the case--that using the prescriptive approach will lead more quickly to the development of competitive markets and rational pricing. As the comments of the incumbent LECs and the Eighth Circuit's stay of the Commission's interconnection pricing rules indicate, any attempt by the Commission to prescribe prices will be halted by endless, multi-fronted, guaranteed-revenue-stream-fed litigation.⁵ Moreover, if the interconnection negotiations and state arbitration proceedings of the last year are any indication, incumbent LEC gaming will compound further the complications associated with such an approach.⁶

Although some IXCs supported the use of a prescriptive approach, they provided no compelling reasons as to why it would work.⁷ For example, in advocating implementation of a prescriptive approach, AT&T claims that the "[r]einitialization [o]f [p]rice [c]laps [i]s

⁵ See, e.g., *Comments of GTE*, CC Docket Nos. 92-262 *et al.*, at 79-87 (filed Jan. 29, 1997)("GTE"); and *Joint Comments of Bell Atlantic-Nynex*, CC Docket Nos. 92-262 *et al.*, at 16-17 (filed Jan. 29, 1997)("Bell Atlantic-Nynex").

⁶ Far too many of ACSI's own experiences in negotiating, arbitrating and attempting to implement interconnection agreements are illustrative of such gaming by incumbent LECs. For example, after months of negotiations and the conclusion of arbitration proceedings by the Texas Public Utility Commission ("Texas PUC"), Southwestern Bell has sued in both federal and state court seeking to enjoin the Texas PUC and ACSI from implementing the arbitrated interconnection agreement between the two carriers. *Southwestern Bell Tel. Co. v. AT&T et al.*, Civil Action No. A-97CA-044 (W.D.T.X. Jan. 21, 1997); *Southwestern Bell Tel. Co. v. Public Utility Commission of Texas et al.*, Civil Action No. ___ (Dist. Ct. of Travis, TX).

⁷ See, e.g., *Comments of AT&T*, CC Docket Nos. 92-262 *et al.*, at 20-29 (filed Jan. 29, 1997)("AT&T"); and *Comments of MCI*, CC Docket Nos. 92-262 *et al.*, at 7-11 (filed Jan. 29, 1997)("MCI").

[e]asier [t]o [a]dminister [t]han [t]he '[m]arket-[b]ased' [a]pproach."⁸ What AT&T ignores is that administrative convenience, in and of itself, is not a justifiable reason for selecting one plan over another.

MCI also supports the prescriptive approach and argues that the Commission should "require the incumbent LECs to justify access charges based on forward-looking costing principles to send appropriate pro-competitive signals to the local access market."⁹ However, MCI fails to appreciate that local access markets currently are not competitive and that prescriptive pricing likely will send the wrong pricing signals. Only a competitive marketplace is capable of sending "correct" pricing signals--prescribing prices that send the wrong signals will inhibit competitive entry and the development of market-driven pricing.

As TCG and ALTS aptly noted, the Commission's own experience in wrenching the long distance market from AT&T's monopoly control was not accomplished overnight through a prescriptive flash-cut to lower rates and effective competition.¹⁰ Rather, the Commission (aided by Judge Greene and the MFJ) implemented a series of regulatory reforms that included removal of barriers to entry into the long distance market and a carrot and stick approach that provided appropriate incentives for pro-competitive behavior (largely disincentives for anti-competitive behavior) by and subsequent regulatory relief for the

⁸ *AT&T* at 22.

⁹ *MCI* at 7.

¹⁰ See *Comments of TCG*, CC Docket Nos. 92-262 *et al.*, at 33-42 (filed Jan. 29, 1997) ("*TCG*"); *ALTS* at 2.

dominant carrier. Not until competition existed at a real quantifiable level sufficient to displace AT&T's dominant status did the Commission complete deregulation.

