

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
5423 SLAB HB 23 795

1, 1988 TO DECEMBER 1, 1988. THIS WILL PERMIT A THOROUGH REVIEW AND ANALYSIS OF THE EFFECT OF THE FIRST 60 CENT INCREASE, AND PERMIT AMPLE TIME FOR REVIEW OF THE RESULTS. I RECOGNIZE THAT IMPLEMENTATION DELAYS WILL NOT BE POPULAR WITH AN INDUSTRY ANXIOUS TO COMPLETE THE PROCESS OF REFORM. I, AS ONE WHO WANTS TO FOSTER CONSUMER WELFARE, SHARE THAT CONCERN FOR PUBLIC INTEREST REASONS. WE HAVE ALREADY TAKEN THE INDUSTRY'S PROPOSAL AND RE-SHAPED IT TO THE POINT WHERE ADDITIONAL CHANGES MAY RISK WHAT IS TODAY A FINELY-TUNED AND FRAGILE CONSENSUS. HOWEVER, NONE OF THE MODIFICATIONS ADOPTED TODAY POSTPONES THE FINAL FULL IMPLEMENTATION OF SUBSCRIBER LINE CHARGES. BECAUSE OUR ACTIONS WILL VITALLY BOOST AMERICA'S ECONOMY AND COMPETITIVENESS, AND SAVE PEOPLE MONEY TOO, IT IS IMPERATIVE THAT WE DO SO.

I UNDERSTAND THAT NEW JERSEY HAS WITHDRAWN ITS DEPOOLING PETITION IN ANTICIPATION OF THIS COMMISSION'S ADOPTION OF THE JOINT BOARD'S RECOMMENDATIONS. THIS IS INDEED GOOD NEWS AS NEW JERSEY STANDS TO LOSE THE MOST FROM THE CONTINUATION OF MANDATORY POOLING THROUGH APRIL 1989. I HOPE OTHER LOW COST STATES AND LOW COST COMPANIES WILL BE EQUALLY AS PATIENT. ANY FURTHER DELAY COULD RESULT IN DEPOOLING BY THE CONTRIBUTOR COMPANIES THROUGH JUDICIAL ACTION, WHICH CAN BRING ABOUT GEOGRAPHIC RATE DEAVERAGING. ANY MORE DELAY COULD BE CATASTROPHIC.

ONCE AGAIN, I'D LIKE TO THANK CYNTHIA WACK AND STAFF FOR WORKING SO HARD ON GETTING THIS FCC ITEM TO US IN SHORT ORDER. I UNDERSTAND THAT MICHAEL WACK SPENT HOURS IN FRONT OF THE WORD PROCESSOR, AND BARBARA LYNCH ASSISTED CINDY WITH A MULTITUDE OF ASSIGNMENTS NECESSARY TO BRING THIS ITEM BEFORE US TODAY.

2. Universal Service

Rate integration is closely connected to the statutorily-based Commission policy of fostering universal telecommunications service. Section 1 of the Communications Act of 1934, as amended, ("the Act"), 47 U.S.C. § 151, states that the Commission was created:

For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges... ^{17/}

Citing this statutory directive, this Court then stated that "[o]ur case law recognizes the prominence of this universal service objective," and rejected a contention that the Commission has no responsibility to promote universal service. National Association of Regulatory Utility Commissioners v. FCC, 737 F.2d 1095, 1109 & n.6 (1984), cert. denied, 105 S. Ct. 1224 (1985). The

^{17/} Cf. Committee on Commerce, Science, and Transportation, Report on S. 1660, the Universal Telephone Service Preservation Act of 1983, S. Rep. No. 270, 98th Cong., 1st Sess. 25 (1983):

The policy of rate integration has been specifically endorsed by this Committee as long ago as 1975. The Committee believes that rate integration represents sound public policy that benefits the entire Nation, and must be maintained. The Committee notes it is consistent with the overall policy objective of this legislation -- to maintain universal telephone service at reasonable rates throughout the Nation.

Commission has also consistently recognized that Section 1 of the Act mandates affordable, universal telephone service,^{11/} and has employed the rate integration policy in connection with achieving this goal.^{12/}

3. Competition

In the MTS & WATS Market Structure Inquiry, the Commission opened the Alaska interstate telecommunications market to competition. It "concluded that competition would result in telecommunications service provided at the lowest possible cost, reduction or elimination of waste, an increase in the responsiveness of carriers to the needs and desires of the consumers, and more rapid and efficient responses by the carriers to technological change and innovation." 92 F.C.C.2d 787, 793 (1982).

^{11/} See, e.g., MTS & WATS Market Structure, CC Docket Nos. 78-72 and 80-286, released July 26, 1985, at 1 (The Joint Board, in an Order Inviting Further Comments, stated that "The preservation of universal telephone service has been a major Commission objective throughout the MTS & WATS Market Structure proceeding"); MTS & WATS Market Structure, 97 F.C.C.2d 682, 683 (1983), aff'd in part, remanded in part, sub nom. NARUC v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), cert. denied, 105 S. Ct. 1224 (1985); Notice, CC Docket No. 78-72, Phase IV, FCC 83-254, released June 8, 1983; MTS & WATS Market Structure, 93 F.C.C.2d 241, 265-67, 278 (1983).

^{12/} "The relatively high level of charges . . . has inhibited the free flow of communications between the contiguous states and those [offshore] points to the disadvantage of all of our citizens." Domsat I, 35 F.C.C.2d at 856; see also n.12, supra.

In the
United States Court of Appeals
for the District of Columbia

No. 85-1279

ALASCOM, INC.,

Petitioner,

v.

THE FEDERAL COMMUNICATIONS COMMISSION AND
THE UNITED STATES OF AMERICA,

Respondents.

THE STATE OF ALASKA AND THE ALASKA
PUBLIC UTILITIES COMMISSION, ET AL.,

Intervenors.

On Petition for Review of a Final Order
of the Federal Communications Commission

BRIEF FOR INTERVENORS THE STATE OF ALASKA
AND THE ALASKA PUBLIC UTILITIES COMMISSION

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September 30, 1985

MAR 3 1987

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

_____)
In the Matter of)
)
Integration of Rates and)
Services for the Provision of)
Communications by Authorized) CC Docket No. 83-1376
Common Carriers Between the)
Contiguous States and Alaska,) RM 4436
Hawaii, Puerto Rico and the)
Virgin Island)
_____)

To: The Federal-State Joint Board

FURTHER COMMENTS OF
THE STATE OF ALASKA

I. INTRODUCTION

The State of Alaska (Alaska or the State) hereby submits further comments in the above-captioned proceeding. The December 2, 1986 round of initial comments shows that **all parties recognize the need to ensure universal service for Alaska and that provision of telecommunications service is critical to the State.**

II. FOSTERING AND MAINTAINING UNIVERSAL SERVICE SHOULD CONTINUE TO BE THE LODESTAR FOR THIS PROCEEDING.

In its initial comments, the State stressed the reliance Alaskans place on telecommunications to help overcome the vast distances, harsh climate, and limited transportation alternatives

which characterize the State. Other parties also voiced this concern, and stressed the importance of universal service for Alaska.[✓] The State highlighted the fact that universal service in the State continues to be difficult to achieve: the telephone penetration level has recently been as low as 83.5% (in July 1986), which was lower than all other states except Mississippi.[✓] The State concluded that given the telephone penetration level in Alaska

it is particularly important that this Joint Board not retreat from the longtime commitment to rate integration, impose changes in separations procedures or devise mechanisms which would either undermine the realization of universal service for Alaska or prevent provision of service to all areas of Alaska.[✓]

[✓] See, e.g., Comments of Alascom, Inc. at 6-10 (Alascom Comments); Comments of the Anchorage Telephone Utility at 2-4 (ATU Comments); Comments of the Alaska Telephone Association at 6-11 (ATA Comments); Comments of General Communication, Inc. at 16 (GCI Comments); Comments of the National Telecommunications and Information Administration at 5 (NTIA Comments). See also Comments and Proposal of American Telephone and Telegraph Company at 14 (AT&T Comments).

[✓] Comments of the State of Alaska at 11 (Alaska Comments). The most recent survey of "Telephone Subscribership in the U.S." shows Alaska telephone penetration for November, 1986 at 87.3 percent. Because of the State's small population and the small sample size, the statistical variation for Alaska in this survey is 5 percent. Industry Analysis Division, Common Carrier Bureau, "Telephone Subscribership in the U.S." at Table 2 (released January 12, 1987) (Report). Even this Report, however, shows that in Alaska both telephone penetration in households and telephone availability other than in households remain very substantially below national averages (by 5.1 and 4.8 percent, respectively). Id. at Tables 1 and 2.

[✓] Alaska Comments at 11.

As the State discussed in its initial comments, elasticity studies presented to the CC Docket No. 78-72 Joint Board suggest that telephone subscribership levels are more elastic in areas in which such levels are already relatively low.^{1/} Two recent studies provide additional evidence that increases in monthly telephone rates could cause significant declines in telephone penetration levels.

A study by the Idaho Public Utilities Committee concludes that each \$1.00 increase in monthly residential telephone rates in Idaho sparks a 0.4 percent decline in telephone penetration assuming other factors are held constant. Idaho Public Utilities Commission, "The Demand for Basic Residential Telephone Service in Idaho" at 8 (undated) (IPUC Study). Accordingly, a \$5.00 increase per month would lower the Idaho telephone penetration level 2.28 percent, and a \$20.00 monthly increase would spark a decline of 9.18 percent.^{2/}

A study prepared for the Consumer Advocate Division of the West Virginia Public Service Commission concludes that a \$5.00 per month increase in residential rates in West Virginia would lead to a 4 percent decrease in telephone penetration. A \$10.00 per month increase would cause 12 percent of West Virginian customers to cancel service and, as monthly increases approach \$20, 27 percent would give up service. Chilton Research Services, "Residential Customers' Attitudes Toward Telephone Services in West Virginia",

^{1/} See Alaska Comments at 26 & n.45.

^{2/} IPUC Study at 8-9.

Prepared for The Consumer Advocate Division, State of West Virginia Public Service Commission at 3, 26 (October 28, 1986) (West Virginia Study). This study confirms the findings of studies submitted to the FCC that customers with the lowest incomes are most likely to cancel service in response to rate increases.^{6/}

These studies, of course, were not done in Alaska. Both Idaho and West Virginia, however, are, like Alaska, primarily rural. Both have higher telephone penetration levels than Alaska. Thus, the effects of rate increases on universal service may be greater in Alaska than the effects these studies indicate for Idaho and West Virginia. Together, these studies suggest the Joint Board must proceed with great caution, particularly in addressing proposals to change separations policies, which could create as much as \$26 to \$28 per access line per month increases in Alaska telephone rates.^{7/}

III. WITH IMPLEMENTATION OF THE FINAL STEP OF RATE INTEGRATION, ALASKA SHOULD BE TREATED AS PART OF THE NATIONALLY AVERAGED RATE STRUCTURE.

On December 31, 1986, the Commission granted the Emergency Petition for Relief of Alascom, Inc. (Alascom) and ordered implementation of the final step of rate integration and termination of the \$1.25 million monthly transitional supplement paid to Alascom

^{6/} West Virginia Study at 28.

^{7/} See Alaska Comments at 27 n.47.

by AT&T.^{8/} After fifteen years' transition, implementation of the final step of rate integration now allows Alaskans to enjoy the same geographically averaged interstate rates enjoyed by residents of all other states. Full rate integration should be maintained.^{9/}

Now that it has been fully instituted, Alaska rate integration should be accommodated in the same manner it is in other states. Rates for MTS/WATS service to and from Alaska should be part of the nationally averaged rate structure. Costs of service to and from Alaska should be treated as are those of other states, because the national rate structure is designed to generate revenue needed to recoup costs of providing service to and from all parts of the country. Shortfalls on so-called high cost routes are recouped by providing service on so-called low-cost routes.^{10/}

^{8/} Memorandum Opinion and Order, CC Docket No. 83-1376, FCC 86-602 at 2, 16 (released January 2, 1987) (January 2 Order).

^{9/} Whatever steps the Commission might take in connection with the U.S. Court of Appeals recent decision in Alascom, Inc. v. Federal Communications Commission (Case No. 85-1279 (January 27, 1987)), it should not tamper with the final step of rate integration. To undo that step would mean interstate rates, just lowered, would be forced back up, creating rate churn and inequity for Alaska consumers. This would be particularly unjust given that the final step of rate integration was accompanied by termination of the \$15 million annual transitional supplement. Because of that termination, Alascom has filed a request to the Alaska PUC for authority to institute certain new charges designed to increase intrastate revenues. See n.24, infra. Changes to full rate integration would require, at the least, corresponding changes with respect to reinstatement of the transitional supplement.

^{10/} See Alaska Comments at 12-19.

In this connection, the data requested by Alascom, Inc. in its Motion to Obtain Required Information (filed December 24, 1986) may well prove instructive.

IV. SEPARATIONS CHANGES THAT SHIFT COSTS TO THE
INTRASTATE JURISDICTION WOULD UNDERMINE UNIVERSAL
SERVICE.

In its January 2 Order terminating the supplement paid to Alascom, the Commission recognized that it was "inequitable to place at risk the intrastate communications that are essential to many subscribers in the remote areas of Alaska."^{11/} The Commission concluded that, chiefly because of the decreased cost of capital and the treatment of the now terminated supplement as cost-free capital by the Alaska Public Utilities Commission (APUC), upward pressures on intrastate rates had abated, "if not disappeared completely."^{12/}

The State believes that the Commission has misread the status of pressures on intrastate rates. These pressures have not "disappeared completely." Although the cost of capital may have decreased, there remain significant factors that contribute to upward pressure on intrastate rates, including, for example, the need to complete the development of Alaska's telephone system. This and other factors creating upward pressures on intrastate rates are conspicuously absent from the Commission's analysis.

Perhaps even more conspicuous, however, is the failure by the Commission to acknowledge that the greatest pressure on intrastate rates could come from the myriad of separations proposals the Joint Board in CC Docket No. 80-286 is now considering. These

^{11/} January 2 Order at ¶ 14.

^{12/} Id. at ¶ 34.

als, if adopted, would increase dramatically the costs to be
red from the intrastate jurisdiction, and accordingly,
e enormous upward pressures on intrastate rates. As the
noted in its December 2 Comments, the Category 8 separations
edures changes proposed by AT&T could cause an extraordinary
t -- \$42 million -- to the Alaska intrastate jurisdiction.^{11/}
n the small number of access lines in the State -- approxi-
ely 250,000 -- a shift of \$42 million would increase the intra-
te revenue requirement by approximately \$167.50 per access line
: year, or \$14 per line per month.^{14/} Combined with other cost
co rry changes, intrastate revenue requirements could increase
? up to \$28 per line per month.^{15/}

Increases in Alaskan intrastate revenue requirements of these
magnitudes are inconsistent with universal service.^{16/} According
to data submitted by Alascom and ATA, rural (and other) Alaskans
already pay more for phone service than comparable customers in

^{11/} Alaska Comments at 24.

^{14/} Id. at 25 n.42.

^{15/} Id. at 27 n.47.

These figures would be reduced by \$3 per line per month if
the Commission is correct in its assumption, enunciated in
its January 2 Order, that the impact of that decision would
require only a \$6 million per year intrastate rate increase.
January 2 Order at ¶ 34. See also ATA Comments at 26, 36.

^{16/} Were the IPUC Study results to be applicable in Alaska, a \$40
per month increase could lead to a decline in service of over
18 percent (reducing Alaskan penetration levels to about 70
percent). Were West Virginia Study results applicable, an
even greater decline in service would be suggested.

the lower 48.^{17/} Merely stating the magnitude of these shifts and resulting revenue requirements, however, understates the special hardships that rate increases would pose for low income residents of the State, whom, the Idaho, West Virginia and other studies show, are apt to suffer the greatest decline in service.^{18/}

In light of these facts and the facts set forth in the State's Comments, separations changes must not be instituted which would harm universal service. As the State has urged, companies with high Category 6 costs should receive cost support analogous to the support provided for high NTS local loop costs, or comparable support. With respect to Category 8 costs, Alaska should be treated like other states, which requires adoption of "make-whole" policies to assure that Alaskans, like other Americans, face no massive jurisdictional revenue shifts.^{19/}

AT&T has suggested that if separations shifts would harm universal service in Alaska, then the State should subsidize telephone service so as to minimize that harm.^{20/} This argument is both theoretically and factually unsound. If adopted, it would

^{17/} ATA Comments at 16-17, 26 & Attachment C; Alascom Comments at 10-11.

^{18/} In order to preserve and prevent declines in universal service, the Commission could closely monitor the status of Alaska telecommunications service. This monitoring would assist it in assessing the impact of termination of the supplement, any separations changes adopted, or any other changes in provision of service.

^{19/} Reply Comments of the State of Alaska, CC Docket No. 80-286 at 18-21, 26-27 (October 29, 1986). See also Alaska Comments at 20-29.

^{20/} AT&T Comments at 31-32.

discriminate against Alaska by requiring it, and no other state, to subsidize telephone service to keep rates at affordable levels. Viewed in this way, the proposal is the antithesis of rate integration. Further, as AT&T itself emphasized in its Opposition to Alascom's Motion to Obtain Required Information, Alascom's toll network is the functional equivalent of local loops in the lower 48.^{21/} In the lower 48, high local loop costs are supported by the high cost fund. In Alaska, support from a similar source must be found for its functional equivalent.^{22/}

In its Order extending time for filing these comments, the Commission recognized that parties should have an opportunity to comment in this proceeding on actions taken by the CC Docket No. 80-286 Joint Board on separations issues.^{23/} On February 13, 1987, the Commission announced that the February meeting at which that Joint Board was to have arrived at a recommendation on those issues was being postponed until March. The State suggests that the Commission either postpone the final round of comments in this proceeding or announce that supplemental comments may be filed

^{21/} AT&T Opposition at 3.

^{22/} In this connection, it should be noted that, in significant part because of the precipitous drop in oil revenues described in its Comments, the State budget for Fiscal Year 1987 is now estimated to be \$875 million in the red. The State, therefore, is being forced to retrench. The Governor, in fact, has proposed a Fiscal Year 1988 budget that represents a 27 percent cut in spending from Fiscal Year 1987 levels. Annual Budget Message By The Honorable Steve Cowper, Governor of the State of Alaska (January 28, 1987).

