DOCKET FILE COPY ORIGINAL

ORIGINAL

RECEIVED

SEP - 3 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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
	)	
End User Common Line Charges	)	CC Docket No. 95-72
	)	
AMERICA'S CARRIERS TELECOMMUNICATION ASSOCIATION ("ACTA"), Petitioner	)	

PETITION FOR EXPEDITED RECONSIDERATION
REPLY COMMENTS
OF
AMERICA'S CARRIERS TELECOMMUNICATION ASSOCIATION

America's Carriers Telecommunication Association ("ACTA"), by its attorneys, submits these reply comments on the petitions for reconsideration submitted on July 11, 1997 regarding the FCC's First Report and Order (FCC 97-158) ("First Report") released on May 16, 1997 in the above-captioned proceedings.

I. INTRODUCTION

ACTA is a national trade association with over 215 members including competitive interexchange service providers ("IXCs") providing telecommunications services on an interstate, international and intrastate basis to the public-at-large. Some of its members also act as underlying

No. of Copies rec'd 0+4
List ABCDE

(or wholesale) carriers providing network facilities, equipment and services to other member carriers thereby allowing telecommunications services to be resold to the public.

On July 11, 1997, ACTA filed a petition for expedited reconsideration of the Commission's First Report in the above-referenced dockets. As stated in ACTA's petition, according to the Commission's Order, the Primary Interexchange Carrier Charge ("PICC") for multi-line business customers will be $2.75 per line starting on January 1, 1998. This PICC has the potential to increase by $1.50 per line per year after its initiation. The PICC is designed to be a per-line cost incurred by IXCs. ACTA argued in its petition that many of ACTA's IXC members are small to medium-sized carriers that have specifically, and sometimes exclusively, targeted multi-line businesses as customers. Imposition of this new regime upon ACTA's members will cause them severe and irreparable harm. Additionally, the Commission's abolition of the unitary price option for tandem-switched transport users and its net 400% increase in the tandem switching charge will put many of ACTA's members at an insurmountable competitive disadvantage and cause many of them simply to go out of business.

Furthermore, ACTA argued in its petition that the Commission should reconsider its Order because it did not adequately analyze the effects of these new rules on small business as required by the Regulatory Flexibility Act[1] ("RFA"). Similarly, ACTA argues that the First Report violates Section 202(a) of the Communications Act[2] by mandating discriminatory pricing.

---

[1] 5 U.S.C. §§ 601-612.

[2] 47 U.S.C. § 202(a).

The overwhelming weight of the petitions and comments filed by ACTA and other parties demonstrate that the FCC must modify its new access rules. Accordingly, ACTA requests that the Commission adopt a multi-line business PICC priced at the same rate as the residential PICC ($0.53 per line), mandate the pricing of tandem switching at a standard based on forward-looking economic cost and preserve the unitary rate structure for tandem-switched transport users.

II. ARGUMENT

A. Commenting Parties Agree With ACTA That The Commission Should Reconsider Its Order Because Its Rules Disproportionately Harm Smaller Carriers

1. The First Report Violates The Regulatory Flexibility Act.

Several parties agreed with ACTA that the Commission failed to conduct a proper analysis of the effect of its rules upon small businesses.[3] Accordingly, the Commission should reconsider its Order. The Commission states in the Order's Final Regulatory Flexibility Act Analysis section that its adoption of a new tandem-switching rate structure should "reduce and minimize uncertainty" for small businesses. First Report, ¶433. As pointed out by many other commenting parties, the Commission's analysis fails to recognize the vast and disproportionate cost that will be borne by small carriers as a result of the new tandem switching rate structure.[4] As a result of long-standing Commission policy, small interexchange carriers depend on tandem routing much more than larger carriers. Because the First Report will increase tandem switching rates by 400%

---

[3] *See, e.g.*, Comments of CompTel; Comments of TRA; and Comments of Hyperion.

