MCI Telecommunications Corporation
1801 Pennsylvania Avenue, NW
Washington, DC 20006
202 887 2779
FAX 202 887 2204

DOCKET FILE COPY ORIGINAL

Donald H. Sussman
Regulatory Analyst
Federal Law and Public Policy

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August 17, 1998

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: In the Matter of Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation; CC Docket No. 98-77

Dear Ms. Salas:

Enclosed herewith for filing are the original and sixteen (16) copies of MCI Telecommunications Corporation's Comments regarding the above-captioned matter.

Please acknowledge receipt by affixing an appropriate notation on the copy of the MCI Comments furnished for such purpose and remit same to the bearer.

Sincerely yours,

Don Sussman

Enclosure
DHS

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation	)))	**CC Docket No. 98-77**

MCI COMMENTS

Don Sussman
Alan Buzacott
1801 Pennsylvania Ave., NW
Washington, DC 20006
(202) 887-2779

August 17, 1998

Table of Contents

Summary i

I. Introduction 1

II. The Commission Should Revisit Access Reform for Price Cap Carriers and Complete Universal Service Reform Before Diverting Its Limited Resources to Access Reform of Rate-of-Return Carriers 4
- A. The Commission Must Prescribe Access Charges to Forward-Looking Economic Cost 4
- B. The Commission Must Complete Universal Service Reform 7
- C. The Commission Must Resolve Implementation Issues for Price Cap Carrier Access Reform 9

III. Rate Structure Modifications 10
- A. Subscriber Line Charge 11
- B. Presubscribed Interexchange Carrier Charge 14
  - 1. Implementation Issues 14
  - 2. PICC Caps 16
- C. Local Switching 17
- D. Transport Services and the TIC 18
  - 1. Facilities TIC 19
  - 2. Residual TIC 20
- E. Marketing Costs 21
- F. Special Access PICC 22

IV. Conclusion 24

Summary

On June 4, 1998, the Commission issued a Notice proposing to reform the access rate structure of rate-of-return incumbent local exchange carriers (ILECs) to better reflect the manner in which costs are incurred. In that Notice, the Commission proposes a rate structure for rate-of-return ILECs similar to the structure ordered by the Commission for the price cap ILECs in its May 7, 1997 First Report and Order.[1] While MCI supports the Commission's fundamental finding that access rates should, wherever possible, reflect the manner in which costs are incurred, MCI does not believe that the time is now ripe for the Commission to divert its limited resources to reform the access rate structure of rate-of-return ILECs. Rather, the Commission should first resolve issues that could lead to immediate benefits for over 90 percent of the population (i.e., continued price cap ILEC access and universal service reform), before embarking on a rulemaking that could require over a thousand small independent ILECs to provide annual cost studies, that could require small carriers to increase investment to ensure that reform policies are implemented as ordered, and that would ultimately impact less than ten percent of interstate access lines.

Should the Commission decide to proceed with rate-of-return carrier access reform, MCI supports, in principle, the Commission's proposals to apply to rate-of-return carriers many of the rate structure changes that it applied to price cap carriers in the First Report and Order. Because

[1]Access Charge Reform, CC Docket No. 96-262, First Report and Order, (First Report and Order)12 FCC Rcd 15982 (1997)(Access Charge Reform Order); Order on Reconsideration, 12 FCC Rcd 10119(1997); appeal pending sub nom. Southwestern Bell Tel. Co. v FCC, No. 97-2618 (and consolidated cases)(8th Cir. argued Jan. 15, 1998); Second Order on Reconsideration; 12 FCC Rcd 16606 (1997).

rate-of-return carriers incur costs in a similar manner to price cap carriers, the Commission should establish a long-term goal of aligning the rate-of-return ILECs' rate structure with the price cap ILECs' rate structure. In the short term, however, the Commission should limit the rate structure changes for rate-of-return carriers to (1) increasing the SLC ceiling; and (2) replacing the per-minute CCL with the per-line PICC. These changes would address the most significant problem with the rate-of-return ILECs' current rate structure: the recovery of NTS common line costs through per-minute rates. Furthermore, implementation of these changes could be accomplished without amendment of the Part 69 cost allocation rules or complex cost studies. The SLC ceiling increase, in particular, could be implemented almost immediately.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation	)	**CC Docket No. 98-77**
	)	