^{23/} Memorandum Opinion and Order, CC Docket No. 83-1376, FCC 1558 at 1.

thirty days after the CC Docket 80-286 Joint Board's recommendations on Central Office Equipment Categories 6 and 8 separations are released.^{24/} Resolution of collateral matters, such as Alascom's motion concerning immediate implementation of the Court of Appeals order in Alascom, Inc. v. Federal Communications Commission, may also require the filing of supplemental comments.

V. CONCLUSION

The State suggests that the points raised in these comments and the principles outlined in its initial comments be used to

^{24/} Some comments in this proceeding have addressed the issue of transition periods for implementation of new separations rules. Given that the existence, nature and scope of any changes in separations rules has yet to be decided, it would appear that such comments are premature. Any transition period must be calibrated to be sufficiently long to take into account the relationship between any enacted separations changes and the need to maintain universal service.

Alascom suggests four methods of increasing intrastate revenues. Id. at 42-43. To respond to the need for increased intrastate revenues in light of the termination of the supplement Alascom, on January 22, 1987, filed a request with the APUC to institute directory and operator assistance rates, and related measures. Presumably, those methods would, therefore, not be available to support intrastate revenue increases required by other separations changes.

protect and enhance universal service for Alaska.

Respectfully submitted,

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February 27, 1987

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

In the Matter of)
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Integration of Rates and)
Services for the Provision of)
Communications by Authorized)
Common Carriers Between the)
Contiguous States and Alaska,)
Hawaii, Puerto Rico and the)
Virgin Islands)
)

CC Docket No. 83-1376

RM 4436

To: The Federal-State Joint Board

REPLY COMMENTS OF THE STATE OF ALASKA

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March 27, 1987

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SUMMARY

The Communications Act establishes as national telecommunications policy the promotion of service on a nation-wide basis to as many people as possible. Universal service must, therefore, be the fundamental goal in this proceeding.

The Joint Board has had presented to it extensive data, comments and proposals, as well as further comments. In these three sets of submissions, no party has disputed that Alaska's geography, demographics and other characteristics make telecommunications services critically important to, and universal service particularly difficult to achieve, in Alaska. In light of these facts and fundamental national telecommunications policies, the Joint Board should recommend, and the Commission adopt, measures that will (1) maximize universal service by allowing all Alaskans to obtain telecommunications services at affordable rates, and (2) promote integration of Alaska into the rest of the United States.

To foster universal service in Alaska, it is necessary to acknowledge the existence of and need for a carrier of last resort for the provision of Alaska interstate and intrastate services. Changes in the market structure through which interstate services are provided can have significant effects on the provision of intrastate services. These effects would frustrate the achievement of universal service.

As the State has maintained in its previously filed comments, integration of Alaska into the rest of the Nation is an important

national goal and can be accomplished, in significant part, by treating the costs of providing telecommunications services to and from Alaska in the same manner as are the costs of providing such services in other parts of the United States.

The State believes any proposal that would frustrate, rather than promote, the goals of universal service and integration of Alaska into the rest of the Nation should not be recommended by the Joint Board.

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

In the Matter of)
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Integration of Rates and)
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CC Docket No. 83-1376

RM 4436

To: The Federal-State Joint Board

REPLY COMMENTS OF THE STATE OF ALASKA

The State of Alaska (Alaska or the State), by its attorneys and pursuant to the Joint Board's Order Requesting Data and Inviting Comments in this proceeding, hereby submits its reply comments.

I. THE CRITICAL IMPORTANCE OF TELECOMMUNICATIONS SERVICES TO AND THE DIFFICULTY OF ACHIEVING UNIVERSAL SERVICE IN ALASKA ARE UNCONTROVERTED.

In its July 15, 1986 response to the Joint Board's data request, Alaska submitted data concerning the State and its citizens. Information concerning demographics, geography, climate,

✓ Response of the State of Alaska to Order Requesting Data and Inviting Comments (July 15, 1986) (Data Response).

transportation, education, public safety and health, economics, state revenues and expenditures, and the State's provision and consumption of telecommunications services was provided. Other parties provided similar or related information.

It is worth noting again some of the essential facts established.^{1/} The combination of Alaska's vast size and its small population makes the State's population density one-fifth that of the state with the next lowest population density (Wyoming) and one-sixty-seventh that of the United States as a whole.^{2/} Alaska has almost 300 communities. All but three contain fewer than 10,000 people, and over 200 communities have fewer than 500 people.^{3/} These settlements are dispersed throughout Alaska's 591,004 square miles, an area equal to 20 percent of the continental United States.^{4/}

This sparse and geographically dispersed population faces an extraordinary harsh climate and difficult terrain.^{5/} Transportation is difficult and roads are extremely limited.^{6/} In such circumstances, telecommunications services are critically important.

^{1/} A summary of the data was provided with the State's Data Response at 1-5. Facts of particular relevance were highlighted in the Comments of the State of Alaska at 5-10 (November 28, 1986) (Alaska Comments).

^{2/} Data Response at 1.

^{3/} Id. at Section A, 4-5.

^{4/} Id. at Section A, 1.

^{5/} Id. at Section C.

^{6/} Id. at Section D.

For example, Alaskans rely on telecommunications to provide emergency medical services and education to citizens in rural areas.^{1/} The State's unusual characteristics can make telecommunications services unusually costly to provide.^{2/}

Despite the extraordinary need for it, telecommunications service is not universally available in Alaska. Telephone penetration in the State has historically been, and continues to be,

^{1/} Id. at Section F, 1-9, Section E, 2.

^{2/} As the Commission has previously stated:

The remote communities in Alaska rely on telecommunications for much of their contact with others. The costs of providing this service to these points is significantly higher than that for other locations given the low population density, the remoteness of many of the communities, and the fixed costs associated with satellite transmission.

Integration of Rates and Services, CC Docket No. 83-1376, FCC 84-616 at 2 (December 11, 1984). See also Integration of Rates and Services, CC Docket No. 83-1376, FCC 84-512 at 7 (December 11, 1984), in which the Commission said:

The State of Alaska has unique geographic and cost characteristics which were a significant factor in the Commission's adoption of rate integration, and may also influence the type of competitive market structure that will be viable in Alaska. In the decision opening the Alaska MTS/WATS market to competition, the Commission noted several of these characteristics, including low, thinly distributed population density . . . adverse climatic and geographic conditions, and remote facility locations leading to high maintenance costs.

among the lowest in the Nation and significantly below national averages.^{10/}

These record facts are uncontroverted. The State asks the Joint Board to keep them in mind as it considers the policies to be applied to Alaska.^{11/}

II. THE JOINT BOARD SHOULD RECOMMEND MEASURES THAT WILL ALLOW ALL ALASKANS TO OBTAIN TELECOMMUNICATIONS SERVICES AT AFFORDABLE RATES AND THAT WILL PROMOTE INTEGRATION OF ALASKA INTO THE NATION.

In the State's view, the record facts outlined above and the fundamental national telecommunications policies of universal service and rate integration require adoption of proposals that will (1) allow all Alaskans to obtain telecommunications services at affordable rates, and (2) promote integration of Alaska into the rest of the Nation.^{12/} In fact, although they may also advance other goals, the relevant interexchange carriers have acknowledged these public interest policies as proper goals in this proceeding. Alascom has advocated rate integration and sought to minimize additional burdens on intrastate ratepayers to promote universal

^{10/} See Further Comments of the State of Alaska at 2 (February 27, 1987); Alaska Comments at 11.

^{11/} If, because of intervening regulatory or legal events, the Joint Board determines that it needs additional data regarding telecommunications service, the State, or other matters, it should immediately request such additional data and ask that they be filed as promptly as possible.

^{12/} See Alaska Comments at 2-4, 12-19 for a discussion of the universal service and rate integration policies.

service.^{11/} AT&T has, at least tacitly, acknowledged the propriety of rate integration by proposing a special fund to support it in rural Alaska.^{14/} GCI has recognized the importance of universal service by its discussion of the need for a support mechanism for rural service and its proposal to freeze cost allocations to promote universal service.^{15/}

A. Universal Service Requires A Carrier Of Last Resort.

Universal service can be promoted by recognizing the existence of and need for a carrier of last resort for interstate and intrastate services. The Commission, in its bush earth stations proceeding, recognized that only one satellite facility can be supported in rural Alaskan areas.^{16/} Alascom has been the carrier obliged to provide service to and from those points.^{17/} At least

^{11/} E.g., Further Comments of Alascom, Inc. at 1-4, 45-47 (February 27, 1987) (Alascom Further Comments).

^{14/} Comments and Proposal of AT&T at 29-36 (December 7, 1986) (AT&T Comments and Proposal).

^{15/} Further Comments of GCI at 6 (March 2, 1987) (GCI Further Comments). See also id. at 26 ("[A]doption of GCI's present proposal would provide a new mechanism through which the Commission could harmonize its policies of universal service through rate integration and competition in the Alaska market.").

^{16/} Policies Governing Ownership and Operation of Domestic Satellite Earth Station in Bush Communities in Alaska, 96 F.C.C.2d 522, 523 (1982); Policies Governing Ownership and Operation of Domestic Satellite Earth Stations in Bush Communities in Alaska, 92 F.C.C.2d 736, 738 & n.12 (1982); RCA Global Communications, Inc., 56 F.C.C.2d 660, 689 (1975).

^{17/} E.g., Alascom Further Comments at 8.

with respect to intrastate services, Alascom's obligation is a function of state regulation and policy.

The State urges the Joint Board to recommend a market structure that allows a carrier of last resort to provide interstate and intrastate services at affordable rates. Changes to the market structure through which interstate services are provided can have significant effects on the provision of intrastate service by, for example, creating stranded investment problems or causing other shifts in jurisdictional cost allocations. If these effects are ignored, it is possible (and perhaps even likely) that many Alaskans would not have access to telecommunications services and thus that universal service would be undermined.

Costs of standard investment could be forced into the intrastate jurisdiction, and onto intrastate ratepayers, creating rates well beyond the level of affordability for all Alaskans, particularly those for whom a carrier of last resort is most needed. This danger exists because there is a single network through which both interstate and intrastate services are provided by the carrier of last resort.^{13/}

Similarly, the Joint Board should critically evaluate any approach that would significantly affect cost allocations for jointly used equipment. As did the Joint Board in CC Docket No.

^{13/} Alascom Further Comments at 17-19 and Attachment A. It has been predicted that intrastate toll rates could be as much as triple to cover increased costs if certain market changes were instituted. Id. Such rates are already almost twice as high as interstate rates for calls of the same distance. Id. at 13 and Attachment B.

80-286,^{12/} this Joint Board should recognize the need to avoid significant intrastate rate increases as a result of separations procedures and rules. Since separations rules for certain types of equipment take into consideration the relative amounts of interstate and intrastate use, market structure changes that would reduce significantly the relative amount of interstate use of Alascom's network could create significant increases in intrastate revenue requirements and thus, intrastate rates. Such market structure changes would frustrate universal service and should not be recommended.

- B. Integration Of Alaska Into The Nation Requires That Costs Of Providing Interstate Service For Alaska Be Treated In The Same Manner As Are Costs Of Providing Such Service Elsewhere In The United States.

Integration of Alaska and other off-shore points into the national telecommunications system has been a fundamental Commission policy for more than fifteen years.^{10/} Recently, the Commission implemented that policy by ordering the final step of rate integration for Mainland U.S.-Alaska routes^{11/} and by asking this

^{13/} See FCC News Release, Report No. DC-863 (March 12, 1987).

^{10/} See Alaska Comments at 12-17 for a discussion of the rate integration policy and relevant Commission decisions.

^{11/} Integration of Rates and Services, Memorandum Opinion and Order, CC Docket No. 83-1376, FCC 86-602 (January 2, 1987).

Joint Board to study rate integration with respect to Alaska-Hawaii routes.^{22/}

The final step of Mainland U.S.-Alaska rate integration should be maintained. Alaskans and those who communicate with them should not be forced to pay higher interstate rates than other Americans. Rate integration continues to be in the public interest for the entire nation.

The Commission's rate integration policy requires that, with respect to interstate rates, Alaska be treated no differently than other states. Both the rates charged for service to and from Alaska and the manner in which those rates are calculated should be no different than they are for other states. As the State has stressed,^{23/} the essence of rate integration is that geographically averaged rates are set at levels necessary to generate sufficient revenue to cover the cost of providing service (including a reasonable rate of return) to all portions of the United States, not each and every portion by itself. The Commission has said its rate integration policy "should be interpreted as implicitly recognizing that a rate structure which averages rates in 48 states and de-averages rates in two states may subject the residents of those two states to an unreasonable prejudice or disadvantage

^{22/} Integration of Rates and Services, Supplemental Notice of Proposed Rulemaking, CC Docket No. 83-1376, FCC 86-600 (January 9, 1987).

^{23/} See Alaska Comments at 14.

within the meaning of Section 202(a) [of the Communications Act]."^{24/}

Alaska is not, and should not be considered, a separate interstate interexchange market.^{25/} Differences between revenues derived from and costs allocated to interstate service to and from Alaska have been, and should continue to be, built into nationally averaged rates established pursuant to the Commission's rate integration policy. They have been, and given the mandates of the Communications Act and Commission policy, must continue to be, treated the same as differences for service to and from other locations which are costly to serve.

Notwithstanding AT&T's protestations to the contrary, it is proper to require carriers charging rate integrated rates to be responsible for the costs of Alaska service. AT&T, for example, is permitted to charge rates that are higher than costs for low cost routes because it charges the same rates, which are lower than costs, for high cost routes of comparable length. To allow AT&T to derive excess profits (i.e., profits above a reasonable rate of return) from serving low cost routes and not use those

^{24/} MTS/WATS Market Structure, 81 F.C.C.2d 177, 192 (1980). The Commission also said: "[A] rate structure which uses different ratemaking methods to determine the rates which different users pay for comparable services is inconsistent with the national policy expressed in Section 202(a)." Id.

^{25/} Competitive Common Carrier Services, 95 F.C.C.2d 554, 574-75 (1983) ("[W]e conclude that there is a single national relevant geographic market (including Alaska . . .) for interstate, domestic, interexchange telecommunications services with no relevant submarkets.").

profits to cover the costs of service on high cost routes would likely raise its rate of return above allowed levels. Such a practice would be contrary to the rate integration policy and would involve de-averaging, in a manner which the Commission has said would violate Section 202(a) of the Communications Act.

III. FUNDAMENTAL ELEMENTS OF AT&T'S PROPOSAL TO ALTER THE EXISTING MARKET STRUCTURE WOULD FRUSTRATE ACHIEVEMENT OF UNIVERSAL SERVICE AND INTEGRATION OF ALASKA INTO THE NATION.

As the Supreme Court noted thirty years ago, competition can promote innovation, efficiency, lower prices, and better products or service.^{26/} Competition, however, is not an end, but a means.^{27/}

AT&T's proposal to change further the existing telecommunications market structure in Alaska is designed to enhance open entry and competition in Alaska interstate services. While open entry and competition may, as the Supreme Court elucidated, result in benefits which promote the public interest, fundamental elements of the AT&T approach appear inconsistent with the primary

^{26/} American reliance on free competition rests on the premise that "unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress. . . ." Northern Pacific Railway Co. v. United States, 356 U.S. 1, 4 (1958). See also MTS-WATS Market Structure Inquiry, 92 F.C.C.2d 787, 841 (1982).

^{27/} "It is only in a blunt, indiscriminating sense that we speak of competition as an ultimate goal." FCC v. RCA Communications, Inc., 346 U.S. 86, 92 (1953). Further, "encouragement of competition as such has not been considered the single or controlling reliance for safeguarding the public interest." Id. at 93.

public interest goals of fostering universal service and integration of Alaska into the rest of the Nation.

AT&T's approach rests on creation of an "Alaska Rural Fund" of \$39 million to provide "support" for universal service in rural portions of Alaska.^{11/} Support would be allocated from the fund on a route-by-route basis. Both the total amount of the fund and the support allocated to each individual route would be capped and phased-out at some indefinite point in the future. In addition, AT&T seeks, inter alia, to be allowed a point of presence in Alaska.^{12/}

AT&T's approach, while repeated in each of its pleadings, is sketchy and lacking in operational detail. Notwithstanding the absence of detail, the plan is flawed in serious and fundamental respects and thus provides an inadequate and inappropriate solution to the issues before the Joint Board. Universal service and Alaskan integration into the Nation would be hampered, not advanced, by it.

(1) Creation of an Alaska rural fund would be a fundamental and unprecedented departure from, and might well presage the end of, rate integration and national geographically averaged rates. AT&T, in effect, proposes to spin off Alaska, and indeed "rural" Alaska, from the rest of the Nation. The difference between costs and revenues from providing service there would be treated differently than anywhere else in the United States. Ironically,

^{11/} AT&T Comments and Proposal at 29-35.

^{12/} Id. at 26.

if rural Alaska is unusually expensive to serve (an assumption which AT&T has not supported with any comparative data), an area that needs rate integration most would be segregated from the rest of the Nation's telecommunications system. If that were done, analogous treatment for other "high cost" areas, perhaps in rural Western or Southern states, or in costly to serve "rust belt" communities, might follow.

The result of permitting creation of special funds for allegedly costly to serve areas would be the Balkanization of what has been a unified telecommunications system that has served this country well. The current unified system would be replaced by a multi-tiered system in which rates and quality of service would vary geographically. For example, low cost areas would likely be well served either at current rates (which would generate profits above a reasonable rate of return) or perhaps at lower rates. High cost areas would likely be served only at rates higher than those currently charged. Even those rates might not generate revenues sufficient to cover costs and service quality would likely decline. Universal service would no longer be attainable.

(2) Even without regard to the unprecedented nature of what AT&T proposes, and its long-term effects on the Nation's telecommunications system, the support AT&T proposes would not ensure that needed service is provided to all Alaskans. For example, AT&T claims that the difference between costs incurred and

revenues derived from Alaskan interstate service is \$97 million.^{10/} Approximately \$40 million, AT&T claims, is attributable to separations procedures for Category 8 COE.^{11/} Thus, by AT&T's own figures, the remaining difference between cost of providing Alaskan interstate service and the revenues derived is approximately \$57 million.

