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FEDERAL COMMUNICATIONS COMMISSION
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Before the
Federal Communications Commission
Washington, D.C.

In the Matter of)
)
MCI Telecommunications Corporation)
Petition for Prescription of Tariffs Implementing)
Access Charge Reform)

CCB/CPD 98-12
CC Docket No. 97-250

**COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION**

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March 18, 1998

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SUMMARY

The MCI petition should be summarily rejected pursuant to Section 1.401(e) of the Commission's rules as it is an out-of-time petition for reconsideration and is substantively without merit. The Commission has already ruled on MCI's request for prescription and the other issues have either already been considered or are pending in other proceedings.

MCI raises no new arguments to justify reconsideration of the Commission's decision to adopt a market-based approach to access reform. MCI's claims regarding the development of competition are either irrelevant, inaccurate or both. The availability of UNEs at cost-based rates has not been undermined by court decisions.

Further, MCI presents no evidence that a prescriptive approach will benefit consumers because it has not demonstrated that it has passed access charge reductions through to its long distance customers.

The detailed requirements requested by MCI immediately have all been considered by the Commission and bear no relation to MCI's ability to assess a PICC on its customers. MCI was able to assess a PICC on its customers who were served by rate of return LECs who do not charge a PICC. MCI's proposals would only serve to add unnecessary administrative burdens and costs with no corresponding benefit. MCI's petition should be rejected.

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The United States Telephone Association (USTA) respectfully submits its comments in the above-referenced proceeding. USTA is the principal trade association of the local exchange carrier (LEC) industry. Its members provide over 95 percent of the incumbent LEC-provided access lines in the U.S. USTA's price cap-regulated members have reduced access charges by approximately \$11 billion since the inception of price cap regulation and another \$3 billion to reflect changes in access structure adopted by the Commission in CC Docket No. 96-262. USTA has requested that the Commission determine whether MCI and the other major interexchange carriers (IXCs) have passed those savings on to their long distance customers.

On February 24, 1998, MCI Telecommunications Corporation (MCI) filed an Emergency Petition for Prescription of the rate levels, terms and conditions in the pending tariff investigation. Specifically, MCI requests that the Commission eliminate the distinctions between primary and non-primary lines, make the incumbent LECs responsible for the collection of the presubscribed interexchange carrier charge (PICC) until they provide detailed information

to the interexchange carriers (IXCs), prescribe a standardized, independently verifiable definition of primary and non-primary lines, require the incumbent LECs immediately to provide auditable line count information by telephone number, grant the Sprint petition to permit IXCs to discontinue assessing a PICC on customers which the IXC has terminated,¹ and standardize the date used by incumbent LECs to decide which customers' PICCs are assigned to an IXC. This petition should be summarily dismissed pursuant to Section 1.401(e) of the Commission's rules as it is completely without merit, both procedurally and substantively.²

I. THE PETITION SHOULD BE DISMISSED AS IT IS MOOT, PREMATURE, REPETITIVE, FRIVOLOUS AND PLAINLY DOES NOT WARRANT COMMISSION CONSIDERATION.

Procedurally, this petition, like the petition filed by the Consumer Federation of America,³ is just an out-of-time petition for reconsideration of the Commission's decisions in CC Docket No. 96-262.⁴ In that proceeding, the Commission properly determined that "competitive markets are far better than regulatory agencies at allocating resources and services efficiently for

¹See, Sprint Corporation Request for Declaratory Ruling Regarding Application of PICCs, CCB/CPD 98-2, filed December 31, 1997.

²Section 1.401(e) states, "Petitions which are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner".

³Consumer Federation of America, et.al, Petition Requesting Amendment of the Commission's Rules Regarding Access Charge Reform and Price Cap Performance Review for Local Exchange Carriers, RM 9210.