MCI COMMENTS

I. Introduction

MCI Telecommunications Corporation ("MCI") respectfully submits these comments regarding the Notice of Proposed Rulemaking (Notice) in the above-captioned proceeding, released June 4, 1998.[2] In that Notice, the Commission proposes to reform the access rate structure of rate-of-return incumbent local exchange carriers (ILECs) to better reflect the manner in which costs are incurred (e.g., recovering non-traffic sensitive costs through flat rate charges and traffic sensitive costs through per minute charges wherever possible). The Commission-proposed rate structure for rate-of-return

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[2] In the Matter of Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, CC Docket No. 98-77, FCC 98-101, Notice of Proposed Rulemaking (Notice), released June 4, 1998.

ILECs is similar to the structure ordered by the Commission for the price cap ILECs in its May 7, 1997 First Report and Order.[3]

MCI supports the Commission's fundamental finding that access rates should, wherever possible, reflect the manner in which costs are incurred.[4] MCI has long supported the position that the existing interstate access rate structure for rate-of-return ILECs is not cost causative, and that existing charges such as the Transport Interconnection Charge (TIC) and the Carrier Common Line charge (CCL) act as subsidies for ILEC profits.

MCI also supports the Commission's conclusion that access reform for all ILECs, including rate-of-return ILECs, is critical to achieving Congress' ultimate goal of a fully competitive local telecommunications marketplace.[5] As the Commission itself has noted, inflated access charges that stem from implicit and inefficient subsidies distort competition in the interexchange market,[6] suppress demand for interexchange services, and can lead to higher rates paid by end users.[7] Additionally, because of the growing

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[3] Access Charge Reform, CC Docket No. 96-262, First Report and Order, (First Report and Order) 12 FCC Rcd 15982 (1997)(Access Charge Reform Order); Order on Reconsideration, 12 FCC Rcd 10119(1997); appeal pending sub nom. Southwestern Bell Tel. Co. v FCC, No. 97-2618 (and consolidated cases)(8th Cir. argued Jan. 15, 1998); Second Order on Reconsideration; 12 FCC Rcd 16606 (1997).

[4] Notice at ¶2.

[5] Notice at ¶¶1-2.

[6] Notice at ¶24-25.

[7] First Report and Order at ¶30.

importance of the telecommunications industry to the economy as a whole, such inefficiencies ultimately can retard job creation and economic growth in the nation.[8] Inflated access charges also constitute a barrier to entry in the local exchange market because they constrain the financial resources available for interexchange carriers to enter local markets. Reducing interstate access charges to forward-looking economic cost unquestionably increases consumer welfare.

However, MCI does not believe that the time is now ripe for the Commission to divert its limited resources to reform the access rate structure of rate-of- return ILECs. In the First Report and Order, the Commission concluded that it would be in the public interest for the Commission to focus on access reform of price cap carriers before tackling the rate structures and levels of the smaller independent ILECs. MCI supports that decision since reform of price cap ILECs' interstate access charges could immediately affect the "vast majority of all access lines and interstate access revenues."[9] MCI therefore urges the Commission to resolve issues that could lead to immediate benefits for over 90 percent of the population (i.e., continued price cap ILEC access and universal service reform), before embarking on a rulemaking that could require over a thousand small independent ILECs to provide annual cost studies, that could require

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[8] Id.

[9] Price cap regulation currently governs almost 91 percent of interstate access charge revenues, more than 92 percent of total ILEC access lines, all ten of the ILECs with more than two million lines, and 13 of the 17 non-NECA ILECS with more than 50,000 access lines. First Report and Order at ¶330.

small carriers to increase investment to ensure that reform policies are implemented as ordered, and that would ultimately impact less than ten percent of interstate access lines.

