with this function in digital switches.[335] USTA indicates that analog switches account for approximately 25 percent of the RBOC lines in service.[336] USTA estimates the "Analog End Office Trunk Switch Ports" component of the TIC at $138.4 million or 4.46 percent of total TIC revenues.[337]

95. Cable & Wireless asserts that the costs of analog multiplexers are imposed by direct-trunked transport customers; therefore the costs should be built into the direct-trunked transport rate elements, or a separate DS1:DS0 multiplexing element should be added for direct-trunk transport customers.[338]

96. *Use of special access rates to establish Direct-Trunked Transport Rates.* USTA and many incumbent LECs contend that the TIC results in large part from the fact that the transport rate restructure order repriced switched transport services based on special access high-cap rates despite the fact that, in the past, switched access and special access rates were derived very differently.[339]

97. USTA explains that the local transport equal charge rates were derived from a revenue requirement that was the result of the Commission's Part 36 and 69 cost allocation rules on investments and expenses. This mandated cost allocation process predominantly used general categorizing and averaging of costs across geographic areas, technologies, services, and jurisdictions.[340] Plant investment was the primary driver because expenses generally followed the allocation of the plant. Because there were basically only two rate elements for switched local transport (the per-minute termination charge and the per-minute facility charge), the rates could deviate very little, if at all, from the rate levels resulting from the cost allocation rules. Special access rates, on the other hand, were more heavily based on a unit investment approach which more specifically identified the actual plant used for each service. The unit investments were then used as a basis for loading overheads. In addition, under the

[335] NECA Comments at 5-6.

[336] USTA Comments, Attachment 10 at 9. *See also* ARMIS 43-07.

[337] USTA Comments, Attachment 11.

[338] Cable & Wireless Comments at 21. *See also* Citizens Utilities Comments at 32 (supporting assignment to direct-trunked transport).

[339] *See, e.g.,* USTA Comments at 62-65; BellSouth Comments at 80; GTE Comments at 38.

[340] *See, e.g.,* GTE Comments at 38; Citizens Utilities Comments at 32.

cost allocation process, high capacity facilities could be directly assigned to the special access category.[341]

98. USTA therefore asserts that when the transport rate restructure set switched transport rates based on special access rates, the TIC represented the difference in revenues between the two pricing schemes and the differences in the costing methodologies used for each service in the past. The TIC, therefore, represents the averaging of costs across technologies, geographies, services, and jurisdictions that were inherent in the old cost allocation rules that determined the equal charge rates.[342] According to USTA, a detailed direct cost approach demonstrates that the cost allocation rules assign more investment to transport than is actually used in providing the service. The difference in costs is currently in the TIC, even though the costs are actually incurred to provide local services, intrastate services, and/or interstate services other than local transport.[343] USTA estimates this "transport averaging, cost allocations, and cost recovery" component of the TIC at $1.16 billion, or 37.27 percent of the total TIC revenues.[344]

99. USTA and incumbent LECs argue that changes to this structure will require Joint Board action, and that until such action can be taken, these TIC components should be removed from the per-MOU TIC rate and should be bulk-billed to IXCs based on interstate revenues or minutes.[345]

100. USTA alleges that part of the TIC also represents circuit equipment and cable and wire facilities serving longer haul traffic that have an embedded Part 36 cost many times greater than that based on a special access costing methodology. According to USTA, the cost of hauling traffic to scattered local switches in remote areas is much greater than that of hauling the same amount of traffic in larger cities at special access rates. The cost difference is part of the TIC.[346] Citizens Utilities argues that circuit termination costs could be directly assigned for jurisdictional purposes, but that Part 36 requires that circuit equipment be allocated to categories based on average cost per termination.[347] USTA estimates that the

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[341] USTA Comments at 63-64.

[342] USTA Comments at 63-64.

[343] USTA Comments at 65.

[344] USTA Comments, Attachment 11.

[345] USTA Comments at 66.

[346] *See, e.g.*, USTA Comments at 65; BellSouth Comments at 80; GTE Comments at 38.

[347] Citizens Utilities Comments at 33.

investment in interexchange cable and wire is \$37.4 million, or 1.21 percent of the total TIC revenues.[348]

101. U S West contends that the cost of interexchange facilities per unit of traffic in sparsely populated areas is several times more than the cost of exchange facilities in densely populated areas. U S West argues that this is part of the reason why special access is less expensive per unit of traffic than transport, and accounts for most of the TIC not attributable to other factors listed in U S West's comments.[349] NECA argues that many of its pool participants do not have high-capacity DS1 or DS3 special access services throughout their service areas because they have no customers that require these services. NECA submits that the areas without demand for DS1 or DS3 special access services have higher transport costs than those areas that do have these services. NECA suggests that the Commission discontinue its reliance on special-access transport rates as a surrogate for local transport costs; NECA would then develop cost-based transport rates and file them in access tariffs.[350] Aliant asserts that a significant portion of the TIC results from the fact that special access is primarily an urban service while switched transport is primarily a rural service. Aliant states that approximately 77 percent of Aliant's DS1 special access revenue is located in Lincoln, Nebraska, while 79 percent of Aliant's tandem-switched transport and 58 percent of Aliant's DS1 direct-trunked transport revenue is located outside of Lincoln.[351]

102. Cable & Wireless argues that special access is generally less costly than direct-trunked transport because special access, unlike direct-trunked transport, generally is limited in use to low-cost urban areas. Cable & Wireless contends that the additional costs of direct-trunked transport should be removed from the TIC.[352]

103. *Central Office Equipment Maintenance Expenses.* USTA and incumbent LECs argue that the Part 36 and Part 69 rules overstate the assignment of COE maintenance expenses to the TIC.[353] USTA states that by separating COE maintenance expenses on the basis of the combined COE investment, a mismatch occurs to the extent that the expenses associated with maintaining the investment are apportioned differently than the investment

[348] USTA Comments, Attachment 11.

[349] U S West Comments at 69-70.

[350] NECA Comments at 7.

[351] Aliant Comments at 3.

[352] Cable & Wireless Comments at 21-22.

[353] *See, e.g.,* USTA Comments at 62-63; BellSouth Comments at 78; U S West Comments at 68-69; Citizens Utilities Comments at 33; GTE Comments at 38.

being maintained. This results in a portion of COE maintenance expense for local and operator switches being allocated in Part 69 to Common Line, Transport, and Special Access, where there is no switch investment to maintain.[354] USTA estimates COE Maintenance Misallocations at $101.8 million, or 3.28 percent of the TIC.[355] According to USTA, a more cost-causative approach would be to separate the central office expenses based on the separation of the investment being maintained.[356]

104. To accomplish this modification, USTA proposes to modify sections 36.321 and 69.401(b).[357] USTA states that COE switching expenses should be assigned to the Transport elements based on a relationship of interstate tandem switching investment assigned to the Transport element to total Part 69 interstate switching investment, with the remainder being assigned to local switching. According to USTA, COE operator expenses should be assigned to information, interexchange and operator transfer elements based on the relative relationships from assignment of the operator investment to these elements. By using the above-described approaches, USTA states that costs will be removed from the common line, access and transport elements and will be reassigned to the switching element.[358] USTA claims, however, that these changes will require Joint Board action and, until such action can be taken, these TIC components should be removed from the per-MOU TIC rate and should be bulk-billed to IXCs based on interstate revenues or minutes.[359]

105. Cable & Wireless argues that, to the extent that these costs are not related to facilities-based transport, they should be moved out of the TIC and, to the extent that they are NTS, they should be recovered as part of the per-line or per-port local switching costs.[360]

106. *Use of Circuit Terminations in Separating Costs Between Private Line and Message Services*. USTA asserts that Part 36.126 assigns interexchange trunk investment to message joint, interstate private line, and intrastate private line categories and allocates these costs based on the average cost per circuit termination. USTA states that the costs in interexchange circuit equipment categories, except message joint, are jurisdictionally pure and

[354] BellSouth Comments at 78.

