areas. The test of a carrier is "whether there is any legal compulsion to hold itself out indiscriminately to the public."[6]

7. One requisite of a communications "carrier" is that it transmit messages of others over lines it operates or maintains.[7] Complainant does not meet this requirement. The Communications Act distinguishes between "transmission" of signals over lines, on the one hand, and "facilities" dedicated to such transmission on the other.[8] A coin telephone is a facility, not a transmission line, no matter that wires are contained in its plastic shell.

8. Even if Complainant is a "carrier," and SWBT specifically denies this, Complainant falls within the reseller exception of Part 69's definition of "end user." Section 69.2(m) provides in pertinent part that a reseller shall be deemed an end user if all resale transmissions originate on the premises of such reseller. Complainant's payphones are placed at locations under license or lease and as such, for purposes of Part 69, those locations constitute "the premises of such reseller." Through terms of agency or lease, private payphone providers such as Complainant are premises based resellers of telecommunications services within the definition of Section 69.2(m).

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[6] *Cox Cable Communications, Inc.*, 102 F.C.C. 2d 110, 121, ¶ 26 (1985), citing *Transponder Sales*, 90 F.C.C. 2d 1238, 1255-57 (1982), aff'd sub nom. *World Communications, Inc. v. FCC*, 735 F.2d 1465 (D.C. Cir. 1984).

[7] 47 U.S.C. §§153 (a), (b), (d) and (h).

[8] See 47 U.S.C. § 153(a) & (b).

9. Complainant is an "end user" under Section 69.2(m) and thus must pay EUCL charges. Therefore, complainant has failed to state a claim for which relief can be granted.

WHEREFORE, because Complainant has failed to state a claim for which relief may be granted, SWBT prays that the Complaint be dismissed and that SWBT be discharged with its costs.

ALTERNATIVE MOTION TO STAY PROCEEDING

In the alternative, SWBT prays that this Complaint be stayed until the Commission has entered its ruling on the Petition for Declaratory Ruling filed with the Commission by the American Public Communications Council on April 21, 1989 (DA 89-517), which petition is still pending. As the Complaint points out, DA 89-517 involves the identical questions of law raised in this Complaint.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

By _____
James E. Taylor
Richard C. Hartgrove
John Paul Walters, Jr.

Attorneys for
Southwestern Bell Telephone Company

One Bell Center, Room 3520
St. Louis, Missouri 63101
(314) 235-2507

March 22, 1993

Exhibit A

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JAN 28 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of		
Millicom Services Company		
Complainant,		COMPLAINT
v.		
Southwestern Bell Telephone Company		File No. E-93-49
Defendant.		

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ENFORCEMENT DIVISION

To: The Commission

The complainant alleges the following as its complaint against the defendant.

THE PARTIES

1 The complainant[1] is a New York partnership with its principal place of business at 555 63rd Street, Brooklyn, New York 11220 (telephone number 718-439-9292). The complainant is involved in the sale, lease, installation and maintenance of IPPs. Complainant's IPPs are connected to telephone lines furnished by defendant.

2 The defendant has offices at One Bell Center, St. Louis, Missouri 63101. Defendant is a local exchange carrier ("LEC") providing access lines to complainant's IPPs.

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[1] Millicom Services Company ~~acquired~~ is the successor in interest to Millicom Telecommunications Services, Inc. (or MTS, Inc.), who provided independent public payphones ("IPPs") in defendant's territory, and under whose name some records may be maintained.

INTRODUCTION

3 The complainant, Millicom Services Company, is a provider of IPP service. This complaint asks the Commission to rule that the Commission's rules and regulations do not authorize the defendant to impose end user common line ("EUCL") access charges upon the IPPs provided by the complainant.

4 An IPP provider is not included in the definition of end-user in 47 C.F.R. § 69.2(m), and is therefore not subject to the EUCL access charge imposed under Part 69 of the Commission's rules. The Commission's access orders make it clear that the non-traffic sensitive costs attributable to public pay phone service are assignable to the carrier common line charge and that the rationale that resulted in that assignment applies as persuasively to an IPP as to a local exchange carrier public payphone ("LECPP").

