

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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

**REPLY COMMENTS OF BELL ATLANTIC ON
PETITIONS FOR RECONSIDERATION
OF ACCESS CHARGE REFORM ORDER**

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TABLE OF CONTENTS

I. THE COMMISSION SHOULD DISMISS MCI'S LATE-FILED PETITION FOR RECONSIDERATION.....	1
II. THE TIC EXEMPTION SHOULD NOT BE ACCELERATED -- IT SHOULD BE STAYED.....	3
III. THE COMMISSION SHOULD ESTABLISH A TRUNK-EQUIVALENCY RATIO FOR APPLYING PICCS TO CENTREX LINES.....	6
IV. THE COMMISSION SHOULD CONSIDER A SINGLE PICC RATE FOR ALL LINES FOR AT LEAST A TWO YEAR PERIOD.....	7
V. THE COMMISSION SHOULD EXCLUDE USF CONTRIBUTIONS FROM THE X-FACTOR CALCULATIONS.....	8
VI. THE COMMISSION SHOULD CLARIFY THE SHIFT OF TIC COSTS TO DEAVERAGED TRANSPORT RATES.	9
VII. THE COMMISSION SHOULD REJECT OTHER PROPOSED CHANGES.	10

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**I. The Commission Should Dismiss MCI's Late-Filed Petition
For Reconsideration.**

The Commission should dismiss MCI's comments insofar as they constitute an untimely petition for reconsideration of the Commission's *Access Charge Reform Order*.² In the guise of "comments" on the petitions of other parties, MCI has presented entirely new proposals that were not included in any

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

² In the Matter of Access Charge Reform, CC Docket No. 96-262, First Report and Order (rel. May 16, 1997) ("*Access Charge Reform Order*"); *errata* rel. June 4, 1997.

reconsideration petitions that were filed in this proceeding. These proposals should have been filed within 30 days of public notice of the order, as required by the Commission's rules and by statute.³

Specifically, MCI argues that the Commission should; (a) abandon its market-based approach to access charge reform in favor of a prescriptive approach that would rely on regulatory intervention to reduce access charges;⁴ (b) require the local exchange carriers ("LECs") to bill presubscribed interexchange carrier charges ("PICCs") in arrears, and to pro-rate PICCs based on the number of days in a month that a customer is served by a particular interexchange carrier;⁵ (c) reconsider the targeting mechanism for reducing the TIC through the annual X-factor;⁶ and (d) "clarify" that PICCs should not recover any service-related transport costs that will be assigned in the future to the tandem switched transport ("TST") rate elements, and that the "TIC exemption" will apply to both residual and service-related components of the per-minute TIC.⁷ None of these proposals was presented in a timely petition for reconsideration by any other party. The Commission must dismiss these requests, since the time limit for reconsideration petitions in Section 405(a) of the Act is jurisdictional, and cannot be waived.

³ See 47 C.F.R. Section 1.429(d); 47 U.S.C. Section 405(a).

⁴ See MCI at pp. 1-4, 12.

⁵ See *id.* at pp. 5-6.

⁶ See *id.* at pp. 8-11.

⁷ See *id.* at pp. 12-14. LBC's "comments" also should be dismissed insofar as it makes the same arguments. See LBC at pp. 1-2.

II. The TIC Exemption Should Not Be Accelerated -- It Should Be Stayed.

Several commenters support the AT&T and TCG requests to make the "TIC exemption" effective immediately.⁸ As Bell Atlantic previously demonstrated, the TIC exemption should not be accelerated -- it should be stayed.⁹ Indeed, TCG's comments give further support for a stay of this rule. TCG admits that it supported the TIC exemption as a means of offsetting the impact of the "unitary" TST rate structure.¹⁰ TCG argues that it would not be able to compete with the rates that the LECs' would be required to charge under the Commission's unitary rate structure unless the per-minute residual TIC rate were waived if a customer chose TCG's transport services instead of the LEC's. Since the Commission has decided to eliminate the unitary rate structure as of July 1, 1998, and since most of the LECs' transport-related costs will be removed

⁸ See, e.g., Hyperion at pp. 2-4; TRA at p. 15; TW at p. 15. Under the TIC exemption, the LECs may not apply the per-minute residual TIC rate element to minutes of use that are not carried on LEC local transport services beginning January 1, 1998. See 47 C.F.R. Section 69.155(c).