⁴Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, *First Report and Order*, CC Docket Nos. 96-262, 94-1, 91-213 and 95-72, FCC 97-158 (rel. May 16, 1997), *Second Order on Reconsideration*, FCC 97-368, (rel. Oct. 9, 1997), *review pending sub nom. Southwestern Bell Tel. Co. v. FCC*, No. 97-2618 (8th Cir.). [Access Charge Order].

the maximum benefit of consumers” and thus adopted a market-based approach to access pricing.⁵ The Commission stated, “[w]e conclude, based on our experience in exchange access and other telecommunications markets and the record in this proceeding, that a market-based approach to reducing access charges will, in most cases, better serve the public interest...we believe that this approach is most consistent with the pro-competitive, deregulatory policy contemplated by the 1996 Act.”⁶ As Commissioner Powell stated in a recent speech:

...competitive markets are the only proven devices for maintaining efficiency in the face of blistering technological change...One reason that policy makers find it difficult, even after setting appropriate ground rules, to allow the market to run its course is, ironically, their fear of ceding control to the marketplace. The Act commands us all to move away from regulation and toward a world in which the market, rather than bureaucracy, determines how communications resources should be utilized.⁷

A. MCI’s Arguments Are No More Convincing Now Than When the Commission First Rejected The Prescriptive Approach.

The Commission specifically rejected the prescriptive approach suggested in the petition for several reasons. The Commission noted that accurate, forward-looking cost models are not available at the present time to determine the economic cost of providing access service. “[L]acking the tools for making accurate prescriptions, precipitous action could lead to significant errors...”⁸ The Commission was concerned that such errors could have a detrimental impact on the provision of universal service, could further impede the development of

⁵*Id.* at ¶ 42.

⁶*Id.* at ¶ 44.

⁷Speech of Commissioner Michael K. Powell before the Legg Mason Investor Workshop, Washington, D.C., March 13, 1998.

⁸Access Reform Order at ¶ 46.

competition in local markets and could disrupt existing services. Thus, MCI's petition is clearly repetitive and must be dismissed.

The Commission also recognized that the market-based approach may take *several years* to drive costs to competitive levels.⁹ As the Commission acknowledged, removing the distortions and inefficiencies in the current access rate structure cannot be accomplished on a flash cut basis without severe consequences. The Commission stated that it would release subsequent orders with detailed rules to implement the market-based approach and to address the problem of ensuring the recovery of historical costs. These orders have not been released. This petition is grossly premature as it was filed less than two months after the access reform order became effective. MCI's flawed suppositions as to future outcomes should be dismissed as frivolous.

The Commission also recognized that competition is likely to develop at different rates in different locations and that some services will be subject to competition faster than other services.¹⁰ The Commission noted that this was completely consistent with the profit-maximizing incentives of new entrants. New entrants are expected to serve the most profitable, higher priced customers first. As competition develops for serving these customers, the margins for serving those customers decrease. Eventually the relative profitability of serving lower-priced customers increases and competition develops for those customers as well. However, it takes time for these market phenomena to occur.

⁹*Id.* at ¶45. The Commission also stated that if competition did not emerge, it would prescribe rates in the future to bring them into line with forward-looking costs. (at ¶48).

¹⁰*Id.* at ¶ 266.

The Commission's decision to rely on a market-based approach was strongly supported by commenting parties, including incumbent LEC competitors. For example, Time Warner stated that, "[a] properly designed and enforced market-based approach to lowering interstate access rates has several advantages over a prescriptive approach. First, as the Commission has long recognized, prices set by prescriptive regulation are not as efficient as those determined by a competitive market. Moreover, while a prescriptive approach might increase short-term static efficiencies (bringing prices closer to the ILECs' costs), a market-based approach will establish the preconditions for the development of more beneficial dynamic efficiencies (the entry of firms with costs that are lower than the ILECs'). For this reason, the development of competition over the long term would be more beneficial than the short term benefits of prescription."¹¹ Teleport Communications Group noted that "[p]rices based on market prices, rather than regulatory rules, are more likely to lead to appropriate results...".¹² The Association for Local Telecommunications Services explained, "The central reason both Congress and the Commission have concluded markets should be relied upon to set prices rather than regulation is that regulation, despite the best efforts of the regulators, has proven totally unable to replicate competitive results. Lapsing back now to 'prescriptive' regulation is a white flag of surrender totally inconsistent with the Telecommunications Act of 1996, as well as with the Commission's

¹¹Comments of Time Warner, CC Docket No. 96-262, filed January 29, 1997 at 19.