5 The complainant also seeks to recover as damages the EUCL charges it has paid in the past, and charges which continue to accrue.

6 Complainant notes that a petition for declaratory ruling was filed with the Commission by the American Public Communications Council ("APCC") on April 21, 1989 (DA 89-517), and that petition remains pending before the Commission. A copy of the APCC petition is attached as Exhibit 1, and is incorporated herein by reference. In addition, complainant understands that other formal complaints raising the same issue as that discussed herein

are also pending before the Commission. See C.F. Communications Corp. v. Century Telephone of Wisconsin et al., File Nos. E-89-170 through E-89-182.

THE LAW

7 The defendant is required by 47 U.S.C. § 201 to furnish communications service upon reasonable request and subject to the orders, rules, and regulations of the Commission. Under 47 U.S.C. § 201(b), "[a]ll charges, practices, classifications, and regulations for and in connection with such communications service, shall be just and reasonable, and any such charge, practice, classification or regulation that is unjust or unreasonable is hereby declared to be unlawful."

8 Under 47 U.S.C. § 202, it is unlawful for the defendant "to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage."

THE CONTROVERSY

9 The complainant provides (or has provided) IPP service to its customers at approximately 200 IPP stations in the State of Texas, each of which is connected to a telephone line provided by

the defendant. For each such line, the defendant furnishes to the complainant, and the complainant pays, a monthly bill submitted by the defendant.

10 Since complainant has been using telephone lines furnished by the defendant, the defendant has been charging the complainant a monthly EUCL access charge for each such line. That EUCL charge is imposed in a flat dollar amount normally described as a "subscriber line charge" on the telephone bills submitted by defendant to the complainant.

11 In November, 1990, complainant filed an informal complaint against defendant with the Commission. In the informal complaint, complainant protested the assessment of EUCL charges on IPP lines, requested a determination that the defendant's practice is unlawful, and requested a refund of past EUCL charges improperly assessed. Defendant responded in July, 1991. (Complainant does not have a copy of the attachment referenced in the response, but will attempt to locate it and forward it to the Commission.) On November 12, 1992, the Common Carrier Bureau Enforcement Division issued a letter to complainant, noting that it declined to take action on the informal complaint, and directing complainant that a formal complaint should be filed within sixty days of the date of the letter. A copy of the defendant's response, and the Common Carrier Bureau's letter is attached as Exhibit 2.

COMPLAINANT IS NOT AN END USER UNDER THE REGULATIONS

12 The purported regulatory basis for the EUCL charge is 47 § C.F.R. 69.1(b), which provides that "[c]harges for . . . access services shall be computed, assessed and collected . . . as provided in this part," and 47 C.F.R. § 69.5(a), which provides that "[e]nd user charges shall be computed and assessed upon end users as defined in this subpart . . ." The imposition of the EUCL charge upon the complainant by the defendant is in violation of those sections because the complainant is not an end user as that term is defined in 47 C.F.R. § 69.2(m):

> (m) "End User" means any customer of an interstate or foreign telecommunications service that is not a carrier except that a carrier other than a telephone company shall be deemed to be an "end user" when such carrier uses a telecommunications service for administrative purposes and a person or entity that offers telecommunications services exclusively as a reseller shall be deemed to be an "end user" if all resale transmissions offered by such reseller originate on the premises of such reseller;

Complainant is expressly excluded from this definition because complainant is a carrier that does not use the telecommunications service for administrative purposes and because the complainant is not an entity which offers telecommunications services exclusively as a reseller and none of the resale transmissions offered by the complainant originates on the complainant's premises. The defendant's EUCL charges are therefore contrary to the rules and regulations of the Commission and are therefore a violation of 47 § U.S.C. 201. See Exhibit 1.