Even that amount, AT&T admits, might be too small. It was based on the difference between revenues and costs before the final step of rate integration. Alaskan interstate rates are now lower and the revenue shortfall on Alaskan routes may be somewhat higher.^{12/} Thus, even if, in total contravention of the Commission's rate integration policy, there were to be an Alaska rural fund, AT&T's proposed fund could not provide resources needed for service to Alaska to continue.

In addition, AT&T seeks to distinguish between areas within Alaska for purposes of "support." AT&T justifies its \$39 million figure as the amount of "support" necessary for rural Alaska only. The difference between \$57 million and \$39 million (i.e., \$18 million), it says, goes to "support" urban service in Alaska.^{13/} "Urban" Alaska should not be segregated from the rest of the Nation, however, any more than should "rural" Alaska. Each

^{10/} E.g., Further Comments of AT&T at 2, 5, 7 (February 27, 1987) (AT&T Further Comments). This figure excludes the transitional supplement which ceased being paid in January 1987.

^{11/} Id. at 8.

^{12/} Id. at 5 n.*.

^{13/} Id. at 15, 20.

is part of the single interstate interexchange telecommunications market. All areas are entitled to geographic rate averaging without regard to whether they are "urban" or "rural." All areas in the United States are entitled to the benefits of rate integration.

(3) There is no evidentiary support for the assumption underlying AT&T's proposal that the difference between revenues generated by rate integrated rates and costs of serving Alaska will diminish over time. This assumption underlies AT&T's argument that a cap and eventual termination of the fund for rural Alaska and no "support" for urban Alaska are appropriate. Apparently, this assumption is based on AT&T's hopes that economic and population growth in rural Alaska will ultimately allow profitable operations there and that competition and market freedom will spur immediate efficiencies and economies in urban markets. These hopes may or may not prove to be correct, but they are unsupported by the record in this proceeding. AT&T has not pointed to any specific cost savings that will result from the market structure changes it seeks.

Further, even if its hope that rural service costs will decrease proves incorrect, AT&T still proposes (again without support) that its Alaska rural fund be phased-down and eventually terminate.^{14/} This proposal would destroy any hope of universal service in Alaska and is totally unjustifiable.

^{14/} AT&T Comments and Proposal at 35-36, 36 n.**.

(4) AT&T's approach of allocating support to specific routes appears impractical and likely to lead to a regulatory and bureaucratic nightmare. Rate integration makes route specific accountings and allocations irrelevant and unnecessary. No purpose would be served by engaging in such exercises here. The complexities, regulatory lag, and inherent inaccuracies of this approach would make the costs of such a scheme -- even without regard to the expense of its administration, including economic and accounting studies -- vastly outweigh any conceivable benefits.

(5) AT&T's proposal for a point of presence in Alaska also raises universal service concerns. A principal purpose of AT&T's attempt to obtain an Alaskan point of presence is to allow AT&T to interconnect with Alascom in Alaska, thus minimizing the distance over which Alascom handles calls.^{13/} Because distance has been a factor in allocating COE Category 8.23 costs between the interstate and intrastate jurisdictions, creating an AT&T point of presence in Alaska would shift millions of dollars a year in costs to the intrastate jurisdiction.

As noted above, the Joint Board in CC Docket No. 80-286 has recommended that the relative allocation of interexchange carrier COE Category 8.23 costs be frozen at 1985 percentages. Until that Joint Board decision is released and the Commission itself acts, the specific effects AT&T's proposed Alaskan point of presence would have on universal service can not be determined with

^{13/} Response to Data Request of AT&T at 15-17 (July 15, 1986).

certainty. It should be noted, however, that the Joint Board recommended freezing interexchange carrier allocation percentages at 1985 levels. It did not recommend continuing to apply a distance sensitive allocation formula to new study period data, which could result in new, different allocation percentages. Thus, if the Joint Board's recommendation is adopted, it appears that Category 8.23 separations will be frozen at 1985 percentages regardless of whether AT&T is allowed a point of presence in Alaska. In any event, the State would have serious concerns if this Joint Board were to permit an AT&T point of presence in Alaska, particularly if such a development would create significant increases in intrastate revenue requirements or other effects which would endanger universal service.

IV. CONCLUSION

The State requests that the Joint Board carefully consider all the evidence in the record and recommend to the Commission a market structure that promotes universal service by allowing all

Alaskans to obtain telecommunications services at affordable rates
and that integrates Alaska into the rest of the Nation.

Respectfully submitted,

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March 27, 1987

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SUBCHAPTER I. GENERAL PROVISIONS

§ 151. Purposes of chapter; Federal Communications Commission created

For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communication, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication, there is created a commission to be known as the "Federal Communications Commission", which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this chapter. June 19, 1934, c. 652, Title I, § 1, 48 Stat. 1064; May 20, 1937, c. 229, § 1, 50 Stat. 189.

Historical Note

1937 Amendment. Act May 20, 1937 inserted the words "for the purpose of promoting safety of life and property through the use of wire and radio communication."

Authority of Director of Emergency Planning During Time of War. Delegation of authority of President under sections 305(a) and 600(a), (c), and (d) of this title, relating to radio stations and communications, to Director during time of war, see Ex.Ord.No.10105, Apr. 17, 1967, 22 F.R. 2729, set out as a note under section 606 of this title.

Commission on Governmental Use of International Telecommunications. Joint Res. July 29, 1954, c. 647, 68 Stat. 537, established the Commission on Governmental Use of International Telecommunications to examine, study and report on the objectives, operations, and effectiveness of information programs with re-

spect to the prompt development of techniques, methods, and programs for greatly expanded and far more effective operations in this vital area of foreign policy through the use of foreign telecommunications. The Commission was required to make a report of its findings and recommendations on or before Dec. 31, 1954, and the Commission ceased to exist 90 days after submission of its report to the Congress.

Communication Privileges to Participants in World Telecommunication Conferences. Act May 13, 1947, c. 54, 61 Stat. 83, provided that nothing in this chapter, or in any other provision of law shall be construed to prohibit United States communication common carriers from rendering free communication services to official participants in the world telecommunication conferences to be held in the United States in 1947.

EXECUTIVE ORDER NO. 10160

Ex.Ord.No.10460, June 15, 1933, 18 F.R. 3513, as amended by Ex.Ord.No.10773, July 1, 1934, 23 F.R. 5001; Ex.Ord.No.10782, Sept. 8, 1938, 23 F.R. 6271, formerly set out as a note under this section, which related to the performance of telecommunication functions by Director of the Office of Civil and Defense Mobilization, was revoked by section 4 of Ex.Ord.No.10995, Feb. 19, 1962, 27 F.R. 1519, set out as a note under section 507 of this title.

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Constitutionality 1
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1. Constitutionality

The radio broadcasting licensing system established by Congress in this chapter is a proper exercise of power of Congress over "commerce". *National Broadcasting Co. v. U. S.*, N.Y.1943, 63 S.Ct. 997, 319 U.S. 190, 87 L.Ed. 1344. See, also, *Regents of University System of Georgia et al. v. Carroll*, 1948, 50 S.E.2d 608, 78 Ga.App. 292, affirmed 70 S.Ct. 370, 338 U.S. 580, 94 L.Ed. 303.

The standard provided by this chapter for licensing of radio broadcasting station is public interest, convenience or necessity and denial of a station license on that ground, if valid under this chapter, is not a denial of "free speech". *National Broadcasting Co. v. U. S.*, N.Y.1943, 63 S.Ct. 997, 319 U.S. 190, 87 L.Ed. 1344.

The Supreme Court had refused to answer questions relating to the constitutionality of provisions in former section 81 et seq. of this title propounded by the court of appeals, on the ground that they were indefinite. *White v. Johnson*, 1931, 51 S.Ct. 115, 282 U.S. 367, 75 L.Ed. 388. See, also, *American Bond & Mortgage Co. v. U. S.*, 1931, 51 S.Ct. 118, 282 U.S. 374, 75 L.Ed. 395.

In enacting this chapter Congress must be deemed to have exercised its power within constitutional limitations. *Sablowsky v. U. S.*, C.C.A.Pa.1938, 101 F.2d 183.

The Congress under this chapter completely occupied and pre-empted the field of interstate communications in radio and television. *Lamb v. Sutton*, D.C.Tenn. 1959, 164 F.Supp. 928, affirmed 274 F.2d 705, certiorari denied 80 S.Ct. 1601, 363 U.S. 850, 4 L.Ed.2d 1524.

2. Construction

The United States Court of Appeals would not construe provision of this chapter so as to leave a licensee without opportunity for relief from arbitrary action of the Federal Communications Commission and so as in effect to eliminate provision from this chapter, unless

provision were susceptible of no other possible interpretation. *Yankee Network v. Federal Communications Commission*, 1939, 107 F.2d 212, 71 App.D.C. 11.

In construing this chapter it is court's duty in so far as it is practicable to reconcile the different provisions of this chapter, to render them consistent and harmonious and give effect to each. *Sablowsky v. U. S.*, C.C.A.Pa.1938, 101 F.2d 183.

3. Purpose

This chapter is a comprehensive scheme for the regulation of interstate communication. *Benanti v. U. S.*, N.Y.1957, 78 S.Ct. 155, 355 U.S. 96, 2 L.Ed.2d 126.

The purpose of this chapter was to protect the public interest in communications, and this chapter did not create new private rights. *Scrapps-Howard Radio v. Federal Communications Commission*, 1942, 62 S.Ct. 875, 316 U.S. 4, 86 L.Ed. 1229. See, also, *Regents of N. M. College of Agriculture & Mechanic Arts v. Albuquerque Broadcasting Co.*, C.C.A.N.M.1947, 158 F.2d 900.

The purposes of creation of Commission by this section as expressed by Congress therein, and mandates pursuant to such purposes, as enumerated in this section, furnish ample support for Commission's adoption of nation-wide television allocation plan. *Peoples Broadcasting Co. v. U. S.*, 1953, 209 F.2d 286, 93 U.S.App.D.C. 78.

The purpose of Congress in establishing the Commission was to set up an expert agency capable of coping with the ever-changing and constantly increasing problems of a booming industry. *American Broadcasting Co. v. Federal Communications Commission*, 1951, 191 F.2d 492, 89 U.S.App.D.C. 293.

This chapter was not designed primarily as a new code for adjustment of conflicting private rights through adjudication but was designed to maintain a grip on the dynamic aspects of radio transmission. *American Broadcasting Co. v. Federal Communications Commission*, 1951, 191 F.2d 492, 89 U.S.App.D.C. 293. See, also, *Massachusetts Universalist Convention v. Hildreth & Rogers Co.*, D.C.Mass.1949, 87 F.Supp. 822, affirmed 183 F.2d 497.

The underlying policy of this chapter is the securing and protection of the pub-

lic interest. *WOKO, Inc. v. Federal Communications Commission*, 1940, 109 F.2d 665, 71 App.D.C. 228.

The purpose of this chapter is to secure the use of the channels of radio communication by private licensees under a competitive system and hence those licensees must be protected in that use, not merely from unlicensed stations and unlicensed operators, but from improper activities of licensed stations and operators and from arbitrary action by the Commission itself in the exercise of its regulatory power. *Yankee Network v. Federal Communications Commission*, 1939, 107 F.2d 212, 71 App.D.C. 11.

The Commission is an administrative agency set up by Congress to determine pursuant to this chapter the rights of the people of the United States to have the best possible radio service. *Black River Valley Broadcasts v. McNinch*, 1938, 101 F.2d 235, 69 App.D.C. 311, certiorari denied 59 S.Ct. 703, 307 U.S. 623, 83 L.Ed. 1591.

This chapter was designed to the end that the Commission should have jurisdiction over and power to regulate within its terms all interstate and foreign communication and transmission of energy by wire and radio. *Sablowsky v. U. S.*, C.C.A.Pa.1938, 101 F.2d 183.

Purpose of regulating radio transmission is to prevent chaos and insure satisfactory service and it is in interest of public and common justice to owner that status of broadcasting station constructed and maintained in good faith should not be injuriously affected except for compelling reasons. *Journal Co. v. Federal*

Radio Commission, 1931, 48 F.2d 461, 60 App.D.C. 92.

This chapter contemplates the regulation of interstate wire communication from its inception to its completion. *U. S. v. American Telephone & Telegraph Co.*, D.C.N.Y.1911, 57 F.Supp. 451, affirmed 65 S.Ct. 1401, 325 U.S. 837, 89 L.Ed. 1964.

The purpose of federal occupation of the entire field of regulation of interstate business of telegraph companies was to insure uniformity of regulation. *Western Union Telegraph Co. v. King*, 1939, 6 S.Ct. 268, 61 Ga.App. 537.

4. State regulation

This chapter does not preclude states from exercise of their police powers in use of land and buildings, on theory of interference with interstate commerce, in absence of actual or implied regulations to the contrary. *Kroeger v. Stahl*, D.C.N.J.1957, 119 F.Supp. 403, affirmed 218 F.2d 121.

5. Public convenience and necessity

This chapter does not create private rights. *WYDE, Inc. v. Barth Broadcast- ing Corp.*, D.C.N.Y.1961, 199 F.Supp. 753.

The standard of "public convenience and necessity" prescribed by this chapter for introduction or discontinuance of service is to be so construed as to secure for the public the broad aims of this chapter as set forth in this section. *W. C. Division, Commercial Telegraphers' Union, A. F. of L. v. U. S.*, D.C.D.C. 1949, 87 F. Supp. 324, affirmed 70 S.Ct. 118, 338 U.S. 661, 91 L.Ed. 529.

§ 152. Application of chapter

(a) The provisions of this chapter shall apply to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the United States in such communication or such transmission of energy by radio, and to the licensing and regulating of all radio stations as hereinafter provided; but it shall not apply to persons engaged in wire or radio communication or transmission in the Canal Zone, or to wire or radio communication or transmission wholly within the Canal Zone.

(b) Subject to the provisions of section 301 of this title, nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices,

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- (f) "Commercially impracticable" defined.
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- (c) Notice of proposal; renewal; preliminary assessment of nonrenewal; administrative review; issues; notice and opportunity for hearing; transcript; written decision.
- (d) Basis for denial.
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PART IV—MISCELLANEOUS PROVISIONS

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- (b) Collection of personally identifiable information using cable system.
- (c) Disclosure of personally identifiable information.
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- (g) Regulation by States or franchising authorities.
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- (b) Penalties for willful violation.
- (c) Civil action in district court; injunctions; damages; attorney's fees and costs; regulation by States or franchising authorities.
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- (b) Discrimination prohibited.
- (c) Equal opportunity programs; establishment; maintenance; execution; terms.
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- Sec. 554. Equal employment opportunity—Cont'd cal report; notice and comment on amendments.
- (e) Annual certification of compliance; periodic investigation of employment practices.
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- (g) Discrimination complaints; investigation; enforcement.
- (h) "Cable operator" defined; owners of multiple unit dwelling.
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SUBCHAPTER VI—MISCELLANEOUS PROVISIONS

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- (b) Exceptions.
- (c) Definitions.
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- (e) Rights, obligations and liabilities under other laws unaffected.
611. Telecommunications Policy Study Commission.
- (a) Establishment; functions.
- (b) Membership; chairman.
- (c) Report to Congress, President and Federal Communications Commission; termination of Telecommunications Policy Study Commission.
- (d) Compensation and travel expenses of members; appointment and compensation of staff.
- (e) Contracts; public hearings, forums, and other meetings.
- (f) Cooperation of Federal departments, agencies and instrumentalities with Commission; transmission of necessary information to Commission.
- (g) Authorization of appropriations.
- (h) Authority co-extensive with appropriation Acts.
- (i) Federal Communications Commission proceedings or activities unaffected.
610. Telephone service for the disabled.
- (a) Establishment of regulations.
- (b) Internal means for effective use of essential telephone with hearing aids.
- (c) Technical standards.
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- (f) Rulemaking to be completed by January 3, 1984; retrofitting not required; exception.

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SUBCHAPTER I—GENERAL PROVISIONS

§ 151. Purposes of chapter; Federal Communications Commission created

Study of Telecommunications and Information Goals. Pub.L. 97-259, Title II, § 202, Sept. 13, 1982, 96 Stat. 1099, provide: that:

"(a) The National Telecommunications and Information Administration shall conduct a comprehensive study of the long-range international telecommunications and information goals of the United States, the specific international telecommunications and information policies necessary to promote those goals and the strategies that will ensure that the United States achieves them. The Administration shall further conduct a review of the structures, procedures, and mechanisms which are utilized by the United States to develop international telecommunications and information policy.

"(b) In any study or review conducted pursuant to this section, the National Telecommunications and Information Administration shall not make public information regarding usage or traffic patterns which would damage United States commercial interests. Any such study or review shall be limited to international telecommunications policies or to domestic telecommunications issues which directly affect such policies."

Cross References

Commercial space launch program, authority of Federal Communications Commission as not affected by, see section 2603 of Title 49, Transportation.

Land remote-sensing commercialization program, authority of Federal Communications Commission as not affected by, see section 4245 of Title 15, Commerce and Trade.

West's Federal Practice Manual

Federal Communications Commission, see §§ 32, 3401 et seq.

Code of Federal Regulations

Access charges, see 47 CFR 69.1 et seq.

Amateur radio services, see 47 CFR 97.1 et seq.

Aviation services, see 47 CFR 87.1 et seq.

Cable television relay services, see 47 CFR 78.1 et seq.

Cable television services, see 47 CFR 76.1 et seq.

Disaster communications service, see 47 CFR 99.1 et seq.

Miscellaneous rules relating to common carriers, see 47 CFR 64.1 et seq.

Organization of Federal Communications Commission, see 47 CFR 0.1 et seq.

Practice and procedure before Federal Communications Commission, see 47 CFR 1.1 et seq.

Radio broadcast services, see 47 CFR 73.1 et seq.

Safety and special radio services, see 47 CFR 81.1 et seq.

Stations on shipboard in maritime services, see 47 CFR 83.1 et seq.

Law Review Commentaries

Home satellite dish antenna. 23 Washburn L.J. 66 (1985).

Indecency on cable television—a barren battleground for regulation of programming content. Vicky Hallick Robbins, 15 St. Mary's L.J. 417 (1984).

Library References

Telecommunications ¶144, 382, 383.

C.J.S. Telegraphs, Telephones, Radio, and Television §§ 74 et seq., 298 to 301, 316.

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1. Constitutionality

Regulation by Commission of microwave fed and off-the-air community antenna television systems is not a violation of the right to free speech. Black Hills Video Corp. v. FCC, CA Mo 1968, 399 F.2d 65.