¹²Comments of Teleport Communications Group, CC Docket No. 96-262, filed January 29, 1997 at 4.

longstanding goal of furthering competition.”¹³

In a statement previously submitted by USTA and attached hereto, Alfred E. Kahn described some of the adverse impacts of a prescriptive approach. “The problem raised by the proposed prescriptive path is not confined to its effect on the incentives of both incumbent and competitive LECs to invest in the modernization of our telecommunications infrastructure. Even more directly and obviously, it would inevitably impair drastically the ability of the incumbents to so.”¹⁴ Such a result harms not only the telecommunications providers who rely on the public switched network to provide service to their customers, but more important, consumers themselves. Prices which are not market-based will give the wrong signals regarding usage, which will incent inefficient firms to enter the market, as well as chill investment.¹⁵ Firms will have no incentive to become facilities-based competitors if the costs necessary to invest in the infrastructure cannot be recovered because prices do not reflect market conditions. Chilling incentives to invest in the infrastructure through a prescriptive approach to setting prices will threaten the maintenance of high quality, reliable service, stifle innovation thereby reducing customer options and, ultimately, jeopardize universal service. In short, a prescriptive approach will only serve to eliminate the benefits of competition which Congress intended to provide to

¹³Comments of Association for Local Telecommunications Services, CC Docket No. 96-262, filed January 29, 1997 at 21.

¹⁴Statement of Alfred E. Kahn on FCC’s Proposed Reforms of Carrier Access Charges, USTA Reply Comments, CC Docket No. 96-262, filed February 14, 1997 at Attachment 1.

¹⁵*See, also*, J. Gregory Sidak and Daniel F. Spulber, Affidavit, CC Docket No. 96-262, USTA Comments filed January 29, 1997 at Attachment 3 and Reply Affidavit, USTA Reply Comments filed February 14, 1997 at Attachment 2 also attached hereto.

consumers.

Finally, MCI chooses to ignore the complex and prolonged regulatory proceeding which would be required to implement a prescriptive approach. Such an undertaking could not begin until the Commission had completed a proceeding to determine how incumbent LECs are to recover their historical costs in order to avoid impermissible confiscation. Even if accomplished, the Commission has committed to phasing in any ordered rate reductions in order to avoid rate shock.¹⁶ MCI has provided no new evidence to support a prescriptive approach to access pricing.

B. MCI's Claims Regarding the Development of Competition are Either Irrelevant, Inaccurate or Both.

The petition claims that, due to the decisions of the 8th Circuit Court of Appeals, the availability of unbundled network elements (UNEs) will no longer facilitate the development of competition. This claim is unfounded for numerous reasons.

First, the decisions of the 8th Circuit Court of Appeals clarified the jurisdictional responsibilities of both the Commission and the states regarding the pricing rules for UNEs. *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997). In fact, the Court had stayed the Commission's pricing rules long before the Commission decided to adopt a market-based approach to access regulation. Thus, the rules for UNE pricing were far from settled at the time of the access charge proceeding. Further, there is nothing in the access reform order to suggest that the Commission in any way relied upon rebundling of UNEs to support the market-based approach. Any uncertainty now regarding judicial review stems from MCI's decision to further appeal the 8th Circuit decisions.

¹⁶Access Reform Order at ¶ 290.

Second, pursuant to the decisions of the 8th Circuit and consistent with the Telecommunications Act, the majority of states have adopted the Commission's recommended pricing rules based on forward-looking cost methodologies for UNEs. Some states have even made combinations of elements available at forward-looking prices. States have also approved resale discounts in the default range specified by the Commission. There is no basis to conclude that the decisions of the 8th Circuit have undermined the Commission's decision to adopt a market-based approach to access.