[355] USTA Comments, Attachment 11 at 1.

[356] USTA Comments, Attachment 10 at 7.

[357] USTA Comments, Attachment 10 at 7.

[358] USTA Comments, Attachment 10 at 8.

[359] USTA Comments at 62-63.

[360] Cable & Wireless Comments at 22.

could be directly assigned to jurisdictions if it were permitted by the Part 36 Rules. For the message joint investment classification, traffic usage factors determine the final jurisdictional allocation. USTA states that the distribution of costs to categories and jurisdictions based on direct identification would reduce the TIC by reassigning costs to intrastate and interstate.[361] USTA estimates that the use of circuit Termination Counts misallocates $630.66 million to the TIC, or 20.33 percent of the TIC.[362]

107. Frederick & Warinner argues that differences in the definition of circuit terminations when allocating costs between switched and special access contribute to the TIC, resulting in costs being over-allocated to message trunking facilities and under-allocated to special access. Frederick & Warinner proposes an "equivalent termination count" be used for message circuit equipment in COE Category 4.23 in order to more appropriately reflect how CO transmission costs are incurred.[363] Frederic & Warinner generated an "equivalent termination count" based on the ratio of tariffed rates. Using the ratio of NECA's DS1 channel termination rate to the DS0 channel termination rate gives a weighting of 5.2. According to Frederick & Warinner, changing terminations in this way would (1) allocate more costs to special access and less to switched access; (2) bring special access rates closer to those determined by LRIC cost studies; (3) reduce the message toll costs being allocated to various transport elements; and (4) increase the tandem-switched termination rate (using special access rates divided by assumed MOU), thereby reducing the revenue requirement to be collected in the TIC.[364]

2. Market-Based Approaches

108. The incumbent LECs generally support continued recovery of all remaining sums in the TIC after reassigning any identifiable TIC costs to other services. USTA and incumbent LEC parties state that, to a large extent, the TIC reflects costs that the separations and access charge rules assign to interstate local transport.[365] While USTA and incumbent LEC parties state that it is possible to identify the cause of only a portion of the costs included in the TIC,[366] this does not suggest that only a portion of the TIC should be

[361] USTA Comments, Attachment 10 at 6; BellSouth Comments at 78-79; U S West Comments at 67-68; Citizens Utilities Comments at 33.

[362] USTA Comments, Attachment 11 at 1.

[363] Frederick & Warinner Comments at 8-9.

[364] Frederick & Warinner Comments at 10.

[365] *See, e.g.*, USTA Comments at 59.

[366] *See, e.g.*, USTA Comments at 59; Sprint Comments at 28.

recovered in a post-access reform environment.[367] Ameritech asserts that a large part of the TIC contributes to the incumbent LECs' ability to maintain affordable basic exchange rates.[368] Incumbent LEC parties assert that the TIC represents actual costs that have been assigned to the interstate jurisdiction, and that companies are entitled to recovery of the amount currently assigned to the TIC.[369] Evans *et al.* submits that rate-of-return LECs are recovering jurisdictionally interstate, actual transport costs under the current system, and that any changes to the rate structure must allow continued recovery of the actual, defined revenue requirement.[370] Roseville Tel. states that the remaining TIC costs result from Part 36 rules and should be reassigned to the Interstate Special Access, Interstate Local Switching and intrastate jurisdictions.[371]

109. ALTS and ACSI argue that once readily-correctable misallocations are removed, market-based forces should be relied upon to reduce any remaining TIC.[372] Spectranet asserts that the need for a transition period applies as much to new entrants as it does for incumbent LECs because the immediate flash-cutting of access rates to LEC cost will undermine the basis upon which new entrants were planning to enter the local exchange business.[373]

110. Several parties allege that a Federal-State Joint Board pursuant to section 410(c) is required before the TIC can be fully eliminated. NARUC states that solving the TIC issue requires Joint Board action prior to action by the FCC.[374] USTA and incumbent LEC parties assert that many of the changes necessary to eliminate the TIC will require Joint Board action.[375] Frontier states that the FCC should promptly convene a Joint Board to address these

[367] USTA Comments at 58.

[368] Ameritech Reply at 32.

[369] *See, e.g.*, BA/NYNEX Reply at 39; PacTel Comments at 72; NECA Comments at 4 n.11; SNET Comments at 39-40; GVNW Comments at 8; Alaska Telephone Association Comments at 9; Western Alliance Comments at 21-22.

[370] Evans, *et al.*, Comments at 4.

[371] Roseville Tel. Comments at 11-12.

[372] ALTS Comments at 26; ACSI Reply Comments at 21.

[373] Spectranet Comments at 4.

[374] NARUC Comments at 7.

[375] *See, e.g.*, USTA Comments at 62-63; GTE Comments at 39.

issues on a schedule that coincides with the timetable for proposed phase-out of the TIC.[376] Until such action can be taken, these incumbent LEC parties argue that the remaining TIC components should be removed from the per-MOU TIC rate and should be bulk-billed to IXCs based on interstate revenues or minutes.[377] Ameritech asserts that the remainder of the TIC should be billed to interstate providers of telecommunications services in a competitively neutral manner on a flat-rate basis.[378] Roseville Tel. asserts that the remaining portion of the TIC should be recovered through a "Separations Cost" rate element, at least until a Joint Board reforms the separations rules. Roseville Tel. states that this will allow recovery of properly-incurred costs by an explicit mechanism applied equally to all cost-causers (i.e., users of interstate access services).[379] NECA and TDS contend that incumbent LECs should continue to collect the balance of the TIC through a smaller TIC-type charge or through alternative collection arrangement such as bulk-billing. They state that this charge would continue to be collected pending Joint Board action to change the separations rules.[380]

111. BA/NYNEX states that there are two interim solutions to sums remaining in the TIC pending separations changes. First, residual TIC amounts could be recovered from IXCs based on their proportionate share of LEC interstate access minutes. Second, LECs could recover any residual TIC on a per-presubscribed line basis to the IXCs. For price cap purposes, any TIC residual should be in the trunking basket and LECs should be allowed to target price cap reductions to this element. Pending separations changes, these mechanisms would be easy to administer, would not unduly burden the IXCs and would enable the LEC to reduce the amounts at issue through targeting of price cap reductions.[381] BA/NYNEX asserts that the remaining costs recovered through the TIC are primarily NTS and, therefore, should be recovered through a flat-rate charge. According to BA/NYNEX, such flat rate charges would resemble the charges states have adopted for UNEs, would reduce the arbitrage problem, because incumbent LECs would no longer have to charge high per-minute rates compared to the rates for UNEs, and would, when combined with the rates for local telephone

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[376] Frontier Comments at 9 n.17.

