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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 U S WEST, INC.

U S WEST, Inc. ("U S WEST") hereby submits its reply comments on various petitions for reconsideration and/or clarification of the Federal Communications Commission's ("Commission") First Report and Order in the above-captioned docket.[1]

I. THE COMMISSSION SHOULD NOT ALLOW INCUMBENT LEC COMPETITORS TO EVADE PAYMENT OF THE RTIC

Several parties filed comments in support of an immediate exemption from payment of the residual transport interconnection charge ("RTIC") whenever a customer utilizes an incumbent local exchange carrier's ("LEC") local switching, but

[1] In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, FCC 97-158, rel. May 16, 1997 ("First Report and Order"), appeals pending sub nom. Southwestern Bell Telephone Company v. FCC, Nos. 97-2618, et al. (8th Cir.).

not its local transport.[2] The Commission should reject these attempts to move up the effective date of the RTIC exemption. Instead, the Commission should promptly grant U S WEST's request for a stay of the modified RTIC rule pending judicial review.[3]

Granting an RTIC exemption for incumbent LEC competitors at any time, let alone immediately, will result in the unfair avoidance by these competitors of the legitimate costs contained in the RTIC. As U S WEST demonstrated in its Petition for Partial Stay, U S WEST's RTIC will be comprised mostly, if not entirely, of two types of implicit support on January 1, 1998 -- the effective date of the RTIC exemption. The tandem switch support component of the RTIC represents the two thirds of tandem switch costs remaining in the RTIC until such costs are shifted to the tandem switching rate.[4] In addition, the implicit universal service support component of the RTIC represents universal service support and other hard-to-trace cost factors that historically have been assigned to the RTIC as a result of the complex and imperfect system of rate regulation.[5] U S WEST has submitted extensive evidence in this and other proceedings demonstrating that a significant portion of its RTIC is traceable to "rural implicit support."[6]

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[2] MCI Comments at 15; Telecommunications Resellers Association Comments at 15; Time Warner Comments at 15-16.

[3] Petition for Partial Stay Pending Judicial Review filed Aug. 14, 1997.

[4] First Report and Order ¶ 218.

[5] Id. ¶¶ 224-26.

[6] See, e.g., U S WEST Comments filed herein Jan. 29, 1997, at 63-64, 70-72; U S WEST Communications, Inc. Petition for Waiver of Part 69 of the Commission's Rules, filed July 24, 1996, at 11.

The Commission's modified RTIC rule arbitrarily discriminates against U S WEST by allowing its competitors to avoid payment of the implicit support contained in the RTIC by providing their own local transport, even though U S WEST will continue to incur the costs contained in the RTIC. The Commission's discriminatory application of the RTIC creates an artificial price distortion that gives U S WEST's competitors an unfair price advantage in the local transport market. As a result, U S WEST, which has one of the highest RTICs in the industry, will suffer an irreversible loss of revenue and local transport business if the RTIC rule is allowed to take effect. More significantly, U S WEST's relationships with existing and potential customers will be irreparably damaged.

In addition, the Commission's collection method for universal service support is inequitable, discriminatory and non-sustainable. Assessing such support only on U S WEST and not on its competitors is patently inequitable and discriminatory in violation of Section 254(b)(5) of the Communications Act, as amended (the "Act").[7] Moreover, eliminating the RTIC as a source of universal service support before a new system of explicit support can be implemented is contrary to Section 254(b)(4) of the Act, which requires that universal service support be "sufficient" and "predictable."[8] If universal service support can easily be avoided (making it non-sustainable), then it is neither "sufficient" nor "predictable."

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[7] 47 U.S.C. § 254(b)(5).

[8] 47 U.S.C. § 254(b)(4).

II. FAILING TO RECOGNIZE THE IMPORTANCE OF PROPER RATE REBALANCING IN DEALING WITH IMPLICIT SUBSIDIES WOULD AGGRAVATE AN ALREADY TENUOUS SITUATION

U S WEST is of the opinion that the Commission's decision to exempt carriers using unbundled network elements ("UNE") to provide interstate access from paying implicit subsidies retained in interstate access charges is patently arbitrary. Given the critical nature of this error, U S WEST has gone directly to court on this issue, fearing the impact of delay which could be occasioned by seeking reconsideration. Several parties did seek reconsideration on this issue, pointing out the anomaly inherent in continuing to include implicit universal service subsidies in interstate switched access charges, but eliminating those same subsidies from the identical functionality when sold as an unbundled network element.[9] Another voice on this subject is ALTS, whose August 13, 1997 ex parte filing on this issue supported the necessity of charging the TIC-based subsidies on UNEs used for interstate access.[10]