⁹ See Bell Atlantic at pp. 6-8; see also NYNEX Telephone Companies' Petition for Stay, filed July 23, 1997.

¹⁰ See TCG at p. 4 n.10. This explains the alliance of TCG and CompTel in their *ex parte* filing of April 16, 1997, which proposed the TIC exemption. In its earlier comments, TCG had opposed continuation of the unitary rate structure, arguing that it makes it difficult for carriers such as TCG to offer competitive transport services. See *Access Charge Reform Order* at Appendix B, para. 60. TCG apparently agreed to support continuation of the unitary rate structure, which had been CompTel's highest priority since the Docket 91-213 local transport restructure, as part of a package proposal that included the TIC exemption.

from the TIC on January 1, 1998,¹¹ there is no need, or justification, for the TIC exemption.¹²

In addition to being procedurally flawed, MCI's arguments concerning the recovery of remaining TIC costs through PICCs¹³ are also wrong. To the extent that the Commission addresses the merits of these claims (which it should not), it should clarify that service-related costs may be recovered through PICCs, and that there is no exemption for costs recovered through PICCs. To support its claim that the order defines "residual interconnection charge" revenues for purposes of computing PICCs under Section 69.153(a) as excluding service-

¹¹ For example, Bell Atlantic will shift approximately \$140 million in costs from the existing TIC to TST rates effective January 1, 1998, leaving only \$65 million in tandem switching costs to be transitioned to TST rates over the following two years. This will bring Bell Atlantic's TST rates closer to cost, and it will make the CLECs' competing transport services more attractive to the IXC's.

¹² AT&T, responding to an ALTS *ex parte* filing dated August 13, 1997, argues that the Commission should clarify that the TIC exemption applies to carriers that purchase transport from the LECs as unbundled network elements ("UNEs"). See AT&T at pp. 19-20. As an initial matter, the ALTS *ex parte* filing is not a petition for reconsideration, and it was not filed within the statutory time limit. Therefore, this issue cannot be addressed in this reconsideration proceeding. In addition, AT&T incorrectly assumes that the CLECs may purchase UNE transport to connect to LEC services that provide exchange access to LEC customers. The Commission has issued a notice of proposed rulemaking to determine whether this should be permitted and, as we will demonstrate in that proceeding, it should not. See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Third Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 97-295, released August 8, 1997, at para. 61.

¹³ See MCI at pp. 13-14; see also LBC at pp. 1-2 & n.4. MCI also argues that the court's CompTel decision requires elimination of the residual TIC rate element. See MCI at pp. 8-11. The Commission has already considered and fully addressed the issues raised by the court's decision. See *Access Charge Reform Order* at paras. 198, 205, 232.

related costs that will be transitioned to TST rates over the next three years, MCI mistakenly cites paragraph 235 of the *Access Charge Reform Order*. Contrary to MCI's claim, however, the term "residual interconnection charge" does not appear, and is not defined, in that paragraph. Paragraph 235 merely states that the LECs should target their X-factor reductions in the July 1, 1997 annual access tariff revisions to a "residual TIC" based on percentages that exclude the revenues that are expected to be reassigned to facilities-based charges in the future. The following paragraphs of the order, and Section 69.153(a) of the Commission's rules, make it clear that the PICCs recover all "residual interconnection charge revenues" up to the limits of the PICC caps, "without resort to the percentage estimates" described in paragraph 235.¹⁴ The Commission's order also makes it clear that the "TIC exemption" only applies to the per-minute residual TIC rate element as defined in Section 69.155, and not to residual interconnection charge revenues.¹⁵