[4] *See, e.g.*, Comments of CompTel at 17-18; Comments of TRA at 6-15; U.S. Long Distance Petition at 3-5; Petition of WorldCom at 4-7; Frontier Petition at 8-13.

after any "offsetting" access rate reductions, small carriers will be forced to pass on these higher rates to their customers.[5] As demonstrated by many of the petitions and comments, such enormous price increases will exacerbate competitive disadvantages between small and large carriers, and cause a loss of traffic from the tandem-switched option. It is apparent that such a brutal blow to the competitive IXC community is clearly inconsistent with the RFA[6], pro-competition mandates of the Telecommunications Act of 1996 and the ostensible policies of the Commission itself.

2. The Tandem Switching Charge.

Additionally, the great weight of the petitions and comments confirms ACTA's assertion that the Commission's new rate structure hurts small businesses further by also failing to meet the goal of cost-based pricing that underscores the Telecommunications Act.[7] As ACTA and others argued in their petitions, the current tandem switching rates are a fairly close approximation of the forward-looking costs of tandem switching. However, the proposed rates bear little relation to actual economic costs as they are based on embedded cost loadings. Direct trunk routing, however, is spared these embedded costs and, thus, more closely reflects actual costs. Therefore, as demonstrated by the bulk of the comments, direct trunk routing will become the more attractive

---

[5] *Id.*

[6] *See Thompson v. Clark*, 741 F.2d 401, 405 (1984).

[7] *See* Comments of CompTel at 7-8; Comments of TRA at 11-15; Comments of WorldCom at 4-10.

option for consumers to the detriment of smaller carriers offering tandem-switched routing.[8] In short, the Commission's capricious and arbitrary pricing differential between tandem switching and direct trunk routing flies in the face of Congress' intent to foster equitable and rationally priced telecommunications competition as embodied in the 1996 Act.[9] Furthermore, such skewed and artificial pricing will result in higher rates for rural customers and a dramatic reduction in carrier choices for rural subscribers as smaller carriers are forced out of rural markets.

3. The Unitary Pricing Structure.

Many parties joined with ACTA in seeking reinstatement of the unitary pricing option for tandem-switched transport.[10] Allowing IXCs to pay a single per-minute rate for end-to-end tandem-switched transport transmission is the method prefered by IXCs and CLECs.[11] However, now long distance carriers will be forced to purchase tandem-switched transport pursuant to an inflated and irrationally priced partitioned rate structure. Such government mandated artificial pricing will greatly increase the cost of tandem-switched transport as carriers will now have to pay two sets of fixed charges. Under the new regime, small IXCs also must pay airline mileage according to the actual routing of the call, no matter how circuitous it may be, as opposed to

---

[8] *Id.*

[9] The Commission's decision to increase the tandem switching rate by almost 400% will increase the already discriminatory overhead imposed upon switched transport users, thus defying the D.C. Circuit's mandate of last year. *See Competitive Telecommunications Association v. FCC*, 87 F.3d 522 (D.C. Cir. 1996). The Commission will merely be inviting another judicial stay if it continues to defy the appellate courts by refusing to reconsider its decision on this issue.

[10] *See, e.g.*, CompTel Petition at 16-23; Excel Petition at 3-7, 9-10; Frontier Petition at 3-8; Telco Petition at 4-7; USLD Petition at 5-7; WorldCom Petition at 10-21.

[11] *Id.*

paying airline mileage between the end-office and the serving wire center. Once again, since small carriers are the predominant users of tandem-switching, they will be placed at a competitive disadvantage against the likes of AT&T.[12]

The FCC's arbitrary elimination of the unitary pricing option for tandem-switched users is undercut by one undeniable fact: both classifications of transport traffic are routed through intermediate tandem locations at the sole discretion of the ILEC.[13] The only difference between the routing of dedicated-trunked and tandem-switched traffic is that the ILECs impose a separate charge on the latter to recover the "costs" of that function. In short, there is no technical or cost differences that warrant dedicated-trunked users to enjoy a unitary pricing option while imposing upon smaller carriers, who depend on tandem-switched transport, a more complex and costly three-part rate structure. Allowing the partioned rate structure to go into effect will harm competition by unduly discriminating against smaller carriers, deprive rural areas of the benefits of robust competition and gouge consumers. Accordingly, the Commission should reconsider its Order in this regard.