[377] *See, e.g.*, USTA Comments at 62-63; PacTel Comments at 72; SNET Reply at 27-28; Alaska Telephone Association Comments at 9.

[378] Ameritech Reply at 32.

[379] Roseville Tel. Comments at 12.

[380] NECA Comments at 7; TDS Comments at 23-24.

[381] BA/NYNEX Comments at 38.

lines and the EUCL charge, come close to the UNE rates for local loops and switches in many instances.[382]

112. Several incumbent LECs propose specific mechanisms to recover any remaining TIC costs. U S West recommends that TIC costs that cannot be reassigned to other access rate elements, or are not reassigned pursuant to separations reform, be recovered, at least in part, through increased end user common line charges. U S West also suggests that we establish a separate fund similar to the universal service fund, with IXCs contributing to the fund on a flat-rate basis equal to their percentage share of switched access MOU. U S West further recommends revising the price cap rules to establish a formula for a flat-rated TIC.[383] SWBT proposes establishing a "Public Policy" rate element containing the costs associated with providing transport facilities and services to low-volume, rural areas and a significant portion of tandem switching costs.[384]

113. In a similar vein, GTE proposes permitting incumbent LECs to recover any remaining TIC costs through a flat-rate "regulatory policy cost recovery" charge.[385] Under GTE's proposal, incumbent LECs would submit separations-based cost studies to the FCC showing the amount of marketing expense erroneously assigned to the interstate jurisdiction under existing FCC rules and residual TIC revenue requirement remaining after reallocation of specific costs to other rate elements.[386] Under GTE's plan, incumbent LECs would make corresponding adjustments to their newly-created "Network Services basket" PCI to reflect removal of marketing expenses and reassignment of TIC costs to other access elements. GTE's regulatory policy cost charge would be assessed on a bulk-billed basis to all telecommunication carriers that purchase interstate switched access, transport and network facilities used to provide interstate services from incumbent LECs. GTE asserts that the method is fair because it charges all carriers using incumbent LEC networks.[387] GTE submits that the regulatory policy charge should be capped at its initial value for one year, although an incumbent LEC would be permitted to charge less than the initial value. GTE argues that the regulatory policy charge should not be subject to price cap regulation because it is an explicit subsidy recovery and not representative of specific services provided to customers. Annual

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[382] BA/NYNEX Reply at 39-40.

[383] U S West Comments at 71-73.

[384] SWBT Reply at 11.

[385] GTE Comments at 39, 41-44.

[386] GTE Comments at 42.

[387] GTE Comments at 43.

adjustments to the regulatory policy charge would be limited to the changes in costs allocated to the interstate jurisdiction that are being recovered by this charge.[388]

114. Teleport states that once the review of incumbent LEC switched access costs has been completed, the Commission will be able to determine what costs, if any, should remain in the TIC, and how any unrecovered costs can be recovered. Teleport recommends that any residual amounts be recovered through a uniform surcharge on all related rate elements subject to competition, which will ensure that the charges are cost based.[389] Subsequently, Teleport clarified that it believed that the TIC should not be assessed on carriers that do not use incumbent LEC transport facilities.[390] Sprint and Time Warner also recommend that the Commission preclude incumbent LECs from assessing the TIC on traffic that is carried to or from incumbent LEC end offices on the facilities of a competitor because that would require CAPs to pay for the costs of their competitors' services.[391]

115. Time Warner argues that the Commission should reject incumbent LEC proposals to establish a separate recovery mechanism, such as bulk billing, to preserve incumbent LEC revenue requirement recovery because they would reinstate the largely discredited rate base, rate-of-return regulatory structure and its associated harmful incentives.[392]

116. Several parties commented on pricing flexibility as a vehicle to address costs in the TIC. Aliant argues that after incumbent LECs shift TIC amounts into the appropriate existing or new rate elements, LECs should have the flexibility to shift any remaining TIC amounts into Transport and Tandem Switched zones, noting that this would allow the market to determine if these costs are recoverable.[393] Cable & Wireless states that TIC deaveraging would be acceptable once the charge is purged of inappropriate costs, provided that deaveraging is based on differences in the remaining costs. Cable & Wireless argues that incumbent LECs should not be allowed to recover revenue via the TIC in order to ensure

[388] GTE Comments at 44.

[389] Teleport Comments at 32-33.

[390] Letter from Judith Herrman, Manager, Federal Regulatory Affairs, Teleport, to Richard Lerner, Competitive Pricing Division, April 11, 1997.

[391] Sprint Comments at 30; Time Warner Comments at 15; ACC Long Distance Comments at 12.

[392] Time Warner Reply at 22.

[393] Aliant Comments at 3.

revenue-neutrality in a regulatory environment intended to be devoid of implicit subsidies.[394] If deaveraging is permitted, Cable & Wireless contends that the Commission should ensure that all incumbent LECs deaverage in a consistent manner using geographic zones demarcated by actual cost differences, e.g., cost differences for an efficient local exchange provider using forward-looking technology. Cable & Wireless notes that every study area may not include all zone types, and there may be a need for more than three zones to minimize residual averaging within zones.[395] To the extent that direct-trunked transport rates understate the costs of transport in less-dense areas because they are based on special access rates in high-density areas, Sprint states that the Commission could allow density-based deaveraging of direct-trunked transport rates without the constraints that presently exist.[396]

117. TCA argues that incumbent LECs should be given greater flexibility to add rate elements or change rates as portions of the TIC are more clearly identified.[397] On the other hand, TRA opposes giving the incumbent LECs any significant flexibility as part of any associated transition.[398]

3. Approaches that Eliminate or Phase Out the TIC

118. Several parties contend that the TIC should be eliminated totally, or that any TIC amounts remaining after making any reallocations warranted by the record should be eliminated. MCI contends that there is no reason for the TIC once access cost elements are set to recover economic cost.[399] MCI argues that the TIC is an uneconomic, unnecessary, make-whole charge that should be eliminated. Moreover, MCI alleges that there is no basis for reallocating some of the TIC amount and renaming the rest the "public policy" rate element, which will force new entrants to pay an indefensible subsidy to their competitors.[400] MCI argues that Part 36 allocates incumbent LEC expenditures, not costs. MCI suggests that it is likely incumbent LEC spending is not at the economically efficient level, given the current absence of effective competition and the price cap plan that does not effectively pass through to ratepayers changes in incumbent LEC costs. MCI states that the Hatfield model

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[394] Cable & Wireless Comments at 22.