COMPLAINANT IS EXEMPT FROM EUCL UNDER
THE COMMISSION'S ACCESS ORDERS

13 The Commission, by formal order, has specifically exempted pay telephones from the EUCL charge, with certain exceptions not applicable to the complainant's telephones. MTS and WATS Market Structure, 93 F.C.C. 2d 241 (1983), recon. 97 F.C.C. 2d 682, 703-705 (1983) ("First Reconsideration Order"), further recon. 97 F.C.C. 2d 834 (1984), aff'd in principal part and remanded in part, NARUC v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), cert. denied, 105 S. Ct. 1224 (1985). For the reasons explained in APCC's petition for a declaratory ruling (see Exhibit 1, pages 6-12), the defendant's EUCL charges are in direct violation of an order of the Commission and are, therefore, a violation of 47 U.S.C. § 201.

THE DEFENDANT'S COLLECTION OF EUCL IS DISCRIMINATORY

14 Defendant is a direct competitor of the complainant in the furnishing of payphone service. No EUCL charge or equivalent charge for recovery of non-traffic sensitive ("NTS") costs is attributed to any end user for the defendant's pay telephones (LECPPs). Instead, defendant recovers the cost of the LECPP line through the carrier common line charge ("CCLC"), imposed on interexchange carriers. For the reasons in APCC's petition for a declaratory ruling (see Exhibit 1 at pages 9-12), IPPs and LECPPs should be treated equally for purposes of recovery of NTS costs, and the NTS loop costs associated with IPPs should be recovered through the CCLC rather than from complainant. The imposition of

an EUCL charge by defendant upon the complainant's IPPs is an act of unjust and unreasonable discrimination against the complainant to its prejudice and disadvantage and an undue and unreasonable preference and advantage in favor of the defendant in violation of 47 U.S.C. § 202.

DAMAGES

15 The complainant has been and will be damaged by the defendant in the amounts of the unlawfully imposed EUCL charges. The complainant has been wrongfully assessed EUCL charges of approximately $49,440 by the defendant, and these charges continue to be assessed every month.[2] Complainant ceased paying EUCL charges billed to its IPPs in November, 1990.

COMPLAINANT'S STANDING

16 The complainant is bringing this complaint against the defendant under 47 U.S.C. §§ 206 - 208 for its violations of 47 U.S.C. §§ 201 and 202, and its violations of the regulations and orders of the Commission.

17 WHEREFORE, the complainant asks the Commission for the following relief:

1. Declaration. A declaration that the imposition by the defendant of a subscriber line charge or EUCL access charge upon the complainant's IPPs violates 47 U.S.C. §§ 201 and 202, and 47 C.F.R. §§ 69.1(b) and 69.5(a), and the orders of the Commission;

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[2] The final amount of EUCL charges unlawfully billed to complainant will have to be determined in a final accounting following resolution of this complaint.

CORRECTED COPY

2. Damages. An award of the damages incurred by the complainant, including the EUCL charges wrongfully collected by the defendant, in an amount to be determined in a final accounting;

3. Costs and fees. An award of the complainant's costs and fees;

4. Other relief. Such other relief as the Commission may deem appropriate.

Respectfully submitted,

Millicom Services Company

Millicom Services Company
555 63rd Street
Brooklyn, New York 11220

Dated: January 11, 1993

CERTIFICATE OF SERVICE

I, Liz Jensen, hereby certify that the foregoing Answer of Southwestern Bell Telephone Company in File No. E-93-49, has been served this 22nd day of March, 1993 to the Parties of Record.

Liz Jensen

Liz Jensen

March 22, 1993

Millicom Services Company
555 63rd Street
Brooklyn, NY 11220

ITS, Inc.
1919 M Street, N.W.
Room 246
Washington, D.C. 20036

Helen M. Hall
Keck, Mahin & Cate
Counsel for Millicom
1201 New York Avenue, N.W.
Washington, D.C. 20005-3919

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Millicom Services Company,	)	
Complainant,	)	File No. E-93-49
v.	)	
Southwestern Bell Telephone Company,	)	
Defendant.	)	

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ENFORCEMENT DIVISION

REPLY

Complainant Millicom Services Company ("Complainant"), pursuant to Section 1.726 of the Commission's Rules and Regulations, 47 C.F.R. § 1.726, hereby files its reply to the affirmative defense asserted by Defendant Southwestern Bell Telephone Company ("Defendant") in its answer to the complaint in this matter, and in support thereof states as follows:

1. As its sole affirmative defense, Defendant alleges that Defendant's claim is barred, in whole or part, by the statute of limitations contained in "Commission Rule 1.718 and 47 U.S.C. 415." Because Defendant's limitations argument is one basis for Defendant's accompanying Motion to Dismiss or in the Alternative to Stay Proceedings ("Motion"), Complainant hereby incorporates by reference its Opposition to Defendant's Motion for purposes of this Reply. Complainant's Opposition is filed contemporaneously herewith.

