

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Access Charge Reform)
)
Price Cap Performance Review for Local)
Exchange Carriers)
)

CC Docket No. 96-262

CC Docket No. 94-1

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. (SBC) hereby submits its reply to the comments filed October 29, 1999 in the above-referenced proceeding pursuant to the Further Notice of Proposed Rulemaking (FNPRM)¹ released August 27, 1999.

In its comments, SBC supported the USTA comments that suggested deaveraging of interstate common line and traffic-sensitive access charges within a study area without a competitive showing. SBC and USTA each urged the Commission to adopt Phase II pricing flexibility for switched services similar to that adopted by the Commission for transport services and to provide an opportunity for price cap LECs to make a showing based on the class of customer served.

SBC and USTA both strongly opposed the Commission's proposal to mandate a capacity-based rate structure for local switching costs. USTA fully explained that there is no opportunity for price cap LECs to experience a windfall based on a putative misalignment between NTS costs and usage-based prices in the traffic sensitive basket due to the calculation of

¹ Fifth Report and Order and Further Notice of Proposed Rulemaking, *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers; Petition of U S WEST Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the*

the X-Factor. USTA confirmed that the Commission's reliance on accounting data to attempt to support its claims of a windfall is economically erroneous since regulatory accounting distorts both the level and growth of earnings and, inconsistent with price cap regulation, relies on separations to estimate earnings at the basket (interstate-only) level.

SBC and USTA urged the Commission not to adopt either the "q" or the "full g" adjustments. While USTA explained that these adjustments are unnecessary and ill advised, USTA also correctly noted that if the "q" factor is adopted, the X-Factor must be lowered.

In these reply comments, SBC agrees with the USTA reply comments, filed November 23, 1999, which counter the suggestions made by AT&T and MCI that the Commission should impose unrelated conditions prior to the adoption of geographic deaveraging. USTA also correctly refutes those parties that suggest that the Commission should not adopt Phase II pricing flexibility triggers, attaching a paper by Dr. William Taylor of the National Economic Research Associates (NERA) which explains that pricing flexibility should not be based on any type of market share test.

The comments filed in this proceeding demonstrate that the industry does not want a mandatory capacity-based rate structure for local switching. No carrier argued that such a rate structure should be required. USTA's reply contains a persuasive report prepared by Brian S. Delidow and Dr. Steve G. Parsons of INDETEC International which describes the nature of telecommunications economic switching costs and concludes that switching costs do vary with traffic (call attempts and minutes of use), contrary to the assumptions of the FNPRM.

While a number of the IXCs argued for the proposed “q” and “g” adjustments to the PCI, the USTA reply attaches papers by Dr. Taylor and Professor Frank Gollop of Boston College which refute these arguments.

I. Geographic Deaveraging Of Switched Access Services Within A Study Area Should Be Adopted.

AT&T, MCI and Time Warner all wish to add to their competitive advantage in the market for switched access services by proposing additional, unrelated regulatory conditions on price cap LECs before the price cap LECs can undertake any geographic deaveraging of those services. These proposals should all be rejected.

As USTA properly responds, the Pricing Flexibility Order explained that greater pricing flexibility will not lead to predatory pricing² and that prices that more closely reflect costs decrease the possibility of cross-subsidization. Averaging creates market distortions.³ Preventing the deaveraging of switched access services only perpetuates these distortions

II. The Phase II Pricing Flexibility Rules Are Overdue.

Some of the commenters claim that the Commission need not issue Phase II pricing flexibility rules for switched access. These claims must be dismissed. The rules must be promptly issued.

The work of setting the triggers for Phase II is not tantamount to a grant of flexibility. Price cap LECs can obtain regulatory relief only upon satisfying specific competitive showings. The framework itself does not assure regulatory relief. To obtain Phase II relief, price cap carriers must demonstrate that competitors have established a significant market presence for provision of the services at issue. If competition does not allow the triggers to be met, flexibility will not be granted. The Commission should finish the job here.

² Pricing Flexibility Order at ¶ 64.