[395] Cable & Wireless Comments at 22-23.

[396] Sprint Comments at 29.

[397] TCA Comments at 4.

[398] TRA Comments at 36.

[399] MCI Comments at 87.

[400] MCI Reply at 29.

indicates that the incumbent LECs' spending is approximately $10 billion above their true costs.[401] Furthermore, MCI contends that the Hatfield model shows that incumbent LECs are not charging less than cost to provide local service.[402]

119. AT&T recommends eliminating the TIC immediately, suggesting that phasing the TIC out over some period might be inconsistent with the court's mandate in *CompTel v. FCC*. AT&T also asserts that the 1996 Act requires access to be priced at TELRIC levels, and contends that anything other than an immediate elimination of the TIC would violate that requirement.[403] AT&T also argues that the TIC should be eliminated immediately because: (1) the current per-minute TIC raises long distance rates above economic levels and restricts long distance usage, to the detriment of consumers ;[404] (2) the 1996 Act requires the Commission to remove implicit subsidies from access, and to price access at TELRIC;[405] (3) the TIC is anticompetitive and inconsistent with the Act's competitive goals because (a) it guarantees incumbent LECs recovery of transport "costs," even when their networks are not used;[406] and (b) it distorts competition by allowing incumbent LECs to price transport facilities below cost and thus below competitors' prices; and (4) the Court of Appeals has admonished the Commission to move expeditiously to a cost-based alternative or provide a reasoned explanation of why a departure from cost-based ratemaking is necessary, and no such justification exists here.[407]

120. CompTel asserts that the TIC should immediately be set to zero because by definition, it does not include any costs that will not be recovered by TSLRIC-based rates for other access elements.[408] Similarly, LCI argues that access charges should be priced using TELRIC method, and that the TIC should be eliminated as a non cost-based residual revenue stream that is at odds with the movement to cost-based pricing.[409] NCTA also argues that the

[401] MCI Reply at 27.

[402] MCI Reply at 27-28.

[403] AT&T Comments at 57-59.

[404] *Accord* WorldCom Comments at 65.

[405] *Accord* MCI Comments at 86; LCI Comments at 28.

[406] *Accord* Sprint Comments at 29-30; Teleport Comments at 14 n.8.

[407] AT&T Reply at 30-31.

[408] CompTel Reply at 2.

[409] LCI Comments at 28.

TIC should be eliminated immediately.[410] Telco Communications Group advocates reassigning the easily identifiable costs to facility-based elements and phasing out the balance of the TIC. The TIC allows the incumbent LECs to price access below cost and recover the shortfall, regardless of whether the incumbent LEC provides transport facilities to the carrier paying the TIC or not. As a result, Telco Communications Group says a collocated transport provider must meet or beat the incumbent LEC prices and pay the TIC as well.[411] TRA contends that costs in excess of forward-looking economic costs should be eliminated.[412]

121. ACC Long Distance contends that the TIC should be eliminated over a well-defined period of no more than three years.[413] Excel favors reassigning readily identifiable and quantifiable costs and prescriptively phasing out the remainder of the TIC over no more than three years.[414]

122. Ad Hoc supports the Commission's proposal to identify and reallocate costs in the TIC to the extent possible, and to either permit incumbent LECs to write off the remaining TIC costs, or to require incumbent LECs to treat those costs as they treat other residual costs.[415] LCI argues that incumbent LECs should not be permitted to assess the TIC on terminating traffic because it is not cost-based since there are no TELRIC-based costs to recover.[416] ITC asserts that the TIC should be viewed as a support mechanism and eliminated as part of the USF proceeding.[417]

123. The California Cable Television Association argues that any transport costs recovered by the TIC should be recovered through the transport element with the non-cost subsidy portion prescriptively phased.[418] Time Warner argues that incumbent LECs should be given a limited opportunity to recover costs in the TIC that are unassignable to other

[410] NCTA Comments at 3, 27.

[411] Telco Communications Group Comments at 5.

[412] TRA Comments at 36.

[413] ACC Long Distance Comments at 12.

[414] Excel Comments at 13-14.

[415] Ad Hoc Comments at 27-29.

[416] LCI Comments at 20.

[417] ITC Comments at 4.

[418] California Cable Television Association Comments at 12.

elements, such as amortizing them over a five-year period through proportionate allocation to interstate switched access rate elements.[419] TCI argues that the Commission should base all rates for transport facilities on forward-looking costs and phase out the recovery of other TIC cost, which approach, according to TCI, would be most consistent with the Court's remand. If the Commission wishes to allow the incumbent LECs continued recovery of any portion of legacy costs, it should do so through a PIC-based rate element, which would be phased out over time by transferring these costs to the SLC.[420]

124. The Oregon Commission states that any remaining costs should be phased out.[421] The Alabama Commission generally supports a solution in which costs would be reassigned to the transport facility elements to correct identifiable misallocations. The remaining revenue shortfall should be shifted to a separate fund or account, recovered on a competitively neutral basis, and phased out over a reasonable period of time. The Alabama Commission states that the TIC is an implicit subsidy that must be eliminated under the 1996 Act.[422]

125. The Texas Public Utility Counsel supports reassigning to transport facility rate elements those portions of the TIC that can be identified, including the TELRIC of the element plus a reasonable allocation of forward looking common costs, and shifting the remaining revenue shortfall to a specially identified account to be recovered on a competitively neutral basis and phased out over time. Increased levels of universal service support should be used to offset the amount of the TIC that is earmarked for phase-out.[423] The Texas Public Utility Counsel argues that the Commission should eliminate unnecessary economic cost recovery.[424] To the extent that there are uneconomic costs embedded in the TIC, AARP, *et al.* argues that they should be eliminated.[425] AARP, *et al.* states that using reductions in the rate of return to reduce the TIC is reasonable.[426]

126. USTA and most incumbent LECs assert that the TIC should not be phased out, contending instead that any costs remaining in the TIC after reallocation should be bulk-billed

[419] Time Warner Comments at 14.

[420] TCI Comments at 20.

[421] Ohio Commission Comments at 5-6.

[422] Alabama Commission Comments at 10-11.

[423] Texas Public Utility Counsel Comments at 21.

[424] Texas Public Utility Counsel Comments at 16.

[425] AARP, *et al.*, Comments at 17. *See also* State Consumer Advocates Comments at 36.