Finally, the Commission's proposed reliance on a prescriptive pricing plan has no economic foundation. In short, there is no reason to believe that the Commission's prescription of prices will lead to the development of competition in access markets necessary for the establishment of market-checked rational pricing. As stated above, and as recognized by the comments of many parties, access markets are not currently competitive.¹¹ Prescribing cost-based rates for monopoly providers will not make them so.

If well managed, a monopolist, like any other business entity, will act in its own self interest. A monopoly entity, unless provided with sufficient incentive to act otherwise, naturally will act in ways to protect and preserve its monopoly. Despite many attempts to cloak the wolf in sheep's clothing,¹² a monopolist's interests by definition are neither pro-competitive nor pro-consumer. The imposition of cost-based pricing does nothing to change this.

As the Commission proved in the example of AT&T's deregulation set forth above, the only way to change the inherent behavioral pattern of a monopolist is to employ a "do this or else . . ." approach (sometimes referred to as the carrot and stick approach, but perhaps more accurately dubbed the candy and club approach--particularly at the beginning of the process). If competition is to develop and the market is to set prices, then monopolists

¹¹ See, e.g., *ALTS* at i and *Comments of LCI International*, CC Docket Nos. 92-262 *et al.*, at 8 (filed Jan. 29, 1997) ("*LCI*").

¹² See, e.g., *GTE* at 19-20.

must be provided with disincentives for acting in natural but anti-competitive and anti-consumer ways. The mere prescription of cost-based rates does nothing in the way of preventing or even discouraging anti-competitive behavior by the incumbent LECs. In fact, the Commission's proposed prescription of access prices could be manipulated by the LECs so that artificially low pricing in high density zones discourages further competitive entry and aids incumbent LECs in snuffing-out existing competitors altogether.

III. THE FCC'S MARKET-BASED APPROACH MUST BE MODIFIED AND FORTIFIED SO THAT COMPETITION IS ALLOWED TO DEVELOP (¶¶ 140-217)

A. An Effective Market-Based Approach to the Deregulation of Dominant Carriers Must Incorporate or Be Preceded by the Removal of Entry Barriers

No reform of access charges can work without the Commission first setting the proper competitive foundation. The Commission must remove existing barriers to entry prior to--or as the initial phase of--reforming access charges. As ALTS adroitly noted in its initial comments, this will involve critical action on at least three fronts.¹³ First, the Commission must complete its *Expanded Interconnection* proceeding.¹⁴ Among the issues that remain unaddressed in that proceeding are rates and rules for physical and virtual collocation, and the ability of competitive LECs to purchase term and volume discounted offerings from incumbent LECs. Additionally, ACSI endorses ALTS' call for the

¹³ ALTS at 5-14.

¹⁴ *Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141.

Commission to renew its "fresh look" period in order to ensure that the goal of establishing effective access competition has not been impaired by the long delay in completing the *Expanded Interconnection* proceeding.¹⁵

Second, uncertainty surrounding the interconnection rules set forth in the Commission's *Local Competition* order must be lifted so that potential competitors can attract the capital necessary for market entry. Although this matter largely is in the hands of the Eighth Circuit, it is important to note that the stay of these rules likely will retard the speed and scale of competitive entry into access markets. (Most facilities-based competitors enter the access market first and then move forward with plans to compete in the switched local services arena.)

Third, competitive barriers to entry outside the control of the incumbent LECs must be removed. State and local governments, utilities and private building owners have created numerous barriers that must be corrected and, when within the Commission's jurisdiction, preempted. True local and access competition cannot be realized unless the Commission does everything within its power to preempt every anti-competitive and discriminatory state law, local franchising requirement and utility pole attachment prerequisite.

Finally, as several commenters noted, any plan to reform access charges must be coordinated carefully with the implementation of universal service and separations reform.¹⁶ Indeed, it makes little sense to reform access charges without first assessing the impact of

¹⁵ *ALTS* at 11.

