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

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In the Matter of	)	
	)	CC Docket No. 96-262
Access Charge Reform	)	

RCN TELECOM SERVICES, INC.'S PETITION FOR RECONSIDERATION

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July 11, 1997

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RCN Telecom Services, Inc., by undersigned counsel and pursuant to Section 1.429 of the Federal Communications Commission's ("Commission") rules, submits this Petition for Reconsideration of the Commission's First Report and Order,[1] released May 16, 1997, and published on June 11, 1997 in the Federal Register.

I. INTRODUCTION

RCN Telecom Services, Inc.'s ("RCN") affiliate, RCN Long Distance Company (formerly Commonwealth Long Distance Company), has been a long distance service provider since 1992. Subsidiaries and affiliates of RCN are authorized, pursuant to certification, registration, or (where appropriate) deregulation, to provide resold long distance telecommunications services in every state except Alaska, Hawaii and New Mexico. Subsidiaries and affiliates of RCN are also authorized to provide local exchange service in Massachusetts, New York and Pennsylvania, and have applications for such

[1] *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, FCC 97-158 (rel. May 16, 1997) ("Access Reform Order").

authority pending in Connecticut, Delaware, the District of Columbia, Maryland, New Hampshire and Virginia. RCN is a reseller of local exchange services in the service areas of NYNEX (in New York and Massachusetts) and Bell Atlantic (in Pennsylvania). RCN is also a facilities-based local exchange carrier in Massachusetts and plans to implement facilities-based service in New York and Pennsylvania in the near future. As a provider of both interexchange and competitive local exchange services, RCN is directly impacted by the rules adopted in the Commission's Access Reform Order.

RCN opposed Southwestern Bell's, Pacific Bell's and Nevada Bell's Petition for Partial Stay of the Commission's Access Reform Order.[2] In its opposition, RCN argued that the Commission should defer to reconsideration the Joint Petitioner's and other carrier's arguments against the Rules adopted in the Order. RCN now files this Petition for Reconsideration to urge the Commission to retain the unitary rate structure for tandem-switched transport.

II. BACKGROUND

Incumbent local exchange carriers ("LECs") currently offer, and interexchange carriers ("IXCs") may choose from, two pricing options for tandem-switched transport: (1) the unitary rate structure and (2) the three-part rate structure. Under this interim transport rate structure, an IXC may chose to pay for tandem-switched transport in one of two ways:

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[2]Opposition of RCN Telecom Services, Inc. and Telco Communications Group, Inc. to Southwestern Bell, Pacific Bell and Nevada Bell Joint Petition for Partial Stay, CC Docket Nos. 96-262 and 94-1 (filed June 9, 1997).

(1) a single usage-sensitive charge with distance measured in airline miles from the incumbent LEC's serving wire center ("SWC") that serves the IXC's Point of Presence ("POP") to the incumbent LEC's end office serving the end user, plus a tandem switching charge ("unitary rate structure"); or

(2) a flat-rated charge for a dedicated facility from the incumbent LEC's SWC to the incumbent LEC's tandem switch, plus a usage-sensitive charge for tandem-switched transport service from the incumbent LEC's tandem switch to the incumbent LEC's end office (with mileage computed separately for the two segments), plus a tandem switching charge.

In practice, IXCs purchasing tandem-switched transport have chosen the first option, the unitary rate structure, as the more economical one. However, in the Access Reform Order, the Commission ordered incumbent LECs to eliminate this option effective July 1, 1998.[3]

III. THE ACCESS REFORM ORDER DOES NOT MOVE THE INTERIM RATE STRUCTURE CLOSER TO THE COMMISSION'S FINAL GOALS

The Commission was guided by three goals in its initial reform of the transport rate structure:

(1) encouraging efficient use of transport facilities by allowing pricing that reflects the way costs are incurred;

(2) facilitating full and fair interexchange competition; and

(3) avoiding interference with the development of interstate access competition.[4]

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[3]Access Reform Order at ¶175.

[4]*Transport Rate Structure and Pricing*, 7 FCC Rcd 7006, 7009 (1992) ("First Transport Order"); Access Reform Order at ¶177.

The Commission claims that the interim rate structure "represents significant compromises that cause it to fall substantially short of these goals in many ways."[5] It sets forth the following shortcomings of the interim structure (*i.e.*, the unitary rate structure):

(1) the unitary rate structure does not encourage IXCs to use transport facilities efficiently because it does not accurately reflect the manner in which incumbent LECs incur costs to provide tandem-switched transport (*i.e.*, non-traffic sensitive ("NTS") costs are recovered on a usage-sensitive, per minute of use basis);[6]

(2) the unitary rate structure inhibits the development of competitive alternatives to incumbent LEC tandem-switched transport by bundling the dedicated and common portions of the transmission component of tandem-switched transport;[7] and

(3) the unitary rate structure does not best promote "full and fair" competition in the interexchange market because it was designed to promote "pluralistic supply in the interexchange market."[8]

Notwithstanding these alleged shortcomings of the unitary rate structure, because the three-part rate structure mandated by the Access Reform Order suffers from equal, if not greater shortcomings, the Commission should reverse its decision and retain the unitary rate structure as a tandem-switched transport pricing option.