Predictably, AT&T and MCI continue to fight for an access/interconnection structure that places the burden of universal service far more heavily on the shoulders of their competitors than it does on their own shoulders.[11] Worse yet, AT&T and MCI continue to argue that the implicit subsidies in those parts of interstate access used by AT&T and MCI should be eliminated, not through rational

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[9] Rural Telephone Companies Petition at 3-15; Rural Telephone Coalition at 8-21.

[10] Letter from Richard Metzger, ALTS, to A. Richard Metzger, FCC, dated Aug. 13, 1997.

[11] MCI Comments at 21-23; AT&T Comments at 18-19.

rate rebalancing and cost-based pricing, but through simply forcing incumbent LECs to reduce access prices without addressing the costs assigned to the interstate jurisdiction currently recovered though those access prices.[12] AT&T and MCI take the position that the costs thus assigned to the interstate jurisdiction should simply be ignored in calculating reasonable rates. The structure established by the Commission in the First Report and Order, by exempting UNEs used for interstate access from the implicit subsidies continued in interstate access, unlawfully favors AT&T and MCI at the expense of the public and competition. AT&T and MCI would have the Commission extend the discriminatory structure even further by establishing a confiscatory structure whereby implicit subsidies, rather than being dealt with lawfully, were simply de-funded (with no concomitant relaxation of the universal service obligations supported by the subsidies).

AT&T and MCI miss an absolutely critical point. So long as the separations process continues to drive costs into the interstate jurisdiction, incumbent LECs are entitled to a fair and reasonable opportunity to recover those costs. The Commission has announced plans to refer a broad range of separations issues to a Joint Board for purposes of determining whether certain costs or classes of costs are not the type that should be recovered through interstate rates.[13] But no costs in the rates of incumbent LECs have been identified as questionable for recovery, and there is no proceeding of any magnitude ongoing at this time looking toward

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[12] MCI Comments at 3-4.

[13] First Report and Order ¶ 213.

excluding some costs from interstate rates.[14] Accepting AT&T's and MCI's invitation to simply assume that access prices can be reduced without further serious analysis of the nature of the costs to remain uncovered by revenues would be utterly arbitrary and unlawful.

The bottom line of AT&T's and MCI's position is that they seek the Commission's help in skewing universal service support in a manner that creates artificial competitive advantages for themselves. The subsidies which AT&T and MCI can now avoid through substitution of UNEs for interstate access are, ultimately, universal service subsidies. Congress spoke very clearly when it directed that implicit subsidies be removed from all rates -- interstate as well as intrastate -- and replaced with nondiscriminatory, predictable and sufficient subsidies.[15] There is no evidence that Congress ever intended that purchasers of UNEs or interstate access be exempted from making a fair contribution to universal service. Yet the Commission, through exempting AT&T and MCI from paying their fair share of universal service support when they substitute UNEs for interstate switched access, has already undercut universal service. AT&T and MCI, by demanding that they be relieved from all subsidies in interstate switched access, want further relief from universal service obligations. The Commission, at the very least, should avoid making a bad situation worse, and should deny AT&T's and MCI's requests that they be given further unjustified access price reductions.

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[14] The Commission's tentative schedule does not require price cap LECs to submit forward-looking cost studies until February 8, 2001. Id. ¶ 48.

[15] 47 U.S.C. §§ 254(b)(4)-(5).

At the same time that AT&T and MCI are attempting to avoid contributing to universal service support, they and other commenters advocate the continuation of other government-mandated subsidies in the access charge structure. For example, MCI supports a three-year delay in the implementation of call setup charges to avoid raising the rates of large telecommunications providers with a high volume of short duration calls.[16] However, exempting these carriers from paying call setup charges disproportionately assigns call setup costs to customers making longer duration calls and thus is simply not justified. Similarly, other commenters support continued reliance on an assumption of 9,000 minutes of use per month per trunk rather than actual minutes of use.[17] U S WEST estimates that its access tandem minutes of use per month per switch are only 5,700,[18] which means that the use of 9,000 minutes substantially overstates the amount of usage. The use of an artificial 9,000 minutes figure which does not comport with reality simply constitutes another implicit subsidy that should not be reinstated by the Commission.

