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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	**CC Docket No. 96-262**
	)	
Price Cap Performance Review for Local Exchange Carriers	)	**CC Docket No. 94-1**
	)	
Transport Rate Structure and Pricing	)	**CC Docket No. 91-213**
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	**CC Docket No. 96-263**

PETITION FOR RECONSIDERATION OF COMPUSERVE INCORPORATED

CompuServe Incorporated, by it attorneys and pursuant to Section 1.429 of the Commission's rules, hereby files this petition for reconsideration of that part of the Commission's Access Charge Reform First Report and Order, released May 16, 1997 in the above-captioned proceeding, which allows the local exchange carriers (LECs) to implement call setup charges effective July 1, 1998.[1/] Specifically, CompuServe requests that the Commission reconsider its order at least to the extent that it rules that call setup charges may not be implemented prior to July 1, 2000.

1/ Access Charge Reform First Report and Order, CC Docket No. 96-262, 62 Fed. Reg. 31868, June 11, 1997.

I. BACKGROUND

CompuServe is among the world's leading independent providers of innovative and productivity-enhancing Internet and online services. CompuServe and its licensed affiliates around the world serve over five million consumer subscribers who have access not only to CompuServe's own wide-ranging databases and proprietary content, but also the World Wide Web and other parts of the Internet. In addition to its multitude of consumer services, through its Network Services division, CompuServe is one of the nation's leading providers of corporate data services and financial transactions processors. For example, one of CompuServe's principal transactions processing customers is VISA, for whom CompuServe processed in the range of one billion point-of-sale credit card verifications during the last calendar year. The average call duration for this type of point-of-sale transaction is approximately 12 seconds.

In the Notice of Propose Rulemaking, the Commission sought comment on whether it should permit or require incumbent LECs to include a call setup charge in their local switching rate structures.[2/] CompuServe, along with other parties, explained to the Commission in their comments that short duration data calls such as those carried by financial transactions processors contribute to the efficient use of the public switched network, especially at a time when the LECs are complaining about the alleged adverse impact on the network created by long duration Internet calls; that the LECs advocating that they be given discretion to establish call setup charges provided virtually no information concerning the costs they claim they incur for call setup or the rates they would propose to recover these costs; that the increasing amount of

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2/ Notice of Proposed Rulemaking, Access Charge Reform, CC Docket No. 96-262, released December 24, 1996, at para. 76.

financial transactions being processed electronically have contributed in material respects to the growth and health of the nation's economy as the world moves into the Information Age; that, based upon the existing rate structure precluding call setup charges, information providers such as CompuServe had invested heavily in developing their networks to handle financial transactions in as efficient a manner as possible; and that the Commission should ensure that the ultimate costs of implementing a system for recovering for call setup through a separate charge do not outweigh the economic benefits of establishing such a charge.[3] Each of these arguments were presented to the Commission in urging the agency not to change its rule so as to allow LECs to establish call setup charges.

In the Access Charge Reform Order, the Commission determined that call setup charges are incurred primarily on a per-call rather than per minute basis and that "[b]y requiring recovery [of] the costs of call setup on a per minute basis, our current rate structure mandates an implicit subsidy running from customers that make lengthy calls to those that make short-duration calls."[4] The Commission acknowledged in a cursory fashion that CompuServe and others argued that "imposing a call setup charge will be disruptive to their businesses and may force them to use alternatives to the public switched network."[5] And, it surmised that "[t]ransaction-oriented users of the network may be motivated to develop more economically

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[3] See CompuServe Comments, January 29, 1997, at 25-29; CompuServe Reply Comments, February 13, 1997, at 11-13; Bankers Clearing House, MasterCard International Incorporated, and VISA U.S.A., Inc. Comments, January 29, 1997; Ad Hoc Telecommunications Users Committee Comments, January 29, 1997, at 17-25.

[4] Access Charge Reform Order, at para. 137. The Commission did not provide any information which attempted to quantify the extent of the alleged subsidy.

[5] Id., at para. 143.

efficient processing methods, with resulting economic benefits."[6] In purported recognition of the need for a transitional adjustment period in light of the above considerations, the Commission determined that LECs choosing to impose a call setup charge could not do so prior to July 1, 1998.

II. DISCUSSION

A. A Longer Transition Period Is Necessary To Avoid Undue Disruption To Access Customers' Network Operations And Business Planning

CompuServe believes that, based on the record compiled in response to the NPRM as outlined above, in conjunction with the lack of specific information provided by the LECs concerning the costs of establishing call setup charge versus the benefits of such charges, the Commission should **not** have decided to allow the LECs to establish call setup charges. Nevertheless, CompuServe has decided not to seek reconsideration of the Commission's basic determination, but rather to seek reconsideration only of the length of the transitional period the Commission established. The July 1, 1998, date is too short to take account appropriately of even the factors which the Commission itself acknowledged warrant a transition period -- avoiding undue disruption to the businesses of access customers and providing adequate time for access customers to evaluate other network alternatives.

CompuServe requests that the date by which LECs would be allowed to implement call setup charges be changed to July 1, 2000. This extension at least would provide CompuServe and similarly-situated access customers a more reasonable amount of time to evaluate alternative network scenarios for carrying transactions processing calls that do not

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[6] Id.

penalize the efficiency achieved in carrying very short duration calls. CompuServe needs to have adequate time to explore the economic and technological cost/benefits of alternatives and evaluate the feasibility of shifting all or some traffic from an existing network to one or more alternatives, possibly networks designed specifically to carry data traffic.[7] For a network that handled approximately one billion transactions last year such as CompuServe's and others similarly situated, these types of economic/technological evaluations require more time than the Commission has allowed.