WHEREFORE, for the reasons set forth in its Opposition to Defendant's Motion to Dismiss or in the Alternative to Stay Proceedings, Complainant Millicom Services Company respectfully requests that Defendant's affirmative defense be denied.

Respectfully submitted,

Albert H. Kramer
Douglas E. Rosenfeld
Keck, Mahin & Cate
1201 New York Avenue, N.W.
Washington, D.C. 20005-3919
(202) 789-3400

Dated: April 5, 1993

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 5th day of April 1993, that I have caused a copy of the foregoing pleading to be sent via first-class mail, postage prepaid, to the following:

James E. Taylor
Richard C. Hartgrove
John Paul Walters, Jr.
One Bell Center, Room 3520
St. Louis, Missouri 63101

* Thomas D. Wyatt
Chief, Formal Complaints and Investigations Br.
Common Carrier Bureau
Federal Communications Commission
1250 23rd Street, N.W., Room 100
Washington, D.C. 20554

* Carolyn T. Roddy
Federal Communications Commission
1250 23rd Street, N.W., Room 100
Washington, D.C. 20554

Douglas E. Rosenfeld

* Hand-Delivered

Tab

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DUPLICATE

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Millicom Services Company,	)	
	)	
Complainant,	)	File No. E-93-49
	)	RECEIVED
v.	)	
	)	APR 7 1993
Southwestern Bell Telephone Company,	)	
	)	ENFORCEMENT DIVISION
Defendant.	)	

OPPOSITION TO MOTION TO DISMISS
OR IN THE ALTERNATIVE TO STAY PROCEEDINGS

Complainant Millicom Services Company ("Complainant"), pursuant to Section 1.727 of the Commission's Rules and Regulations, 47 C.F.R. § 1.727, hereby files its opposition to Defendant Southwestern Bell Telephone Company's ("Defendant") motion to dismiss the complaint, or in the alternative to stay proceedings in this matter, and in support thereof states as follows:[1]

I. COMPLAINANT'S CLAIMS ARE NOT TIME-BARRED

Defendant's statute of limitations argument is two-pronged. First, Defendant argues that Complainant "abandoned" its informal complaint under the terms of Rule 1.718 by failing to file a formal complaint within six (6) months of the date on which

[1] In its complaint, Complainant incorporated by reference a petition for declaratory ruling filed April 21, 1989 (DA-89-517) ("Petition") filed by the American Public Communications Council ("APCC"). Complainant hereby incorporates by reference APCC's July 6, 1989 reply Comments ("Reply") filed in connection with the Petition. A copy of APCC's Reply is attached hereto.

Defendant presented the Commission with its report regarding the informal complaint. Even assuming, arguendo, that Complainant "abandoned" its informal complaint, Complainant's formal complaint would not be barred. An informal complaint is not a prerequisite to filing a formal complaint under the Commission's rules. At most, the "abandonment" would prevent the formal complaint from relating back to the date of the informal complaint under Section 1.718 -- Defendant's second argument.

However, the six-month provision of Section 1.718 cannot be read in isolation; rather, it must take into account Section 1.717,[2] which provides that when a complainant is not satisfied by the carrier's response to its informal complaint, the Complainant may await the Commission's disposition of the matter. Indeed, in

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[2] Section 1.717 provides, in its entirety:

> The Commission will forward informal complaints to the appropriate carrier for investigation. The carrier will, within such time as may be prescribed, advise the Commission in writing, with a copy to the complainant, of its satisfaction of the complaint or of its refusal or inability to do so. Where there are clear indications from the carrier's report or from other communications with the parties that the complaint has been satisfied, the Commission may, in its discretion, consider a complaint proceeding to be closed, without response to the complainant. In all other cases, the Commission will contact the complainant regarding its review and disposition of the matters raised. If the complainant is not satisfied by the carrier's response and the Commission's disposition, it may file a formal complaint in accordance with § 1.721 of this part. (Emphases added).

such cases the rule unambiguously provides that "the Commission will contact the complainant regarding its review and disposition of the matters raised," and further provides that if the Complainant does not consider the Commission's disposition satisfactory, the Complainant may then file a formal complaint. Certainly the rules are not designed to compromise the claim of a Complainant awaiting disposition of its informal complaint.

