services.[710] SONETECH states that it is natural for ISPs to be CLECs and IXCs, and that access charges would act as an incentive for ISPs to move in that direction.[711]

202. America On-Line urges the Commission to reject LEC statements which suggest that ISPs have incentives to use inefficient services and facilities that will persist as long as the Commission refrains from imposing its access charge rules.[712] America On-Line and Internet Access Coalition state that ISPs know that their customers want higher speed access to the Internet and other on-line services and to the extent that incumbent LECs, or any other entity, offer an efficient, reliable and economic means to provide ISPs' product to the consumer, ISPs have every incentive to use it to the ultimate benefit of the public.[713] America On-Line states that the ISP market is extremely competitive and every provider has powerful market incentives to offer the most reliable, cost-effective, efficient and quality service it can.[714]

203. CPT claims that usage-based charges on basic voice service and ISDN calls from residential users, and usage-based charges for the unbundled loop undermine the LECs' incentives to deploy technologies that solve congestion problems. Collecting usage fees through the circuit switched netowrk then becomes highly profitable and technologies which eliminate the rationale for those charges would threaten this profit center.[715] CPT proposes that the Commission should leave the pricing of basic voice services as is, and require LECs to eliminate the usage charges on higher bandwidth residential digital services like ISDN, if the call is terminated using the new packet switched service.[716]

204. *Discrimination.* PacTel argues that by not requiring ISPs to pay access charges. the Commission discriminatorily grants a preference in rates to ISPs.[717] PacTel states that

[710] ACTA Comments at 27.

[711] SONETECH Comments at 3-4.

[712] America On-Line Reply at 13-15.

[713] *Id.*; Internet Access Coalition Reply at 11.

[714] America On-Line Reply at 13-15.

[715] Consumer Project Reply at 6.

[716] *Id.*

[717] PacTel Comments at 74-75.

ISPs are not like regular business customers, that they are more like IXCs because of the way their customers connect with them.[718]

205. CIEA claims that the mere difference in the payment mechanisms for ISPs and IXCs does not show discrimination in favor of ISPs. CIEA explains that IXCs use different aspects of the local exchange network that ISPs and their Internet customers do not use. For example, outdialing, 911 service, and directory assistance services are used by IXCs, but are not required by ISPs. CIEA states that IXCs have more rights and privileges in interconnecting with the local exchange than ISPs do. Furthermore, states CIEA, IXCs and ISPs pay LECs in different ways because all users of the PSTN pay in different ways, based on their pattern of use.[719]

206. America On-Line contends that requiring ISPs to pay access charges would constitute discrimination because other end-users are not required to pay access charges. Internet Access Coalition agrees, stating that treating ISPs like other end-users is not discriminatory since ISPs are end-users. Internet Access Coalition states that ISPs use business lines solely to receive incoming calls, and, thus, they don't pay originating call fees, just like numerous other business customers -- such as call centers, mail order providers, radio talk shows, and many financial institutions.[720]

207. *Anti-competitive acts by LECs.* Several commenters have expressed a concern that assessing access charges on ISPs will lead LECs to engage in anti-competitive activities.[721] Compuserve and Prodigy state that RBOCs function not only as the dominant providers of access upon which the independent ISPS are dependent to reach their customers, but are also competitors to the independent ISPs in providing information services.[722] CompuServe\Prodigy contend that any access charges collected by the parent RBOC from its affiliated ISP merely represents an intra-corporate transfer among RBOC affiliates with no real overall economic effect to the RBOC or its affiliate. Independent ISPs, however, would have to absorb any increase in access charges to stay in business.[723]

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[718] PacTel Reply at 27.

[719] CIEA Reply at 6-8.

[720] Internet Access Coalition Reply at 10-11.

[721] Consumer Project Reply at 3; CIEA Comments at 8; CompuServe/Prodigy Comments at 15; Internet Access Coalition Comments at 19-20; PSINet at 9-10; SONETECH at 4.

[722] CompuServe\Prodigy Comments at 15.

[723] *Id.*

208. PacTel counters that the Commission has extensive rules ensuring that the largest LECs, the BOCs, provide interconnection to third-party ISPs that is comparable, including identical prices, to the interconnection that they provide to their own enhanced service operations. Furthermore, states PacTel, the Commission has extensive accounting rules and other safeguards to ensure against LEC cross-subsidies to support their enhanced services operations.[724]

C. Terminating Access

1. Incumbent LECs

209. Several IXCs and other commenters supported limiting terminating access rates to forward-looking economic cost. Those advocating that the Commission hold terminating access rates to TSLRIC levels cite the absence of competitive pressures on the terminating access provider. They contend that even as originating access services become more competitive, price cap LECs will retain the ability to exercise market power over terminating access, justifying a prescriptive approach that would limit terminating access rates to forward-looking cost.[725] They also emphasize the likelihood of continued ILEC dominance in the provision of access services in the foreseeable future.[726] A number of commenters support the development of TSLRIC studies as a basis for establishing cost-based rates for terminating access.[727]

210. According to incumbent LECs and other commenters, however, sufficient competitive forces exist to constrain the prices charged for terminating interstate access service. For example, USTA challenges the fundamental premise that, because the called party is not paying for the call, terminating access charges are shielded from downward market pressures. Thus, according to these commenters, if a LEC overprices terminating access relative to originating access, a pair of callers in repeated communications would have an incentive to alter their pattern of calls to favor the lower-priced alternative.[728] Other commenters argue that the availability of unbundled network elements and interconnection arrangements will act as a constraint on potentially excessive terminating access charges as

[724] PacTel Reply at Parker Affidavit p. 5.

[725] CompTel Comments at 19; Cable & Wireless Comments at 31; ACTA Comments at 23; LCI Comments at 3; TCI Comments at 36; Allied Communications Comments at 3; WorldCom Comments at 92.

[726] AT&T Comments Appendix A at 18; LCI Comments at 3; Cable & Wireless Comments at 31.

[727] *See, e.g.,* TRA Comments at 38-39; California Commission Comments at 17; LCI Reply at 6-7.