II. The Commission Should Revisit Access Reform for Price Cap Carriers and Complete Universal Service Reform Before Diverting Its Limited Resources to Access Reform of Rate-of-Return Carriers

A. The Commission Must Prescribe Access Charges to Forward-Looking Economic Cost

The Commission's reform of price cap carriers' interstate access charges is far from complete. The Commission should re-visit and significantly modify its access reform policies for price cap ILECs since many of the fundamental assumptions on which the Commission based its initial decisions have not been realized. For example, since the Commission adopted the First Report and Order, the 8th Circuit has struck down the Commission's pricing guidelines for unbundled network elements (UNEs) and the Commission's requirement that ILECs combine unbundled network elements for new entrants.[10] Without a requirement that the ILECs combine network elements, the scope for UNE-based competition is sharply reduced.[11] The availability of the "platform" strategy was an important factor underlying the Commission's "confidence"

[10] Although MCI expects this decision to be reversed by the Supreme Court, the impact of the decision has been -- and continues to be -- clear: it removes the theoretical foundation on which the Commission's access-charge order was based.

[11] As the Commission concluded in the Local Competition Order, "requesting carriers would be seriously and unfairly inhibited in their ability to use unbundled elements to enter local markets" if the ILEC is not required to combine elements.

that unbundled elements could be counted on to constrain the pricing of access services. While some state commissions have boldly embraced forward-looking economic pricing even in the wake of the 8th Circuit's ruling, final pricing remains an open issue in many jurisdictions, and new entrants with national aspirations, such as MCI, are today faced with the prospect of having to "prove in" the cost of entering local markets on a state-by-state, instead of regional, basis.

Without UNEs priced at forward-looking economic cost and available in combinations, the Commission can no longer reasonably predict that competition will evolve sufficiently to reduce interstate access charges. Thus, the fundamental assumption of the First Report and Order -- that UNEs would enable significant competition in a reasonable time frame -- has been invalidated. Unbundled network elements are not available at forward-looking economic cost throughout the country, need not be combined by the ILEC, and cannot be ordered in a nondiscriminatory manner.[12] Furthermore, there is no prospect that these roadblocks will be cleared in the near future.[13] Under these circumstances, the Commission can no longer reasonably predict that competition will evolve sufficiently to drive access charges to cost.

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[12]While MCI applauds the work of several states in making combinations of elements available at forward-looking pricing as a matter of state or contract law, there can be little dispute that UNEs are not practically available on a national scale.

[13]While the Supreme Court has agreed to hear the Commission's appeal of the 8th Circuit's decision, it is not expected that a decision will be handed down before the end of 1998.

New entrants' only remaining options for entering the local market are to rely entirely on their own facilities or, to a very limited extent, their own facilities in combination with UNEs.[14] Because of the substantial levels of investment required for a new entrant to pursue a facilities-based strategy, there is no question that the pace of competitive entry will be substantially less than the Commission contemplated in the First Report and Order. As a result, the Commission cannot, as it did in the First Report and Order, continue to express "confidence" that competition will drive access charges to competitive levels in areas served by price cap ILECs.[15]

Without widespread availability of UNEs priced at forward-looking economic cost and available in combinations, competitive entry cannot occur fast enough to put downward pressure on ILEC access rates in the foreseeable future. The pace of facilities-based entry is, almost by definition, severely constrained by the time required to construct facilities or collocations and by the need for massive levels of investment. Because facilities-based local competition is starting from a base of zero, CLEC market entry based on a pure facilities-based strategy or limited use of UNEs will take years to have any effect on the level of interstate access charges. Not only can a facilities-based strategy not be counted on to reduce access to cost, but the current level of interstate

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[14]Current resale discounts are insufficient for resale to be a viable strategy. More importantly, resellers of local exchange services must still pay ILEC access charges.

[15]See Access Charge Reform Order at ¶48.

access charges constrains the financial resources available for IXCs to pursue a facilities-based local strategy.[16]

Accordingly, one of the most significant steps the Commission can take to accelerate local facilities-based competition -- the only path of entry that still holds any promise for bringing competition to the local market -- is to revisit access reform for price cap ILECs and adopt prescriptive measures that will ensure that access charges are quickly driven to forward-looking economic cost. Without an immediate change in course, above-cost access charges will continue to distort the market for interstate long distance services, harm long distance customers, and seriously jeopardize the development of competition in local markets.