In the paper attached to the USTA reply, Dr. Taylor explains that market share tests such as those proposed by AT&T and Time Warner would be inconsistent with standard economic principles. Dr. Taylor correctly explains that AT&T's arguments are contrary to and inconsistent with previous positions it has taken.

Dr. Taylor explains that market share does not provide meaningful or accurate information about whether market power actually exists. The Commission has previously found that market share should not be the sole determining factor of when a firm possesses market power.⁴

Further, Dr. Taylor properly states that AT&T and Time Warner are particularly in error because they advocate measuring market share based on customer locations rather than on a more appropriate measure, such as capacity. Again, in the AT&T Non-Dominance Order, the Commission itself recognized that the appropriate measure of market share is generally capacity-based.

III. The Commission Must Not Require A Capacity-Based Rate Structure For Local Switching.

No carrier supports the imposition of a capacity based rate structure for local switching. USTA notes that the reasons provided by the carriers are consistent with USTA's arguments in this regard and demonstrate that there is no justification for imposing a capacity-based rate structure for local switching.

³ Pricing Flexibility Order at ¶ 61.

⁴ Motion of AT&T to be Reclassified as a Non-Dominant Carrier, FCC 95-427 (rel. Oct. 23, 1995).

IV. The USTA Analyses Show That The Commission's Proposals For Switching Reform Are Inappropriate.

USTA attaches analyses by Brian Delidow and Dr. Steve Parsons of INDETEC which describe the nature of telecommunications economic switching costs and the extent to which these costs are caused by traffic. Delidow and Parsons show that the underlying costs of providing switching are traffic sensitive. They also note that state regulators have consistently recognized that switching costs are traffic sensitive and that all of the cost models that have been developed over the past several years recognize that switching costs are variable.

Since switching costs are variable, the Commission's proposed adjustments to the PCI are wrong. They would only serve to arbitrarily reduce rates without recognizing the relationship between costs and usage.

V. The Commission Should Not Adopt a "Q" Factor In The Traffic Sensitive PCI Formula.

In a paper attached to the USTA reply, Professor Gollop examines the so-called "windfall", which supposedly results from a misalignment between costs driven by nontraffic-sensitive factors and revenues collected on a traffic-sensitive basis. He correctly disputes the inferences that the X-Factor is presumably insensitive to growth in local switching minutes and to changes in LEC capacity utilization and that the phantom windfall has occurred in spite of the Commission's own X-Factor model.

Dr. Taylor's paper, also attached to the USTA reply, also refutes the notion of the phantom windfall. He properly points out that AT&T's assertion that the costs of local switching do not increase with growth in traffic is incorrect, and confirms Professor Gollop's analysis that AT&T's conclusions are dependent upon the economically meaningless separations process to

estimate the investment, expenses and earnings at an interstate only level found in AT&T's Attachment B.

VI. The Commission Must Closely Analyze The Claims Made By Some Parties Regarding Their Duty To Interconnect.

AT&T claims that it need not complete calls to CLECs with whom it cannot agree upon a terminating rate. The Commission must consider this claim closely, with all of its implications. An IXC should not be permitted to unilaterally decline to terminate calls to end-users simply because it disapproves of the terminating rates of a CLEC. An IXC that chooses to serve a geographic area as a common carrier should serve all users inside that area, and should not be allowed to refuse or discontinue service to those served by any LEC with whom the IXC cannot agree upon access rates. If a dispute exists, the Commission's Section 208 complaint procedures are available.

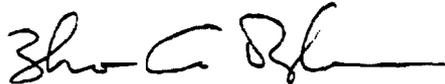
If the Commission determines that an IXC has the power to discontinue service, all Section 201 interconnection obligations must be correspondingly limited. The effect on under or unserved areas of the country would also need to be addressed. Thus, the far-ranging implications of the CLEC terminating access question must be forthrightly discussed in the order on this issue.

VII. Conclusion.

For the foregoing reasons, SBC respectfully requests that the Commission adopt the recommendations of USTA as stated in the Comments and Reply Comments.

Respectfully submitted,

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Certificate of Service

I, Katie Turner, hereby certify that the foregoing "Reply Comments of SBC Communications, Inc." in CC Docket No. 96-262 has been served on November 29, 1999 to the Parties of Record.


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