III. THE "FRESH LOOK" RULE REQUESTED BY TCG AND MCI WOULD NOT BE LAWFUL

In its initial petition for reconsideration, TCG, now supported by comments by MCI, requested that the Commission adopt what is called a "fresh look" rule for

[16] MCI Comments at 20-21; Sprint Comments at 3.

[17] Sprint Comments at 4.

[18] U S WEST, Inc. Comments filed herein Jan. 29, 1997, at 67.

existing agreements with incumbent LECs regarding tandem switched transport.[19] "Fresh look" was utilized in CC Docket Nos. 91-141 and 92-222 to permit incumbent LEC special access customers to terminate their contracts prematurely to take advantage of new opportunities and choices offered by collocated competitive access providers.[20] The TCG and MCI theory is that, as competition enters the world of tandem switched transport, customers should not be burdened by contractual obligations made prior to adoption of the rules permitting such competition.[21]

While we question the overall wisdom of federal regulators interfering with contracts that have been negotiated freely, in this case TCG and MCI are clearly wrong under any logic. The ability to purchase competitive local transport -- of any variety -- was established in 1993, not yesterday.[22] It would clearly be arbitrary and unreasonable for the Commission to direct that a "fresh look" be given to contracts entered into after the effective date of the order permitting development of competitive local transport alternatives. Moreover, one of the key underlying premises of the Telecommunications Act of 1996 (the "1996 Act") -- that incumbent LECs be compensated for the costs which they incur in providing service -- would be

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[19] TCG Petition at 4-6; MCI Comments at 16-17.

[20] In the Matter of Expanded Interconnection with Local Telephone Company Facilities; Amendment of the Part 69 Allocation of General Support Facility Costs, CC Docket Nos. 91-141 and 92-222; Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd. 7369, 7463-64 ¶ 201 (1992).

[21] TCG Petition at 4-6; MCI Comments at 16-17.

[22] In the Matter of Expanded Interconnection with Local Telephone Company Facilities; Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 91-141 and 80-286, Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd. 7374 (1993).

traduced by enactment of a "fresh look" rule for tandem switched transport. The Commission does not, under the 1996 Act, have the power to disrupt contractual obligations in order to foster what it believes to be optimal competitive conditions. Thus, TCG's and MCI's "fresh look" proposal must be rejected.

IV. THE COMMISSION SHOULD NOT ADOPT UNNECESSARY AND BURDENSOME PICC BILLING REQUIREMENTS

MCI seeks to impose a number of unnecessary and burdensome PICC billing requirements on incumbent LECs, including pro-rated billing and billing in arrears.[23] The Commission should reject these proposals out of hand. First, MCI's argument that interexchange carriers ("IXC") will incur a "double payment" of the Carrier Common Line ("CCL") and PICC during the transition month of January 1998 is misleading. The IXCs will not, as MCI implies, be assessed both the CCL and the PICC for the transition month (i.e., a true double payment). The sole reason that IXCs may pay both the CCL and the PICC in January 1998 is that the CCL for December 1997 will not be collected until January 1998. Therefore, the fact that the PICC billing cycle may commence in January does not create an unfair situation for IXCs.

Second, a pro-rated billing requirement for the PICC would impose tremendous costs on incumbent LECs without producing corresponding benefits. U S WEST and other incumbent LECs plan to bulk bill each IXC for the PICC based on a "snapshot" of the IXC's customers taken on a date certain each month. The PICC will not be assessed until after the monthly customer snapshot is taken.

[23] MCI Comments at 5-6.

Because the market for access lines has been growing steadily, IXCs will benefit from this billing procedure. If, for example, the customer snapshot is taken on September 30, then customers added between October 1 and October 31 will not be included in the IXC's PICC bill for October. This effectively results in a free month for the IXC. To the extent there is churn in the long distance industry, PICC overpayments will be offset by corresponding PICC underpayments. Thus, the monthly snapshot will roughly approximate an IXC's customer base for a given month.

For these reasons, the Commission should grant or deny the petitions for reconsideration and/or clarification to the extent set forth herein.

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September 3, 1997

CERTIFICATE OF SERVICE

I, Rebecca Ward, do hereby certify that on this 3rd day of September, 1997, I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST, INC.** to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.

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