[728] USTA Comments Attachment 3 at 12; TCI Comments, Attachment A at 4.

alternative access providers offer competitive services.[729] High terminating rates, these commenters argue, will encourage IXCs to purchase unbundled network elements to complete long-distance calls themselves.[730]

2. Non-Incumbent LECs

211. Competitive LECs urge the Commission to refrain from imposing any direct regulation of their terminating access charges. They contend that competitive LECs lack the kind of market power that would enable them to charge IXCs excessive terminating access rates.[731] Competitive LEC negotiations with IXCs, they explain, have resulted in terminating access charges equal to or below the terminating access rates contained in incumbent LEC tariffs.[732] Commenters assert that IXCs are sophisticated customers with bargaining leverage over competitive LECs and will take necessary actions to discourage excessive charges for terminating access.[733] Other commenters argue that competitive LECs, like incumbent LECs, will restrain their terminating access charges to lower the incentive for IXCs to purchase unbundled network elements to provide their own local access.[734] Spectranet argues that initial dependence of competitive LECs on large volume customers will discourage unreasonable terminating access rates because high rates would entice IXCs to substitute terminating special access for these users.[735] Competitive LECs also express the concern that strict regulation of their terminating access rates would impose an additional burden on their ability to enter the market and compete successfully.[736]

212. Other commenters favor regulation of the terminating access rates of competitive LECs, suggesting that bottleneck control of the called party's loop necessitates some level of

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[729] USTA Comments at 67; Ameritech Comments at 53; BA/NYNEX Comments at 42.

[730] USTA Comments at 67; Ameritech Comments at 52-53; BA/NYNEX Comments at 42; SNET Comments at 54; BellSouth Reply at 40; SWBT Reply at 46-47.

[731] ALTS Comments at 29; American Communications Services Reply at 21.

[732] TCI Comments, Attachment A at 6 (*citing* Comments of Spectranet International, Inc., CC Docket No. 92-262 at 7).

[733] Spectranet Comments at 7-8; ICG Telecom Group Reply at 23.

[734] ACC Long Distance Reply at 10; Cox Communications Reply at 4-5; Spectranet Comments at 7-8.

[735] Spectranet Comments at 8.

[736] Time Warner Comments at 49-50; WinStar Comments at 5-6.

regulation.[737] Although incumbent LECs argue that regulation of terminating access is unnecessary, they contend that any regulation of incumbent LEC terminating access should entail equivalent regulatory treatment of competitive LECs because they hold the same degree of market power with respect to the loops they control.[738]

D. Universal Service-Related Part 69 Changes

213. Many parties note that the Commission must carefully coordinate access charge reform and universal service reform.[739] Commenters agree generally that, in order to prevent double recovery and remove implicit subsidies, access charges must reflect receipt of universal service support above current levels.[740] Other parties argue, however, that double recovery is unlikely, especially for rural carriers for whom revenues will be insufficient to maintain service in high cost areas, even if access charges remain unchanged.[741] Several non-price cap incumbent LECs argue that it is premature to address the issue of potential double recovery, particularly for small, rural, rate-of-return LECs, until the details of the universal service fund mechanism are established and the Commission has assessed the cumulative impact of the universal service, access reform, and separations proceedings.[742]

214. The Alabama and Texas Commissions express concern that reducing interstate access rates to reflect universal service revenues will divert funds traditionally used to support intrastate high costs to offset interstate rates, which may only be accomplished by a

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[737] AT&T Comments at 63; WorldCom Comments at 92; Ohio Commission Comments at 12.

[738] USTA Comments at 67; BA/NYNEX Comments at 42; BellSouth Comments at 86; PacTel Comments at 74; Rural Telco Coalition Comments at 23-24.

[739] *See, e.g.*, Arch Communications Reply at 1; Alaska Telephone Association Comments at 7; TDS Comments at 27, Reply at 7; Texas Commission Comments at 30; Washington Commission Comments at 9.

[740] *See, e.g.*, Arch Communications Reply at 1; AT&T Comments at 65; Cable & Wireless Comments at 28, n.33 (asserting that the portion of current rates that is universal service subsidy must be separated from rates to comply with the *Universal Service* proceeding); California Commission Comments at 13-14; Internet Access Coalition Comments at 6; PacTel Comments at 50; PCIA Comments at 3-4, Reply at 2-3; Sprint Comments at 54; TCI Reply at 28-29.

[741] *See, e.g.*, Alaska Telephone Association Comments at 7; Western Alliance Comments at 19-20.

[742] *See, e.g.*, Evans, *et al.* Comments at 3; Puerto Rico Tel. Comments at 20-21; TCA Comments at 4-5; TDS Comments at 26, 28, Reply at 7; Western Alliance Comments at 19-20; *see also* American Communications Services, Inc. Reply at 8-9 (asserting that Commission should defer access reform until universal service and separations reform are adopted).

recommendation of a Federal-State Joint Board.[743] These Commissions conclude that a separate component is necessary within the universal service fund that will replace the explicit subsidy reflected in the common line elements of interstate access.[744] The Ohio Commission notes that any downward adjustment of interstate access rates must be based only on the interstate revenues received through the universal service fund mechanism.[745]

215. BA/NYNEX contend that, to the extent universal service payments are intended to cover shortfalls in intrastate payments, a downward adjustment of interstate access rates would in effect be double-counting and would take away the revenue support that the LEC had just received from the universal service fund.[746] Thus, any adjustment to access charges must reflect only the portion of universal service support that covers shortfalls in interstate cost recovery.[747]

216. Several commenters contend that universal service funds should not be used to reduce interstate costs recovered through access charges.[748] These parties argue that neither universal service fund subsidies that keep local exchange rates below cost nor "support funds" that compensate carriers for the discounted portion of the rates for telecommunications services provided to schools, libraries, and rural health care providers, may be used to reduce costs recovered through interstate access charges.[749] Thus, a universal service support payment should not result in a *per se* decrease in interstate access charges unless it is specifically identified as replacing identified means of cost recovery that had previously been

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[743] Alabama Commission Comments at 14; Texas Commission Comments at 30.