¹⁶ See, e.g., *ALTS* at 14; *Comments of U S West*, CC Docket Nos. 96-262 *et al.*, at 19 (filed Jan. 29, 1997) ("*U S West*").

universal service and separations reform. Any other approach almost certainly will guarantee that the Commission will be redoing access reform in the near future. Accordingly, ACSI urges that the Commission pause until its plans for universal service and separations reform are adopted and can be incorporated properly into any access charge reform plan.

B. There Is No Evidence to Suggest That Incumbent LECs Will Use Additional "Pricing Flexibility" In Pro-Competitive Ways

Like many commenters, ACSI believes that a market-based approach will drive rates toward competitive levels more reliably than would a prescriptive approach.¹⁷ However, the Commission's proposed market-based approach is flawed and must be restructured dramatically if it is to provide the desired results. As currently structured, the Commission's market-based plan reads as a pretext for deregulating the incumbent LECs. However, if competitive access markets and rational pricing is the agreed upon goal (and the majority of commenters agree that it is), the Commission would be wiser to focus first on ensuring competitive entry and preventing anti-competitive or discriminatory conduct.¹⁸

Accordingly, ACSI submits that the Commission's proposed market-based approach is unworkable because it triggers deregulation too quickly and is largely devoid of disincentives for anti-competitive and discriminatory behavior by the incumbent LECs. For example, the regulatory reforms that the Commission proposes to grant to incumbent LECs in Phase I of its market-based approach are among those that the incumbent LECs want

¹⁷ See, e.g., *Comments of Ameritech*, CC Docket Nos. 96-262 *et al.*, at 36 (filed Jan. 29, 1997)(*"Ameritech"*); *WorldCom* at 72.

¹⁸ See, e.g., *ALTS* at 5-14; *WorldCom* at 24-26.

most. For that reason alone, they should be held back until there is actual competition and not merely the potential for it--the carrot and stick approach will not work if all the carrots are given out up front. More importantly, those reforms--including geographic deaveraging, RFP and contract rate authority--promise to give incumbent LECs the unchecked "pricing flexibility" necessary to smother competition in its infancy. For this reason, those reforms must be made contingent upon an incumbent LEC's showing of quantifiable and significant competition in the relevant access market.

Not surprisingly, the incumbent LECs argue that they should be given even more pricing flexibility in Phase I of the Commission's market-based approach. For instance, BellSouth and other incumbent LECs advocate that Phase I should include deregulation of all "new services".¹⁹ If use of the word "new" on other consumer products gives any indication ("new" *improved* Tide; "new" *blue* M&Ms; "new" Crest *with* sparkles; etc.), the incumbent LECs are hoping to create a loop-hole large enough to drive a truck through. (That truck would be a steamroller headed straight for access competitors like ACSI.)

In short, the Commission's proposed two-phase market-based plan appears to rely on incumbent monopolists to think good competitive thoughts and to take actions that will open markets to competition. Such a plan simply will not suffice. As explained above, exchanging significant regulatory relief for merely making competition possible--as the Commission proposes to do in Phase I of its market-based plan--will expose existing

¹⁹ *BellSouth* at 37-38. In fact, BellSouth argues that the Commission should grant incumbent LECs significant pricing flexibility even *before* the Commission's modest proposed conditions for Phase I of its market-based approach have been met. *Id.* at 3-10.

competitors to anti-competitive pricing activity by incumbent LECs and all but guarantee the end of further competitive entry.

And there is precious little left in Phase II of the Commission's plan that would entice the incumbent LECs down the path toward competition. The incumbent LECs' path toward Section 271 approval illustrates that even with a large prize (in-region interLATA entry) dangled in front of them, the incumbent LECs must be prodded, cajoled and outright ordered not to act in anti-competitive ways. Time and again during the process of negotiating and implementing interconnection agreements, incumbent LECs have promised one thing and delivered another--or nothing at all. This is evidenced by ACSI's own formal complaint against BellSouth and by numerous other proceedings in which new entrants have documented anti-competitive behavior by incumbents.²⁰ Once incumbent LECs have the pricing flexibility they crave, they no longer will have any incentive to act in pro-competitive ways. Moreover, the Commission will have given them the tools to eliminate what little competition they face already. Thus, only when an incumbent has taken the actions necessary so that competition actually takes place should significant regulatory relief be granted. ACSI comments on several parties' astute suggestions for restructuring the Commission's two-phased plan below.