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[5]Access Reform Order at ¶177.

[6]Access Reform Order at ¶178.

[7]Access Reform Order at ¶179.

[8]Access Reform Order at ¶180. The Commission again cites the NTS costs argument in relation to this shortcoming of the unitary rate structure.

A. In Refusing to Reinitialize Tandem-Switched Transport Rates to Forward-Looking Costs, the Three-Part Rate Structure Does Not Encourage IXCs to Use Tandem-Switched Transport Efficiently

The Commission decided not to reinitialize tandem-switched transport rates to levels reflecting long run incremental costs.[9] Instead, it took a "first step .. within the limits of current ratemaking practices" to develop a **cost-causative** rate structure.[10] Acknowledging that unbundled network elements may be used to provide interstate access services, the Commission decided to rely on unbundled network element prices to place market-based, downward pressure on access rates instead of requiring access rates to be priced based on forward-looking costs.

Given the Commission's clear authority over the establishment of rates for interstate access services,[11] it is not clear how the current ratemaking practices prevent the Commission from adopting access prices that are based on forward-looking costs. Since the Commission has already found that a pricing methodology based on forward-looking,

[9]Access Reform Order at ¶199.

[10]Access Reform Order at ¶199.

[11]*See, e.g., Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, and End User Common Line Charges*, Order, FCC 97-216, ¶7 (rel. June 18, 1997) ("Order Denying Stay") ("Pursuant to section 201, the Commission regulates the prices charged for interstate access service under Part 69 of our rules, and no one has questioned (or plausibly could question) our authority over interstate access charges").

economic costs best replicates the conditions of a competitive market,[12] it should have applied the same pricing methodology to tandem-switched transport. The continued disparity between unbundled network element prices and access prices will create uneconomic incentives for the purchasers of interstate access and cause inefficient use of the facilities that are used to provide tandem-switched transport. Whether the disparity in pricing methodologies under the three-part rate structure will favor unbundled network elements or the incumbent LECs' interstate access services is not clear.[13] No matter which class of carriers receives the regulatory advantage, the three-part rate structure suffers from the same shortcoming of the unitary rate structure -- it does not encourage IXCs to use interstate access facilities efficiently.

The second major shortcoming of the mandated three-part rate structure is its continued reliance on the concept that transport costs are distance sensitive. Due to the incumbent LECs' use of SONET rings, both tandem-switched and direct-trunked transport customers' calls are in fact often transported over identical routes. The incumbent LECs' use of SONET rings makes it difficult, if not impossible, to predict the actual routing of transport traffic. A call that needs to be transported from point A (the serving wire center)

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[12]*Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 at ¶679 (1996) ("Local Competition Order").

[13]RCN notes that competitive LECs did not unanimously support the argument that tandem-switched transport is currently underpriced. WorldCom Reply Comments at pg. 26.

to point B (the end office) may be routed through any number of other points on the way to its final destination. The Commission argues that because the tandem-switched transport customer requires the incumbent LEC to route its traffic through the tandem, such customers must pay the incumbent LEC to get from point A to the tandem, and from the tandem to point B. However, if the costs of providing transport varies not based on distance but per ring or per trunk size,[14] a distance-sensitive charge that does not accurately reflect the costs incurred to provide transport and is imposed not once, but twice, creates further inefficiencies in the three-part rate structure.

The third shortcoming of the three-part rate structure is implicitly recognized by the Commission itself. The Commission surmises that as competition develops in the tandem-switched transport market, incumbent LECs may want to provide such services on a unitary pricing basis.[15] If unitary pricing is the pricing methodology that will prevail in a competitive market, and the Commission intends to reintroduce the unitary pricing option in some future pricing flexibility proceeding, eliminating the unitary rate structure option now is inefficient and in contravention of the Commission's ultimate goal of reducing regulatory interference in telecommunications markets.

Nor does the Commission go far enough to encourage efficient restructuring of IXCs' use of transport facilities under the three-part rate structure. Recognizing that it

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[14] *See*, Access Reform Order at ¶154 and n. 207.