[744] Alabama Commission Comments at 14 (proposing separate components for both high-cost assistance for intrastate services and interstate common cost recovery); Texas Commission Comments at 30-31.

[745] Ohio Commission Comments at 11 (assertign that, if intrastate revenues are used to assess contributions and used to distribute assistance to recipients of universal service support, incumbent LECs that are net beneficiaries of support should be permitted to make downward adjustments to intrastate costs).

[746] BA/NYNEX Comments at 61.

[747] BA/NYNEX Comments at 61.

[748] *See, e.g.*, Ameritech Reply at 34 (opposing attempt to require the recipient carrier to use universal service funds for reducing access charges); Western Alliance Comments at 20; WITA Comments at 9; *see also* State Consumer Advocates Reply at 15 (arguing that TIC, interstate transport and interstate switched access are not services that the Joint Board has designated for universal service support); *but see* BA/NYNEX Reply at 6-7 (arguing that certain funds that LECs receive from the new universal service fund may be used to offset current revenues from interstate access services).

[749] *See, e.g.*, Ameritech Reply at 34.

afforded by access charges.[750] ALLTEL asserts that, because the LTS and DEM weighting mechanisms are the only components of the proposed universal service plan that have direct relationship to access, other universal service support components are designed to offset cost of providing local service in high cost areas and, as such, do not require a corresponding reduction in access rates.[751]

217. According to the Washington Commission, a possible approach to preventing double recovery is to adopt a presumption that any revenues obtained from the universal service fund would be offset against recovery claimed from access charges, and incumbent LECs would bear the burden of establishing to the regulatory authority that additional recovery was appropriate.[752] NARUC asserts that incumbent LECs should have the burden of demonstrating that double recovery will not occur through the combination of restructured access charges and universal service support.[753] TCI argues that incumbent LECs should not be permitted to adjust their price cap indices upwards to permit recovery of their contributions payments unless, at a minimum, they can show that they are actually funded by interstate switched access charges.[754]

218. Several incumbent LECs argue that, to the extent that LECs will have to contribute to any new universal service support mechanism, access charge reduction that would occur as a result of receiving universal service support above current levels must be offset by the amount the LEC has to contribute to the universal service fund.[755] According to PacTel, any exogenous downward adjustment to price cap indices is appropriate to reflect any additional revenues received from the new universal service fund, provided the adjustment is made only to the extent that there is a net revenue increase to the LEC, and the decrease is offset with an exogenous upward adjustment to reflect the extent to which the LEC is unable to pass its own contributions through to its customers.[756] BellSouth contends that unless the Commission establishes a surcharge recovery mechanism to recover LEC contributions to the

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[750] *See, e.g.*, Puerto Rico Tel. Comments at 19; TDS Reply at 7 (arguing that any off-set for interstate access revenues to prevent double recovery must match support from the new mechanism that it is designed to replace).

[751] ALLTEL Comments at 14.

[752] Washington Commission Comments at 9.

[753] NARUC Comments at 8; *but see* TDS Comments at 28 (no reason to presume federal universal service support causes over-recovery unless it is subtracted from whatever interstate cost allocations are then in effect).

[754] TCI Reply at 30.

[755] *See, e.g.*, BA/NYNEX Comments at 61; BellSouth Comments at 53, n.99; PacTel Comments at 49.

[756] PacTel Comments at 49.

new universal service fund, then LECs must recover their contributions through an access charge mechanism, such as a per line charge assessed to IXCs.[757]

219. Many of the parties commenting on the issue support the Commission's proposal to account for the receipt of explicit universal service revenues, including LTS, through an exogenous cost adjustment to the price cap indices of incumbent LECs.[758] TCI argues that incumbent LECs will double recover if price caps are not adjusted to recognize the elimination of LTS support obligations.[759] Many incumbent LECs, however, agree that the Commission must remove LTS payments from access charges and recommend that these costs be removed from the CCL charge to comply with the 1996 Act requirement that universal service support payments be explicit.[760]

220. Many commenters further propose that price cap LECs should be required to offset access charges by the amount of any increase in universal support payments above current universal service funding, and apply this reduction to the CCL or any new mechanism that replaces it.[761] Other commenters offer more specific proposals for applying adjustments to particular baskets or service categories in a particular order. For example, BellSouth recommends that universal service funds first be applied to reducing the CCL charge, then to the TIC service category in the trunking basket, and finally to the local switching service category in the traffic sensitive basket.[762] Alternatively, Sprint suggests that, if the Commission adopts Sprint's proposal to access reform by eliminating the CCL charge and reducing access rates to TELRIC-based prices, the required reductions in the price cap index be applied first to the TIC and then to the difference between current rates and TELRIC-based rates for traffic sensitive switching and transport. If the Commission does not eliminate the

[757] BellSouth Reply at 7, n.11

[758] *See, e.g.*, ACTA Comments at 22; California Commission Comments at 13-14; Internet Access Coalition Comments at 6; Sprint Comments at 54; Texas Commission Comments at 30; TCI Comments at 34, Reply at 29.

[759] TCI Reply at 29-30; *see also* ALLTEL Comments at 14 (arguing that once LTS and DEM weighting and transitioned to the high cost universal service fund, there should be a corresponding dollar-for-dollar reduction in associated access rates).

[760] *See, e.g.*, U S West Comments at 53; *see also* Ameritech Comments at 50-51, Reply at 34; BellSouth Comments at 68.

[761] *See, e.g.*, ACTA Comments at 22 (arguing that CCL charges should be reduced to the extent that recovery of LTS from other sources is not offset by a SLC cap reduction); California Commission Comments at 13-14 (asserting that CCL charges should be reduced to the extent universal service funding is directed to support high-cost loops); SWBT Comments at 6 (maintaining that CCL charges should be reduced by the amount of high cost support incumbent LECs receive from the new universal service fund).

[762] BellSouth Comments at 53-54.