[426] AARP, *et al.*, Comments at 17.

to the IXCs based on interstate revenues or minutes until reform of the separations process is completed. These parties argue that all incumbent LECs are entitled to full and complete recovery of the TIC amount because the TIC represents actual, real costs that have been assigned to the interstate jurisdiction by the Commission's rules.[427] Puerto Rico Tel. asserts that the Commission is under no obligation to phase out the TIC based on the CompTel remand, and in fact, cannot ignore the real costs underlying the TIC in the guise of access charge reform.[428]

127. Minnesota Independent Coalition argues that there is no basis for assuming that certain investment costs included in the TIC should be removed because of imprudence or because such investments are no longer used or useful. Minnesota Independent Coalition contends that this issue cannot be determined on an industry-wide basis using assumptions that may be wholly inaccurate in the case of individual LECs, but must be determined on a company-by-company basis.[429] Several incumbent LECs contend that failure to allow recovery would constitute a breach of the regulatory contract, a denial of fundamental due process, and a Fifth Amendment taking.[430]

128. Ameritech asserts that a phase out of the TIC should only be mandated: (1) over a sufficiently long period of time (*e.g.*, five years) to permit incumbent LECs and state commissions to manage the revenue loss; (2) if the Commission adopts the market-based approach to access reform, which would give the incumbent LECs sufficient pricing flexibility to manage the revenue loss; and (3) the Commission permits price cap LECs to target mandatory price cap reductions to the TIC during the phase-out period. In addition, Ameritech says states should conduct proceedings to permit incumbent LECs to recover the intrastate portions of the loop and line port costs from end user rates or state universal service fund subsidies, because these facilities currently are partially subsidized from the TIC.[431] The Illinois Commission proposes that to the extent that it is not possible to reallocate the entire

[427] *See, e.g.*, USTA Reply at 36-37; BellSouth Reply at 13-14; U S West Comments at 63-64; SWBT Reply at 12; Aliant Comments at 2; SNET Reply at 27-28; ALLTEL Reply at 8; Puerto Rico Tel. Reply at 11-12; Rural Tel. Coalition Reply at 13-15; TCA Comments at 4; TDS Comments at 23; Western Alliance Comments at 22.

[428] Puerto Rico Tel. Comments at 16-17.

[429] Minnesota Independent Coalition Comments at 17.

[430] Roseville Tel. Comments at 10; Minnesota Independent Coalition Comments at 17.

[431] Ameritech Reply at 32-33.

TIC to appropriate rate elements, rate reductions required by the price cap mechanism should be focused on the TIC until it is phased out.[432]

129. Several incumbent LECs concur with Ameritech on targeting price cap reductions to the TIC until the TIC is phased out, although disagreeing with Ameritech's idea to phase out the TIC over a fixed number of years. For example, PacTel suggests that, if the Commission continues to use a productivity factor, it could include a new "productivity offset" where the productivity factor could be targeted to the remaining TIC, gradually eliminating it over a number of years.[433] Sprint also proposes to target all of the price cap productivity adjustment at the TIC until it is eliminated. Sprint states that a price cap productivity adjustment would eliminate the TIC in five years or less for all but three price cap LECs, without having to explore in detail the cost components of the TIC, or possibly revise Parts 36 and 69.[434] Sprint indicates that the TIC would be eliminated within 7 years for the other 3 price cap LECs. Sprint states that it may be possible to phase out the TIC immediately if increases in explicit universal service subsidies to price cap LECs, with offsetting reductions in the interstate access charges, are large enough.[435] During the phase out, Sprint contends that the TIC should continue to be recovered on a per-minute basis, instead of using bulk-billing mechanisms based on presubscribed lines or retail IXC revenues. Recovery in bulk would insulate the incumbent LECs from competition because they would recover the TIC even if LEC competitors provided the access.[436]

130. ALTS argues that the Commission should not adopt Sprint's proposal to phase out the TIC by applying the productivity factor against it only. ALTS argues that such targeting would undercut the rationale for the "just and reasonable" status of all price-cap rates, which is the widespread application of the X-factor. According to ALTS, there are no sound policy reasons for Sprint's approach. Instead, the TIC should be curing identifiable cost misallocations and reducing the remainder via competition in the tandem market.[437] ALTS states that a long-term phase down of any remaining costs in the TIC is a fallback option.[438]

[432] Illinois Commission Comments at 13.

[433] PacTel Comments at 72; *See also* BA/NYNEX Comments at 38.

[434] Sprint Comments at 29, 51, Exhibit 8; Sprint Reply at 17-18.

[435] Sprint Reply at 17.

[436] Sprint Reply at 19.

[437] ALTS Reply at 24.

[438] ALTS Comments at 26.

E. SS7 Signalling

131. A number of commenters support adopting the Ameritech rate structure for general application to all price cap LECs.[439] TCI argues that an unbundled SS7 rate structure would allow customers and market entrants to obtain access efficiently by purchasing only the SS7 network functions they require. TCI further supports flat-rated charges for signal links and STP port termination.[440] Although Time Warner supports adoption of the Ameritech rate structure, it cautions against the creation of overly detailed rules, suggesting that detailed rules for SS7 services are unnecessary.[441] AT&T supports adoption of the Ameritech rate structure but acknowledges that some LECs lack facilities to measure SS7 usage which justifies delaying implementation of the unbundled rate structure.[442] MCI supports the concept of an unbundled SS7 rate structure, but argues that rates for particular sub-elements could be more cost-based than the Ameritech rate structure.[443] Illuminet also supports general use of the Ameritech rate structure, but urges the Commission to impose strict tariff requirements to ensure that rates are just and reasonable. As for specific elements, Illuminet, like TCI, favors flat-rated charges for signal links and STP port termination because they reflect specific SS7 functions dedicated to specific customers.[444]

132. Generally, incumbent LECs oppose mandating the implementation of the Ameritech SS7 rate structure. BellSouth and GTE oppose a specific rate structure for signalling because it would require the acquisition and deployment of equipment to measure usage of SS7 services.[445] In addition, BellSouth argues that the Ameritech rate structure does not provide adequate flexibility to address the use of future signalling services, such as advanced intelligent networks (AIN).[446] Similarly, Bell Atlantic and NYNEX oppose mandating the Ameritech SS7 rate structure because they, too, lack the ability to track costs associated with the use of disaggregated SS7 services.[447] If the Commission imposes an

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[439] TCI Comments at 22-23; Time Warner Comments at 16-17; Illuminet Comments at 2-4.

[440] TCI Comments at 22.

[441] Time Warner Comments at 17.

[442] AT&T Reply at 33-34.

[443] MCI Comments at 87.

[444] Illuminet Comments at 2-4.

[445] BellSouth Comments at 81; GTE Comments at 53.

[446] BellSouth Comments at 82.