²⁰ Despite entering into an interconnection agreement with BellSouth, ACSI is experiencing unwarranted and unexplained delays in receiving unbundled loops and number portability from BellSouth and unreasonable service interruptions in switching customers to those loops. *American Communications Services, Inc. v. BellSouth Telecommunications, Inc.*, E-97-9 (filed Jan. 6, 1997).

C. The Commission's Proposed Market-Based Plan Must Incorporate Pro-Competitive Regulatory Incentives

ACSI agrees with ALTS and WorldCom that the success of any access reform plan hinges upon providing the incumbent LECs with the appropriate incentives for pro-competitive behavior and disincentives for anti-competitive behavior.²¹ Pricing flexibility and related deregulatory measures must be granted incrementally in exchange for pro-competitive incumbent LEC action. In the case of anti-competitive action, deregulatory measures must be held back or revoked.

To this end, ACSI believes that ALTS offers the most insightful suggestions for the sequencing of incumbent LEC deregulation.²² Like many commenters, ACSI believes that the principal shortcoming of the Commission's proposed market-based plan is that it fails to link logically the timing of grants of additional incumbent LEC pricing flexibility to the quantifiable emergence of effective competition in access markets.²³ ALTS suggests that the original three phase plan for incumbent LEC deregulation set forth in the *Price Cap*

²¹ See, *ALTS* at 4, 17-20; *WorldCom* at 72-91.

²² *ALTS* at 17-20.

²³ See, e.g., *Id.*; *TCG* at 42-46; *WorldCom* at 79-86. ACSI also agrees with ALTS' and other commenters' conclusions that the Commission's test for measuring substantial competition in the provisioning of an access service should be rigorous and comprehensive. See *ALTS* at 3-4, 14-17; *WorldCom* at 86-87. In particular, ACSI believes that the Commission's review of competitiveness for particular access services should incorporate measures of demand responsiveness, supply responsiveness, market share and the incumbent's pricing behavior. Accordingly, ACSI rejects incumbent LECs' contentions that the market for special access services at DS-1 and higher capacities is sufficiently competitive to justify removal from price caps. See, e.g., *Ameritech* at 32-33; *Bell Atlantic-Nynex* at 55-57. ACSI also rejects incumbent LEC claims that other access services are sufficiently competitive to warrant deregulation at this time. *Id.*

Second FNPRM represents a more rational sequencing of incumbent LEC deregulation than that contained in the Commission's two-phase market-based plan.²⁴ ACSI agrees.

ACSI also agrees in principle with the broad guidelines for modifying and fortifying the Commission's market-based proposal set forth by WorldCom.²⁵ Specifically, ACSI agrees that the Commission's market-based plan should: "(1) ensure that the initial threshold for pricing flexibility is high enough to give the incumbent LECs a serious incentive to implement all the measures necessary to stimulate competition; and (2) . . . not permit the incumbent LECs to implement measures that could unreasonably impede competition during the transition toward full competition."²⁶ ACSI also agrees that the incumbent LECs should have to meet a rigorous showing--at least as high as the "competitive checklist" under Section 271 (and preferably higher)--to establish that the triggering conditions for Phase I--"Potential Competition"--have been met.²⁷

ACSI also agrees with those parties that believe that the Commission's plan fails to incorporate appropriate checks on discrimination and cross-subsidization.²⁸ Thus, ACSI also endorses WorldCom's proposal that the Commission should require that incumbent LECs' non-recurring charges, for both access and local exchange services, be cost-based and

²⁴ *ALTS* at 17-20; *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, Second Further Notice of Proposed Rulemaking, FCC 95-393 (rel. Sept. 20, 1995).