CCL charge, however, Sprint proposes that incumbent LECs should be required to apply their incremental universal service revenues against the price cap indices for both the CCL charge and TIC in equal proportions until both elements are eliminated, and then against rates for traffic-sensitive local switching and transport.[763]

221. Several non-price cap LEC parties assert that there is no need to adjust interstate costs for rate-of-return ILECs to reflect universal service revenues because double recovery is unlikely.[764] For example, WITA asserts that there is no double recovery if the receipt of funds is based on a benchmark that is calculated on a national average revenue per line, including revenue generated from access services because it is only the cost of local service in excess of the benchmark that is funded through the USF mechanism.[765] Evans, *et al.* notes that, because the present system limits universal service payments to loop costs not included under the interstate gross allocator and makes the offsetting cost reduction to intrastate costs, any new universal service fund system should continue to offset intrastate costs.[766] The Minnesota Independent Coalition contends that either local service rates or universal service revenues must necessarily increase if access charges paid by IXCs decrease.[767]

222. Several parties commented on the way in which non-price cap LECs' interstate access charges should be adjusted to account for removal of implicit LTS subsidies and any increase in explicit universal service support revenues. Most commenters favoring a downward exogenous cost adjustment for price cap LECs' price cap indices also support a similar downward adjustment to non-price cap LECs' access rates.[768] USTA and several other non-price cap LECs assert that rate-of-return companies should be permitted to use funding from any new universal service support mechanisms to offset existing explicit universal

[763] Sprint Comments at 54-55.

[764] *See, e.g.*, Alaska Telephone Association Comments at 7; Western Alliance Comments at 20.

[765] WITA Comments at 9; *see also* Cathey, Hutton and Associates Comments at 4 (asserting that recovery will not be "double" but will only alter the amount of costs recovered from access rates versus the amount of costs recovered from the new universal service fund mechanism because access rates will be calculated into the benchmark revenues to be used to offset proxy-based universal service costs); Western Alliance Comments at 21 (arguing that, because the proxy models in *Universal Service* proceeding have deleted DEM weighting and LTS, there is no need to subtract the universal service support payments paid to rural LECs from the interstate costs used to develop rural LECs' access charges).

[766] Evans, *et al.* Comments at 3.

[767] Minnesota Independent Coalition Comments at 18.

[768] *See, e.g.*, PCIA Comments at 3-4; Sprint Comments at 54, n.23.

service requirements before reducing any Part 69 rates.[769] USTA argues that Part 69 rate reductions, *i.e.*, decreases in the level of this implicit support mechanism, should only take place to the extent that new universal service revenues exceed existing explicit universal service requirements.[770] Roseville Tel. supports allowing non-price cap LECs to continue to use universal service revenues to offset intrastate revenue shortfalls and, for any universal service support greater than the amount currently received (including LTS), use that to reduce the CCL charge and then the SLC.[771] Should the Commission reduce interstate costs to reflect revenues received from any new universal service support mechanism to the extent allocated to the interstate jurisdiction, however, Roseville Tel. cautions that intrastate rates will have to be raised to address the shortfall that is currently covered by universal service support.[772]

223. According to NECA, the Commission should clarify that, absent changes in the separations rules, interstate revenue requirements would continue to be determined as they are today.[773] NECA further advocates that the Commission adopt Part 69 rule changes that treat new universal service amounts allocated to the interstate access elements, including DEM weighting and LTS, as revenue streams in the development of interstate access rates.[774] NECA proposes that revenues from the new universal service fund be used to offset the pool common line revenue requirement, in a manner similar to the way the SLC offsets CCL rates.[775] In developing its traffic-sensitive local switching rates, NECA would consider all revenue projected for its common line pooling members, as well as any proxy-based amounts for pooling companies that are allocated to interstate common line.[776] In addition, NECA argues that the Commission should clarify that the per-line rural transition high-cost support amounts from the new universal service fund should continue to be treated as an intrastate expense adjustment recovered from the interstate jurisdiction to help keep intrastate rates

[769] *See, e.g.*, GVNW Comments at 12; Puerto Rico Tel. Reply at 8; TDS Comments at 27; USTA Comments at 69.

[770] *See, e.g.*, Puerto Rico Tel. Reply at 8; USTA Comments at 69.

[771] Roseville Tel. Comments at 16.

[772] Roseville Tel. Comments at 16.

[773] NECA Comments at 14.

[774] NECA Comments at 14-15.

[775] NECA Comments at 15.

[776] NECA Comments at 15; *see also* TDS Comments at 27 (arguing that LTS should continue to be treated as an interstate revenue stream for the NECA Common Line pool).

affordable.[777] NECA notes that this may require Part 36 rule changes to ensure matching of the expense adjustment with the level of federal universal service funding ultimately adopted.[778]

E. Part 69 Allocation Rules

224. In the NPRM, we solicited comment on whether it would be appropriate for incumbent price cap LECs to be relieved of complying with Subparts D and E of Part 69 of our rules, which address the allocation of investments and expenses to the access rate elements.[779]

225. Many of the commenters recommend that the Commission eliminate Subparts D and E.[780] GTE argues that the allocation rules are outdated and unnecessarily inhibit the introduction of new services and technologies, thereby limiting incumbent LECs' ability to respond to competition.[781] GTE argues that the cost allocation rules, which are predicated on rate base regulation, serve no purpose in GTE's proposed access regime, which includes a simplification of price baskets and an elimination of sharing requirements and low end adjustments.[782] BellSouth contends that it does not use the cost allocation rules for ratemaking, and instead uses them only for internal purposes.[783] BellSouth acknowledges that the cost allocations rules are necessary to complete the ARMIS reports, but contends that with a market-based approach to access reform, neither the ARMIS reports nor the cost allocation rules are necessary.[784]

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[777] NECA Comments at 15; *see also* Evans, *et al.* Comments at 3 (asserting that any new universal service support system should continue to offset intrastate costs).

[778] NECA Comments at 15, n.46.

[779] NPRM at ¶ 294.

[780] Ameritech Comments at 56; BA/NYNEX Comments at 60; BellSouth Comments at 88; GTE Comments at 46-47.

[781] GTE Comments at 46-47. *See also* BA/NYNEX Comments at 60 (elimination of sharing mechanism under market-based approach will allow Commission to eliminate onerous cost allocation rules).