In enacting this chapter Congress was to be deemed to have exercised its power within constitutional limitations. Red Lion Broadcasting Co. v. FCC, 1967, 381 F.2d 908, 127 U.S. App. D.C. 129, affirmed 89 S.Ct. 1794, 395 U.S. 367, 23 L.Ed.2d 371.

Congress did not pre-empt adjustment of property rights in communication field by passage of this chapter. Cable Vision, Inc. v. KUTV, Inc., CA Idaho 1964, 335 F.2d 348, certiorari denied 85 S.Ct. 700, 379 U.S. 989, 13 L.Ed.2d 609.

2. Construction

Goal of nationwide communications network need not, in all cases, take precedence over specific provisions of this chapter, especially where the Commission jurisdiction is explicitly denied under a particular provision. National Ass'n of Regulatory Utility Com'rs v. FCC, 1976, 533 F.2d 601, 174 U.S. App. D.C. 374.

This chapter must be construed in light of needs for comprehensive regulations and the practical difficulties inhering in state-by-state regulation of parts of an organic whole. General Tel. Co. of Cal. v. FCC, 1969, 413 F.2d 1301, 134 U.S. App.

Note 2

D.C. 116, certiorari denied 90 S.Ct. 173, 178, 396 U.S. 888, 24 L.Ed.2d 163.

In order to ensure that Federal Communications Commission, through its discretion and expertise, will be able to foster beneficial and proper interpretations and applications of this chapter, this chapter is generally viewed as not having created implied private rights of action, either for damages or for injunctive relief. *New England Tel. and Tel. Co. v. Public Utilities Com'n of Maine*, D.C.Me.1983, 565 F.Supp. 949.

3. Purpose

In enacting this chapter, Congress meant to confer broad authority on the Commission so as to maintain, through appropriate administrative control, a grip on the dynamic aspects of radio transmission. *F.C.C. v. Midwest Video Corp.*, 1979, 99 S.Ct. 1435, 440 U.S. 689, 59 L.Ed.2d 692.

It was the intent of Congress under the provisions of this chapter to permit private broadcasting to develop with the widest journalistic freedom consistent with its public obligations. *Columbia Broadcasting System, Inc. v. Democratic Nat. Committee*, Dist.Col.1973, 93 S.Ct. 2080, 412 U.S. 94, 36 L.Ed.2d 772.

Commission's legitimate concern in regulation of community antenna television is not limited to controlling competitive impact CATV may have on broadcast services, and the Commission has authority to regulate CATV with view to promote objectives for which Commission had been assigned jurisdiction over broadcasting. (Per Mr. Justice Brennan with three Justices joining and The Chief Justice concurring in result.) *U.S. v. Midwest Video Corp.*, 1972, 92 S.Ct. 1860, 406 U.S. 649, 32 L.Ed.2d 390, rehearing denied 93 S.Ct. 95, 409 U.S. 898, 34 L.Ed.2d 157.

If goal of this chapter of providing uniform, efficient service is ever to be realized, FCC must be free to strike down the costly and inefficient burdens on interstate communications which are sometimes imposed by state regulation. *National Ass'n of Regulatory Utility Com'ns v. F.C.C.*, 1984, 746 F.2d 1492, 241 U.S.App.D.C. 175.

In determining mandate of this chapter, court of appeals must focus on language of chapter itself, with due deference to Commission's interpretation of its own organic law. *Black Citizens for a Fair Media v. F.C.C.*, 1983, 719 F.2d 407, 231 U.S.App.D.C. 163, certiorari denied 104 S.Ct. 3545.

This chapter should not be turned into mechanism whereby participants in joint communications problems can force Commission to arbitrate contractual disputes over division of residual revenues from their joint venture; purpose of this chapter is to protect public interest rather than providing forum for settlement of private disputes. *United Tel. Co. of Carolinas, Inc. v. F.C.C.*, 1977, 559 F.2d 720, 182 U.S.App.D.C. 99.

Congress, rather than purporting to transfer its legislative power to the unbounded discretion of the Commission, intended a specific statutory basis for the authority of the Commission. *American Tel. & Tel. Co. v. F.C.C.*, C.A.2, 1973, 487 F.2d 865.

This chapter was designed to endow the Commission with sufficiently elastic powers such that it could readily accommodate dynamic new devel-

opments in field of communications. *General Tel. Co. of Southwest v. U.S.*, C.A.Tex.1971, 449 F.2d 846.

This chapter was not intended to prevent a telephone company from installing, repairing or testing its lines. *Bufalino v. Michigan Bell Tel. Co.*, C.A.Mich.1968, 404 F.2d 1023, certiorari denied 69 S.Ct. 1468, 394 U.S. 987, 22 L.Ed.2d 763.

This chapter is primarily designed to protect customers against unjust and discriminatory services rather than to protect competitors against unfair competitive practices. *MCI Communications Corp. v. American Tel. & Tel. Co.*, D.C.Ill. 1978, 462 F.Supp. 1072.

This chapter does not create any private rights; it is merely an act regulating commerce and even the granting of a license under authority of this chapter does not give any person anything in nature of a property right. *Comtronics, Inc. v. Puerto Rico Tel. Co.*, D.C.Puerto Rico 1975, 409 F.Supp. 800, affirmed 533 F.2d 701.

This chapter was intended only to establish the conditions on which communications services of an interstate nature are lawfully provided and, thus only regulates the bilateral relationship between the carrier and its subscriber; this chapter does not impose any duty on a carrier with respect to the manufacturer of telephone terminal equipment. *Id.*

Primary purpose of this chapter was to vest in single governmental agency power and means to regulate broadcasting industry in such comprehensive manner as to assure uniformity and constructive growth. *Greater Fremont, Inc. v. City of Fremont*, D.C.Ohio 1968, 302 F.Supp. 652.

Fundamental rationale for this chapter is based on fact that number of available radio frequencies is finite and that therefore Congress had to exercise its power over interstate commerce to allocate available frequencies and control their use. *Schroeder v. Municipal Court of Los Cerritos Judicial Dist.*, 1977, 141 Cal.Rptr. 85, 78 C.A.3d 841, appeal dismissed 98 S.Ct. 1641, 435 U.S. 990, 56 L.Ed.2d 81.

4. State regulation

In light of recently promulgated Federal Communications Commission declaratory ruling establishing limited preemption policy in regard to municipal zoning regulation of amateur radio antennas, amateur radio operator's action challenging constitutionality of city's ban upon erection of amateur radio station antennas would be remanded for reconsideration and possible reconciliation of FCC policy with city's zoning plan. *Therms v. City of Lakeland Park, Ky.*, C.A.6 (Ky.) 1986, 779 F.2d 1187.

Had Federal Communications Commission taken specific action to preempt zoning control of amateur radio antennas, such action would be subject to judicial scrutiny as to whether it was within the agency's authority and was exercised reasonably. *Guschte v. City of Oklahoma City*, C.A.10 (Ok.) 1983, 763 F.2d 379.

Congress did not intend to allow inconsistent state regulations to frustrate its goal of developing a unified national communication service. *National Ass'n of Regulatory Utility Com'ns v. F.C.C.*, 1984, 746 F.2d 1492, 241 U.S.App.D.C. 175.

This chapter preempts the field in the regulation of interstate communications. *Comtronics, Inc. v. Puerto Rico Tel. Co.*, D.C.Puerto Rico 1975, 409 F.Supp. 800, affirmed 533 F.2d 701.

Police regulation prohibiting possession of police radar detector in motor vehicle was not preempted by this chapter. *Smith v. District of Columbia*, D.C.App.1981, 436 A.2d 53.

Federal legislation has preempted local regulation of radio transmissions including assignment of frequencies, interference phenomena and content of broadcast material, but has not foreclosed all local regulation of microwave transmissions. *Schroeder v. Municipal Court of Los Cerritos Judicial Dist.*, 1977, 141 Cal.Rptr. 85, 78 C.A.3d 841, appeal dismissed 98 S.Ct. 1641, 435 U.S. 990, 56 L.Ed.2d 81.

Subscribers' action against provider of long-distance telephone service based on fraud and deceptive advertising was not preempted by Federal Communications Act [47 U.S.C.A. § 151 et seq.] where issues raised were ones of public disclosure and truthful advertising and did not challenge defendant's right to provide communication service in the manner that it did. *Kellerman v. MCI Telecommunications Corp.*, 1985, 479 N.E.2d 1057, 89 Ill.Dec. 51, 134 Ill.App.3d 71.

This chapter did not preempt local regulation of height of radio antenna. *Sleeper v. Old King's Highway Regional Historic Dist. Commission*, 1981, 417 N.E.2d 987, 11 Mass.App. 571.

Although Commission has preempted state control over terms and conditions governing interconnection of customer-provided telephone equipment to the nationwide telephone network, Commission's action does not completely foreclose state regulation so long as state action does not derogate the interstate rulings; a state may provide additional options to customers with respect to interconnection provided they are alternatives to, rather than substitutes for, requirements specified in interstate tariffs and provided that such regulations accomplish the protective objectives of the interstate regulation and in no way permit interference with or impairment of interstate services. *Sherdon v. Dann*, 1975, 229 N.W.2d 531, 193 Neb. 768.

Congress granted Commission sole and exclusive jurisdiction over interstate and foreign telephone service, including jurisdiction to regulate interconnection of customer-provided equipment with common carrier facilities for interstate and foreign service; however, this chapter reserves to the states jurisdiction over intrastate telephone and telegraph communications. *Id.*

This chapter does not sanction state regulation where it encroaches on Commission's statutory authority. *Southern Pacific Communications Co. v. Corporation Commission*, Okl.1978, 586 P.2d 327.

Code 1950, § 46.1-198.1 making it unlawful for any person to operate a motor vehicle upon highways of state when vehicle is equipped with any device or mechanism to detect emission of radio microwaves employed by police to measure speed of motor vehicles does not conflict with federal regulatory system established by this chapter, but complements system by protecting effectiveness of essential police radio communication, and is not violative of U.S.C.A. Const. art. 6, cl. 2 as relating

to a preempted field. *Crenshaw v. Com.*, 1978, 249 S.E.2d 243, 219 Va. 38, 17 A.L.R.4th 1328.

Radio communications services are essentially intrastate in nature, and it was Congressional intent to reserve to several states right to regulate such intrastate services rather than to preempt field. *Radio Tel. Communications, Inc. v. South-eastern Tel. Co.*, Fla.1964, 170 So.2d 577.

6. Authority of Commission

Commission's legitimate concern in regulation of community antenna television is not limited to controlling competitive impact CATV may have on broadcast services, and the Commission has authority to regulate CATV with view to promote objectives for which Commission had been assigned jurisdiction over broadcasting. (Per Mr. Justice Brennan with three Justices joining and The Chief Justice concurring in result.) *U.S. v. Midwest Video Corp.*, 1972, 92 S.Ct. 1860, 406 U.S. 649, 32 L.Ed.2d 390, rehearing denied 93 S.Ct. 95, 409 U.S. 898, 34 L.Ed.2d 157.

Authority of Commission to regulate broadcasting and other communications is derived from this chapter as amended. *U.S. v. Southwestern Cable Co.*, Cal.1968, 88 S.Ct. 1994, 392 U.S. 157, 20 L.Ed.2d 1001.

Congress in enacting this chapter acted in a field that was demonstrably both new and dynamic, and Congress therefore gave Commission a comprehensive mandate with not niggardly but expensive powers. *Id.*

The Commission was expected to serve as the single government agency with unified jurisdiction and regulatory authority over all forms of electrical communication, whether by telephone, telegraph, cable, or radio, and Commission was for such purpose given broad authority by this chapter. *Id.*

Nothing in this chapter empowers Commission to forgive proven violations of this chapter's clear prohibitions of unjust, unreasonable, and discriminatory rates. *MCI Telecommunications Corp. v. F.C.C.*, 1983, 712 F.2d 517, 229 U.S.App.D.C. 203.

Commission's ability to regulate cable television is very broad and not circumscribed by the rules of subchapters II and III of this chapter. *American Civil Liberties Union v. F.C.C.*, C.A.9, 1975, 523 F.2d 1344.

Commission is not restricted to a course of action which has been dictated by requirements of the transportation industry. *General Tel. Co. of Southwest v. U.S.*, C.A.Tex.1971, 449 F.2d 846.

Action of Commission in waiving hearings required under the then effective regulations and authorizing beginning of operation of seven CATV systems in market which, while near bottom of top 100 television markets in country, was unique because it covered a considerable area without any large cities and had substantial population not reachable by CATV was appropriate and did not constitute any injustice. *Paducah Newspapers, Inc. v. F.C.C.*, 1969, 414 F.2d 1183, 134 U.S.App.D.C. 287.

Interpretation by Commission of its statutory grant and its applications are entitled to great deference. *General Tel. Co. of Cal. v. F.C.C.*, 1969, 411 F.2d 390, 134 U.S.App.D.C. 116, cert.

donari denied 90 S.Ct. 173, 178, 396 U.S. 888, 24 L.Ed.2d 163.

7. Private rights

Mandate that Federal Communications Commission allocate spectrum in manner that promotes safety of life and property does not grant public safety broadcasters absolute right to particular spot in spectrum, but it does require that Commission give their needs priority over those of commercial broadcasters such as direct broadcast satellite service. *National Ass'n of Broadcasters v. F.C.C.*, 1984, 740 F.2d 1190, 239 U.S.App.D.C. 87.

§ 152. Application of chapter

(a) The provisions of this chapter shall apply to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the United States in such communication or such transmission of energy by radio, and to the licensing and regulating of all radio stations as hereinafter provided; but it shall not apply to persons engaged in wire or radio communication or transmission in the Canal Zone, or to wire or radio communication or transmission wholly within the Canal Zone. The provisions of this chapter shall apply with respect to cable service, to all persons engaged within the United States in providing such service, and to the facilities of cable operators which relate to such service, as provided in subchapter V-A of this chapter.

(b) Except as provided in section 224 of this title and subject to the provisions of section 301 of this title and subchapter V-A of this chapter, nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with interstate communication service by wire or radio of any carrier, or (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (3) any carrier engaged in interstate or foreign communication solely through connection by radio, or by wire and radio, with facilities, located in an adjoining State or in Canada or Mexico (where they adjoin the State in which the carrier is doing business), of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (4) any carrier to which clause (2) or clause (3) of this subsection would be applicable except for furnishing interstate mobile radio communication service or radio communication service to mobile stations on land vehicles in Canada or Mexico; except that sections 201 to 205 of this title shall, except as otherwise provided therein, apply to carriers described in clauses (2), (3), and (4) of this subsection.

(As amended Feb. 21, 1978, Pub.L. 95-234, § 5, 92 Stat. 35; Oct. 30, 1984, Pub.L. 98-649, § 8(a), 98 Stat. 2801.)

1984 Amendment. Subsec. (a). Pub.L. 98-549, § 3(a)(1), added provision making this chapter applicable with respect to cable service, to all persons engaged within the United States in providing such service, and to the facilities of cable persons which relate to such service, as provided in subchapter V-A of this chapter.

Subsec. (b). Pub.L. 98-549, § 3(a)(2), substituted "section 301 of this title and subchapter V-A of this chapter" for "section 301 of this title".

1978 Amendment. Subsec. (b). Pub.L. 95-234 substituted "Except as provided in section 224 of this title and subject" for "Subject".

Effective Date of 1984 Amendment. Amendment by Pub.L. 98-549 to take effect 60 days after Oct. 30, 1984, except where otherwise expressly

This chapter does not create private rights. *Moro v. Telemundo, Incorporated*, D.C.Puerto Rico 1974, 387 F.Supp. 920.

8. New technology

Phrase "so far as possible" as used in this section providing that Commission is to make available, so far as possible, to all people of the United States a rapid and worldwide wire and radio communications services expresses the intent that available and reasonable new technology be applied in achieving the mandated goal. *U. S. v. Western Elec. Co., Inc.*, D.C.N.J.1981, 531 F.Supp. 894.

Legislative History. For legislative history and purpose of Pub.L. 95-234, see 1978 U.S. Code Cong. and Adm. News, p. 109. See, also, Pub.L. 98-549, 1984 U.S. Code Cong. and Adm. News, p. 4633.

Code of Federal Regulations

Access charges, see 47 CFR 69.1 et seq.
Amateur radio services, see 47 CFR 97.1 et seq.
Aviation services, see 47 CFR 87.1 et seq.
Cable television service, see 47 CFR 76.1 et seq.
Commission organization—Delegation of authority, see 47 CFR 0.201 et seq.
Disaster communications service, see 47 CFR 99.1 et seq.
Extension of lines and discontinuance of services by carriers, see 47 CFR 63.01 et seq.
Public mobile radio services, see 47 CFR 22.0 et seq.
Radio broadcast services, see 47 CFR 73.1 et seq.
Safety and special radio services, see 47 CFR 81.1 et seq.
Stations on shipboard in maritime services, see 47 CFR 83.1 et seq.

Law Review Commentaries

Obscenity, indecency and the excitable boy: Is pay cable different? 1 *Cooley L.Rev.* 391 (1983).

Library References

Telecommunications ¶144, 382.
C.J.S. Telegraphs, Telephones, Radio, and Television §§ 74 et seq., 298, 316.

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1. Construction

Words "charges," "classifications," and "practices," as used in section of Communications Act which provides that nothing in this chapter shall be construed to apply or give Federal Communication Commission jurisdiction with respect to charges, classifications, and practices for or in connection with intrastate communication service were not intended to refer only to "customer charges" for specific services, but rather, those words are terms of art that are to be interpreted by reference to trade to which they apply, and thus, embrace depreciation. *Louisiana Public Service Com'n v. F.C.C.*, 1986, 106 S.Ct. 1890, 90 L.Ed.2d 369.

Nothing in provision of this chapter that the provisions of this chapter are applicable to "all interstate and foreign communication by wire or radio", and in surrounding language, or in history or purposes of this chapter limits authority of Commission to those activities and forms of communication that are specifically described by this chapter's other provisions. *U.S. v. Southwestern*

Cable Co., Cal. 1968, 83 S.Ct. 1994, 392 U.S. 157, 20 L.Ed.2d 1001.