[15] Access Reform Order at ¶193.

might be more economical and cost-efficient for some carriers to restructure their transport arrangements and convert to dedicated facilities, the Commission ordered incumbent LECs to waive, from the effective date of the Access Charge Reform Order until December 31, 1998, any nonrecurring service connection charges for converting trunks from tandem-switched to direct-trunked transport.[16] The Commission also directed incumbent LECs to waive, for the same period, any nonrecurring service disconnection charge for over-provisioned trunks.[17] Another transport arrangement that might be more economically efficient than utilizing tandem-switched transport under the three-part rate structure would be to establish more POPs and/or POPs closer to the incumbent LECs' tandems. However, the nonrecurring charges associated with establishing the entrance facilities that connect an IXC's POP to the incumbent LEC's serving wire center can be substantial, and the Commission has not directed incumbent LECs to waive these fees.

B. By Not Requiring Forward-Looking, Cost-Based Prices and By Limiting the TIC Exemption, the Commission Has Perpetuated Obstacles to Competition in the Tandem-Switched Transport Market

As discussed above, to the extent that the prices for unbundled network elements and incumbent LECs' interstate access services are based on different pricing methodologies, the regulatory regime favors one provider over the other. Furthermore, the Commission's refusal to exempt IXCs and competitive LECs that do not use the incumbent

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[16]Access Reform Order at ¶176.

[17]Access Reform Order at ¶176.

LECs' transport facilities from payment of the full Transport Interconnection Charge ("TIC")[18] continues to provide incumbent LECs with a substantial advantage in the transport market.

As the Commission noted, it created only a limited exemption from the TIC. Although the Commission claims that this exemption is "substantially similar" to the second feature of the compromise transport reform proposal offered by Teleport Communications Group ("TCG") and the Competitive Telecommunications Association ("CompTel"),[19] the Commission's residual TIC exemption is a substantial reduction of the full exemption those parties recommended. First, the exemption is limited to the switched minutes of competitive access providers that interconnect at the incumbent LECs' end offices. Second, it is limited to the "residual" TIC and does not apply to the costs that will remain in the TIC over the next three years while those costs are being reallocated to other rate elements.

[18]Access Reform Order at ¶192.

[19]Access Reform Order at ¶192. The features of the TCG/CompTel proposal included: (1) retaining the unitary pricing structure for tandem-switched transport; (2) exempting IXCs and competing LECs that do not use the transport facilities supplied by the incumbent LEC from paying the TIC; and (3) preventing the incumbent LEC from deaveraging the TIC within a state during a five-year transition period.

C. If the Three-Part Rate Structure Increases Small IXCs Costs' Substantially While Reducing or Holding Constant AT&T's Costs, It Will Not Promote "Full and Fair" Competition in the Interexchange Market

When it adopted the interim transport rate structure in 1992, the Commission required the Bell Operating Companies ("BOCs") and GTE to estimate the effects the new pricing structure would have on three classes of IXCs: (1) AT&T; (2) MCI and Sprint; and (3) small IXCs.[20] In 1994, the Commission reviewed the percentage change in the amounts actually paid by each class of IXCs for interstate switched access during the first three quarters of the interim transport rate system.[21] To RCN's knowledge, the Commission has neither requested nor reviewed any estimates of the impact the mandated three-part rate structure will have on small and medium IXCs. Without such estimates, the Commission cannot make the determination that the three-part rate structure promotes "full and fair" competition in the interexchange market and will not unduly disadvantage small

[20]The Commission analyzed the estimates and data originally filed by the incumbent LECs and determined that small IXCs were not likely to face unreasonable increases in their access costs under the interim rate structure. *Transport Rate Structure and Pricing*, Report and Order, 7 FCC Rcd 7006, 7042 at ¶69 ("First Transport Order").

[21]*Transport Rate Structure and Pricing*, Third Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 3030, 3044 at Table 1, n. 35 (1994) ("Third Transport Order"). The Commission found that the impact of the move to the interim rate structure on small and medium IXCs as groups was minor during the first three quarters of 1994. *Id.* at 3045, ¶22.

and medium IXCs vis-a-vis AT&T. RCN therefore urges the Commission to require the Bell Operating Companies and GTE to provide impact estimates again.[22]

CONCLUSION

The mandated three-part rate structure suffers from many, if not more, of the alleged inefficiencies and shortcomings of the current, interim transport rate structure. The only way to move to a final, cost-based transport rate structure is to reinitialize transport rates to their forward-looking, long run incremental costs. Until the Commission is prepared to take that final step, it should retain the unitary rate structure as an option IXCs may choose when purchasing tandem-switched transport from incumbent LECs.

Respectfully submitted,

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[22]Although any estimates prepared by incumbent LECs will likely underestimate the adverse impact of the rate structure change on IXCs, incumbent LECs necessarily have access to more rate and cost information than their IXC access customers and therefore are the proper parties to make the impact calculations. The Commission will, of course, have to analyze independently the information submitted by the incumbent LECs.

CERTIFICATE OF SERVICE

I, Wendy Mills, hereby certify that on the 11th day of July, 1997, a copy of the foregoing Petition for Reconsideration of RCN Telecom Services, Inc. was served via courier on the following:

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