4. The PICC.

Business users, local governments and carriers have echoed ACTA's request that the Commission reconsider the imposition of a disproportionately large PICC on multi-line business

---

[12] As WorldCom noted in its petition, it appears that the Commission has a basic misunderstanding that tandem-switched transport users prefer tandem-switched routing. In reality, access customers could not care less about how an ILEC routes traffic within its network so long as it reaches the desired end point at a fair price. *See* WorldCom Petition at 11.

[13] *See* CompTel Petition at 18; Telco Petition at 4-6; WorldCom Petition at 10 n. 16, 13. Also, this a fact which even the ILECs do not dispute. *See* Comments of USTA at 6.

users.[14] As ACTA stated in its petition, the PICC threatens a vital market segment for small carriers: small to mid-sized multi-line businesses. The "Catch-22" facing small carriers' to compensate for the increased costs incurred as a result of the PICC will, quite simply, force many to go out of business. They are faced with either raising their rates or absorbing the higher costs. Either way, small IXCs will fall victim to larger IXCs who can amortize such government-mandated costs over more minutes of use. As ACTA and other commenting parties have shown, the multi-line business PICC bears no relation to access costs caused by such customers.[15] Costs caused by multi-line business users are already fully recovered through the multi-line Subscriber Line Charge. Thus, the PICC is a non-cost based charge that ends up serving as an implied subsidy to local exchange carriers in defiance of the 1996 Act.[16]

Furthermore, the competitive market that the Commission seeks to perpetuate will cease to become a reality if small carriers are forced out by artificial and discriminatory pricing. The Commission should beware of upsetting the tenuous balance of forces that makes the interexchange market the vibrant competitive entity that it is. It is no coincidence that the tremendous growth of small carriers in the last fifteen years has helped give consumers numerous, viable choices for their long distance service. The Commission should avoid adopting rules that would disproportionately burden small carriers and threaten their economic viability.

---

[14] *See, e.g.*, International Communications Association ("ICA") Petition at 2-4; Comments of TRA at 2-5; County of Los Angeles Petition at 2.

[15] *Id.*

[16] *See* 47 U.S.C. § 254(e).

III. CONCLUSION

For the reasons enumerated above, ACTA strongly urges the Commission to reconsider its Order and adopt new rules. ACTA proposes that the multi-line business PICC be reduced to the proposed level of the residential PICC, or $0.53 per line. Furthermore, the Commission should adopt a usage-based charge in a competitively neutral manner to recover any cost-based revenues that may be lost as a result of a reduction in the multi-line business PICC. Lastly, the Commission should mandate the pricing of tandem switching at a standard based on forward-looking economic cost and preserve the unitary rate structure for tandem-switched transport users.

Respectfully submitted,

AMERICA'S CARRIERS
TELECOMMUNICATION ASSOCIATION

By: Robert M. McDowell

Charles H. Helein
General Counsel
Robert M. McDowell
Deputy General Counsel

Of Counsel:

Harisha J. Bastiamplillai, Esq.
Helein & Associates, P.C.
8180 Greensboro Drive
Suite 700
McLean, Virginia 22102
(703) 714-1300 (Telephone)
(703) 714-1330 (Facsimile)

Dated: September 3, 1997

rmm/070/recon2

CERTIFICATE OF SERVICE

I, Michele Grasse, a secretary in the law office of Helein & Associates, P.C., do hereby state and affirm that copies of the foregoing "Petiton For Expedited Reconsideration Reply Comments" CC Docket Nos. 96-262, 94-1, 91-213 and 95-72 were served via hand delivery this 3rd day of September, 1997, on the following:

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554
(Hand Delivery)

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554
(Hand Delivery)

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554
(Hand Delivery)

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

William E. Kennard, General Counsel
Office of the General Counsel
Federal Communications Commission
1919 M Street, N.W.
Room 614
Washington, D.C. 20554
(Hand Delivery)

Acting Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, D.C. 20554
(Hand Delivery)

William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554
(Hand Delivery)

Michele Grasse

Michele Grasse, Legal Secretary