Commission pay cable television rules prohibiting pay exhibition of feature films more than three but less than ten years old, specific sports events shown on broadcast television within previous five years, more than minimum number of nonspecific sports events which had not been broadcast in any of the five preceding years, and all series programs, and which prohibited commercial advertising in conjunction with pay exhibition programming and limited overall number of hours of pay operations which could be devoted of sports and feature films to 90 percent of total pay operations, were not authorized under this section. *Home Box Office, Inc. v. F.C.C.*, 1977, 567 F.2d 9, 183 U.S.App.D.C. 142, certiorari denied 98 S.Ct. 111, 434 U.S. 829, 54 L.Ed.2d 89.

Although agency is entitled to great deference in the construction of its own statute, that adage is not a license to construe statutory language in any manner whatever, to conjure up powers with no clear antecedents in statute or judicial construction, or to ignore explicit statutory limitations on the agency's authority. *National Ass'n of Regulatory Utility Com'rs v. F.C.C.*, 1976, 533 F.2d 601, 174 U.S.App.D.C. 374.

Where complaint did not allege interstate and foreign communication by radio or interstate and foreign transmission of energy by radio or interstate and foreign communication by wire, subject signal system test facility was outside scope of this chapter and there was no requirement for prior authorization of facility by Commission. *State Committee to Stop Sanguine v. Laird*, D.C.Wis. 1970, 317 F.Supp. 664.

2. Law governing

Questions concerning duties, charges and liabilities of telegraph or telephone companies with respect to interstate communications services are to be governed solely by federal law, and states are precluded from acting in such area. *Ivy Broadcasting Co. v. American Tel. & Tel. Co.*, C.A.N.Y.1968, 391 F.2d 486.

3. State statutes

Oklahoma ban upon advertising of alcoholic beverages was in conflict with specific federal regulations including the Federal Communications Commission's so called "must-carry" rules. Commission regulations prohibiting deletion or alteration of any portion of out-of-state television broadcast signals, including commercial advertising, and Commission's policy that state regulation of "pay cable" services is completely precluded by this title. *Capital Cities Cable, Inc. v. Crisp*, Okl.1984, 104 S.Ct. 2694.

While this section excluding from federal jurisdiction matters for or in connection with intrastate communication service deprives Commission of power over local services, facilities and disputes that in their nature and effect are separable from and do not substantially affect interstate communications, this section does not sanction any state regulation, formally restrictive only of intrastate communication, that in effect encroaches substantially upon Commission's authority to regulate matters for or in connection with interstate communication services. *Puerto Rico Tel. Co. v. F.C.C.*, C.A.1, 1977, 551 F.2d 624

p. 37, footnote #93: See New York's approach to installation + maintenance.

- no shifting of rate charges to non low-income users

pg. 40, footnote 100: Life line assistance estimated to be ~ \$18/year.

pg. 40, footnote 102: See non-rate-related ways to assist low-income customers.

pg. 42, #65: SLC (subscriber line charge) assistance does require matching state \$.

(- adopted Dec 1985)

Latest assistance program (installation charges etc, does not require state matching \$.

p. 47,
#73 + 74:

Return to R. R. H. H. H.

2777

Before the
FEDERAL COMMUNICATIONS COMMISSION FCC 87J-1
Washington, D.C. 20554

In the Matter of)	
)	
MTS and WATS Market Structure)	CC Docket No. 78-72
)	
Amendment of Part 67 of the)	CC Docket No. 80-286
Commission's Rules and)	
Establishment of a Joint Board)	

RECOMMENDED DECISION AND ORDER

Adopted: March 12, 1987; Released: *March 31, 1987*

By the Federal-State Joint Board:

I. Introduction

1. Pursuant to the request of the Federal Communications Commission (Commission) in its Further Notice of Proposed Rulemaking (Further Notice),¹ we present our recommendations concerning the effects of the initial implementation of (1) subscriber line charges (or SLCs), (2) the federal lifeline assistance program, and (3) the current high cost assistance measures on the primary goals of the access charge proceeding and interexchange competition. Preserving universal service, promoting economic efficiency, eliminating service pricing discrimination, and deterring uneconomic bypass are the four longstanding goals identified in this proceeding.² We also present our recommendations for further action the Commission should take to achieve these goals. As a part of this proposal for further action, we also make certain recommendations regarding

1 Further Notice of Proposed Rulemaking, MTS and WATS Market Structure and Amendment of Part 67 of the Commission's Rules, CC Docket Nos. 78-72 and 80-286, FCC 86-305 (released July 2, 1986); summarized at 51 Fed. Reg. 27,426 (1986).

2 In that proceeding, the Commission also stated that the access charge plan "represented an effort to preserve an opportunity for fair competition during a transition period in which [it] and the industry work to eliminate existing inequalities in interconnection options offered interexchange carriers." First Reconsideration Order, infra note 4, at para. 3.

remain at \$3.50 is a significant change from the Commission's original plan to recover all interstate NTS costs from end users.

5. In addition, we recommend that the current federal lifeline assistance program continue as established and that the matching federal benefits increase with the recommended increase in SLCs. We also recommend that the Commission implement an additional lifeline program that will provide assistance to offset the costs of initial connection to the telephone network for low income households not presently on the network. Specifically, we recommend a two-part program: first, federal assistance sufficient to pay one-half of the charges, up to \$30.00, assessed for commencing service would be provided to qualifying subscribers; and second, where a local exchange carrier offers a deferred payment plan for service commencement charges and it does not assess the subscriber any interest, federal assistance will be available to that LEC to cover the interest costs on an amount up to \$200.00. We believe that this additional lifeline assistance program will provide an opportunity for those 5 million low income households currently without telephone service to obtain that service.

6. Further, we recommend that the Commission retarget the present formula for high cost assistance to direct more assistance to smaller and medium-sized LECs. Finally, we recommend that the Commission modify its current mandatory pooling requirements to implement a revised pooling system that retains the benefits of the present system while permitting LECs needed flexibility.

7. We believe that the overall effect of the recommendations presented herein achieves a proper balance among the goals of this proceeding. Our recommendation to increase SLCs will provide additional economic efficiency gains and further mitigate bypass. In addition, the limited increase in SLCs allows for the introduction of needed changes in the mandatory common line pool by reducing the disparity among carrier common line (or CCL) rates that could cause undue pressure to deaverage interstate toll rates. At the same time that we are recommending these measures to increase network efficiency, we propose changes in the high cost and lifeline assistance programs that will promote our universal service goal, by further protecting and benefiting small local high cost exchange carriers in maintaining reasonable rates, and assisting low income customers both in initially connecting to the network and in affording the SLCs and local service charges.

8. In order to ensure that our proposals achieve the desired results, we recommend an expanded monitoring effort by the Commission and the Joint Board. We recommend that this comprehensive monitoring proposal, which will involve frequent reports to Congress and state regulatory bodies, be described in detail in a Recommended Decision and Order to follow.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

Return to Fruehlich

2777

Before the
FEDERAL COMMUNICATIONS COMMISSION FCC 87J-1
Washington, D.C. 20554

In the Matter of)	
)	
MTS and WATS Market Structure)	CC Docket No. 78-72
)	
Amendment of Part 67 of the)	CC Docket No. 80-286
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2 In that proceeding, the Commission also stated that the access charge plan "represented an effort to preserve an opportunity for fair competition during a transition period in which [it] and the industry work to eliminate existing inequalities in interconnection options offered interexchange carriers." First Reconsideration Order, infra note 4, at para. 3.

modifications to the federal mandatory pool for carrier common line costs.

II. Overview of Recommendations

2. In supporting the implementation of limited subscriber line charges along with low income and high cost assistance measures two years ago, we recognized that our recommendations were a cautious step in addressing the problems inherent in the existing non-traffic sensitive (NTS) cost recovery mechanisms. We stated at that time that we would carefully evaluate the effects of these recommendations before proceeding with any further changes. The Commission's Further Notice initiated the reexamination of these three issues and asked for recommendations in a unified package for further action in these areas. As several outstanding petitions raised questions regarding possible modifications to the mandatory common line pooling system, the Commission also requested recommendations for future action in this related area.

3. In summary, we find that the interim measures we proposed and the Commission adopted in 1984 have furthered the four goals of this proceeding. We further find that certain additional steps are warranted at this time. In response to the Commission's request for proposed modifications to its current SLCs, we now recommend a permanent solution to the issue of the proper approach to the recovery of interstate NTS loop costs. We recommend that the Commission increase the current SLC to \$2.60 on June 1, 1987, \$3.20 on September 1, 1988, and \$3.50 on April 1, 1989, or the amount with which the local exchange carriers (or LECs) will recover their full interstate NTS loop costs, whichever is less.³ Prior to any increases in 1988 and 1989, we recommend that the members of the Joint Board and the Commission conduct a 90-day study and review of the impact of SLCs to date. We recommend that the Commission report to Congress and state regulators on the results of these reviews.

4. Maintaining SLCs at the \$3.50 cap will assure that interexchange carriers (or IXC) continue to pay, on a nationwide basis, an appropriate portion of NTS loop costs. In conjunction with this action, we recommend that the Commission ensure that all of the cost savings resulting from this final implementation of SLCs be flowed through to customers in the form of lower interstate toll rates. We note that in this Order we do not recommend that the Commission adopt in toto any of the plans presented by parties in the record. Moreover, our recommendation that SLCs

³ We also recommend that the flat-rate charge for embedded Centrex lines be increased to \$4.00 on June 1, 1987, to \$5.00 on September 1, 1988, and to \$6.00 on April 1, 1989, or the multi-line business subscriber line charge, which recovers the LEC's full interstate NTS loop costs, whichever is less.

remain at \$3.50 is a significant change from the Commission's original plan to recover all interstate NTS costs from end users.

5. In addition, we recommend that the current federal lifeline assistance program continue as established and that the matching federal benefits increase with the recommended increase in SLCs. We also recommend that the Commission implement an additional lifeline program that will provide assistance to offset the costs of initial connection to the telephone network for low income households not presently on the network. Specifically, we recommend a two-part program: first, federal assistance sufficient to pay one-half of the charges, up to \$30.00, assessed for commencing service would be provided to qualifying subscribers; and second, where a local exchange carrier offers a deferred payment plan for service commencement charges and it does not assess the subscriber any interest, federal assistance will be available to that LEC to cover the interest costs on an amount up to \$200.00. We believe that this additional lifeline assistance program will provide an opportunity for those 5 million low income households currently without telephone service to obtain that service.

6. Further, we recommend that the Commission retarget the present formula for high cost assistance to direct more assistance to smaller and medium-sized LECs. Finally, we recommend that the Commission modify its current mandatory pooling requirements to implement a revised pooling system that retains the benefits of the present system while permitting LECs needed flexibility.

7. We believe that the overall effect of the recommendations presented herein achieves a proper balance among the goals of this proceeding. Our recommendation to increase SLCs will provide additional economic efficiency gains and further mitigate bypass. In addition, the limited increase in SLCs allows for the introduction of needed changes in the mandatory common line pool by reducing the disparity among carrier common line (or CCL) rates that could cause undue pressure to deaverage interstate toll rates. At the same time that we are recommending these measures to increase network efficiency, we propose changes in the high cost and lifeline assistance programs that will promote our universal service goal, by further protecting and benefiting small local high cost exchange carriers in maintaining reasonable rates, and assisting low income customers both in initially connecting to the network and in affording the SLCs and local service charges.

8. In order to ensure that our proposals achieve the desired results, we recommend an expanded monitoring effort by the Commission and the Joint Board. We recommend that this comprehensive monitoring proposal, which will involve frequent reports to Congress and state regulatory bodies, be described in detail in a Recommended Decision and Order to follow.

III. Background

9. In a series of reconsideration orders in CC Docket No. 78-72, the Commission reviewed and revised aspects of its access charge plan adopted in the Access Charge Order.⁴ An important aspect of the access charge plan provided that a major portion of the local loop costs allocated to the interstate jurisdiction would be recovered directly from telephone subscribers through monthly flat-rate charges,⁵ and found that such fixed charges would achieve the primary goals of the access charge proceeding.

10. In the Second Reconsideration Order, the Commission deferred the implementation of the residential and single-line business subscriber line charges until 1985 pending the completion of a number of proceedings.⁶

4 The Access Charge Order established a system of tariffed access charges through which local exchange carriers recover most of their costs assigned to the interstate jurisdiction through the separations process. Third Report and Order, MTS and WATS Market Structure, CC Docket No. 78-72, 93 FCC 2d 241 (1983) (hereinafter the Access Charge Order), modified on reconsideration, 97 FCC 2d 682 (1983) (hereinafter First Reconsideration Order), modified on reconsideration, 97 FCC 834 (1984) (hereinafter Second Reconsideration Order), aff'd in principal part and remanded in part, National Ass'n of Regulatory Utility Comm'rs v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), cert. denied, 105 S. Ct. 1224, 1225 (1985), modified on further reconsideration, 99 FCC 2d 708 (1984), 101 FCC 2d 1222 (1985), aff'd on further reconsideration, 102 FCC 2d 849 (1985), petitions for review pending, People of California v. FCC, No. 84-1124 (D.C. Cir., petition filed April 2, 1984), and AT&T v. FCC, No. 84-1148 (D.C. Cir., petition filed April 16, 1984).

5 The Commission's initial decision provided that a substantial portion of fixed exchange plant costs that are assigned to interstate services should ultimately be recovered through flat-rate per line charges that are assessed upon end users. However, it also noted the possible disruptive effects of immediate flat-rate charges for the entire end user portion and therefore provided that in 1984, the first year of the plan, LECs would have to charge a minimum flat fee of \$2.00 per line per month for residential subscribers and \$4.00 per line per month for business subscribers. The plan further provided a five-year transition period for recovery of all interstate NTS loop costs from end users except for high cost assistance, customer premises equipment (CPE), and inside wire costs, which would be recovered from the pooled CCL charges. See generally

These proceedings included an examination of the SLCs and the transition mechanism for implementing them, possible assistance programs for low income households, and assistance measures for subscribers in high cost study areas.⁷ Pursuant to the decision to examine these issues, the Commission issued a Further Notice of Proposed Rulemaking in which it requested recommendations from this Federal-State Joint Board (Joint Board) regarding the implementation of residential and single-line business SLCs, possible exemptions or targeted assistance for low income subscribers, and more effective mechanisms to meet the needs of high cost telephone LECs for additional assistance.⁸

11. In November 1984, we issued our recommendations on the various issues referred to us.⁹ In our Recommended Decision, we formulated a three-part plan. First, we recommended that limited residential and single-line business SLCs of \$1.00 per line per month be implemented in June 1985, to be increased to \$2.00 per line per month in June 1986.¹⁰ Second, we recommended a two-phase program for assistance to

Access Charge Order note 4, at paras. 124-49.

6 In the First Reconsideration Order, the Commission provided that initial subscriber line charges of \$2.00 per month for residential and single-line customers would be implemented in 1984, with SLCs increasing to a \$3.00 cap in 1985 and a \$4.00 in 1986, where the charge would remain through 1989. The plan also established subscriber line charges for multi-line business customers equal to \$6.00 per month or the full interstate allocation of NTS loop costs for the study area involved. In the Second Reconsideration Order, however, the Commission did not defer the implementation of multi-line business SLCs, finding that the charges would not be so burdensome as to cause businesses to forego telephone service. These charges became effective in May 1984. See generally Recommended Decision, infra note 9, at paras. 5-12.

7 The other proceedings that the Commission initiated in the Second Reconsideration Order were: (1) a further inquiry into the effects on universal service of SLCs and federal decisions in general; and (2) a further inquiry to compile more detailed data on the extent and nature of bypass of the telephone network. All of the proceedings were completed in 1985. See Further Notice, supra note 1, at para. 3.

8 Further Notice of Proposed Rulemaking, MTS and WATS Market Structure and Amendment of Part 67 of the Commission's Rules, CC Docket Nos. 78-72 and 80-286, 49 Fed. Reg. 18,318 (1984).

9 Recommended Decision and Order, MTS and WATS Market Structure and Amendment of Part 67 of the Commission's Rules, CC Docket Nos. 78-72 and

low income households. We established guidelines for a limited federal lifeline program, which provided a 50% reduction in the SLC for customers qualifying under a state-established lifeline program that was means-tested and subject to verification. We also recommended an expedited study to establish broader lifeline measures to assist low income households.¹¹ Third, we recommended retargeting the federal high cost assistance measures to provide additional assistance to telephone subscribers served by LECs with fewer than 50,000 access lines and those with particularly high MTS loop costs.¹² We recommended that SLCs remain at

80-286, 49 Fed. Reg. 48,325 (1984) (hereinafter Recommended Decision).

10 We also recommended that some flexibility be given to the LECs in the form of optional alternative tariff provisions to recover carrier common line costs in order to combat localized bypass problems. We further recommended that the Commission and Joint Board staff work closely with interested state public utility commissions to explore more comprehensive experimental tariffs for recovery of interstate MTS costs. See Recommended Decision, supra note 9, and Memorandum Opinion and Order, MTS and WATS Market Structure and Amendment to Part 67 of the Commission's Rules, CC Docket Nos. 78-72 and 80-286, 50 Fed. Reg. 13,028 (1985) (order establishing the procedures for filing optional alternative and experimental tariffs). Experimental tariffs were filed by the Florida Public Service Commission (Florida) on November 9, 1984, the Rochester Telephone Company (Rochester) on January 16, 1986, and the Illinois local exchange carriers (ILECs), on December 30, 1986. In June 1985, we found that the Florida plan, as then structured, would impose additional cost burdens on telephone subscribers in other states and recommended that Florida revise its plan. Recommended Decision and Order, MTS and WATS Market Structure and Amendment of Part 67 of the Commission's Rules, CC Docket Nos. 78-72 and 80-286, FCC Memo No. 5328 (released June 25, 1985). The Rochester and ILEC petitions will be discussed in this proceeding. See infra note 77.

11 Pursuant to that study, we recommended broader lifeline measures that provided for federal benefits, which match state assistance, up to the full amount of the SLC, provided the state has a lifeline program that has been certified as meeting our general requirements that eligibility for such programs be means-tested and subject to verification. Our recommendations were adopted by the Commission in December 1985. Recommended Decision and Order, MTS and WATS Market Structure and Amendment of Part 67 of the Commission's Rules, CC Docket Nos. 78-72 and 80-286, 50 Fed. Reg. 52,964 (1985); Decision and Order, MTS and WATS Market Structure and Amendment to Part 67 of the Commission's Rules, CC Docket Nos. 78-72 and 80-286, 51 Fed. Reg. 1371 (1986) (hereinafter Lifeline Order), aff'd on recon., 1 FCC Rcd 436 (1986) (hereinafter Lifeline Reconsideration Order).