Third, the Commission did not rely on the availability of UNEs as the sole basis for the development of competition. To the contrary, the Commission provided several tools to further competition, including encouraging facilities-based competition and providing greater opportunities to utilize resale. While MCI has abandoned its efforts to utilize resale discounts and has announced plans to provide facilities-based services to business customers in the major cities, other competitors have successfully entered markets through the use of resale and will continue to do so.¹⁷

Fourth, as discussed in a paper attached hereto, Richard Schmalensee and William Taylor of the National Economic Research Associates describe the recent marketplace developments which require greater pricing flexibility for access services. Schmalensee and Taylor explain that the existence of interconnection agreements with UNEs at cost-based rates makes many incumbent LEC customers potential competitive LEC (CLEC) customers, constrained only by their ability to convince customers to switch access providers. Customers are vulnerable to

¹⁷See, Presentations of Status of Local Telephone Competition, FCC *En Banc* Hearing, January 29, 1998.

competitors because UNEs can be used as substitutes for incumbent LEC-provided access services as well as retail local exchange services. Schmalensee and Taylor conclude that the existence of interconnection agreements should give the Commission a sense of urgency to act to grant pricing flexibility.

Fifth, MCI's contention that competition is not developing is simply incorrect. Schmalensee and Taylor note that access competition was developing long before the Telecommunications Act and the access reform order were enacted. In fact, by the time the Telecommunications Act of 1996 became law, incumbent LECs had already lost significant numbers of customers using high capacity services. The data contained in Schmalensee and Taylor's paper as well as that which was presented by USTA President and CEO Roy Neel during the *en banc* hearing on local competition and attached here are already out of date, but do provide a snapshot of the accelerated pace of competition. Schmalensee and Taylor point out that there are no barriers to the continued growth by competitors. USTA supports the Commission's efforts to update this type of information and will cooperate with the Commission to ensure that the facts about competition are not obscured by the rhetoric. However, as Mr. Neel pointed out, incumbent LECs can only provide part of the picture. It is difficult for incumbent LECs to determine growth in lines and traffic that competitors are experiencing and the volume of services competitors are providing. A simple, non-burdensome reporting requirement for all competitors would provide up-to-date facts.

Contrary to MCI's claims, the data also reveal that incumbent LECs have opened their markets to competitors. The RBOCs and GTE are spending \$4 billion on operational support systems (OSS), new employees, number portability and the other capital expenditures necessary

to meet the requirements of the Act. This amount, of course, does not include the capital spent by the nation's other 1,000 incumbent LECs. The largest six incumbent LECs were processing more than 8,000 competitive orders daily as of January of this year and had dedicated over 8,000 employees to implement OSS changes, serve as the CLEC point of contact, process orders, implement number portability and make necessary network changes.

Finally, MCI's concerns regarding the risk of a price squeeze are unfounded. This issue was discussed in CC Docket No. 96-262 and the Commission rejected MCI's theories at that time, finding that a price squeeze is unlikely to occur and even less likely to succeed.¹⁸ The availability of UNEs is only one deterrent to the unlikely possibility of a price squeeze. Other deterrents include market conditions, increasing competition, imputation requirements, and price cap regulation.¹⁹ There is nothing in the petition which justifies a change in the Commission's market-based approach.

II. CUSTOMERS WILL NOT BENEFIT UNDER A PRESCRIPTIVE APPROACH SINCE THE MAJOR IXCS HAVE NOT LOWERED LONG DISTANCE RATES TO REFLECT REDUCTIONS IN ACCESS CHARGES.

Further, there is no evidence that a prescriptive approach will benefit customers. Incumbent LECs today operate under prescriptive regulation. For example, those incumbent LECs regulated under price cap regulation must reduce their access charges each year to reflect productivity gains over and above productivity gains achieved by our nation. Since 1991, price

¹⁸Access Reform Order at ¶¶ 275-282.

¹⁹See, Richard Schmalensee and William E. Taylor, "Economic Aspects of Access Reform", USTA Comments filed January 29, 1997, Attachment 1 at pp. 40-42 and "Economic Aspects of Access Reform: A Reply", USTA Reply Comments filed February 14, 1997, Attachment 3 at pp. 11-14.

cap-regulated LECs have reduced access charges paid by the IXCs by approximately \$11 billion dollars. USTA has requested that the Commission investigate whether those savings have been passed through to long distance customers.