The Commission's staff itself presumed this to be the case when it sent a letter dated November 12, 1992 to Complainant in which it notified Complainant that (1) the Commission was not going to take further action on the complaint; (2) the informal complaint proceeding would terminate sixty (60) days from the date of the letter; and (3) Complainant could prosecute the complaint further by filing a formal complaint within sixty (60) days. The letter further explained that, unless the formal complaint was filed within sixty (60) days, "Section 415 of the Communications Act (Act), 47 U.S.C. § 415, could constitute a bar to the filing of such a formal complaint with the Commission or a court of competent jurisdiction."

The clear inference is that the six-month provision of Section 1.718 was not a bar to the filing of Complainant's formal complaint in the matter, and that Section 415 had not <u>already</u> operated as a bar to the claim. Consistent with the staff's letter, Complainant filed its formal complaint on January 11, 1993, within the prescribed sixty (60) days. The formal complaint in this matter therefore relates back to the filing date of the

informal complaint, November, 1990, as damages accruing before January 11, 1991 are not time-barred by Rule 1.718 and/or Section 415 of the Act.

II. THE COMPLAINT STATES A CLAIM UNDER THE COMMUNICATIONS ACT BECAUSE COMPLAINANT IS NOT PROPERLY SUBJECT TO END USER COMMON LINE CHARGES

A. Complainant Is A "Carrier" And Not An "End User" Under Part 69 Of The Commission's Rules

The end user common line ("EUCL") charges assessed by Defendant against the lines to which Complainant's independent public payphones ("IPPs") are interconnected[3] are improper because Complainant is not an "end user" of those lines, as that term is defined in Part 69 of the Commission's rules. Part 69 defines an "end user" as follows:

> [a]ny customer of an interstate or foreign telecommunications service that is not a carrier except that a carrier other than a telephone company shall be deemed to be an "end user" when such carrier uses a telecommunications service for administrative purposes and a person or entity that offers telecommunications services exclusively as a reseller shall be deemed to be an "end user" if all resale transmissions offered by such reseller originate on the premises of such reseller;

47 C.F.R. § 69.2(m).

As is more fully explained in the Petition, Complainant is a "carrier," and not an "end user," because it "[holds itself] out to serve the public indiscriminately . . . ." NARUC v. FCC, 525

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[3] IPPs are often referred to as COCOTs.

F.2d 630, 642 (D.C. Cir. 1976); see Petition at 7-8. IPP providers like Complainant unquestionably hold themselves out to the public and therefore qualify as carriers for access charge purposes. IPP providers' telephones are subject to state regulation, and are accessible to the public in the same way as public payphones provided by local exchange carriers ("LECPPs"). Thus, there can be little doubt that IPP providers are "carriers" under the access charge rules. Accordingly, EUCL charges can apply to Complainant only if one of the two exceptions under which "carriers" may be deemed "end users" under Part 69 applies.

Defendant wrongly asserts that Complainant is not a "carrier" under the Communications Act because it has not obtained a certificate of convenience and necessity and has not filed tariffs. The Commission has ruled that non-dominant carriers such as Defendant do not have to obtain certificates of public convenience and necessity pursuant to Section 214 of the Act. See Competitive Carrier Proceedings. Moreover, even if Defendant were required to obtain a certificate, that is irrelevant to the issue of whether Defendant is entitled to assess EUCL charges upon IPPs. Finally, as a reseller of telecommunications services, Complainant is by definition a "carrier."