[782] GTE Comments at 47.

[783] BellSouth Comments at 88 (although BellSouth uses cost allocation rules to develop exogenous cost data internally, this data can be calculated in other ways).

[784] BellSouth Comments at 88.

226. TCI recommends that, commensurate with its suggested hybrid market/prescriptive approach to access reform, the Commission should retain the cost allocation rules until there is substantial competition on a service-by-service basis in a defined geographic market. TCI urges the Commission to proceed cautiously in lifting this type of regulation, contending that premature regulatory flexibility could have anticompetitive consequences due to the incumbent LECs' existing market power.[785] The Georgia Commission contends that the Commission should verify and analyze costs prior to moving to a transitional phase of market-based or prescriptive approach. If the Part 69 rules aid in that process, the Georgia Commission argues that they should be retained.[786]

F. Other Proposed Part 69 Changes

227. The commenters generally agree with the majority of our specific proposals concerning Part 69 revisions.[787] Sprint contends that the NPRM's proposed revisions are non-controversial and should be adopted.[788] Ameritech favors incorporating the previously-granted waivers into Part 69.[789]

228. Some commenters expressed dissatisfaction with various parts of our Part 69 proposals. For example, BellSouth objects to the proposal that "Telephone Company" be defined as "incumbent LEC" as set out in section 252(h)(1) of the 1996 Act because it believes that Part 69 should apply to all LECs, not just incumbent LECs. BellSouth argues that until forbearance determinations are made, all LECs remain subject to the Part 69 rules.[790] BellSouth also opposes the proposal to codify the various Part 69 waivers previously granted, arguing that the waiver orders are sufficiently explanatory, the alternative rate structures are too cumbersome to describe, and the end result would be more, rather than less, regulation.[791]

229. GCI suggests modifications to our proposal to eliminate those sections connected to the equal access rate element. GCI contends that some LECs have not fully recovered

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[785] TCI Comments at 40. *See also* TCI Reply at 26.

[786] Georgia Commission Reply at 43

[787] *See, e.g.,* Ameritech Comments at 56; BellSouth Comments at 88-90; Sprint Comments at 60; WorldCom comments at 94 (supporting Commission's proposal that clarifies that Part 69 access charge rules apply to incumbent LECs and not to CLECs).

[788] Sprint Comments at 60.

[789] Ameritech Comments at 56.

[790] BellSouth Comments at 89.

[791] BellSouth Comments at 90.

equal access costs. GCI also notes that in some areas, such as the Alaska bush, where facilities-based interexchange competition has been prohibited, many LECs have not yet implement equal access. To account for these concerns, GCI recommends that section 69.107, which allows carriers to establish a separate equal access rate element, be eliminated. GCI contends that sections 69.308 and 69.410 should be modified to provide that the costs be assigned to the Local Switching element. GCI also recommends that we retain both the reference to section 69.308 found in section 69.309, and the reference to section 69.410 found in section 69.411. GCI contends that recovery through the Local Switching element is preferable to the general allocation that would otherwise be applicable.[792]

230. Ameritech suggests that Part 69 be changed to permit LECs the flexibility to introduce new switched access rate elements without the current barriers.[793] TCA and NECA recommend that rate-of-return LECs be allowed to introduce new services though the expedited process established for incumbent LECs in the Third Report and Order.[794]

231. In response to our request for additional revisions, many commenters suggested that the Part 69 rules be completely eliminated.[795] Many of the LECs argue that Part 69 rules are unnecessarily restrictive, inhibiting the LECs' abilities to respond to competition, impairing their ability to introduce new services, or failing to account for changes in technology.[796] USTA recommends as part of the market-based Phase I approach, the Commission should replace the current Part 69 rules with streamlined rules that would address the recovery of the CCL, TIC, and depreciation reserve deficiency without codifying specific rate elements.[797] USTA also recommends that Part 69 should be retained for rate-of-return

[792] GCI Comments at 8. *See also* TCA Comments at 5-6 (equal access rate elements should not be removed because some small LECs who have not received a bona fide request to convert should be allowed same treatment of their equal access costs as other LECs).

[793] Ameritech Comments at 42, 56.

[794] TCA Comments at 6; NECA Comments at 14 (referencing Access Reform Third Report and Order, ¶¶ 309-310).

[795] USTA Comments at 48; Ameritech Comments at 56; BA/NYNEX Comments at 60; BellSouth Comments at 88; GTE Comments at 46-47; NECA Reply at 10; SNET Reply at 14.

[796] GTE Comments at 47; SNET Comments at 19-20; SNET Reply at 14; Internet Access Coalition Comments at 5; NECA Reply at 10; NARUC Comments at 5.

[797] USTA Comments at 48. *See also* USTA Reply at 26 (simplification of price baskets and elimination of Part 69 rules will enhance LECs' economic efficiency).

companies, but modified in a separate proceeding to reflect the recovery of the CCL and TIC.[798] NECA argues that Part 69 rules needlessly increase administrative expense.[799]

[798] USTA Comments at 48.

[799] NECA Reply at 10 (elimination or simplification of rules is sound administrative practice irrespective of level of competition).

APPENDIX C - Final Rules

AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

PART 61 -- TARIFFS

1. The authority citation for Part 61 continues to read as follows:

Authority: Secs. 1, 4(i), 4(j), 201-205, and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201-205, and 403, unless otherwise noted.

2. Section 61.3 is amended by revising paragraph (f) to read as follows:

§ 61.3 Definitions

* * * * *

(f) ***Basket.*** Any class or category of tariffed service or charge:

(1) * * *

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3. Section 61.42 is amended by revising paragraphs (d) and (e) as follows:

§ 61.42 Price cap baskets and service categories.

* * * * *

(d) * * *

(1) A basket for the common line interstate access elements as described in §§ 69.115, 69.152, 69.154, and 69.157, and that portion of the interstate access element described in § 69.153 that recovers common line interstate access revenues;

(2) A basket for traffic sensitive switched interstate access elements;

(3) A basket for trunking services as described in §§ 69.110, 69.111, 69.112, 69.114, 69.125(b), and 69.155, and that portion of the interstate access element described in § 69.153 that recovers residual interconnection charge revenues;

* * *

(6) A basket for the marketing expenses described in § 69.156, including those recovered through End User Common Line charges and Presubscribed Interexchange Carrier charges.