\$2.00 until the completion of a further Joint Board proceeding to examine the effect of SLCs on universal service, economic efficiency, interexchange competition, and bypass.¹³ With a few minor changes and clarifications, the Commission adopted our recommendations.¹⁴

12. On July 2, 1986, the Commission issued its Further Notice asking this Joint Board to examine the effects of (1) SLCs, (2) the federal lifeline assistance program, and (3) the present measures to assist high cost telephone companies, on the primary goals of the access charge proceeding and interexchange competition. The Commission recognized that this Joint Board's previous recommendation on these issues involved integrated measures adopted to advance the four primary goals of the access charge proceeding and interexchange competition. It stated that the lifeline program and high cost assistance measures were integral parts of a cohesive package, and therefore must also be examined as part of the review of SLCs. In addition, the Commission requested our recommendations on possible modifications to the current provisions for mandatory nationwide pooling of common line costs and revenues.¹⁵

12 High cost assistance measures contained in Part 67 of the Commission's rules allocate an additional percentage of NTS loop costs to the interstate jurisdiction for LECs with higher than average NTS loop costs. 47 C.F.R. § 67.631 (1986). These measures are designed to reduce the intrastate cost allocation and keep local service rates lower than they otherwise would be. See Recommended Decision, supra note 9, at paras. 46-73. These measures are also described as the High Cost Factor or the Universal Service Factor in the Commission's rules, but are more commonly referred to as the high cost fund or universal service fund in Joint Board and Commission decisions. See 47 C.F.R. §§ 67.601 and 69.501(a) (1986). For additional discussion on high cost assistance see Further Notice, supra note 1, at para. 8.

13 Recommended Decision, supra note 9, at para. 2.

14 Decision and Order, MTS and WATS Market Structure and Amendment of Part 67 of the Commission's Rules, CC Docket Nos. 78-72 and 80-286, 50 Fed. Reg. 939 (1985) (hereinafter Subscriber Line Charge Order).

15 The Commission has prescribed a nationwide mandatory pool for the interstate allocation of common line costs. See Access Charge Order, supra note 4, at 328; and infra paras. 112-116. Pursuant to Commission Rules, the recovery of the interstate portion of NTS loop costs is administered by the National Exchange Carrier Association (NECA). These rules also provide that these costs are assigned to the "common line element" and are recovered in part from end users through SLCs and in part from interexchange carriers through nationally uniform, per minute CCL charges. See 47 C.F.R. §§ 69.601-69.610 (1986). The CCL charge is the per minute charge paid by

13. In seeking public comment for our consideration of these issues, the Further Notice requested discussion on whether the original three-part plan presented in our recommendations has furthered the primary goals of this proceeding and what further steps, if any, should be taken to achieve these goals. Specifically, it asked for comments on: (1) whether the SLCs should be increased (and if so, to what level and on what schedule), modified in some fashion, or remain unchanged at their present level; (2) whether the federal lifeline program and high cost assistance measures presently in place reflect a properly targeted response to the need for assistance to low income subscribers and subscribers in high cost areas, and whether these programs should be modified, and in what manner; and (3) what alternatives may be available to the current mandatory pooling mechanisms used to recover the interstate allocation of NTS exchange costs. Finally, the Commission requested that we evaluate all of the issues discussed in the Further Notice, as well as the comments and replies filed in the record, and prepare recommendations for Commission consideration that will further achieve the goals described in the Access Charge Order.

IV. Subscriber Line Charges and NTS Cost Recovery

A. Comment Summary

14. The interexchange carriers that submitted comments in response to the Further Notice¹⁶ — AT&T, ALC Communications (ALC) and US Sprint — generally support subscriber line charges and argue that these charges should be increased. Specifically, the IXC's believe that implementation of the limited SLC represents a movement to more cost-based pricing, which has resulted in increased economic efficiency and a decrease in pricing disparities among services with no adverse effects on universal service.

15. The IXC's cite several major benefits from the limited SLCs presently in effect. They argue that in terms of eliminating unreasonable service pricing discrimination, the movement to SLCs has already allowed substantial reductions in the CCL rate charged interexchange carriers. This flat-rate recovery of interstate NTS costs from end users has resulted in a smaller differential between switched access rates and substitutes, such as special access. IXC's assert that the benefits of SLCs are demonstrated by the substantial increase in total minutes of use (or MOUs) for switched access service.¹⁷

interexchange carriers through which the LECs recover the portion of their NTS loop costs assigned to the interstate jurisdiction that is not recovered through the SLCs.

16. In terms of economic efficiency benefits, AT&T observes that with the implementation of SLCs, its interstate message toll rates have decreased approximately 20%¹⁸ for the average customer, and the number of AT&T's interstate toll messages has increased by 9%. AT&T further states that the economic efficiency benefits that result from flat-rate end user recovery of the interstate portion of NTS loop costs extend beyond the telecommunications sector. It references a study by the Wharton Econometric Forecasting Associates which concludes that implementation of SLCs has led to an increase of \$6 billion in the nation's real Gross National Product (GNP), created 10,000 new jobs, reduced the federal deficit by \$1.9 billion, and decreased overall price levels by .1%.¹⁹ Furthermore, AT&T urges that it is necessary to continue increasing the transition to flat-rate subscriber line charges to increase the use of the network and generate the full range of societal benefits that will flow from more economic pricing.²⁰

17. AT&T claims that although some progress has been made in deterring uneconomic bypass, 70% of the interstate subscriber plant revenue

16 A list of all parties and their abbreviations commenting in this proceeding is found in Appendix A.

17 According to AT&T, NECA's midyear 1986 filing reported a 10% increase in access MOUs between 1984 and 1985. AT&T Comments at 13.

18 See AT&T Comments at 13. AT&T attributes this decrease is to the transfer, since 1984, of more than \$3 billion per year from IXC recovery to subscriber loop recovery, together with other Commission policies that have further reduced CCL rates. AT&T rates for switched access (MTS and WATS) services were reduced by 5.6% in 1985 and by another 12% in 1986, each as part of the flow-through which we recommended with the implementation of the \$1.00 and \$2.00 SLC. AT&T Comments at 16. Additional decreases of 11% for MTS and 5% for WATS that were not reflected in the AT&T comments became effective on January 1, 1987. See infra note 67.

19 Wharton Econometric Forecasting Associates, Pricing Telecommunications Services: The Impact on the U.S. Economy of Subscriber Line Charges (1986) (Wharton Study).

20 AT&T cites the Wharton Study as demonstrating the full range of benefits to be gained from implementing a \$1 per month subscriber line increase each year for the next five years, culminating in a \$7 dollar SLC cap in 1991. With this further progress in cost-based pricing, AT&T claims that the implementation of SLCs over a 5 year phase-in will lead to an increase of \$23.8 billion in the real GNP, create 30,000 new jobs, reduce

requirement is still being recovered through IXC charges. It contends, along with ALC, that some bypass of the public switched network is being averted by subscriber line charges and other Commission action, but that if the present uneconomic toll loading continues, the bypass potential will be significant. Thus, AT&T concludes that this Joint Board and the Commission must continue to move away from uneconomic toll loading by increasing SLCs. It views movement to \$4.00 by 1988 as an essential next step in that process. AT&T and ALC see no universal service concerns as a result of the present limited SLCs, citing steady or increasing telephone penetration levels. AT&T also contends that if problems should develop with the implementation of increased SLCs, the Commission has an ongoing monitoring program and would be able to respond quickly to mitigate them.

18. While ALC and US Sprint support increased SLCs, they suggest that SLCs be increased at a rate of \$.50 per line per year in order to minimize consumer disruption, and to coincide with the completion of equal access conversions and protect interexchange competition.²¹ MCI states that any increase in SLCs must be based on a strong record of economic efficiency, because, in its view, bypass concerns alone do not justify an increase in SLCs.²²

19. The LECs also state that the implementation of limited SLCs has furthered the primary goals of this proceeding. Thus, as a group they strongly support an increase in the level of SLCs. Four major industry groups are sponsors of the LEC industry-wide Unity 1-A agreement, submitted as comments in this proceeding,²³ and propose in that agreement an increase

the federal deficit by \$10.3 billion and decrease overall price levels by .2%. AT&T Comments at 24.

21 As an alternative proposal, ALC recommends that the Commission substitute a fixed price differential between premium and nonpremium access service for the current percentage based differential, in order to reduce the pressure on the other common carriers' (OCCs) operating margins resulting from lower CCL charges. US Sprint supports this alternative proposal.

22 In MCI's opinion, the Commission's decision requiring that the price of WATS access lines be cost-based and that reductions be made to the originating CCL rate have done much to address the bypass problem. According to MCI, a direct result of this decision is to eliminate the uneconomic loading of NTS costs on WATS usage and with that diminish the incentive for uneconomic bypass of the switched network. In its reply comments, MCI critiques the analyses and assumptions of the various bypass studies submitted by the Bell Operating Companies (BOCs). See infra note

in residential and single-line business SLCs to \$3.00 in June 1987 and \$4.00 in January 1988, or the amount with which a LEC will recover its full study area interstate NTS loop cost, whichever is less. The agreement also provides that LECs may voluntarily raise their SLCs above \$4.00, subject to considerations of universal service objectives and market conditions, and that interexchange carriers should pay an "appropriate portion" of interstate NTS costs. Furthermore, as part of their joint comments, the Unity 1-A sponsors propose to increase the subscriber line charge applied to embedded Centrex lines from the present \$3.00 amount to a \$4.00 cap in June 1987 and a \$5.00 cap in January 1988.²⁴

20. The LECs argue that the implementation of \$1.00 and \$2.00 SLCs has resulted in economic efficiency benefits, citing the significant reductions in CCL rates that have increased overall demand for interstate

32.

23 The four industry associations that submitted the Unity 1-A agreement are the National Rural Telephone Association (NRTA), the National Telephone Cooperative Association (NTCA), the Organization for the Advancement and Protection of Small Telephone Companies (OPASTCO), and the United States Telephone Association (USTA). This agreement is an outgrowth of the LEC 1984 Unity agreement, which was submitted for consideration during our previous examination of these access charge issues. The Unity 1-A agreement was filed in this proceeding on July 25, 1986, and was supplemented by comments and reply comments by the sponsors.

The sponsors state that they represent over 1300 local telephone companies owning over 99% of all exchange access lines in the country. They present as the major goals of their agreement: 1) the broadest connectivity reasonably attainable; 2) usage charges which will encourage efficient use of the network; and 3) reduction in the scope and complexity of regulation. The agreement presents a comprehensive approach to the issues raised in the Further Notice, by advocating not only increases in SLCs, but also revisions in high cost assistance (discussed infra paras. 75-77) and the present pooling system (discussed infra paras. 98-101).

Additionally, the Unity 1-A agreement reflects the third goal of its sponsors by supporting continued use of average schedules as a compensation mechanism and of an overall interstate rate of return in each jurisdiction as the most appropriate method to properly protect the rural, high cost, highly leveraged, REA-funded LECs and all other small telephone companies. It also seeks the reduction or elimination of FCC requirements the sponsors describe as unnecessary and burdensome, and separations reform. As these latter issues are beyond the scope of this proceeding, they are not discussed herein.

switched access services. They also claim that universal service has not been adversely affected by SLCs, contending that nationwide telephone penetration levels are at their highest point (over 92%) since divestiture²⁵ and that there has been no decrease in telephone penetration levels for low income, elderly or rural populations as a result of SLCs.²⁶ Many of the BOCs and independent LECs state in their comments that in their particular regions the telephone penetration rates have not decreased²⁷ and in many instances the number of switched access lines has increased.²⁸ In particular, Southwestern Bell sees no evidence that the present SLCs have had a negative impact on universal service. Its comments include a disconnect study conducted in Kansas City that it claims revealed that high toll bills were more influential on the decision to disconnect than the cost of basic local service. Similarly, a Washington state study submitted as an

24 See Joint Comments, Appendix 3 at 3.

25 See Bell Atlantic Comments at 4.

26 Bell Atlantic states that penetration rates for the elderly customers in its service area are in excess of 95%. Id. at 5. In addition, NYNEX noted a net gain in the number of subscriber lines since June 1, 1985, in its end offices which serve low income, elderly and rural areas. NYNEX Comments at 16-17.

27 For example, Bell Atlantic states that there has been no statistically significant decline in telephone penetration rates in any state it serves. See Bell Atlantic Comments at 5. See also Ameritech Comments at 4-5; Rochester Comments at 17; Cincinnati Bell Comments at 2-3; NYNEX Comments at 16-17; Pacific Bell and Nevada Bell Comments at 3; SNET at 2-3; US West Comments at 9.

28 BellSouth reports a 2.2% increase in the number of households it serves during the past two and one-half years, while Rochester reports an increase of 2.1% in the number of households it serves in just over two years. BellSouth Comments at 8; Rochester Comments at Exhibit A; see also Centel Comments at 2; Pacific Bell and Nevada Bell Comments at 3.

LECs also note their ability to maintain low basic rates. Bell Atlantic claims that the cost of basic local telephone service remains quite low and that, as a percentage of household income, the price of flat-rate residential service has actually decreased over the past ten years. It further notes that even with a \$4.00 subscriber line charge, the cost of flat-rate residential service would still represent less than .5% of the average household income. Bell Atlantic Comments at 5-6.

appendix to US West's comments found that, on average, customers whose service was disconnected had long distance charges equal to or in excess of their bill for local service.²⁹ Thus, these LECs conclude that to the extent that SLCs have caused and will continue to cause significant decreases in the interstate toll rates, many low income customers can benefit.

21. The LECs also argue that implementation of limited SLCs has provided greater incentive for large users to stay on the network and has thus averted or delayed decisions by these users to bypass the switched network. The LECs assert, however, that the uneconomic pricing disparities, if left unchanged, remain at levels sufficient to force large users to abandon the public switched network for economic reasons. Southwestern Bell states that the existing SLCs have diminished uneconomic bypass incentives, but submits several studies supporting its conclusion that significant bypass incentives remain.³⁰ A number of other BOCs also submitted studies or data to demonstrate present or future bypass risks, focusing on the perceived immediate threat of service bypass,³¹ as they urge further

The Unity 1-A sponsors note in their reply comments that several states have recently moved to implement limited subscriber line charges for intrastate recovery purposes as well. Joint Reply Comments at 13.

29 See infra note 60.

30 Southwestern Bell submitted with its comments the results of three different bypass studies to support its conclusion regarding bypass. First, using a Location Specific Bypass System (LSBS) model, it found that if all customers who had the economic incentive adopted the identified bypass technology after June 1, 1986, Southwestern Bell would have seen decreased revenues of \$296.7 million. Southwestern Bell Comments at 17-18 (App. 4). In its Bypass Adoption Rate Study (BARS), it estimated that about 24.8% of its total chargeable access minutes would be lost to bypass in 1990, in spite of a \$2.00 SLC and the changes in access charge rules adopted in the Commission's decision in CC Docket No. 86-1. It estimated that the bypass loss by 1995 would reach 39.7%. Id. at 19. In its third study, in which it employed a Bypass Analysis and Tracking System Data Base (BATS) and attempted to measure the extent that bypass is actually occurring in its certificated service areas, it found that 674 traffic locations met the threshold of a 40% decrease in toll minutes of use over the designated time period, a figure that Southwestern Bell claims indicates that a location has potentially bypassed Southwestern Bell's network. Southwestern Bell says that it is supplementing this study with on-site visits and other techniques to corroborate that the identified locations are in fact bypassing. It has verified 12 bypass systems in Kansas, which it maintains would, with full implementation, result in a minimum annual loss of \$3.5

action to reduce CCL rates by increasing SLCs. Ameritech asserts that, with the concentration of business in the Chicago loop area and new competitive fiber optic systems being introduced there, some 20% of Illinois Bell's total revenues are at risk from bypass. BellSouth maintains that under current rules, the potential loss from bypass in its region is \$397 million. NYNEX, Pacific Bell, and US West also identify serious bypass concerns for their areas.³² In addition to their own studies, many of these LECs cite

million in access and intraLATA toll revenues. Southwestern Bell maintains that bypass by one large user in St. Louis has already reduced its revenues by \$6 million annually. Id. at 19-21.

31 Service bypass involves the migration of customers from switched to special access services due to uneconomic loading of NTS loop costs on interstate toll rates. Southwestern Bell contends that service bypass remains an immediate problem, submitting that orders for high capacity facilities, which it assumes are being used to carry bypass traffic, increased 183% from June 1985 to May 1986. It estimates that changes from switched to special access facilities by two large Oklahoma companies alone resulted in an estimated annual revenue loss to the company of \$8 million. Id. at 21. Rochester asserts that despite reductions in toll rates and general economic growth, the switched access service usage of its top 10 customers declined by 27.6% during a three-month period in 1986 when compared with their usage during the same period in 1985, while at the same time, the use of special access facilities by these same customers increased by 47.6%. Rochester Comments at 21-23. MCI claims that Rochester's study does not consider CCL and toll rate reductions, and thus is not useful. MCI Reply Comments at 13-14.

32 NYNEX claims that evidence that its end offices predominately serving businesses have had a lower rate of growth than residential end offices, and that there is a lower percentage of growth in originating than terminating minutes, supports the argument that business users are bypassing services to avoid paying uneconomic switched access charges. NYNEX contends that usage carried over private lines has grown more rapidly than overall usage, and that if bypass is left unstemmed, the unrecovered cost per subscriber line per month will be an average of \$2.30 - 3.46 in New York and \$1.39 - 2.09 in New England. NYNEX Comments at 9-12.