B. The Commission Must Complete Universal Service Reform

The Commission must still determine the amount of universal service support required to ensure the availability of basic, affordable telephone service throughout America, and clarify the manner in which carriers are allowed to recover their universal service obligations from customers. As part of that process, the Commission must (1)

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[16] This problem is worsened by recent Commission decisions (1) authorizing the ILECs to assess per-call payphone compensation well in excess of cost on the long distance industry; (2) leaving international accounting rates well above economic cost; and (3) placing IXCs in the position of tax collector from end users for ILEC excessive access fees and universal service costs.

select a model platform; (2) determine the inputs to be used in that platform; (3) determine the revenue benchmark to be used to set the support level, and; (4) determine how carriers will be assessed for their portion of universal service support.

The Commission originally planned to select its model platform for non-rural carriers by the end of 1997, to use 1998 to determine the input values to be used in that platform, and to complete this work in time to have the new universal service support system for non-rural carriers in place by January 1, 1999. However, the Commission has not yet selected a model platform; indeed, it recently asked for further comment on a model platform being developed by its own staff.[17] Because of these delays in selecting a platform, the Commission has delayed the effective date for the new universal service support system for non-rural carriers to July 1, 1999.[18] Furthermore, the Commission has sought further information from non-rural carriers on what the revenue benchmark should be.[19] Finally, the Commission must resolve issues regarding how price cap carriers pass their assessment on to their ratepayers.[20]

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[17] See Common Carrier Bureau Seeks Comment on Model Platform Development, CC Docket Nos. 96-45, 97-160, Public Notice, DA 98-1587, released August 7, 1998.

[18] See Federal-State Joint Board on Universal Service, Order and Order on Reconsideration, CC Docket No. 96-45, adopted July 13, 1998, released July 17, 1998.

[19] See Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Forward-Looking Mechanism for High Support for Non-Rural LECs, CC Docket No. 97-160, Order, adopted August 7, 1998, released August 7, 1998.

[20] MCI Telecommunications Corporation Petition the Commission for Prescription of Tariffs Implementing Access Charge Reform, CC Docket No. 97-250, CCB/CPD 98-12, filed February 24, 1998.

These steps are likely to prove tremendously time consuming for the Commission, as evidenced by the fact that the Commission has already had to delay once the implementation date. The Commission also must go through these same steps to determine the universal service support level for rural carriers, further straining Commission resources.

C. The Commission Must Resolve Implementation Issues for Price Cap Carrier Access Reform

As MCI pointed out in its Emergency Petition for Prescription, the Commission has yet to address fundamental implementation issues that relate to access reform of price cap ILECs.[21] For example, nearly 10 months after the Commission asked for comment on how to define primary and non-primary residential lines, the Commission has yet to issue a ruling.[22] Both IXCs and ILECs agree that a uniform definition of primary and non-primary lines is essential to the efficient implementation of the Commission's access reform policies.

Similarly, while the Commission has clarified that the price cap ILECs must provide IXCs line indicator information electronically through CARE and that ILECs must cease billing the presubscribed interexchange carrier charge (PICC) to IXCs when

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[21] Id.

[22] In the Matter of Defining Primary Lines, CC Docket No. 97-181, Notice of Proposed Rulemaking, September 5, 1997.

an IXC disconnects a customer for nonpayment or other violations of the tariffed terms and conditions, several of the largest ILECs continue to resist implementation of these Commission directives. These implementation issues must be resolved quickly to ensure that IXCs can accurately verify and audit PICC bills, which, in turn, will permit IXCs to recover their costs most efficiently.

III. Rate Structure Modifications

As discussed above, the Commission should focus on completing access reform for price cap carriers before diverting its resources to rate-of-return carrier access reform. Should the Commission nonetheless decide to proceed with rate-of-return carrier access reform, MCI supports, in principle, the Commission's proposals to apply to rate-of-return carriers many of the rate structure changes that it applied to price cap carriers in the First Report and Order. Because rate-of-return carriers incur costs in a similar manner to price cap carriers, the Commission should establish a long-term goal of aligning the rate-of-return ILECs' rate structure with the price cap ILECs' rate structure.