(e)(1) The traffic sensitive switched interstate access basket shall contain such services as the Commission shall permit or require, including the following service categories:

(i) Local switching as described in § 69.106(f);

(ii) Information, as described in § 69.109;

(iii) Data base access services;

(iv) Billing name and address, as described in § 69.128 of this chapter;

(v) Local switching trunk ports, as described in § 69.106(f)(1);

(vi) Signalling transfer point port termination, as described in § 69.125(c).

(2) * * *

(vi) Interconnection charge, as recovered in §§ 69.153 and 69.155 of this chapter.

* * * * *

4. Section 61.45 is amended by revising paragraph (b), revising paragraph (c) and redesignating it as subparagraph (c)(1), adding new subparagraph (c)(2), adding subparagraph (d)(1)(ix), and adding paragraphs (i), (j), (k), and (l) to read as follows:

§ 61.45 Adjustments to the PCI for local exchange carriers.

* * * * *

(b) Adjustments to local exchange carrier PCIs for the baskets designated in § 61.42(d)(2), (3), (4), (5), and (6) shall be made pursuant to the formula set forth in § 61.44(b), and as further explained in §§ 61.44(e), (f), (g), and (h).

(1) Notwithstanding the value of X defined in § 61.44(b), the X value applicable to the baskets specified in § 61.42(d)(2), (3), and (6) shall be 4.0%, or 4.7%, or 5.3%, as the carrier elects.

* * * * *

(c)(1) Subject to paragraphs (c)(2) and (e) of this section, adjustments to local exchange carrier PCIs for the basket designated in § 61.42(d)(1) shall be made pursuant to the following formula:

* * *

(2) The formula set forth in paragraph (c)(1) shall be used by a local exchange carrier subject to price cap regulation only if that carrier is imposing a carrier common line charge pursuant to § 69.154 of this chapter. Otherwise, adjustments to local exchange carrier PCIs for the basket designated in § 61.42(d)(1) of this chapter shall be made pursuant to the formula set forth in § 61.44(b), and paragraphs (i) and (j) of this section, and as further explained in § 61.44(e), (f), (g), and (h).

(d) * * *

(1) * * *

(ix) the completion of amortization of equal access expenses.

* * * * *

(i)(1) Notwithstanding the provisions of paragraphs (b) and (c), and subject to the limitations of paragraph (j), price cap local exchange carriers that are recovering interconnection charge revenues through per-minute rates pursuant to § 69.124 or § 69.155 shall target, to the extent necessary to eliminate the recovery of any residual interconnection charge revenues through per-minute rates, any PCI reductions associated with the baskets designated in § 61.42(d)(1) and (2) that result from the application of the formula in § 61.44(b), as further explained in § 61.44(e), (f), (g),

and (h), to the PCI for the basket designated in § 61.42(d)(3), with no adjustment being made to the PCIs for the baskets designated in § 61.42(d)(1) and (2) as a result of the application of the formula in § 61.44(b). These reductions are to be made after the adjustment is made to the PCI for the basket designated in § 61.42(d)(3) resulting from the application of the formula in § 61.44(b), as further explained in § 61.44(e), (f), (g), and (h).

(2) Notwithstanding the provisions of paragraphs (b) and (c), and subject to the limitations of paragraph (j), price cap local exchange carriers that are recovering interconnection charge revenues through per-minute rates pursuant to § 69.155 shall target, to the extent necessary to eliminate the recovery of any residual interconnection charge revenues through per-minute rates, any PCI reductions associated with the basket designated in § 61.42(d)(6) that result from the application of the formula in § 61.44(b), as further explained in § 61.44(e), (f), (g), and (h), to the PCI for the basket designated in § 61.42(d)(3), with no adjustment being made to the PCIs for the basket designated in § 61.42(d)(6) as a result of the application of the formula in § 61.44(b). This reduction is to be made after any adjustment made pursuant to subparagraph (i)(1).

(3) Through December 31, 1997, the reduction in the PCI for the basket designated in § 61.42(d)(3) that results from subparagraph (i)(1) shall be determined by dividing the sum of the dollar effects of the PCI reductions that would have applied to the baskets designated in § 61.42(d)(1) and (d)(2) except for the provisions of subparagraph (i)(1) by the dollar amount associated with the PCI for the basket designated in § 61.42(d)(3), and multiplying the PCI for the basket designated in § 61.42(d)(3) by one minus the resulting ratio.

(4) Effective January 1, 1998, the reduction in the PCI for the basket designated in § 61.42(d)(3) that results from subparagraphs (i)(1) (and (i)(2) shall be determined by dividing the sum of the dollar effects of the PCI reductions that would have applied to the baskets designated in § 61.42(d)(1), (d)(2), and (d)(6), except for the provisions of subparagraphs (i)(1) and (i)(2), by the dollar amount associated with the PCI for the basket designated in § 61.42(d)(3), and multiplying the PCI for the basket designated in § 61.42(d)(3) by one minus the resulting ratio.

(j) In determining the extent of the targeting that shall occur pursuant to subparagraphs (i)(1) and (i)(2), local exchange carriers shall compute their anticipated residual interconnection charge amount by excluding revenues that are expected to be reallocated to cost-causative facilities-based charges in the future. To determine interconnection charge amounts so excluded in connection with the July 1, 1997 tariff filings, the local exchange carriers listed below shall use as an estimate of the residual interconnection charge revenues the specified residual interconnection charge percentage: NYNEX, 77.63 percent; BellSouth,

56.93 percent; U S West, 59.14 percent; Bell Atlantic, 63.96 percent; Southwestern Bell Telephone, 69.11 percent; and Pacific Bell and Nevada Bell, 53.52 percent. Each remaining price cap local exchange carrier shall estimate a residual interconnection charge in an amount equal to 55 percent of its current interconnection charge revenues. For subsequent tariff filings in which the PCI reductions are to be targeted to the interconnection charge, these initial estimates shall be adjusted to reflect the actual amounts that have or will be reallocated. If the use of these estimates results in more PCI reductions being targeted to the interconnection charge than required to eliminate the per-minute interconnection charge, the local exchange carrier shall make the necessary exogenous adjustments to reverse the effects of the excess targeting.