[447] Bell Atlantic/NYNEX Comments at 40.

unbundled structure similar to Ameritech's, Bell Atlantic and NYNEX request that the Commission allow recovery of all direct costs incurred to enable billing for specific rate elements. They estimate this cost would range between $15 million and $40 million.[448] Other RBOCs echo similar concerns regarding equipment requirements to measure unbundled SS7 services.[449] Ameritech itself argues against a general requirement that its SS7 rate structure be implemented for all price cap LECs. It contends that its rate structure may not be appropriate on an industry-wide basis and that use of the Ameritech SS7 rate structure should be permissive.[450]

133. Other commenters caution against mandating the Ameritech rate structure. CompTel suggests that Ameritech's SS7 structure may be appropriate in the future, but should not be mandated now because carriers lacking necessary metering equipment would have to develop measuring capabilities that would place significant financial and operational burdens on smaller carriers.[451] Similarly, Worldcom argues that the high costs associated with measurement and billing facilities outweigh the benefits of adopting Ameritech's rate structure on an industry-wide basis.[452]

134. Generally, commenters choosing to discuss the ISUP/TCAP issue do not favor the imposition of separate charges for ISUP and TCAP messages. They expressed concern that the cost of implementing such an approach and monitoring message lengths with sufficient particularity would not justify the benefits to be derived from the proposed rate differentiation.[453] AT&T suggests rate differentiation between ISUP and TCAP messages should be permissive.[454]

135. With respect to the treatment of signalling rate elements in price cap baskets, both MCI and AT&T advocate placing STP port termination in the traffic-sensitive basket while leaving the signalling link in the trunking basket. These commenters argue that STP port termination is not subject to competitive provision which justifies placement in different

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[448] *Id.* at 40 n.95. *See also* USTA Comments at 66 and Reply at 37. Sprint estimates that the cost of metering equipment would run between $15 million and $20 million. Sprint Comments at 31.

[449] PacTel Comments at 73; SBC Comments at 15.

[450] Ameritech Comments at 23. *See also* US West Comments at 73-74.

[451] CompTel Comments at 31-32.

[452] Worldcom Reply at 39-41.

[453] MCI Comments at 89; Time Warner Comments at 17; CompTel Comments at 31-32.

[454] AT&T Comments at 61.

baskets.[455] AT&T contends that incumbent LECs have an incentive to respond to competitive pressures in their signal link business by raising the level of the STP port charge.[456] Ameritech, on the other hand, opposes shifting STP port charges to the traffic-sensitive basket, arguing that any concern that STP port charges would be used to offset price reductions for the signal link is unfounded. Increases in the STP port termination charge, Ameritech contends, would encourage its customers to find other means to interconnect with the incumbent LEC's network.[457]

F. Impact of New Technologies

136. Incumbent LECs oppose the adoption of specific or detailed rate structures for recovery of costs associated with new technologies. According to USTA, a mandated rate structure would create a disincentive for LECs to invest in the development of new technologies.[458] Ameritech cautions against the adoption of rate structures, arguing that fast changing technology will render detailed rate structures outdated.[459] BellSouth advocates general rate structure guidelines rather than specific rules because flexibility will promote greater customer service choices.[460] GTE also opposes new rate structures for advanced technologies because detailed regulation would impair the ability of incumbent LECs to respond to competition from competitive LECs that also deploy new technologies.[461]

137. Other commenters support the development of cost-causative rate structures for certain technologies. AT&T favors adoption of a rate structure for SONET, recommending that this technology be priced on a flat, distance-sensitive basis. AT&T also advocates the establishment of per-message charges to recover the costs of AIN databases.[462] ALTS agrees that cost-causative rate structures for SONET and AIN should be adopted because these technologies are sufficiently mature to permit identification of their costs.[463] Other

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[455] MCI Comments at 87-88; AT&T Reply at 33-34.

[456] AT&T Reply at 33-34.

[457] Ameritech Comments at 24-25.

[458] USTA Reply at 37. *See also* PacTel Comments at 73.

[459] Ameritech Comments at 25.

[460] BellSouth Comments at 83.

[461] GTE Comments at 53.

[462] AT&T Comments at 62-63.

[463] ALTS Reply at 25.

commenters, however, oppose the adoption of rate structures for new technologies, arguing that the deployment of a new technology to provide access services should lower the costs of providing access and promote efficiency. These commenters argue that new technologies merely change the cost of providing a traditional service and do not justify the adoption of corresponding rate structures.[464]

IV. BASELINE RATE LEVELS

A. Primary Reliance on a Market-Based Approach With Adoption of Several Initial Prescriptive Measures

138. Nearly all commenters agree that competition in markets for local exchange services, including exchange access services, is likely to produce lower interstate access prices. There is sharp disagreement, however, about the extent to which competition has developed, or will soon develop, to the point where it can be relied on to produce lower access charges. It is this disagreement that is largely responsible for parties' differing positions concerning the advisability of adopting either a market-based or a prescriptive approach to access charge reform.

139. *Support for a Market-Based Approach.* DOJ and most LECs support a market-based approach to reform of access charge rate levels. DOJ comments that a market-based approach will permit a more gradual transition to cost-based access charges, which will permit a more orderly and appropriate treatment of issues concerning universal service support and jurisdictional separations.[465] DOJ also recommends that the Commission adopt a prescriptive backdrop to its market-based reform. Incumbent LECs argue that market forces are more reliable and more precise than regulation for aligning rates with costs.[466] They also argue that the efficient operation of competitive markets requires that incumbent LECs be given the pricing flexibility embodied by the market-based approach sooner rather than later.

140. Most incumbent LECs combine their support for a market-based approach with opposition to a prescriptive approach to reforming access charge rate levels. Several incumbent LECs and other parties contend that the prescriptive approach is less likely than the

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[464] Spectranet Comments at 6; TCI Comments at 24; Illinois Commerce Commission Comments at 14.

[465] DOJ Ex Parte at 17-21.

[466] Alaska Tel. Assoc. Comments at 2-5; Aliant Comments at 3-4; Ameritech Reply at 3-8; BA/NYNEX Comments at 2-4; BellSouth Comments at 11, 14-16, 28-29; Cincinnati Bell Comments at 12-13; GTE Comments at 19-21; Independent Telephone and Telecommunications Alliance Comments at 5; PacTel Comments at 11-17; SNET Comments at 2-3, 6-7; TDS Comments at 28-32; USTA Comments at 32-34; and U S West Comments at 20-29.

market-based approach to result in economically efficient rates.[467] Some incumbent LECs also argue that a static prescriptive approach would not reflect fluctuations in supply and demand as a competitive market would.[468] Some commenters maintain that the prescriptive approach would result in inefficient rates, and thus skew potential competitors' entry decisions.[469] Cincinnati Bell opposes the prescriptive approach because it could result in more rapid rate reductions than would occur in a competitive market.[470] Citizens Utilities argues that the prescriptive approach would discourage use of unbundled network elements and retard the development of competition.[471]

141. Several commenters claim that the prescriptive approach is essentially an abandonment of price cap regulation, because it would punish incumbent LECs for efficiency gains made under the price cap regime.[472] Some incumbent LECs argue that the Commission determined that the initial price cap rates were reasonable, and that there is no basis to reverse that finding now.[473] BA/NYNEX argues that the prescriptive approach would be substantially similar to rate-of-return regulation, with recurring rate cases needed to recalculate forward-looking costs in light of further technological improvements. BA/NYNEX argues further that this would vitiate price cap regulation and create a disincentive for future investment.[474] Some incumbent LECs assert that the prescriptive approach unreasonably discourages

[467] *See, e.g.*, Ameritech Comments at 48-49, Attachment B at 4; BA/NYNEX Comments at 2; BellSouth Comments at 41; Illinois Commission Comments at 23-25; CSE Comments at 4-5; Cincinnati Bell Comments at 13; GTE Comments at 74; SNET Comments at 23; American Communications Reply at 2-6.