In the short term, however, the Commission should limit the rate structure changes for rate-of-return carriers to (1) increasing the SLC ceiling; and (2) replacing the per-minute CCL with the per-line PICC. These changes would address the most significant problem with the rate-of-return ILECs' current rate structure: the recovery of NTS common line costs through per-minute rates. Furthermore, implementation of these changes could be accomplished without amendment of the Part 69 cost allocation rules or complex cost studies. The SLC ceiling increase, in particular, could be implemented almost immediately.

By contrast, many of the other proposals in the Notice, including the transfer of line port costs to the common line element and the establishment of trunk port and multiplexer charges, would result in a rate structure that is only marginally more cost causative than the current rate structure. Achieving these marginal improvements would require wide-ranging changes to the Part 69 cost allocation rules, and would also require the rate-of-return ILECs to perform, and the Commission to review, a series of complex cost studies. The Commission should not now expend its limited resources on the implementation of complex rate structure changes that constitute only marginal improvements.

A. Subscriber Line Charge

The Commission should increase rate-of-return carriers' multiline business and non-primary line SLC caps to at least the same level currently in effect for price cap ILECs. Increasing the SLC ceiling for multiline business and non-primary lines will allow economically efficient flat-rated recovery of NTS costs and will permit common line costs to be recovered from the cost causer. As the Commission concluded in the

First Report and Order, "[loop] costs should be assigned, where possible, to those customers who benefit from the services provided by the local loop."[23]

There is no reason not to increase the rate-of-return carriers' multiline business SLC cap to at least $9.00. First, there is no evidence that a $9.00 SLC would be any less affordable for multiline business customers in high cost areas served by rate-of-return carriers than for multiline business customers in high cost areas served by price cap carriers. As the Commission discussed in the First Report and Order, increasing the SLC cap from $6.00 to $9.00 would do no more than recognize the effect of inflation during the fourteen years since the $6.00 cap was established.[24]

Moreover, even at the higher $9.00 cap, the end user charge in high cost areas served by rate-of-return carriers would remain "reasonably comparable" to the end user charges in urban areas and in other areas served by price cap carriers.[25] Even though price cap carriers' common line costs are lower than those of rate-of-return carriers, the inclusion of marketing costs in price cap carriers' end user charges increases these carriers' end user charges to levels at or close to the $9.00 cap. As shown in Attachment A, a significant number of price cap ILECs are assessing end user charges

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[23]First Report and Order at ¶77.

[24]Id. at ¶82.

[25]See First Report and Order at ¶82 (". . . we conclude that $9.00 SLCs remain 'reasonably comparable' to those in urban areas").

that are at or near the $9.00 SLC cap proposed for rate-of-return carriers. The nationwide average price cap ILEC end user charge is $7.15.[26]

The Commission should not adopt the suggestion in the Notice that rate-of-return carriers' multiline business SLC be capped at the level of the neighboring price cap LEC's SLC or at the national average of price cap LECs' SLCs.[27] If a rate-of-return carrier's SLC were capped at the level of the neighboring price cap LEC's SLC, a greater proportion of the rate-of-return carrier's common line costs would have to be collected from IXCs through per-minute rates. As the Commission found in the First Report and Order, a SLC cap below $9.00, and the resulting recovery of NTS costs through per-minute rates, creates an impermissible cross-subsidy from high-volume to low-volume long distance customers.[28]

Further, the concern expressed by NECA and others that the higher SLC cap will provide an incentive for price cap carriers or competitive carriers to "cherry pick" rate-of-return carriers' multiline business customers is misplaced. Under the Commission's theory of the market-based approach to access reform, it is the existing rate structure that creates incentives for competitors to target an ILEC's most profitable customers.[29] Throughout the First Report and Order, the Commission emphasizes that, by decreasing

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[26]Trends in Telephone Service, Table 1.3.

[27]Notice at ¶40.

[28]First Report and Order at ¶82.