Pacific Bell cites twenty-one specific examples of bypass of its network and maintains that bypass is a growing phenomenon due to vulnerability in regulated rate design, availability of advancing technologies, and vendor strategies that lock Pacific Bell out of marketing intraLATA services. Pacific Bell and Nevada Bell Comments at 4-5 and Attachment C. US West conducted two studies that it maintains demonstrate that the current level of end user charges must be increased to further reduce the incentives for uneconomic bypass. It states that one study,

a recent report issued by the United States General Accounting Office (GAO) which concluded that 16-29% of customers bypass and as many as 53% of the LECs' customers are considering plans to initiate or increase bypass activities.³³

22. CP National, the one LEC that does not support increasing SLCs at this time, asserts that the record does not support claims of uneconomic bypass, and proposes that the Commission maintain the current SLCs since the perceived benefits of SLCs "have not reached CP National's service areas."³⁴ Shenandoah, while expressing its support for the Unity 1-A agreement's proposal regarding SLCs, also maintains that the agreement's statement that interexchange carriers should continue paying an "appropriate portion" of common line costs supports its position that IXCs should pay a charge based either on relative use/interstate subscriber line usage (or SLU) or a roughly equivalent fixed percentage (9-10%) of NTS loop costs. Shenandoah suggests that this charge be assessed on a study area basis and maintains that for many customers such a charge would permit the capping of SLCs at less than \$4.00.³⁵

comparing the number of customer locations for each state in the US West service region where the customer has an economic incentive to shift traffic from switched to special access services, showed that the economic incentive for bypass would be eliminated with a full, cost-based SLC. A second study calculating the cross-over point between switched and special access services confirmed, in US West's view, that a reduction in bypass potential occurs as access prices continue to move in the direction of actual costs. US West Comments at 29-30.

MCI critiques the bypass studies presented by the BOCs. It claims that Ameritech's conclusion regarding the bypass problem in Chicago is irrelevant since it focuses only on facilities bypass and, in MCI's view, further implementation of SLCs will not influence this type of bypass. MCI claims that BellSouth fails to explain how it derived its estimate of \$397 million in revenue loss. MCI contends that NYNEX vastly overstates the bypass problem and that in reality the bypass threat is "miniscule" in terms of the impact on the end user. MCI faults Pacific Bell's analysis for misstating the assumed price for special access service, for failing to compare special access and WATS rates, and for overstating the amount of traffic each special access line can carry. MCI claims that Southwestern Bell's LSBS study erroneously assumes that switched access service is homogeneous with all forms of bypass, and that a customer will choose only one IXC, the one in closest proximity to it. MCI Reply Comments at 2-17.

33 See infra note 76.

34 CP National states that it serves local areas identified as rural, many of which have high local exchange rates. CP National states that

23. State public utility commissions (state commissions) participating in this proceeding express a range of views on the NTS cost recovery issues. At the outset, a number of state commissions, particularly those of California, the District of Columbia, Kansas, Missouri, and New York, raise concerns that this reexamination proceeding is premature since the subscriber line charge was only increased to \$2.00 in June 1986. They contend that SLCs have not been in effect for a sufficient time period to determine accurately the impact that an increase in SLCs would have on the universal service objective. In addition, some argue that there have been several changes in the jurisdictional separations rules, along with other Commission actions aimed at deterring bypass, and that the impact that these changes will have on local rates should be determined before any increases in SLCs are considered.³⁶

24. In addressing the substance of NTS cost recovery issues, many state commissions urge that the NTS costs allocated to the interstate jurisdiction should be recovered through charges to the IXCs as well as flat-rate charges on end users.³⁷ Michigan and Missouri suggest that the

although it has an overall annual growth rate of 2% in the number of subscribers it serves, it also serves particular areas with depressed penetration levels. CP National Comments at 2.

35 The Unity 1-A sponsors disagree with Shenandoah's interpretation that a SLU-based IXC charge for each study area is consistent with that agreement, contending that the use of SLU would not have the same "relatively consistent impact" among the LECs as the Unity 1-A proposal. Joint Reply Comments at 32.

36 On January 9, 1987, the Colorado Public Utilities Commission filed comments, in which it argued that any increase in SLCs should be delayed until further study of an allocation and pricing theory presented in a report, entitled "Cost-of-Service Methods for Intrastate Jurisdictional Telephone Services," issued by the National Regulatory Research Institute (NRRI), Report No. NRRI-84-13, in April 1985. Although these comments were submitted three months after the close of the pleading cycle and we do not want to encourage such lateness, we will consider them in order to fully explore all positions on the issues raised in the Further Notice.

37 On March 4, 1987, the National Association of Regulatory Utility Commissions filed a resolution in the record, stating that there should be no increase in the existing SLCs until one full year of experience and a study of the impact of the existing charge and any increased charge on subscribers, and that interexchange carriers should pay a portion of the interstate allocation of NTS loop costs based upon a measure of relative

IXCs should pay an interstate SLU-based charge, that is, a charge based on relative interstate toll subscriber line usage, with any additional NTS costs not recovered from IXCs available for recovery through SLCs.³⁸ Some other state commissions go further and argue that SLCs should be eliminated.³⁹ Arkansas also adopts the concept of charges based on relative interstate use to IXCs, but proposes more fundamental changes in jurisdictional separations and NTS cost recovery.⁴⁰ Like Arkansas,

use of subscriber lines. Letter from Paul Rodgers, General Counsel, National Association of Regulatory Utility Commissions, to William J. Tricarico, Secretary, Federal Communications Commission (March 2, 1987).

38 Michigan maintains that the present \$2.00 SLC brings some low cost LECs to a point where only a SLU-based residual remains to be recovered from the IXCs. Missouri agrees and further argues that the Joint Board recommendation of November 1984 supports the position that IXCs should pay, on a nationwide basis, a charge based on at least a SLU level of NTS costs. It recommends that before increasing SLCs, the Joint Board should examine how close the current policy brings the LECs to a SLU-based IXC charge.

AT&T opposes the concept of a SLU-based charge on IXCs, along with a cap on end user interstate NTS cost recovery, claiming that this proposal amounts to a reversal of the Commission's fundamental position on recovery of NTS costs through end user charges. AT&T asserts that, in any event, with a SLC of \$4.00 in 1988, the IXCs would still be paying charges which exceed a SLU-based portion of NTS loop costs. AT&T Reply Comments at Attachment B.

39 Specifically, Kansas, Texas and Arkansas call for eliminating SLCs.

40 In its comments in this proceeding, Arkansas Public Utilities Commission (Arkansas) proposes an "experimental unified tariff" for NTS cost recovery, applicable only to its state. In its reply comments, Arkansas modifies and expands on this proposal to apply it on a nationwide basis. In its revised proposal, Arkansas proposes first that all residential SLCs be eliminated and that the money currently recovered through these charges be allocated to the intrastate jurisdiction and recovered through local rates in "the most economic and equitable manner." Second, Arkansas proposes that the interstate allocator for NTS common line costs be gradually reduced from the 25% basic allocator to a SLU-based allocator on a study area basis. Under the plan, those NTS costs remaining in the interstate jurisdiction would be paid by IXCs. Arkansas also makes other specific proposals regarding the method of recovering these costs from the IXCs. Like Arkansas, Texas proposes eliminating the SLC and shifting the associated NTS costs to the intrastate jurisdiction, thereby allowing the state commissions to develop the most "equitable and economically efficient" means of allocating these costs.

California suggests a jurisdictional separations change to a SLU-based allocation for the interstate portion of NTS costs, and at the same time endorses Shenandoah's proposal.⁴¹

25. Focusing specifically on SLCs and their impact on universal service, the District of Columbia, Florida, Kansas and Texas contend that the Commission cannot rely on data from the U.S. Bureau of the Census (Census Bureau) to find that penetration rates have not decreased as a result of implementing SLCs, because other factors such as population growth rates or the lifeline program may have been effective in keeping overall penetration rates at the current levels. Furthermore, Arkansas, Missouri and New York also contend that subscriber line charges are similar to local service rates and, as such, increasing SLCs will increase the cost of access to the local network and thereby decrease the number of persons who could afford telephone service. In particular, New York argues that the Commission must consider an end user's total monthly bill in order to evaluate accurately the effect on the end user of increasing SLCs. California argues that the impact of subscriber line charges on universal service must be evaluated in conjunction with other changes causing upward pressure on local service rates such as the phase-out of CPE costs and the deregulation of billing and collection. Arkansas argues that, with a

Comments were received only on the initial Arkansas "experimental unified tariff" proposal. That experimental proposal would recover both interstate and intrastate costs pursuant to a unified tariff administered by the state, that would be characterized by flat-rate recovery from the IXC's: MCI opposes the Arkansas plan because it would shift the risks of NTS investment from LECs to IXCs. It further maintains that the plan imposes double-charges on IXCs that purchase special access by including special access minutes in the calculation of market share for the apportionment of switched access NTS cost recovery. MCI also faults the plan for failing to provide for some differential rate between premium and non-premium access service. Ad Hoc argues that Arkansas failed to explain its proposal in sufficient detail. Finally, the sponsors of the Unity 1-A agreement rebut the contention made by Arkansas that a SLU-based charge to IXCs is consistent with that agreement. They explain that the agreement clearly does not advocate the jurisdictional separations changes required by the Arkansas plan, and that the use of SLU would not have the same effect as the Unity 1-A proposal. See also supra note 35 and accompanying text.

41 NYNEX cautions that the concept of a SLU or relative-use-based recovery of loop costs from the IXCs raises several concerns. First, NYNEX expresses concern that because SLU is a usage-sensitive allocator, NTS cost recovery from the IXCs on a SLU basis could exacerbate uneconomic bypass. Second, it notes that by merely shifting more of the revenue requirement to the intrastate side of the business, the SLU allocator does not necessarily

penetration rate of only 88% in its state, an increase in SLCs will frustrate universal service. Pennsylvania and Texas contend that the typical subscriber who makes few long distance calls does not benefit from the decreased interstate toll rates that have resulted from the introduction of SLCs.

26. In contrast to most other state commissions, Illinois argues that subscriber line charges should be increased, contending that the transfer of NTS cost recovery to end users will encourage efficiency, promote rational economic development, maintain universal service and lead to a decrease in unnecessary subsidization in the telecommunications industry. Illinois supports its argument by noting that subscriber penetration levels for Illinois have remained stable. It states that the maintenance of large customers on the public switched network will ensure that all subscribers enjoy the benefits derived through the use of common facilities.

27. Illinois also cites its concern with bypass problems in Chicago as justification for increasing SLCs.⁴² Other state commissions maintain that little evidence has been presented to establish the existence of uneconomic bypass or the effect that SLCs have had in combatting it; in their view, the evidence provided so far has been mostly anecdotal.⁴³ They maintain that the costs of imposing higher subscriber line charges outweigh

solve the uneconomic bypass problem; such action may create upward pressure on intrastate rates and incentives for more bypass.

42 In its reply comments, New Jersey Board of Public Utilities (New Jersey) also states its concerns with bypass problems present in its state, and includes several examples of existing bypass activities. It encloses a report downgrading New Jersey Bell's bond rating because of the financial community's concern respecting bypass of New Jersey Bell's network, caused by the mandatory pooling of carrier common line costs.

43 A number of state commissions specifically criticize the bypass studies and surveys submitted by the BOCs. California rebuts Pacific Bell's information on bypass (see supra note 32), claiming that it does not necessarily support a conclusion that SLCs should be increased. It maintains that the break-even point for bypass could be raised by increasing special access rates relative to switched access rates, just as effectively as raising SLCs. Kansas faults the bypass studies submitted by Southwestern Bell (see supra note 30). It argues that under the LSBS model, ratepayers would be paying more in SLCs than the amount saved in decreased bypass. Furthermore, Kansas submits that the BARS study fails to consider a number of factors besides rates that were cited by Southwestern Bell in its

the benefits of avoiding bypass revenue losses, that studies do not indicate that greater SLCs are necessary to combat bypass, and that increased SLCs will increase "local bypass" and further erode universal service. A number of state commissions argue that reduced interstate toll rates resulting from implementation of SLCs have not helped alleviate bypass, because factors other than the price of long distance services influence the decision to bypass.⁴⁴

28. Several consumer groups, along with the Communications Workers of America (CWA), oppose increasing SLCs.⁴⁵ The CWA and the CFA, like many of the state commissions, argue that it is premature to reexamine SLCs at this time. The Consumers' Councils and AARP contend that NTS costs should not be recovered through flat-rate charges on the end user at all, but that it is ultimately "fairer" for interstate toll users to continue to pay all the NTS costs.⁴⁶

29. Moreover, several of these commenters believe that in the long run SLCs are likely to have a negative effect on universal service. AARP contends that the decline in long distance rates will not offset the additional subscriber line charges for all users, since, according to its data, only 65% of all residential telephone users make long distance calls and, of those individuals, few make greater than \$10 in long distance calls per month. Other user groups argue that the Census data cannot be relied upon to support the proposition that SLCs have not had an adverse impact on telephone penetration rates. In particular, in their joint comments,

comments. Finally, Kansas maintains that the BATS study is not helpful in this proceeding, since much of the bypass found by survey-type bypass studies involves systems that have been in existence for many years.

44 These state commissions include those in Arkansas, California, Kansas, Michigan, and Missouri. They rely primarily on a December 1984 Bypass Report by the NRRRI to support this position. Southwestern Bell argues that the NRRRI Report inaccurately portrays the nature and extent of bypass because it was conducted in 1984, before AT&T instituted its Megacom and Software Defined Network services. It also faulted the report for excluding resellers, who may be the largest users of Megacom service.

45 These groups include the Consumers' Councils of Georgia, Washington, and Colorado (Consumers' Councils), filing joint comments, and Consumers' Councils of Ohio, New York, and the District of Columbia, filing independently; the United Church of Christ Office of Communications (UCCOC); the Association of American Retired Persons (AARP); the Consumer Federation of America (CFA); and the National Association of State Utility Consumer Advocates (NASUCA).

Consumers' Counsels contend that the effect of SLCs on penetration rates for telephone service has been obscured by other factors such as an overall increase in income and reductions in unemployment.

30. Some of these consumer groups also question whether there have been any actual economic efficiency gains from the implementation of SLCs.⁴⁷ NASUCA and CWA contend that only anecdotal evidence supports the notion that increased SLCs are necessary to fight bypass, and that other devices, such as tapered rates, flat-rate IXC charges and contract pricing would be more effective. Consumer groups generally maintain that there is no evidence that large users are leaving the switched network due to the present level of CCL charges, and also cite the high marketplace performance of telephone companies in support of their argument that bypass is a more distant problem than what they term the direct threat posed by increased SLCs.

31. Several other user groups⁴⁸ as well as the National Telecommunications and Information Administration (NTIA), and the U.S. Department of Justice (DoJ) argue that the existing SLCs have increased consumer welfare as demonstrated by the decrease in long distance toll rates and growth in the minutes of use for switched access services. These parties generally contend that evidence shows that telephone penetration rates have not decreased and therefore universal service has not been harmed by the implementation of SLCs. DoJ and NTIA, as well as API, support further increases in SLCs in order to deter bypass. They argue that the existing access charge system continues to engender uneconomic bypass, and while it is difficult to quantify bypass, it cannot be ignored as a threat.⁴⁹

46 The New York Consumer Protection Bureau concurs in this point. The Ohio Office of Consumer Counsel also recommends the phase-out of SLCs, and the adoption of a flat-rate charge for IXCs.

47 The Consumers' Counsels maintain that the Commission has not derived the marginal cost data concerning MTS loop costs, which it asserts is necessary to evaluate whether prices are moving closer to the marginal cost of the product and, without such data, the Commission cannot determine whether there in fact have been any economic efficiency gains with the implementation of SLCs.

48 These groups include the American Petroleum Institute (API), Concerned Citizens for Universal Service (CCUS), and the International Communications Association (ICA).

49 Ad Hoc supports increasing SLCs although not due to bypass concerns, claiming that the rhetoric about bypass far exceeds any evidence that it has

B. Discussion

32. In developing this recommended decision, we have carefully evaluated the record regarding the impact of the limited SLCs presently in effect. When we recommended that the Commission implement only the \$1.00 and \$2.00 SLCs, we stated our belief that this step would: substantially reduce the extent of pricing discrimination between switched and special access services; promote economically efficient use of the local telephone network; and permit significant reductions in the CCL charge, thereby substantially reducing the incentive for interexchange carriers and high volume toll users to bypass the public switched network as well as permitting major reductions in interstate toll rates.⁵⁰ Moreover, we stated that the gradual phase-in of SLCs, and in particular our recommendation for a \$2.00 cap on the subscriber line charge pending further study, would guard against any adverse impact on universal service.⁵¹ We stated that this study would be conducted in late 1986.⁵²

33. Evaluation of the record before us indicates that our earlier recommendations regarding NTS cost recovery have had the intended effects and advanced our four national goals for this proceeding. First, we find that the implementation of SLCs has had no adverse effect on universal telephone service. Data, gathered by the Census Bureau as part of the Commission's monitoring plan since November 1983, show that the overall nationwide telephone penetration rate has increased since the implementation of the SLCs. In the Census Bureau's most recent release of information, we note that the figures for November 1986 indicate that 92.4% of all households in the U.S. have a telephone in their home.⁵³ This figure for

harmed small users and carriers. Ad Hoc and NTIA argue that SLCs should be increased to \$3.00, and then \$4.00, on an annual basis, rather than pursuant to the schedule proposed in the Unity 1-A agreement.

50 Recommended Decision, supra note 9, at para. 26. To ensure this latter result we recommended that the Commission take all appropriate steps to ensure that the decreases in access costs for IXCs resulting from implementation of the increased SLCs be flowed through to interstate toll customers.

51 Id. at para. 27. In our initial recommendation we noted that our concern for universal service was prompted by a variety of upward pressures on local service rates as well as the fact that SLCs represented a major change in the method of NTS cost recovery.

52 Subscriber Line Charge Order, supra note 14, at para. 5.

telephone subscribership is the highest reported by the Census Bureau since it first began to collect such data as part of the Current Population Survey in November 1983, which at that time showed a penetration rate of 91.4%. In addition, the data show that in November 1986 the number of households with telephone service was 83.1 million as compared to 78.4 million in November 1983. At the same time, the number of households without telephone service declined from 7.4 million to 6.8 million. Subscribership levels among low income groups have remained stable.⁵⁴ Moreover, the telephone penetration rates for the elderly, *i.e.*, individuals 60 years old and above, have remained steady at approximately 95%, a level above the national average.

34. These nationwide figures for telephone penetration rates are also supported by studies submitted in response to the Commission's request. Many LECs reported in this proceeding an overall increase in their penetration levels or a net gain in the number of subscribership lines in their service areas.⁵⁵ In addition, all of the 12 LECs that filed data on this issue found that there was no overall decrease in the penetration levels in their service areas and that there was no significant subscriber drop-off in any particular section of their service areas.⁵⁶ These 12 LECs

53 Telephone Subscribership in the U.S., Industry Analysis Division, Federal Communications Commission (released January 12, 1987); FCC Public Notice, Mimeo No. 1472 (January 12, 1987).