²⁵ *WorldCom* at 72-91.

²⁶ *Id.* at 74-75.

²⁷ *Id.* at 75.

²⁸ *See, e.g., ALTS* at 17-18; *WorldCom* at 24.

nondiscriminatory.²⁹ Additionally, ACSI agrees with WorldCom that incumbent LECs should be required to charge identical cost-based non-recurring charges to customers for service reconfigurations--regardless of whether the reconfiguration is intended to shift some or all services from the incumbent LEC.³⁰

Along these lines, ACSI urges the Commission to delay granting forms of pricing flexibility that may enable incumbent LECs to discriminate until Phase II at the earliest. Specifically, ACSI agrees with WorldCom that growth discounts, contract tariffs, competitive response tariffs, volume discounts, and streamlined regulation of "new" services should not be permitted in Phase I.³¹ However, ACSI disagrees with WorldCom's proposal to permit geographic deaveraging of access services in Phase I and to move geographic deaveraging of the SLC and differential pricing of access services from Phase II to Phase I.³² These forms of pricing flexibility are no less subject to discriminatory incumbent LEC implementation

²⁹ *WorldCom* at 77.

³⁰ *Id.* at 77-78. ACSI also agrees with WorldCom's assessment that the Commission needs to be more vigilant in its enforcement of rules that prohibit various forms of incumbent LEC discrimination. See *Worldcom* at 78-79; *MFS Motion for Declaratory Ruling Proscribing Discriminatory Application of Local Exchange Carrier Nonrecurring Charges*, CC Docket No. 91-141 (filed May 15, 1995)(alleging numerous cases of incumbent LEC violations of the nondiscrimination policy); *American Communications Services, Inc. v. BellSouth Telecommunications, Inc.*, E-96-20 (filed Feb. 15, 1996)(alleging discriminatory and anti-competitive application of nonrecurring reconfiguration charges).

³¹ *WorldCom* at 80.

³² *Id.* at 79-80. At the very least, geographic deaveraging should not be permitted until incumbent LECs offer loops at geographically deaveraged rates. See *MFS Petition for Preemption and Declaratory Ruling on Geographical Deaveraging*, CCB-CPD 97-1 (filed Dec. 20, 1996).

than any of those listed above and, thus, it would be no more appropriate to permit them in the stage of access reform where competition merely has the *potential* to develop.³³

ACSI agrees with WorldCom that if the Commission were to permit streamlined regulation of incumbent LECs' new service offerings, that treatment should be limited to truly new services capable of passing the following criteria: (1) the service has never been offered before; (2) the service provides significantly different functionality than existing offerings; (3) the service is not a bottleneck service; and (4) the service is not subject to a significant cross-elasticity of demand with an existing service.³⁴ Additionally, ACSI believes that the incumbent LECs should bear the burden of proving that new service offerings meet these criteria and that the Common Carrier Bureau should approve incumbent LECs' applications for streamlined regulation of new services prior to the offering of any new service.

Finally, ACSI believes there is merit in WorldCom's proposal to use the threat of prescriptive rate regulation as the ultimate incentive for incumbent LECs to move along the path toward competition and phased-in access deregulation.³⁵ ACSI believes that it may be necessary to incorporate the prescriptive approach as a fall-back position in cases where incumbent LECs have refused to cooperate and for geographic areas that fail to attract competitive entry. Thus, ACSI endorses Commission prescription of cost-based rates for study areas in which incumbent LECs have not satisfied the Section 271 competitive checklist

³³ See *WorldCom* at 80.

³⁴ *Id.* at 85-86.