[29]Id. at ¶76.

the revenues recovered through per-minute charges, the increase in the multiline business SLC cap reduces opportunities for new entrants to target high-volume customers.[30]

B. Presubscribed Interexchange Carrier Charge

MCI supports, in principle, the Commission's proposal to replace rate-of-return carriers' per-minute CCL charge with the per-line PICC. To the extent that SLC caps prevent recovery of common line costs directly from end users, the PICC is necessary to align common line cost recovery more closely with LEC costs. However, the Commission should ensure that all implementation issues have been resolved before rate-of-return carriers begin assessing the PICC on IXCs. Furthermore, the Commission should adopt PICC caps for rate-of-return carriers that recognize rate-of-return carriers' higher common line costs.

1. Implementation Issues

As the Commission is aware, implementation of the PICC for price cap carriers has been fraught with problems. These implementation issues have included (1) the absence of a standard definition for defining non-primary lines; (2) ILEC refusals to suppress billing of the PICC when an IXC has terminated service for non-payment or other tariff violations; (3) the failure of ILECs to provide IXCs with timely, verifiable,

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[30] Id.

and auditable line count information supporting PICC charges; (4) the failure of ILECs to provide IXCs with the information necessary to distinguish between Centrex, single line business, and multiline business customers; and (5) the failure of ILECs to agree on a standard "snapshot" date for PICC billing.

Introduction of the rate-of-return PICC at this time would compound the problems that IXCs have experienced to date. IXCs would not only be confronted with over one thousand PICC bills, likely provided without timely, verifiable, and auditable line count information, but the task of verifying PICC bills would be further complicated by the fact that the exchange of presubscription information between IXCs and rate-of-return carriers is substantially less automated than the exchange of presubscription information between IXCs and price cap carriers.

Accordingly, the Commission should proceed cautiously if it adopts a PICC for rate-of-return carriers. The Commission should, at a minimum, allow six months between the adoption of an order in this proceeding and the introduction of a rate-of-return carrier PICC. In no event should the Commission permit rate-of-return carriers to begin assessing the PICC unless the implementation issues that have arisen in connection with the price cap PICC have been resolved. In particular, if the Commission decides to adopt the primary/non-primary line distinction for rate-of-return carriers' PICCs, the Commission must allow at least six months between the release of an order in the CC Docket No. 97-181 defining primary lines proceeding[31] and the initiation of the rate-of-return PICC.

2. PICC Caps

If the Commission sets the PICC caps for rate-of-return carriers at the same level as it adopted for price cap carriers, two undesirable effects will result. First, because rate-of-return carrier common line costs are higher than price cap carrier common line costs, it will take much longer to eliminate the rate-of-return carrier CCL rate than it will take to eliminate the price cap carrier CCL rate. Second, for much the same reason, the cross-subsidy between business users and residential users will persist for much longer and will be more pronounced than for price cap carriers. The NECA and USTA analyses show that the multiline business PICC will grow to unsupportable levels if line port costs and TIC revenues are recovered through the PICC.[32] Even if these additional costs are not recovered through the PICC, and the PICC recovers only common line costs, it would take fourteen years to eliminate the NECA multiline business PICC's cross-subsidy of residential users.[33]

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[31]Defining Primary Lines, Notice of Proposed Rulemaking, CC Docket No. 97-181, released September 5, 1997.

[32]Notice at ¶37 n. 56.

[33]NECA's common line cost is $10.63 per line. Given that only $3.50 of this cost will be recovered through the SLC, $7.13 must be recovered through the PICC before the PICC and SLC are fully recovering primary line costs. The primary line PICC cap, currently $0.53, will not exceed $7.13 for fourteen years.

The PICC caps for rate-of-return carriers should be set to accelerate the elimination of the CCL and to permit the multiline business cross-subsidy of residential users to be phased out in a reasonable period. The Commission could recognize rate-of-return carriers' higher common line costs by increasing the PICC caps established for price cap carriers by the difference between the rate-of-return carrier's per-line common line cost and the $9.00 SLC cap. For example, because the NECA common line pool's per-line cost is $10.63, the PICC caps for the NECA common line pool could be set $1.63 above the caps for price cap carriers. If line port costs and TIC revenues are to be recovered through the PICC, the caps could be set at a correspondingly higher level.