In a February 11, 1998 letter to Chairman Kennard, USTA pointed out that incumbent LECs had reduced the per-minute rates paid by IXCs by approximately \$3 billion to reflect the full amount of the reductions in usage-based charges adopted by the Commission in the access reform order which became effective on January 1, 1998. That amount did not include the \$1.7 billion reduction due to price cap regulation which became effective on July 1, 1997. Even accounting for the changes in the universal service mechanisms, IXCs have increased charges to customers by approximately \$2 billion by passing through the PICC and assessing a universal service surcharge with no offsetting long distance decreases.

While the petition alleges that long distance rates have decreased, that claim is not supported by the data contained in the petition. The average revenue per minute (ARPM) decline referred to in the petition does not relate to reductions in access charges. Rather, such a decline is to be expected when an IXC promotes high-volume usage migration to discounted optional calling plans and even offers free minutes as a marketing incentive. Under such marketing tactics, usage increases, but revenue decreases. If a higher volume customer migrates to a new calling plan with a lower offered price per minute and increases usage, the ARPM will decline even if the rates for the plans remain the same. Thus, it is not clear that MCI has actually reduced rates at all, but merely taken credit for customers migrating to new lower priced calling plans.

Further, there is no evidence that customers are experiencing decreases in rates. Long distance resellers and end users have indicated that they have not received any benefit from the reduction in the per-minute access charges.²⁰ The Office of Advocacy of the U. S. Small Business Administration noted that the PICC pass through resulted in as much as a 30 percent increase in telephone bills for small businesses. “Furthermore, the significant economic burden on small business end users caused by PICCs and USF surcharges is compounded by the absence of universal, identifiable long distance rate reductions. Although IXC’s received a reduction in the per minute access charges paid to ILECs of \$1.7 billion in July 1997, many small business customers have not received a rate reduction.”²¹ The Office of Advocacy recommended that the Commission investigate the billing practices of the largest IXC’s and whether these IXC’s are reaping a windfall of combined access charge savings, with the pass through of PICCs and USF surcharges.

USTA commends the Commission for taking action in response to the concerns it has raised.²² Although the Chairman requested specific information with which to confirm IXC claims that they have passed through access charge reductions, even a cursory review of the responses received by the Chairman reveal that such information was not provided. USTA will

²⁰See, Comments of American Petroleum Institute at pp. 12-13 and Telecommunications Resellers Association at pp. 2, 7-8 filed January 30, 1998 in RM 9210.

²¹Comments of Office of Advocacy of the U.S. Small Business Administration filed January 30, 1998 in RM 9210.

²²See, Letters from Chairman Kennard to William T. Esrey, Chairman and CEO, Sprint Corporation, Michael C. Armstrong, Chairman and CEO, AT&T, and Bert Roberts, CEO, MCI Communications Corporation, February 26, 1998.

provide a more detailed response in a separate filing.

While the petition describes only a modest increase in MCI's revenues, its press release reporting the fourth quarter 1997 results states that revenues were up 6.3 percent for the year, reaching \$5.1 billion for the fourth quarter and \$19.7 billion for the year. The press release notes that MCI's focus on attracting and retaining higher-spending customers spurred its improvements in revenue and profit. The press release also explains that MCI completed construction of local networks in six new markets: Washington, D.C., Dallas, Houston, San Antonio, Cincinnati and Fort Lauderdale, and now markets facilities-based services in 31 major U.S. business markets.²³

III. THE IMMEDIATE RELIEF SOUGHT BY MCI IS UNREASONABLE AND UNNECESSARY.

The items for immediate relief as listed in the petition have all been considered by the Commission and have no relation to MCI's ability to assess PICCs on its long distance customers. In fact, MCI was able to pass through the PICCs to long distance customers served by rate of return LECs who did not even charge a PICC. Thus, it begs credulity for MCI to complain that it lacks sufficient data. Further, as pointed out by USTA in its letter to Chairman Kennard, the IXCs could very well have chosen not to pass through the PICC to their end user customers, thereby recognizing the savings resulting from the lower access charges. All of the items listed in the petition, regarding defining primary lines, line count information and the collection of the PICCs, would impose additional administrative burdens on incumbent LECs for

²³According to MCI's Web Page, once it merges with Worldcom it will have revenues of over \$30 billion, offer local service over its own facilities in 100 markets and serve 25 percent of the long distance market.

which there is no offsetting benefit.

