

In the Order, the Commission concluded that the TIC effectively caused CAPs to cross-subsidize ILEC transport services.³ To address this problem, the Commission ordered the reallocation of TIC costs, to the extent possible, and imposed the prohibition on the application of the TIC for CAPs that do not use ILEC transport services. This applies equally to "residual TIC" charges as well as to those tandem switching components that will be reassigned within the next three years to other facilities-based charges.⁴ Consequently, the Commission should clarify that the TIC Exemption applies to all per-minute TIC charges, including charges for facilities-based components.

II. The Commission Should Impose "Fresh Look" Requirements On ILEC Access Services.

TCG has asked that the Commission impose "fresh look" requirements on ILEC access services to promote new entry and foster competition in transport services.⁵ LBC agrees.

The Commission previously has imposed "fresh look" obligations on dominant telecommunications providers to prevent them from using their market power in anticompetitive ways.⁶ "Fresh look" allows customers committed to long-term contracts with a dominant provider to take a fresh look at the marketplace once competition is introduced and to escape or renegotiate those contracts if they so desire. This approach "makes it easier for an incumbent provider's established customers to consider taking service from a new entrant.... [and] obtain ... the benefits of the new, more competitive ... environment."⁷

The local access market is a perfect candidate for application of the "fresh look" policy. As the Commission well knows, the local access market remains thoroughly dominated by the ILECs and, in many cases, this dominance is perpetuated by ILEC long-term access service contracts. Indeed, new entrants,

³ Access Charge Reform Order ¶¶ 212, 240.

⁴ For similar reasons, LBC opposes those petitioners who have argued that TIC tandem switching charges may be sheltered within an ILEC's PICC. These charges may be reassigned to other rate elements on a cost-causative basis and should not be hidden in an ILECs PICC.

⁵ See TCG Petition at 4-6.

⁶ See Competition in the Interstate Interexchange Marketplace, 7 FCC Rcd 2677, 2678 (1992); Expanded Interconnection with Local Tel. Co. Facilities, 8 FCC Rcd 7341, 7342-43 (1993), vacated on other grounds, Bell Atlantic Tel. Co. v. FCC, 24 F.3d 1441 (1994).

⁷ Expanded Interconnection with Local Tel. Co. Facilities, 9 FCC Rcd 5154, 5207 (1994).

daunted by the capital costs of system construction, often choose not to even attempt to compete in regions or sub-markets in which an ILEC has a network of long-term arrangements.

For this reason, as in previous instances in which the "fresh look" doctrine has been applied, the customers of dominant service providers should be given a fixed "fresh look" period of time within which to opt-out of their current long-term access contracts. During the fresh look period, access customers should be allowed to renegotiate or terminate their contracts with ILECs — free from contractual penalties or breach of contract litigation — and renegotiate those contracts in the new, more competitive environment or choose to take service from a CAP. Thus, application of the fresh look policy in this context will enhance competition in the local access market.

In addition, application of the "fresh look" policy to ILEC long-term access contracts would help the Commission to fulfill its obligations under Section 257 of the Communications Act, supplemented by the Telecommunications Act of 1996, which requires that the Commission identify and eliminate market entry barriers for entrepreneurs and small businesses.⁸ Only by opening up ILEC access contracts will new entrants into the market have an opportunity to compete.

Respectfully submitted,

LBC COMMUNICATIONS, INC.


/s/ W. Kenneth Ferree

Daniel S. Goldberg

W. Kenneth Ferree

GOLDBERG, GODLES, WIENER & WRIGHT

1229 Nineteenth Street, NW

Washington, DC 20036

(202) 429-4900

Its Attorneys

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⁸ 47 U.S.C. § 257(a).