(k) The calculation of the PCI for the basket designated in § 61.42(d)(3) shall include any residual interconnection charge revenues recovered pursuant to §§ 69.153 and 69.155.

(l) The calculation of the PCI for the basket designated in § 61.42(d)(6) shall include any marketing expense revenues recovered pursuant to §§ 69.153 and 69.156.

5. Section 61.46 is amended by revising paragraph (d) and redesignating it as subparagraph (d)(1), adding new subparagraph (d)(2), revising paragraph (e) and redesignating it as subparagraph (e)(1), adding new subparagraph (e)(2), and adding paragraphs (g) and (h) as follows:

§ 61.46 Adjustments to the API

* * * * *

(d)(1) Subject to subparagraph (d)(2) of this section, and in connection with any price cap tariff proposing changes to rates for services in the basket designated in § 61.42(d)(1), the maximum allowable carrier common line (CCL) charges shall be computed pursuant to the following methodology:

$$CCL_{MOU} = CL_{MOU} * (1 + \% \text{ change in CL PCI}) - (EUCL_{MOU} + PICC_{MOU}) * 1 / (1 + (g/2))$$

where

CCL_{MOU} = the sum of each of the proposed Carrier Common Line rates multiplied by its corresponding base period Carrier Common Line minutes of use, divided by the sum of all types of base period Carrier Common Line minutes of use,

CL_{MOU} = the sum of each of the existing maximum allowable Carrier Common Line rates multiplied by its corresponding base period Carrier Common Line minutes of use, plus each existing maximum allowable End User Common Line (EUCL) rate multiplied by its corresponding base period lines, plus the common line portion of each existing maximum allowable Presubscribed Interexchange Carrier Charge (PICC) multiplied by its corresponding base period lines, divided by the sum of all types of base period Carrier Common Line minutes of use,

$EUCL_{MOU}$ = maximum allowable End User Common Line rates multiplied by base period lines, and divided by the sum of all types of base period Carrier Common Line minutes of use,

$PICC_{MOU}$ = the common line portion of maximum allowable Presubscribed Interexchange Carrier charge rates multiplied by base period lines, and divided by the sum of all types of base period Carrier Common Line minutes of use, and

g = the ratio of minutes of use per access line during the base period to minutes of use per access line during the previous base period, minus 1.

(2) The formula set forth in subparagraph (d)(1) of this section shall be used by a local exchange carrier subject to price cap regulation only if that carrier is imposing a per-minute carrier common line charge pursuant to § 69.154 of this chapter. Otherwise, adjustments to local exchange carrier APIs for the basket designated in § 61.42(d)(1) of this chapter shall be made pursuant to the formula set forth in paragraph (a) of this section.

(e)(1) In addition, for the purposes of paragraph (d), "Existing Carrier Common Line Rates" shall include existing originating premium, originating non-premium, terminating premium and terminating non-premium rates; and "End User Common Line Rates" used to calculate the CL_{MOU} and the $EUCL_{MOU}$ factors shall include, but not be limited to, Residential and Single Line Business rates, Centrex rates, and the Special Access surcharge.

(2) For purposes of paragraph (d), "each existing Presubscribed Interexchange Carrier Charge" shall include all the charges specified in § 69.153 of this chapter.

* * * * *

(g) The calculation of the API for the basket designated in § 61.42(d)(3) shall include any residual interconnection charge revenues recovered pursuant to §§ 69.153 and 69.155.

(h) The calculation of the API for the basket designated in § 61.42(d)(6) shall include any marketing expense revenues recovered pursuant to §§ 69.153 and 69.156.

6. Section 61.47 is amended by adding paragraph (i) and (j), and subparagraph (g)(7) as follows:

§ 61.47 Adjustments to the SBI; pricing bands.

* * * * *

(g)(7) The initial level of the local switch trunk ports service category designated in § 61.42(e)(1)(v) shall be established to include those costs identified pursuant to § 69.106(f)(1). This level shall be assigned a value of 100 and, thereafter must be adjusted as provided in paragraph (a) of this section, subject to the banding restrictions of paragraph (e).

* * * * *

(i)(1) Through December 31, 1997, notwithstanding the requirements of paragraph (a), if a local exchange carrier is recovering interconnection charge revenues through per-minute rates pursuant to § 69.124 or § 69.155, any reductions to the PCI for the basket designated in § 61.42(d)(3) resulting from the application of the provisions of § 61.45(b) and (i)(1) shall be directed to the SBI of the service category designated in § 61.42(e)(2)(vi).

(2) Effective January 1, 1998, notwithstanding the requirements of paragraph (a), if a local exchange carrier is recovering interconnection charge revenues through per-minute rates pursuant to § 69.155, any reductions to the PCI for the basket designated in § 61.42(d)(3) resulting from the application of the provisions of § 61.45(b), (i)(1), and (i)(2) shall be directed to the SBI of the service category designated in § 61.42(e)(2)(vi).

(3) Through December 31, 1997, the SBI reduction required by subparagraph (i)(1) shall be determined by dividing the sum of the dollar amount of any PCI reduction required by § 61.45(i)(1) and from the application of § 61.45(b) to the basket described in § 61.42(d)(3) by the dollar amount associated with the SBI for the service category designated in § 61.42(e)(2)(vi), and multiplying the SBI for the service category designated in § 61.42(e)(2)(vi) by one minus the resulting ratio.

(4) Effective January 1, 1998, the SBI reduction required by subparagraph (i)(2) shall be determined by dividing the sum of the dollar amount of any PCI

reduction required by § 61.45(i)(1) and (i)(2), and from the application of § 61.45(b) to the basket described in § 61.42(d)(3) by the dollar amount associated with the SBI for the service category designated in § 61.42(e)(2)(vi), and multiplying the SBI for the service category designated in § 61.42(e)(2)(vi) by one minus the resulting ratio.