³⁵ *Id.* at 73-74.

and cannot demonstrate full implementation of interconnection agreements by January 1, 1999.³⁶ With regard to this fall-back prescriptive approach, ACSI agrees with the view that prescription should be phased-in over a five-year period.³⁷

IV. RATE STRUCTURE CHANGES MUST FOLLOW COST CAUSATION TO THE EXTENT ADMINISTRATIVELY FEASIBLE (¶¶ 55-139)

ACSI applauds and endorses the Commission's efforts to restructure access charges so that they reflect more accurately their underlying economic costs. Rate structure reforms clearly will be instrumental in creating an environment conducive to the development of access and local exchange competition. Although there appears to be considerable agreement among the parties on rate structure issues, ACSI urges the Commission to be particularly cautious on two fronts. First, ACSI urges the Commission not to go too far--some of the reforms it has set out for consideration could result in the creation of additional entry barriers for access competitors. Rate structure reforms should not be made in cases where they would not be administratively feasible--particularly when the amounts involved are just too small.

Second, ACSI believes that the Commission should reject all incumbent LEC proposals for discretionary implementation of rate structure reforms.³⁸ If the Commission mandates a rate structure reform, it should more accurately reflect cost causation and it

³⁶ *Id.*

³⁷ *See ALTS* at 23.

³⁸ *See, e.g., Bell Atlantic-Nynex* at 39 and 40.

should be administrable--there are no compelling reasons why a reform meeting that standard should be optional.

A. The Carrier Common Line Charge Should Be a Flat Per-Line Charge Assigned to Each End-User's Presubscribed Interexchange Carrier (¶¶ 57-63)

ACSI agrees with LCI, BellSouth and all other parties who support the view that the current per-minute carrier common line ("CCL") charge should be replaced with a flat per-line charge assigned to each end-user's presubscribed interexchange carrier.³⁹ Aside from the fact that a flat-rated charge more accurately reflects the way in which non-traffic sensitive ("NTS") loop costs are incurred, the new CCL charge would be more predictable as well as easier to bill, collect, audit and confirm.

With regard to the recovery of NTS loop costs, ASCI agrees with ALTS and TCG--all capacity/bulk-billing plans should be prohibited.⁴⁰ The Commission should reject all capacity plans because they impair competitors' ability to compete with incumbent LECs. Because all capacity plans include a trailing recovery component--that is, they rely on historical performance measurements--IXCs subject to such recovery plans will be assessed access charges by incumbent LECs even after they have switched to a competitive access provider and are subject to their charges as well. With such potential for double and overlapping charges, it is not difficult to see why capacity plans would help to deter an IXC from switching to an access competitor.

³⁹ See, e.g., *LCI* at 24; *BellSouth* at 68.

⁴⁰ *ALTS* at 24-25; *TCG* at 27-28.

B. Caps On All SLCs Should Be Removed (¶¶ 64-70)

ACSI agrees with AT&T, GTE and other commenters who hold the position that the subscriber line charge ("SLC") cap for residential and multi-line businesses should be lifted.⁴¹ In fact, *all* SLC caps should be removed.⁴² This is consistent with the Commission's long-standing policy of shifting costs to the cost causer. Moreover, the arbitrariness of current SLC caps appears to be at odds with the 1996 Act.

Additionally, ACSI endorses Southwestern Bell's view that the distinction between residential and business lines has no place in the new regulatory environment created by the 1996 Act and should be eliminated.⁴³ Whether a line is connected to a business or a residence has no bearing on its cost. Accordingly, the SLC should not differ based on customer class. Moreover, the SLC should not vary based on the number of lines utilized by a residence or business.

C. A New Flat Rate Element Should Be Created to Cover NTS and TS Local Switching Costs (¶¶ 71-79)

The case of local switching is one in which ACSI urges the Commission to be mindful of administrative feasibility concerns. In its initial comments, TCG questioned whether establishing a per-minute traffic sensitive ("TS") local switching charge could be justified in light of the small amounts involved and the expense of installing appropriate

⁴¹ See, e.g., *AT&T* at 51-55; *GTE* at 27-28.

⁴² *Id.*

⁴³ *Southwestern Bell* at 37.