Much of the billing detail discussed in the petition was already raised by MCI in its comments in CC Docket No. 97-181. USTA strongly opposed MCI's request, observing that it would only serve to increase administrative costs. USTA also explained that such detail was not uniformly available. In its own comments, USTA noted that it had opposed identifying non-primary residential lines in both the universal service and access reform proceedings.²⁴ USTA was concerned about the administrative difficulties involved in such an undertaking since LECs did not possess such records. USTA even requested a year's extension of the requirement to identify non-primary lines to allow sufficient time to incorporate the system changes needed to avoid problems. USTA suggested that in the interim period primary and non-primary lines could be assessed the same charge. USTA explained that the Commission's proposal to require self-certification would have been exceedingly costly and burdensome to implement. The Commission proceeded with its requirement although it did not specify a definition.

USTA reiterates its recommendation that the Commission utilize billing account at the same serving address to define primary lines. Under USTA's definition, each current residential account would be designated as a primary line. This definition relies on accurate, historical data which is currently maintained, thus reducing the administrative burden and potential costs. It also preserves customer privacy and reduces customer confusion. Use of billing accounts will also facilitate efforts to verify line counts as requested by MCI, thus eliminating the added administrative burdens of those MCI suggestions. These advantages make the use of LEC billing

²⁴Comments of USTA filed September 25, 1997, CC Docket No. 97-181.

account far superior to MCI's proposals.

USTA also noted in those comments that there is no reason to expand the existing CARE system. This system provides the IXCs with account information for each new line subscribed to the IXC. It identifies business and residential accounts, billing telephone number (BTN) and an ISDN indicator. The CARE record is exchanged on a daily basis. This information allows the IXC to determine whether a business line is multi line or single line when the IXC is the presubscribed carrier for more than one of the lines associated with the BTN. Neither MCI's previous comments nor its latest petition offer any reasons to justify adding a new indicator on CARE transactions. However, this issue has been raised by MCI at the Ordering and Billing Forum (OBF) and should be resolved there.

Many of MCI's other concerns regarding the implementation of the PICC were addressed by the OBF and other industry standards groups through changes incorporated into the 30 Series Billing records. MCI participated in those deliberations. These procedures are sufficient to ensure that any problems are identified and resolved. In addition, there is no reason to require a standard "snap shot". As noted above, incumbent LECs do not have uniform billing procedures. Billing operations vary as the resources of the carrier vary. For many carriers, it would not be practical to render information on a particular date. The "snap shot" requirement is a significant burden. Incumbent LECs must comply with the Commission's requirements adopted in its order on reconsideration. Further requirements should not be imposed and incumbent LECs should be permitted to make the business decisions necessary to comply with existing regulations in the least burdensome and most efficient manner.

Finally, as was also discussed in the comments in CC Docket No. 97-181, there is no need for additional audits to verify line count data. The Commission has sufficient audit authority if necessary to assess the accuracy of data. From a practical standpoint, LECs have no incentive to misrepresent the number of primary residential lines. The price cap regulated-LECs will not be able to make up the difference in other rates if secondary lines are misrepresented as primary lines. While the differentiation of charges will place LECs at a competitive disadvantage, the price cap rules do not permit LECs to raise other rates in order to make up competitive losses.

MCI's suggestion that incumbent LECs collect PICCs from end users makes no sense. The incumbent LECs collect a PICC from the IXC in order to recover the costs of providing the IXC with access to the incumbent LEC networks. As noted above, this charge does not have to be passed through to the IXCs' customers. That was a choice made by the IXCs. If the IXCs want to pass through PICCs to their customers they must retain the responsibility to do so.

MCI's restatement of the issues raised by Sprint in its Petition for Declaratory Ruling need not be repeated here.²⁵ Again, as USTA already pointed out in its comments in that proceeding, USTA opposes Sprint's request which would force incumbent LECs to step into the middle of disputes among IXCs and their customers. Consistent with Commission rules, incumbent LECs should continue to charge a PICC for all customers presubscribed to an IXC unless the customer changes its presubscribed carrier.