(j) The calculation of the SBI for the service category designated in § 61.42(e)(2)(vi) shall include any residual interconnection charge revenues recovered pursuant to §§ 69.153 and 69.155.

7. Section 61.48 is amended by adding paragraph (k) to read as follows:

§ 61.48 Transition rules for price cap formula calculations.

* * * * *

(k) *Marketing expenses.* In the January 1, 1998 price cap tariff filing, local exchange carriers shall establish the marketing expense basket designated in § 61.42(d)(6) with an initial PCI and API level of 100. The initial value of 100 for the PCI and API for marketing expenses shall correspond to the marketing expenses described in § 69.156(a).

PART 69 -- ACCESS CHARGES

8. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. §§ 154(i) and (j), 201, 202, 203, 205, 218, 254, and 403.

9. Section 69.1(c) is revised to read as follows:

§ 69.1 Application of access charges.

* * * * *

(c) The following provisions of this part shall apply to telephone companies subject to price cap regulation only to the extent that application of such provisions is necessary to develop the nationwide average carrier common line charge, for purposes of reporting pursuant to §§ 43.21 and 43.22 of this chapter, and for computing initial charges for new rate elements: §§ 69.3(f), 69.106(b), 69.106(f), 69.106(g), 69.109(b), 69.110(d), 69.111(c), 69.111(g)(1), 69.111(l), 69.112(d), 69.114(b), 69.114(d), 69.125(b)(2), 69.301 through 69.310, and 69.401 through 69.412. The computation of rates pursuant to these provisions by

telephone companies subject to price cap regulation shall be governed by the price cap rules set forth in part 61 of this chapter and other applicable Commission Rules and orders.

10. Section 69.2 is amended by revising paragraph (hh) to read as follows:

§ 69.2 Definitions.

(hh) "Telephone company" or "local exchange carrier" as used in this Part means an incumbent local exchange carrier as defined in section 251(h)(1) of the 1934 Act as amended by the 1996 Act.

11. Section 69.4 is amended by deleting paragraphs (d) and (f), and subparagraph (b)(1), by revising paragraph (b), and by adding paragraph (h) as follows:

§ 69.4 Charges to be filed.

* * * * *

(b) Except as provided in § 69.4(c), (e), and (h), and in § 69.118, the carrier's carrier charges for access service filed with this Commission shall include charges for each of the following elements:

(1) [Deleted].

* * * * *

(h) In addition to the charges specified in paragraph (b), the carrier's carrier charges for access service filed with this Commission by price cap local exchange carriers shall include charges for each of the following elements:

(1) presubscribed interexchange carrier;

(2) per-minute residual interconnection;

(3) dedicated local switching trunk port;

(4) shared local switching trunk port;

(5) dedicated tandem switching trunk port;

(6) line port costs in excess of basic, analog service; and

(7) multiplexers associated with tandem switching.

12. Section 69.103 is deleted.

13. Section 69.104 is renamed as follows. Paragraphs (a) and (e) are revised as follows:

§ 69.104 End user common line for non-price cap incumbent local exchange carriers.

(a) This section is applicable only to incumbent local exchange carriers that are not subject to price cap regulation as that term is defined in § 61.3(x) of this Chapter. A charge that is expressed in dollars and cents per line per month shall be assessed upon end users that subscribe to local exchange telephone service or Centrex service to the extent they do not pay carrier common line charges. A charge that is expressed in dollars and cents per line per month shall be assessed upon providers of public telephones. Such charge shall be assessed for each line between the premises of an end user, or public telephone location, and a Class 5 office that is or may be used for local exchange service transmissions.

* * * * *

(e) The monthly charge for each residential and single line business local exchange service subscriber shall be the charge computed in accordance with § 69.104(c), or $3.50, whichever is lower.

* * * * *

14. Section 69.105 is renamed as follows. Subparagraphs (b)(7) and (b)(8) are deleted, and paragraph (a) is revised to read as follows:

§ 69.105 Carrier common line for non-price cap local exchange carriers.

(a) This section is applicable only to local exchange carriers that are not subject to price cap regulation as that term is defined in § 61.3(x) of this Chapter. A charge that is expressed in dollars and cents per line per access minute of use shall be assessed upon all interexchange carriers that use local exchange common line facilities for the provision of interstate or foreign telecommunications services, except that the charge shall not be assessed upon interexchange carriers to the extent they resell MTS or MTS-type services of other common carriers (OCCs).

* * * * *

15. Section 69.106 is amended by revising paragraphs (a) and (b), and by adding paragraphs (f) and (g) as follows:

§ 69.106 Local switching.

(a) Except as provided in § 69.118, charges that are expressed in dollars and cents per access minute of use shall be assessed by local exchange carriers that are not subject to price cap regulation upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign services.

(b) The per minute charge described in paragraph (a) shall be computed by dividing the projected annual revenue requirement for the Local Switching element by the projected annual access minutes of use for all interstate or foreign services that use local exchange switching facilities.

* * * * *

(f) Except as provided in § 69.118, price cap local exchange carriers shall establish rate elements for local switching as follows:

(1) Price cap local exchange carriers shall separate from the projected annual revenues for the Local Switching element those costs projected to be incurred for ports (including cards and DS1/voice-grade multiplexers required to access end offices equipped with analog switches) on the trunk side of the local switch. Price cap local exchange carriers shall further identify costs incurred for dedicated trunk ports separately from costs incurred for shared trunk ports.

(i) Price cap local exchange carriers shall recover dedicated trunk port costs identified pursuant to subparagraph (f)(1) through flat-rated charges expressed in dollars and cents per trunk port and assessed upon the purchaser of the dedicated trunk terminating at the port.

(ii) Price cap local exchange carriers shall recover shared trunk port costs identified pursuant to subparagraph (f)(1) through charges assessed upon purchasers of shared transport. This charge shall be expressed in dollars and cents per access minute of use. The charge shall be computed by dividing the projected costs of the shared ports by the historical annual access minutes of use calculated for purposes of recovery of common transport costs in § 69.111(c).