[468] BellSouth Comments at 14-15; USTA Comments, Attachment 1 at 15; BellSouth Reply at 28-30; Ameritech Reply at 7, 19 and Attachment 1 at 16; USTA Reply, Attachment 1 at 10-11, Attachment 2 at 46; Attachment 3 at 7.

[469] Ameritech Comments at 49; PacTel Comments at 5; ALTS Comments at 21-22; Ohio Commission Reply at 6-7; USTA Reply at 10-11; U S West Reply at 7-10. U S West speculates that AT&T and MCI are seeking to limit entry into the local exchange market, in order to delay BOC entry into the long-distance market. U S West Reply at 8-9.

[470] Cincinnati Bell Comments at 13.

[471] Citizens Utilities Comments at 15.

[472] Ameritech Comments, Attachment B at 22-23; BA/NYNEX Comments, Attachment 1 at 4; USTA Comments at 12; PacTel Comments at 30; U S West Comments at 45-46; BA/NYNEX Reply, Attachment 1 at 2, 5-6; GTE Reply at 41. *See also* BellSouth Comments, Attachment 2 at 25 (observing generally that reducing profits too much might adversely affect efficiency incentives).

[473] GTE Reply at 40-41; PacTel Reply at 12; SWBT Reply at 21, *citing LEC Price Cap Order*, 5 FCC Rcd at 6814-17.

[474] BA/NYNEX Comments, Attachment 1 at 7. *See also* BellSouth Reply at 36.

incumbent LECs' investment in their networks.[475] AT&T replies that, because price cap LECs would still be able to increase their profits by increasing their productivity growth, price cap regulation and its incentives for investment would remain in effect.[476] Competition Policy Institute argues that the opening of exchange access markets to competition means that lower rates of return are unlikely to stifle innovation, because competitive pressure will spur innovation.[477]

142. According to BellSouth, if access rates do not comport with market-based levels, it is because of regulatory policies rather than incumbent LEC inefficiency. BellSouth opposes the prescriptive approach because it does not address those regulatory policies.[478] Similarly, several parties assert that we cannot adopt a prescriptive approach unless we establish a joint board to increase the allocation of costs to the intrastate jurisdiction.[479]

143. Local exchange carriers generally argue that they already face substantial competition, particularly for exchange access services.[480] In addition, they argue that competition will develop first, and most rapidly, for the very customers that generate the majority of exchange access minutes.[481] In particular, they argue that barriers to entry are quite low in local markets, particularly for the provision of exchange access services, now that

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[475] Ameritech Comments at 49; BA/NYNEX Comments, Attachment 1 at 3; BellSouth Comments at 41-42; Ameritech Reply, Attachment A at 11; BA/NYNEX Reply at 15-16; PacTel Reply, Testimony of Bruce Egan at 24-25 (Egan Aff.); USTA Reply at 7-8, 11-12, and Attachment 1 at 1-2; U S West Reply at 7; USTA Reply, Attachment 1 at 9-10. *See also* American Association for Adult and Continuing Education, *et al.* Reply at 9-11.

[476] AT&T Reply at 18.

[477] Competition Policy Institute Comments at 24-25.

[478] BellSouth Comments at 15. *See also* USTA Comments, Attachment 2 at 12-19; U S West Reply at 5-6; USTA Reply, Attachment 1 at 3-4.

[479] BA/NYNEX Comments at 21-23 and Ex. 2; PacTel Comments at 31-32; Illinois Commission Comments at 25-26; Harris, Skrivan & Associates Comments at 3; Oregon Commission Comments at 2-3; TDS Comments at 28; Evans, *et al.* Comments at 10-11; API Reply at 17-18; Ohio Commission Reply at 2-3; Time Warner Reply at 22-23. The Tennessee Commission advises against a "rush to judgment" in this proceeding before a joint board can review separations changes. Tennessee Commission Comments at 2-3.

[480] *E.g.*, Ameritech Comments at 33-35; BellSouth Reply at 20-24; GTE Comments at 10-17; PacTel Comments at 11-15; SWBT Comments at 33-34; SNET Comments at 11-15; USTA Reply at 30; and U S West Comments at 22-23.

[481] *E.g.*, BA/NYNEX Reply at 22-26; Cincinnati Bell Comments at 15-20; and U S West Reply at 36-38.

unbundled network elements are available to competitors at cost-based rates.[482] BellSouth states that, regardless of whether the market today is sufficient to restrain access prices, we should still incorporate market principles into the regulatory regime.[483]

144. *Opposition to a Market-Based Approach.* Several parties argue that market forces will not be adequate to drive access rates to forward-looking cost in the near future.[484] AT&T and MCI argue that the provisions of the 1996 Act require that explicit and implicit cross-subsidies have to be removed from interstate access charges, and that this must be done more quickly than can occur under a market-based approach to access charge reform.[485] Intl. Comm. Ass'n also argues that the local exchange and exchange access markets are not competitive, and that we cannot rely on unbundled network elements to drive rates down as long as some of our Part 51 rules are stayed.[486] The Missouri Commission and AT&T argue that competition will be slow to develop, particularly with respect to terminating access.[487] Ad Hoc favors a prescriptive approach, because it ensures that prices will be reduced to forward-looking economic costs regardless of the presence or absence of competition.[488] TDS asserts that both the prescriptive and the market-based approach would increase Commission

[482] BA/NYNEX Comments at 13; BellSouth Commenst at 23-27; SNET Reply at 2-3, 6-7; and USTA Comments at 32-34.

[483] BellSouth Reply at 27-28.

[484] ACC Long Distance Comments at 9; AT&T Comments at 20-21; ACTA Comments at 20; America On-Line Comments at 11-12; Competition Policy Institute Comments at 9-11; SDN Users Association Comments at 1-2; Internet Access Coalition Comments at 8-9; NCTA Comments at 21; LCI Comments at 8-17; CompTel Comments at 13-15; Excel Comments at 7-9; Florida Commission Comments at 7; California Cable Television Association Comments at 10-11; Tennessee Commission Comments at 4; Texas Public Utility Counsel Comments at 4-5; TRA Comments at 6-18; Washington Commission Comments at 7-8; API Reply at 2-4, 12-15; AT&T Reply at 4-8; GCI Reply at 3-4; IXC Long Distance, Inc. Reply at 3-4; Ohio Consumers Counsel Reply at 7-8; Sprint Reply at 20-21; TCI Reply at 20-22; Telco Communications Group Reply at 3. *See also* Frontier Comments at 10-11; GSA/DOD Comments at 19; State Consumer Advocates Comments at 53; Texas Commission Comments at 23-24 (supporting prescriptive approach in short term, followed by a transition to a market-based approach). TCI recommends a prescriptive approach for incumbent LECs and forbearance for competitive LECs, and describes this as a "combination" approach. TCI Comments at 25-27.

[485] AT&T Comments at 63-71; MCI Comments at 42-43.

[486] Intl. Comm. Ass'n Comments at 2-4.