Defendant's allegation that Complainant does not "offer its services to all" because it "places its pay telephones only in those locations where Complainant believes it can make money[,]" and "is under no obligation to place payphones in public areas" is a red herring. See Answer at 6. Like IPPs, most LECPPs are

placed entirely at the discretion of the LEC, not because of any regulatory requirement. In addition, after the payphones are installed, IPPs, like LECPPs, are open for use by all members of the public, making both IPP providers and LECPPs "carriers" and not "end users" for the purpose of assessing EUCL charges.

B. Complainant Is Not Subject To Any Exception Under Which "Carriers" Are Deemed "End Users"

Defendant correctly does not attempt to argue that the exception for telephones used for "administrative purposes" is relevant; it clearly is not. Defendant argues instead that the second exception of Part 69 applies; i.e., Complainant is subject to EUCL charges as a "reseller" of telecommunications services.

1. Complainant Is Not A "Reseller" Of Telecommunications Services For The Purposes Of Section 69.2(m) Of The Rules Because Complainant Does Not "Exclusively" Resell Telecommunications Services

While Complainant does resell some telecommunications services, to be a "reseller" under Section 69.2(m) of the Commission's rules it must satisfy both of the two requirements pertaining to the definition of "reseller." Complainant does not satisfy either requirement. Specifically, Complainant does not (1) "exclusively" resell telecommunications services to the public, and (2) those calls which Complainant does resell do not originate on Complainant's "premises."

Defendant does not address the issue of whether Complainant functions "exclusively" as a reseller. Although some interstate services from IPPs are resold by IPP providers when callers place

them (i.e., "sent-paid" calls) most interstate payphone calls are "0+" calls, or calls initiated by dialing a carrier access code, which typically are not resold by IPP providers. Instead, charges for "0+" and access code calls are assessed by the interexchange carrier or operator service provider that handles the call. In such circumstances, the IPP providers are acting as conduits to deliver traffic to an interexchange carrier or operator service provider, which then charges for the calls itself. When they operate as such, IPP providers are properly classifiable as "exchange carriers." See, e.g., Access Charge Further Reconsideration Order, 97 F.C.C.2d at 881-83 (radio common carriers are considered "exchange carriers" based on the fact that they provide primarily "exchange service" and "access service," not "interexchange service"). The service that IPP providers provide as "exchange carriers" (i.e., providing access from an exchange) is a service that they provide in addition to their reselling activities. Accordingly, IPP providers are not "exclusively" resellers of telecommunications services.

The local exchange tariffs and regulations applicable to IPP providers themselves indicate that IPP providers are treated as exchange carriers rather than "end users." Typically, IPP providers are required to provide "E-911" service without charge; to comply with requirements for handicap access; to display information on how to use the IPP or to report service problems; and to fulfill similar requirements which characteristically are imposed on carriers that provide exchange access, not on "end

users." The tariffs and regulations tacitly acknowledge that IPP providers do more than just resell service to the public.

Indeed, when it passed the Telephone Operators' Consumer Services Improvement Act of 1990, 47 U.S.C. § 226, Congress itself acknowledged that IPP providers like Complainant engage in activities more wide-ranging than just the resale of telecommunications services. Congress subjected "aggregators" to Commission jurisdiction irrespective of whether they engage in resale, thus recognizing that "aggregators" do engage in services other than reselling telecommunications services.[4] Indeed, one of the functions which Congress required "aggregators" to perform is the provision of exchange access. See 47 U.S.C. § 226(c)(1)(B) (requiring availability of certain interexchange access code calls from Complainant's IPPs). Since Complainant does more (and, in fact, is required to do more) than merely resell telecommunications service, Complainant does not operate "exclusively" as a reseller of such service for the purpose of defining "end users" under Section 69. See also Reply at 7-9.

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[4] The Act defines an "aggregator" as "any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services." 47 U.S.C. § 226(a)(1). IPP providers like Complainant clearly fall within the definition of "aggregator" adopted by the Commission. 47 C.F.R. § 64.708(b). Defendant is also an "aggregator," even though it is prohibited from selling interexchange services, thus affirming that "aggregation" is a telecommunications service that subjects parties to Commission jurisdiction whether or not they resell interexchange services.