Not only is MCI's interpretation of the order flawed, but it also proves too much. MCI's definition of the term "residual interconnection charge," which excludes service-related costs, would prevent the LECs from recovering service-related costs from either the per-minute residual TIC or the PICC, since both are designed to recover "residual interconnection charge revenues."¹⁶ This means that the LECs would have no way of recovering the two-thirds of tandem

¹⁴ See *Access Charge Reform Order* at paras. 238-239 (emphasis added).

¹⁵ See *id.* at para. 240.

switching costs that the Commission decided to transition to TST rates over two years.¹⁷ Consequently, the Commission should reject MCI's fatally flawed interpretation of the order.

III. The Commission Should Establish A Trunk-Equivalency Ratio For Applying PICCs To Centrex Lines.

A wide range of commenters, including business customers, Centrex users, and educational institutions, support USTA's proposal to adopt a trunk-equivalency ratio for applying multiline business PICCs to Centrex services.¹⁸ They demonstrate that the multiline business PICCs, which will significantly exceed the single line PICCs for several years, will disproportionately burden Centrex services and harm both the LECs and their customers, especially municipalities and educational institutions.

A few commenters, however, oppose USTA.¹⁹ For example, Time Warner argues that multiline business PICCs for Centrex lines "perform the same function as other multiline PICCs," and that it is acceptable for Centrex customers to "temporarily shoulder a greater proportion of the burden than others."²⁰ TCG and Time Warner argue that PICCs should be applied on the same basis as subscriber line charges for all multiline customers, and that

¹⁶ Compare Section 69.153(a) with Section 69.155(a)(1), (b).

¹⁷ See *Access Charge Reform Order* at para. 218.

¹⁸ See, e.g., Ad Hoc at pp. 9-11; Boston University; API at pp. 9-10; National Centrex Users Group at p. 3.

¹⁹ See, e.g., TCG at pp. 2-3; TW at pp. 7-9.

creating an exception for Centrex customers would encourage requests for similar exceptions from other multiline customers.²¹

These commenters have an obvious self-interest in burdening the LECs' Centrex services with excessive charges that will make the commenters' competitive PBX-based services more attractive to the LECs' customers. For the initial period under the Commission's transition plan, the multiline business PICC will be substantially higher than the single line PICC, placing a particularly excessive burden on Centrex users.²² Because Centrex is directly competitive with PBX-based services, the initially high PICCs assessed on a per-line basis will cause gross distortions in this market.²³ And, contrary to the self-interested claims of the LECs' competitors, the USTA proposal would not carve out an exception that would invite further exceptions. It would simply correct an obvious inequity.

IV. The Commission Should Consider a Single PICC Rate For All Lines For At Least a Two Year Period

Several parties raise concerns that it is discriminatory to impose higher PICC rates for multiline vs. single line customers, as well as numerous administrative concerns with verifying access bills containing different PICCs for

²⁰ See TW at p. 7

²¹ See TCG at p. 2; TW at p. 9.

²² See, e.g., Ad Hoc at pp. 9-11; TRA at p. 5; Boston University; API at pp. 9-10; National Centrex Users Group at p. 3.

²³ See, e.g., Ad Hoc at pp. 10-11.

different classes of service.²⁴ The Commission could ameliorate these concerns by implementing a single PICC rate for a few years, as proposed by some petitioners,²⁵ followed by a decrease in the multiline business PICC until such time as the amount of the subscriber line charge plus the PICC for all subscriber lines is the same. This transition period would provide the Commission with additional time to explore and resolve administrative issues, such as identification of residence additional lines, and it would provide the LECs and the IXC with time to implement bill verification mechanisms. The Commission could reduce the impact on the per-minute rates by capping the PICC at a reasonable level for all lines (*e.g.*, \$1.00 per line on January 1, 1998, and an additional \$1.00 per line, per year).