[487] Missouri Commission Comments at 4-5; AT&T Reply at 6-7.

[488] Ad Hoc Comments at 37.

control over incumbent LEC pricing decisions, and therefore neither are likely to result in efficient pricing.[489]

145. Long-distance carriers, which are the customers of switched access services, argue that competition in local markets largely does not exist today. In addition, they argue that entry into local markets, which have historically been characterized by monopoly provision of services, will take much longer than will LEC entry into long-distance markets, where many customers are accustomed to switching carriers and the operational support systems and procedures for switching carriers are well developed. AARP *et al.* notes that BellSouth and U S West have advocated a prescriptive approach based on TELRIC in interconnection proceedings in other countries, because competition in those countries is not sufficient to drive rates to cost.[490] According to AARP *et al.*, BellSouth has also argued in foreign proceedings that the incumbent has an inherent advantage over new entrants because of factors such as name recognition and customer inertia.[491]

146. Some IXCs and other parties argue that incumbent LECs will fight competitive entry as long as they can.[492] According to LCI and MCI, incumbent LECs are filling interconnection orders slowly and that this is preventing the development of competition.[493] LCI provides a list of service ordering and provisioning procedures that it claims are necessary for local exchange competition to develop, and considers these procedures to be a prerequisite for any market-based reforms.[494] LCI maintains that the incumbent LECs' control of the local networks gives them a competitive advantage, and that the policies adopted in the 1996 Act and the *Local Competition Order* will not lead to competition unless the Commission enforces its rules and properly manages the transition to competition.[495] LCI

[489] TDS Comments at 29-31.

[490] AARP *et al.* Comments at 7-17.

[491] AARP *et al.* Reply at 21-22.

[492] ACC Long Distance Comments at 4-9; AT&T Comments, Attachment A at 20-21; IXC Long Distance, Inc. Comments at 3-4; AARP *et al.* Reply at 7-8; TCI Reply at 22-23. In its reply, IXC Long Distance, Inc. alleges several specific instances in which SWBT and GTE have engaged in anticompetitive conduct to delay interconnection. IXC Long Distance, Inc. Reply at 4-9. GTE denies that any litigation it has initiated was a ploy to delay interconnection. GTE Reply at 35. ACC Long Distance claims it has experienced "repeated delays" in obtaining physical collocation. ACC Long Distance Reply at 5-6.

[493] LCI Comments at 15; MCI Reply at 32-33.

[494] LCI Reply at 3 and Attachment. *See also* AT&T Reply at 14-15; CompTel Reply at 4-5; Sprint Reply at 19-20 and Attachment; WorldCom Reply at 19.

[495] LCI Comments at 8-12.

doubts that resale will lead to competition, because setting wholesale prices at retail minus avoided costs does not permit a new entrant to be profitable enough to construct its own facilities, and because such wholesale pricing is above forward-looking economic cost.[496] MCI maintains that incumbent LECs are using non-recurring charges as a means of discouraging competitive entry.[497] AT&T also criticizes incumbent LECs for failing to provide dialing parity and adequate access to operations support systems.[498] According to LCI, the incumbent LECs' local switches do not permit all interconnectors equal access.[499] AT&T asserts that the prohibition against interconnectors using unbundled network elements for access unless they have also won the local customer creates an unreasonable barrier to entry and will ultimately limit the development of local competition.[500] GTE replies that it provides nondiscriminatory access to its operational support systems.[501]

147. AT&T cites to *Farmers Union Central Exchange, Inc. v. FERC*[502] for the proposition that "[r]eliance on competitive forces to constrain exchange access rates, particularly in the presence of strong indications that market forces will not produce the intended results, would be arbitrary and capricious and contravene the Commission's statutory duty to ensure just, reasonable, and nondiscriminatory rates."[503] PacTel challenges the relevance of *Farmers Union*, arguing that the mandate Congress gave FERC was regulatory, whereas Congress in the 1996 Act stated that competition rather than regulation should be used to set rates for telecommunications services.[504]

148. *Support for a Combination of Market-Based and Prescriptive Measures.* ICG recommends four years of phased-in access charge reductions, while competitive LECs

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496 LCI Comments at 12-13. *See also* ALTS Reply at 11-12 (resale followed facilities-based competition in interexchange market, so resale is less likely than facilities-based competition to provide competitive pressure in access market).

497 MCI Reply at 33-34.

498 AT&T Reply at 10-12.

499 LCI Comments at 13. *See also* AT&T Reply at 10.

500 AT&T Reply at 8-9.

501 GTE Reply at 35.

502 734 F.2d 1486, 1508 (D.C. Cir.) (*Farmers Union*), *cert. denied, Williams Pipe Line Co. v. Farmers Union Central Exchange, Inc.*, 469 U.S. 1034 (1984).

503 AT&T Comments at 48.

504 PacTel Reply at 14-16.

construct facilities-based networks. After this period, ICG suggests that some form of a market-based approach would be reasonable.[505] A number of parties, including several state commissions, advocate similar approaches.[506] The District of Columbia Commission recommends that we retain authority to re-impose regulatory control after we permit some pricing flexibility, in case the competitive conditions that warranted granting the pricing flexibility change.[507]

149. WorldCom suggests using a combination of "carrots" and "sticks" to induce the incumbent LECs to facilitate local competition. WorldCom's "carrot" to induce such compliance would be the promise of future pricing flexibility, and the "stick" would be the threat of prescriptive rate changes.[508] Specifically, WorldCom would give incumbent LECs until January 1, 1999, to implement unbundled network element requirements, and then impose prescriptive requirements.[509] USTA argues that the prescriptive approach should be used, if at all, only if there is considerable evidence that current market forces are insufficient to reform the current access market.[510] On the other hand, BellSouth opposes using the prescriptive approach as a "backstop" to a market-based approach, because it does not believe the Commission can specify a set of circumstances that indicate a market failure.[511]

150. The California Commission supports a market-based approach in competitive areas, and a prescriptive approach in areas that are "not sufficiently competitive." The California Commission would define a competitive market as one where a serving wire center is providing unbundled elements to at least one competitor unaffiliated with the incumbent LEC, provided the incumbent meets the other proposed Phase 1 criteria.[512] AT&T maintains that the growth of competition resulting from the availability of unbundled network elements

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[505] ICG Comments at 15-17.

[506] Ad Hoc Comments at 46; Competition Policy Institute Comments at 9-14; Frontier Comments at 10-11; NCTA Comments at 20-24; Alabama Commission at 11-13; District of Columbia Commission Comments at 1-3; Florida Commission Comments at 5; Texas Commission at 23-26; NARUC Comments at 10; MCI Reply at 2-5.

[507] District of Columbia Commission Comments at 3.

[508] WorldCom Comments at 72-73. *See also* Ameritech Comments, Attachment B at 22-23; American Communications Reply at 6-7, 15-16.

[509] WorldCom Comments at 89-91.

[510] USTA Comments, Attachment 1 at 15.

[511] BellSouth Comments at 16-17.

[512] California Commission Comments at 7-10.