²⁵Sprint Corporation Request for Declaratory Ruling Regarding Application of the PICCs, CCB/CPD 98-2, December 31, 1997.

MCI's request that the Commission require that the incumbent LECs' access bills provide a line item specifying the amount of universal service that is passed through to IXCs in each access element should be rejected. Once again, this request would impose significant burdens and costs with no corresponding benefit. Current billing systems do not provide such detailed information. The costs to incorporate this change would be significant. It is questionable as to whether such data would even be useful since the amounts of universal service recovered through access elements may vary. Incumbent LECs already provide information on the amount of universal service contributions in their access tariffs and report revenue information on the FCC Form 457. There is no reason for incumbent LECs to provide additional detail.

IV. CONCLUSION.

There is nothing in this petition to justify reassessing the Commission's determination that a market-based approach should be relied on when setting prices for access services. The Commission correctly found that a market-based approach is in the public interest. The Commission should continue to take every opportunity to reduce reliance on regulation in favor of market forces and to reject requirements imposed on incumbent LECs which only serve to increase administrative costs.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

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ATTACHMENT 1

**USTA Comments
CCB/CPD 98-12
March 18, 1998**

ATTACHMENT 1

**Statement of Alfred E. Kahn
on
FCC's Proposed Reforms of Carrier Access Charges**

**USTA Reply Comments
CC Docket No. 96-262
February 14, 1997**

STATEMENT OF ALFRED E. KAHN ON FCC'S PROPOSED REFORMS OF CARRIER ACCESS CHARGES

I. INTRODUCTION AND SUMMARY

My name is Alfred E. Kahn. I am the Robert Julius Thorne Professor of Political Economy, Emeritus, Cornell University and Special Consultant with National Economic Research Associates, Inc. (NERA). I have been Chairman of the New York State Public Service Commission and of the Civil Aeronautics Board; and in my capacity as Advisor to President Carter on Inflation, I participated actively in the successful efforts of his Administration to deregulate both the trucking industry and the railroads. I am the author of the two-volume *The Economics of Regulation*, reprinted in 1988 by MIT Press, and have written and testified extensively in the area of direct economic regulation, and particularly of the telecommunications, railroad, trucking, airline and electric power industries. Of particular relevance to my statement here, I was for six years a member of AT&T's Economic Advisory Council. I have also been a member of the Attorney General's National Committee to Study the Antitrust Laws (1954-56) and the National Commission on Antitrust Laws and Procedures (1978-80); I am the co-author of *Fair Competition, The Law and Economics of Antitrust Policy* and have published numerous articles in that area. I attach a copy of my full resume as Appendix A.

The FCC's suggested prescriptive approach to the reform of carrier access charges, as described in its proposed Order in Docket 96-488, taken in conjunction with its previous Order

on local interconnection policy (FCC Order¹), would, in my judgment, jeopardize achievement of the ultimate goal of the Telecommunications Act—namely, accelerated development and investment in an advanced telecommunications infrastructure, under conditions of efficient, dynamic competition. It would do so by reducing carrier access charges rapidly in the direction of total service long-run incremental cost, not of the companies themselves but of a hypothetical entrant. The prescriptive approach ignores the costs of the incumbent local exchange companies, both historical and current, including the costs of the continuing regulatorily-required underpricing of basic residential service. By so doing, it undermines both the incentives and the ability of the ILECs to engage in the necessary large investments in the public network, on which we will continue to be heavily dependent in the years immediately ahead, while at the same time diluting the incentive of new competitors to enter on a facilities basis. The prescriptive approach would also have particularly damaging effects on the incentive of the ILECs and potential challengers to engage in creative innovation.

It will do these things, evidently, in the belief that the markups above incremental costs contained in the current capped access rates constitute a barrier to efficient competition at both local and interLATA levels. That belief is erroneous.

To the extent that the consequent diminution in the flow of contribution to the ILECs from the present carrier access charges is accompanied by a truly equivalent increase in contributions from a universal service fund, competitively-neutrally financed, these harmful

¹ 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 (1996), petition for review pending and partial stay granted, sub nom. Iowa Utilities Board et.al. v. FCC, No. 96-3321 and consolidated cases (8th Cir., October 15, 1996).