V. The Commission Should Exclude USF Contributions From The X-Factor Calculations.

AT&T opposes USTA's proposal to avoid applying the price cap X-factor to the LECs' universal service fund contributions.²⁶ According to AT&T, demand growth will normally more than offset the effect of the X-factor. However, demand growth varies from year to year, and the introduction of competition into the local exchange is likely to reduce demand growth in the future. Given these uncertainties, the Commission should adopt USTA's proposal to exclude a LEC's universal service fund obligation from the impact of

²⁴ See, *e.g.*, Ameritech at p. 3; API at pp. 6-8.

²⁵ See, *e.g.*, TRA Petition for Reconsideration at pp. 11-12.

the X-factor by including it as an exogenous adjustment each year.²⁷ This would give the LECs the same opportunity as other carriers to recover the full amount of their universal service contributions.

VI. The Commission Should Clarify The Shift Of TIC Costs To Deaveraged Transport Rates.

Ameritech supports Sprint's request that the Commission clarify its decision regarding the shift of TIC costs to deaveraged transport rates.²⁸ As Ameritech notes, the LECs that have already implemented zone pricing, as permitted by the Commission's rules, generally have reduced rates in high density zones without increasing rates in low density zones.²⁹ The Commission's order can be interpreted to require the LECs that have already deaveraged their rates to shift TIC costs across-the-board to all local transport service band index sub-categories. The Commission should allow the LECs to shift a larger amount of TIC costs to service band indexes for low density zones to be consistent with its finding that the TIC results, in part, from insufficient cost recovery from transport services in low-density areas.³⁰

²⁶ See AT&T at p. 17 n. 33.

²⁷ The Commission also should reject API's proposal to prevent the LECs from recovering universal service fund contributions as exogenous adjustments. See API at p. 6. This would be confiscatory, and not competitively neutral, since it would prevent the LECs, but not other contributors, from fully recovering their universal service fund contributions.

²⁸ See Ameritech at pp. 7-9.

²⁹ See *id.* at p. 9.

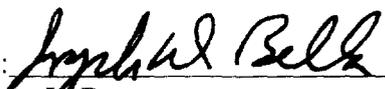
³⁰ See *Access Charge Reform Order* at para. 226.

VII. The Commission Should Reject Other Proposed Changes.

The Commission should reject (1) TCG's proposal that the Commission require the LECs to maintain geographically-averaged TST rates;³¹ and (2) CompTel's argument that marketing expenses should be recovered through subscriber line charges or not at all.³² TCG's proposal would inhibit competition in the local exchange market by discouraging the LECs from reducing rates in high density, low cost areas. CompTel's suggestion is confiscatory. The LECs would continue to incur marketing costs, but would be denied recovery of those costs, due to the Commission's decision to impose caps on subscriber line charges for public policy reasons.

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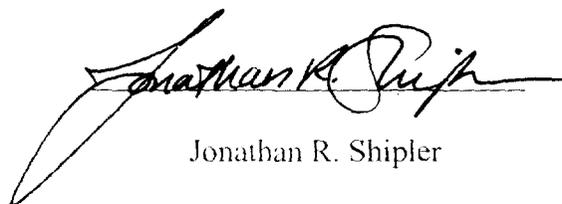
Dated: September 3, 1997

³¹ See TCG at p. 8.

³² See CompTel at pp. 15-16; see also Sprint at pp. 1-2 (arguing for increases in SLC caps to allow direct recovery of all retail expenses from end users).

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of September, 1997, a copy of the foregoing
**“REPLY COMMENTS OF BELL ATLANTIC ON PETITIONS FOR
RECONSIDERATION OF ACCESS CHARGE REFORM ORDER”** was served by first
class U.S. mail, postage prepaid, on the parties listed on the attached service list.



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