C. Local Switching

MCI supports, in principle, the Commission's proposal that rate-of-return ILECs reassign NTS line port costs from the local switching element to the common line element. As a practical matter, however, there is no reason to reassign line port costs to the common line element as long as the SLC and PICC caps prevent the recovery of the reassigned costs through per-line charges. The Commission should not now expend its resources on reviewing complex ILEC switching cost studies if the only effect would be to transfer recovery from one per-minute rate element -- local switching -- to a second per-minute rate element -- the CCL.

Accordingly, the Commission should require only those rate-of-return ILECs whose SLC rates are below cap or whose CCL rates has been eliminated to reallocate line port costs to the common line element. Thus, in the short run, only a few rate-of-return ILECs would be required to conduct switching cost studies. The vast majority of rate-of-return ILECs -- including all participants in the NECA end user common line tariff -- would not have to conduct these cost studies until their CCL rate had been phased out.

The Commission should also defer implementation of the trunk port rate elements until the ILEC reallocates line port costs to the common line element. Based on the information filed by the price cap ILECs in their access reform tariffs, trunk port costs represent less than 10 percent of local switching revenues. Little purpose would be served by conducting switch cost studies simply to reallocate such a small fraction of the ILECs' revenues.

D. Transport Services and the TIC

In the Notice, the Commission proposes to identify certain costs included in the TIC that should be reallocated to other rate elements.[34] The remaining TIC revenues, for which the Commission is unable to identify any cost basis, would be recovered through the PICC, to the extent permitted by the PICC caps, or through per-minute charges.[35] The

[34]Notice at ¶67.

[35]Id. at ¶71.

Commission also seeks comment on an alternate proposal to spread the residual TIC proportionately over the other access elements.[36]

1. Facilities TIC

The only costs in the TIC that the Commission proposes to identify and reallocate are those associated with tandem trunk ports, tandem multiplexers, and the DS1/VG multiplexer at analog end offices.[37] Based on the price cap ILECs' access reform tariff filings, these costs are likely to represent only a small fraction of TIC revenues. As shown in Attachment B, the analog multiplexer costs represented less than one percent of the price cap ILECs' pre-access reform TIC revenues, while the tandem port costs represented less than three percent of the price cap ILECs' pre-access reform TIC revenues.

The incremental gain in efficiency that would result from creating the new trunk port and multiplexer charges does not justify creating a rate structure that is more complicated for ILECs to bill and IXCs to audit. To the extent that the Commission requires the rate-of-return ILECs to reallocate multiplexer and tandem trunk port costs from the TIC, the Commission should give the rate-of-return ILECs the option of including these costs in existing rate elements, rather than creating new rate elements. Specifically, the Commission could permit ILECs to include the tandem trunk port and

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[36] Id. at ¶72.

[37] Id. at ¶67.

multiplexer costs in the tandem switching element, and to include the DS1/VG end office multiplexer cost in the local switching element.

2. Residual TIC

It is clear that the Commission's proposals concerning the residual TIC do not respond to the CompTel remand. In CompTel, the court instructed the Commission to "move expeditiously to a cost-based alternative to the TIC, or to provide a reasoned explanation of why a departure from cost-based ratemaking is necessary and desirable in this context."[38] In the Notice, however, the Commission proposes to identify a cost basis for only a small fraction of the TIC revenues -- the multiplexer and tandem trunk port costs. The vast majority of the TIC revenues, for which the Commission can identify no cost basis, would either be recovered through the PICC or spread over all rate elements proportionately. Such an approach plainly fails to constitute "cost-based ratemaking."

CompTel requires the Commission to (1) determine what, if any, legitimate local transport costs are included in the TIC; (2) require these to be recovered in a manner that reflects the way they are incurred; and (3) eliminate the remainder. If the majority of the TIC cannot be associated with any of the costs of providing transport services, then CompTel prohibits the assessment of these charges on IXCs.

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[38] Competitive Telecommunications Association v. FCC, 87 F.3d 522, 532 (D.C. Cir. 1996).