Another reason why the transitional period should be extended is that most providers such as CompuServe have based their own offerings on the premise that the rate structure did not permit call setup charges. In other words, the service providers' relationships with their customers have assumed the existing rate structure, and it is unreasonable for the Commission to assume that these relationships and the business planning which went into the formation of these relationships may be altered in such a short time frame. As the Commission itself acknowledged in rejecting a prior LEC request to impose a call setup charge, "an abrupt change in the local switching element could undermine access customers' business plans which were based on a reasonable expectation of stability in the access rate structure."[8]

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[7] Of course, in the Notice of Inquiry in CC Docket No. 96-263, the Commission is studying what FCC policies should be adopted or modified to "best facilitate the development of the high-bandwidth data networks of the future. . . ." Notice of Inquiry, Usage of the Public Switched Network by Information Service and Internet Access Providers, CC Docket No. 96-263, FCC 96-488, relased December 24, 1996, at para. 311. CompuServe believes that the extension it is requesting herein comports more realistically with the time-frame under which the Commission anticipates (hopefully) positive developments resulting from the Information Service inquiry.

[8] Bell Atlantic Telephone Companies Petition for Waiver of Sections 69.106 and 69.205 of the Commission's Rules to Permit a Call Setup Charge ("Bell Atlantic Order"), 4 FCC Rcd

B. The Commission In The Past Has Exercised Its Authority To Allow Reasonable Transition Periods

The Commission has long recognized the necessity of a phase-in period for rate structure changes causing rate shock, service disruptions and other adverse effects, and the courts have approved the Commission's exercise of such authority many times. For example, of particular relevance here, in approving the Commission's original Access Charge plan, the D.C. Circuit recognized that "the shift from one type of nondiscriminatory rate structure to another may certainly be accomplished gradually to permit the affected carriers, subscribers and state regulators to adjust to the new pricing system."[9] Moreover, the court pointed out that, "the gradual implementation of new rates and policies is a standard tool of the Commission."[10]

The Commission has often implemented a transition period to protect ratepayers harmed by abrupt rate increases.[11] These phase-in periods, the Commission has explained, serve to "mitigate the rate shock" by providing "a reasonable opportunity" for customers to "reconfigure networks, services and other aspects of their businesses that had been implemented under, and possibly premised on" past rates.[12]

7210, 7211 (1989).

9/ Nat'l Ass'n of Reg. Util. Com'rs v. F.C.C., 737 F.2d 1095, 1135 (D.C. Cir. 1984) ("NARUC"); see also Western Union Telegraph v. F.C.C., 815 F.2d 1495 (D.C. Cir. 1987).

10/ NARUC, 737 F.2d at 1135.

11/ See In the Matter of Investigation of Access and Divestiture Related Tariffs, 102 F.C.C.2d 1007, 1022 (1985).

12/ In the Matter of Investigation of Special Access Tariffs of Local Exchange Carriers, 8 F.C.C.R. 4712, 4719 (1993).

These basic principles have been applied by the Commission in various instances in which rate shock, service disruption, or other adverse effects were likely. Many decisions emphasize the importance of stability and adequate notice to aid businesses and customers in making future plans. As noted above, the Commission earlier denied a request to implement call setup charges, finding that the "abrupt change... could undermine access" plans of customers who reasonably based their business plans on an expectation of "stability in the access rate structure."[13] In a proceeding regarding the detariffing of customer premises equipment ("CPE"), the Commission imposed a two-year price predictability transitional period to protect customers who may be disadvantaged by the changing rates.[14]

Still other decisions by the Commission demonstrate the Commission's prior sensitivity to the need for a reasonable transitional period to minimize the impact of a new rate structure. For example, when local telephone companies and other common carriers compromised on a plan to compensate LECs for use of their facilities for offering MTS and WATS-type services, the Commission agreed to a five year phase-in period for the resulting rate changes.[15] Similarly, the Commission rejected a single implementation date in favor of a ten year period to phase-out embedded station connections investment so as to minimize the burden on customers that a flash-cut date would cause.[16]

13/ Bell Atlantic Order, 4 F.C.C. Rcd at 7211.

14/ See In the Matter of Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services, 98 F.C.C.2d 814, 822-23 (1984).

15/ In the Matter of Exchange Network Facilities for Interstate Access, 71 F.C.C.2d 440 (1979) ("ENFIA").

16/ See In the Matter of Uniform System of Accounts, 85 F.C.C.2d 818, 829 (1981).

Thus, it is clear that the Commission possesses ample authority to avoid undue customer hardship and undue disruption of business plans by adopting reasonable transition periods. For the reasons detailed above in Section II.A concerning the operational/ economic/business reasons why additional time is needed, the Commission should extend to June 1, 2000 the transition period for potential LEC call setup implementation charges.

III. CONCLUSION

For the foregoing reasons, CompuServe requests the Commission to reconsider its order in this proceeding and rule that call setup charges may not be implemented by the LECs prior to July 1, 2000.

Respectfully submitted,

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July 10, 1997

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CERTIFICATE OF SERVICE

I, Teresa Ann Pumphrey, hereby certify that a copy of the foregoing **Petition for Reconsideration of CompuServe Incorporated,** was served by first-class mail, postage prepaid and by hand were indicated, this 10th day of July, 1997, on the following persons:

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