54 The Census Bureau's data gathered according to income groups contradict NASUCA's contention that telephone penetration rates actually have decreased for all income levels except for those households in the \$50,000 -74,999 income category. See NASUCA Comments at 3-4. At the outset, the study cited by NASUCA neglected to consider the effect of inflation on the value of the dollar. To be more accurate, comparison of penetration rates from different years should account for inflation because it decreases the value of the dollar over time; accordingly, it is not accurate to compare the 1983 telephone penetration rates for the same dollar level of income based on the value of 1983 dollars, with the 1986 telephone penetration rates for the same dollar income level based on the value of 1986 dollars. In addition, if the most recent data for income levels in November 1986 is actually compared to the November 1983 data, the record shows that the penetration rates for all the Census Bureau's income categories have remained steady, with minor fluctuations that are not statistically significant.

55 See Comments filed by BellSouth, Centel, NYNEX, Rochester, and United. In particular, NYNEX noted a net gain in the number of subscriber lines since June 1, 1985 in its end offices that serve low-income, elderly and rural areas. See NYNEX Comments at 16-17.

serve more than 90% of the nation's total local access lines.

35. Several parties, however, contend that it is too early to fully evaluate the effects of SLCs on universal service. While we remain alert to any potential impact that SLCs may have on universal service, and outline below a comprehensive monitoring plan to track the effect of the recommended SLC increases, we find nothing in the record that indicates that subscriber line charges have undermined universal service. We believe that sufficient time has passed to permit an initial determination concerning the effects of the implementation of SLCs on universal service. The release of the latest Census Bureau figures, showing nationwide subscribership levels at an all-time high, confirms the positive trend we have seen in penetration levels during the implementation of SLCs.⁵⁷

36. With careful monitoring and with any interested parties being allowed to file information on monitoring needs, any future declines in subscribership levels that might occur will be readily apparent and can be met with quick regulatory action. Accordingly, we recommend that the Commission mandate an open docket and increased monitoring of the effects of these charges by the Joint Board.⁵⁸

37. With regard to our universal service analysis in this proceeding, studies provided in the record indicate that subscribers may not connect initially, or may fail to reconnect, to the telephone network because of the high cost of commencing service.⁵⁹ Similarly, the record contains recent subscriber disconnection studies indicating that a major reason subscribers are involuntarily disconnected from, or voluntarily disconnect from, the telephone network is high toll bills.⁶⁰ These studies do not attribute a subscriber's decision to connect or disconnect from the telephone network to the implementation of SLCs,⁶¹ but indicate instead

56 See Comments filed by Ameritech, Bell Atlantic, BellSouth, Centel, Cincinnati Bell, NYNEX, Pacific Bell and Nevada Bell, Rochester, SNET, Southwestern Bell, United, and US West.

57 Several commenters contended generally that this growth trend is somehow masking subscriber drop-off. We are unable to give credence to this argument because it is contrary to the Census Bureau's data and the commenters have failed to provide evidence of subscriber drop-off.

58 The broader monitoring efforts that we recommend are discussed infra paras. 136-138.

59 See supra para. 20.

that other factors such as high long distance bills and high connection, installation and security deposit charges are largely responsible for keeping subscribers off the network.⁶² The record before us indicates that the \$2.00 SLC has not caused the subscribership declines that some observers anticipated would occur when the limited SLCs were initially recommended. For the foregoing reasons, we conclude that the implementation of limited SLCs has not undermined the goal of universal service.⁶³

38. Second, we find that the implementation of limited SLCs, by moving to a more cost-based pricing structure for switched access services, has produced economic efficiency gains. Specifically, the move toward recovery of a portion of NTS loop costs through SLCs has reduced switched access and interstate toll rates, generating substantial increases in interstate toll calling.⁶⁴ This increased traffic imposes little or no additional costs on the telephone network and allows recovery of NTS costs to be spread over a greater number of minutes of use. Since the implementation of SLCs, CCL charges have decreased by 40%.⁶⁵ A significant

60 See US West Comments at Appendix B.3, the Washington State Utilities and Transportation Commission Study; and Southwestern Bell Comments at Appendix 2, the Kansas City Disconnect Study.

61 In fact, a survey conducted by US West of customers in Tucson, Arizona, and Salt Lake City, Utah, found that a majority of those individuals not connected to the network were using pay telephones for their calling, and over 20% of them were spending approximately \$5.00 or more per week for telephone service. In addition, this survey found that these individuals were generally willing to pay between \$15.00-20.00 on average for monthly service charges. See US West Reply Comments at Exhibit 7.

62 A recent survey by CFA, AARP, and AT&T supports this conclusion. See infra note 112. As discussed below, these studies have prompted us to recommend responsive action in the form of additional federal lifeline assistance to offset connection charges. See infra paras. 68-70.

63 As discussed supra para. 11, lifeline assistance measures are also a critical element in a balanced effort to achieve universal service. Moreover, the additional lifeline assistance measures recommended below are designed to bring the benefits of telephone service to even more individuals.

64 In the three years prior to the implementation of SLCs, the growth in switched access minutes averaged 7.6% per year. Since implementation of these charges in May 1984, the growth rate has averaged 10.9% per year.

portion of this decrease is directly attributable to subscriber line charges.⁶⁶ In addition, interstate toll rates for the average customer have decreased approximately 30%⁶⁷ in the last three years.⁶⁸ This decrease in interstate rates has brought a significant increase in demand for interexchange services.⁶⁹ The LECs have experienced a concomitant increase

65 Since May 1984 when multi-line business subscriber line charges were implemented, CCL rates have dropped from 5.24 cents per minute of use to a current level of 3.14 cents on a weighted basis. With the initial implementation of the residential and single-line business subscriber line charge in June 1985, the CCL rate was a uniform 4.33 cents/minute. With the bifurcation of the CCL rate, the terminating charge remains at 4.33 cents/minute, but the originating charge decreased to 3.04 cents/minute in June 1986, and dropped to 1.55 cents/minute on January 1, 1987. These reductions are the result of the implementation of SLCs as well as the transition from SPF to 25% basic allocator, the phase out of inside-wiring and CPE cost recovery, the change in rate of return regulation and the changes adopted in CC Docket No. 86-1, which bifurcated the originating and terminating CCL rates. These reductions have occurred despite certain other regulatory actions during this period that by themselves would have had the effect of increasing the CCL rate (such as the increase in nationwide NTS loop costs and the special access treatment of WATS closed-end lines in CC Docket No. 86-1.)

66 Absent the present residential and single-line business, multi-line business, and embedded Centrex subscriber line charges, the weighted average level of the present CCL charge would rise from 3.14 to 4.97 cents per minute of use, an increase of 58%.

67 In its comments, AT&T reports a decrease in interstate toll rates for an average customer of approximately 20%. AT&T Comments at 13. However, we note that the Commission recently directed AT&T to lower its NTS rates by an additional 11% and its WATS rates by an additional 5%. AT&T Communications, Mimeo No. 1287 (released December 30, 1986); and FCC News Release, Report No. CC-180 (released December 30, 1986). Although the Commission did not direct the other interexchange carriers, such as MCI or US Sprint, to decrease their rates, it anticipates that these companies will also reduce their rates in response to AT&T's action.

We recognize that these rate decreases, particularly the most recent one, are not solely attributable to the introduction of SLCs, because other separations and access charge changes have been implemented during this period, and the rate decreases have occurred in a relatively favorable economic environment. Nevertheless, it is clear that SLCs have had a major impact in bringing down the rates charged for interstate toll services.

68 Similar reductions are occurring in intrastate toll rates in order to

in the demand for their access services.⁷⁰ For example, Rochester states that it has experienced a steady increase in interstate switched usage throughout the 24-month period in which subscriber line charges took effect.⁷¹

39. These decreases in rates and increases in usage have substantially increased the economic efficiency of the nation's telecommunications network. Moreover, there are indications that the economic benefits extend beyond the telecommunications sector and benefit the overall national economy. In particular, the Wharton Study finds that the beneficial effects of the limited SLCs are not restricted to the telecommunications industry alone but are transmitted throughout the rest of the national economy. It concludes that the cumulative effects of the implementation of SLCs on the U.S. economy already include an increase in the real GNP of \$6.0 billion (in 1985 dollars); an increase of nearly 10,000 new jobs; a reduction in the federal deficit by \$1.9 billion; and a reduction in overall price levels of about .1%.⁷² While we recognize that

maintain parity with interstate rates. These concurring reductions are also benefiting the national economy.

69 Since the implementation of subscriber line charges, from 1984 to 1986, there has been a two year growth rate of 21.52 percent in the interstate MTS and WATS (including both open and closed-end WATS) minutes. See Annual 1985 Access Tariff Filing, CC Docket No. 186-125, Phase I, Mimeo No. 3643 (released April 14, 1986). In addition, AT&T reports an increase of over 9% in its number of interstate toll messages from 1985 to 1986, alone. AT&T Comments at 13. This increased demand for interstate toll calling also has had a positive effect on the growth of interexchange competition.

70 NECA's midyear 1986 filing reported a 10% increase in access minutes of use between 1984 and 1985. See supra notes 17, 64.

71 In addition, Rochester states that the average monthly interstate usage increased from 38.47 million minutes for the seven months in 1984 to 45.01 million in 1985, and to 50.28 million in the first six months in 1986. Rochester Comments at 26. Moreover, Southwestern Bell states that its average interstate usage per switched access line per month has increased from 132.8 minutes in 1984 to 141.8 minutes in 1986. Southwestern Bell Comments at 14.

72 See Wharton Study, supra note 19 and accompanying text. In addition to the Wharton Study, a study completed by the Commission also concludes that ultimately U.S. consumers benefit from reducing prices to businesses because lower telecommunication costs for businesses result in lower prices

it is very difficult to quantify the exact dollar benefits provided by the implementation of SLCs, the record indicates that the implementation of SLCs has introduced tangible economic benefits that further the goal of economic efficiency.

40. Third, we find that the implementation of SLCs has reduced the unjust discrimination between the prices for special access and switched access services. With the introduction of SLCs, local exchange carriers have been able to make substantial reductions in CCL charges assessed for their interstate switched access services. This decrease in switched access charges has decreased the uneconomic differential between the rates for switched and special access services, thereby providing more subscribers with the incentive to remain on the switched telephone network.⁷³

41. Fourth, with this reduction in discrimination between service prices, the implementation of SLCs has helped to reduce the threat of uneconomic bypass. We reach this conclusion because we believe that service pricing plays an important role in service selection by large telecommunications users, including interexchange carriers and resellers.⁷⁴ The economic incentives for bypass by high volume users are incontrovertable when switched access is priced above cost and special access or other bypass services are priced at cost. Thus, to the extent that switched access charges have been more closely aligned with the relevant costs, we believe

of the products these businesses provide. At the outset, however, it finds that the direct benefits of implementation of the SLCs include price reductions, an increase in total interstate conversation minutes and reduced bypass. The study finds that the first \$2.00 of SLCs produced an annual net benefit to telephone users of about \$600 million in 1986. These benefits are due to the value to consumers of the additional calls made by them as a result of the decrease in prices. The difference between the value consumers place on the stimulated calls and the additional costs generated by those calls is net gain to society. Office of Plans and Policy Staff Study, Federal Communications Commission, Economic Efficiency Benefits of the Current Subscriber Line Charge (released January 20, 1987).

73 Keeping subscribers on the switched network will ensure efficient use of the switched network and ease the recovery of NTS costs by increasing the number of minutes over which these costs can be spread. It will also continue the support and recovery of some of the NTS costs assigned to the interstate jurisdiction. This support is particularly important in high cost areas, where it helps maintain affordable local exchange rate levels.

74 Moreover, we are aware that a significant portion of the interstate allocation of NTS costs currently continues to be recovered through usage-based charges on IXCs using switched access services. Currently,

that large customers have been provided significant incentives to remain on the public switched network, and uneconomic bypass has been delayed or averted.

42. Numerous commenters have provided studies and comments which support the conclusion that the existing SLCs have had beneficial effects on the short-term bypass problem. For example, New Jersey and Illinois perceive bypass as a significant threat to the viability of their switched message network.⁷⁵ In addition, the GAO Bypass Study confirms that bypass is a problem in several areas and concludes that 16 to 29% of large telephone customers currently bypass the switched network.⁷⁶ We are aware of the difficulties in quantifying the actual threat of bypass and its impact on the public switched network. Nevertheless, recognizing the clear incentives which can steer large users away from the switched network, we believe that the numerous studies and surveys provided in the record generally support our conclusion that uneconomic bypass is and continues to be a threat to the switched network as long as the price of switched access service remains significantly above economic cost. In fact, a recent report finds that "[n]ationwide the installed capacity of non-LEC short-haul, medium-capacity, point-to-point, transmission alternatives now exceeds the in-use capacity of equivalent Regional Bell Operating Company (RBOC) services. The non-LEC alternatives are by and large, price-competitive with LEC services as currently tariffed."⁷⁷

43. For all the reasons listed above, we conclude that the limited SLCs we recommended in 1984 have advanced the primary goals of this proceeding. We here propose a permanent solution to the issue of the proper method for interstate NTS cost recovery. A key element of this solution provides an increase in the maximum limit on nationwide subscriber line charges by increments of \$.60, \$.60, and \$.30. The SLC cap will increase to

approximately 62% of the interstate common line revenue requirement is presently being recovered from IXCs. NECA Filing Application No. 71 (filed October 23, 1986).

75 Ameritech and Illinois agree that the bypass threat in the Chicago area warrants immediate action. NYNEX and New Jersey make similar arguments regarding the extent and nature of the bypass risks in their areas.

76 In addition, it reports that as many as 53% of large telecommunications customers plan to initiate or increase their bypass activities in the future. See United States General Accounting Office, Telephone Communications: Bypass of the Local Telephone Companies (August 1986) (included as Appendix 1 to Southwestern Bell's Comments). LECs also provided extensive data demonstrating bypass incentives and detailing numerous examples of bypass. See supra para. 21.

\$2.60 on June 1, 1987, to \$3.20 on September 1, 1988, and with a final increase to \$3.50 on April 1, 1989.⁷⁸ We also recommend that the Commission increase the maximum flat-rate charge on embedded Centrex lines, coincidentally with the increase in residential and single-line business SLCs, to a \$4.00 cap on June 1, 1987, a \$5.00 cap on September 1, 1988, and a \$6.00 cap on April 1, 1989, or the full multi-line business subscriber line charge, whichever is less.⁷⁹

77 P. Huber, *The Geodesic Network: 1987 Report on Competition in the Telephone Industry* at 2.23 (January 1987).

78 We do not recommend the Unity 1-A proposal, which would increase the SLC to \$3.00 in June 1987 and \$4.00 in January 1988, and which also provided for optional subscriber line charge recovery above \$4.00, under certain conditions, on a study-area basis. We believe that the benefits of our recommended revisions to the existing mandatory pooling mechanism, discussed *infra* paras. 117-135, can be achieved by increasing the maximum limit on SLCs whichever is less to \$3.50, and we perceive no need for further increases beyond this level. Additionally, the Unity 1-A proposal did not delineate the circumstances necessary under its plan for a LEC to qualify for the optional SLC increase above \$4.00; we note, however, that the experimental tariff procedures which we established in 1984 and 1985, would encompass such plans.

In addition, we want to take this opportunity to address two outstanding petitions relating to NTS cost recovery. See *supra* note 10. The Rochester petition, which proposed to implement an experimental plan that would allow it full recovery of its interstate NTS costs through a SLC of approximately \$3.54, was referred to this Joint Board for consideration. MTS and WATS Market Structure and Amendment of Part 67, Order Inviting Comments, CC Docket Nos. 78-72 and 80-286, Mimeo No. 2736 (released February 21, 1986). The ILECs' petitions request authority to implement an experimental plan that would increase the residential and single-line business SLC in Illinois to \$3.13, and has been referred to this Joint Board. MTS and WATS Market Structure and Amendment of Part 67, CC Docket Nos. 78-72 and 80-286, Mimeo No. 2235 (released March 9, 1987). However, Rochester in its comments and the ILECs in their petitions state that if we recommend increasing SLCs up to \$4.00, each will withdraw their petitions. Although we believe that our actions will meet the objectives of these petitions, we do not believe that we presently are in a position to dismiss them. Therefore, we request that Rochester and the ILECs file petitions to withdraw their requests to increase SLCs or to update their petitions in light of the recommendations herein. Furthermore, any other petitioners wishing to withdraw proposals considered in this proceeding may do so. See *infra* note 146.

44. In conjunction with our proposed increases in residential and single-line business SLCs, we propose that the Commission mandate development of a comprehensive monitoring plan to be specified in a Recommended Decision and Order to follow shortly.⁸⁰ With regard to the universal service impacts of the subscriber line charge increases we recommend expansion of the Commission's present monitoring of telephone penetration rates. In particular, we anticipate that this enhanced monitoring program will be better designed to track the impact of SLCs on particular population subgroups, such as low income households. Moreover, we recommend that prior to any SLC increases in 1988 and 1989, the members of the Joint Board and the Commission conduct a 90-day study and review of the impact of SLCs to date. The Commission should then report to Congress and state regulators on the results.

45. We are taking a balanced and cautious approach by recommending a gradual phase-in of more modest SLC increases in this Order. We are persuaded that the record shows that limited SLCs have not had an adverse impact on universal service⁸¹ and have had significant positive

79 The subscriber line charge assessed embedded Centrex lines was increased on June 1, 1986, from \$2.00 to \$3.00, or the full interstate NTS loop costs, whichever is less. Embedded Centrex lines are those lines that were in service or on order as of July 27, 1983. All other Centrex lines have paid the multi-line business subscriber line charge since 1984. The distinction between new and embedded Centrex lines was deemed necessary to avoid the possibility that customers would abandon Centrex service for Private Branch Exchange (PBX) service before the state commissions had an opportunity to adjust intrastate rate structures to allow Centrex service to compete effectively with PBXs. See MTS and WATS Market Structure and Amendment of Part 67 of the Commission's Rules, CC Docket Nos. 78-72 and 80-286, Mimeo No. 139 at paras. 2-17 (released October 8, 1985). We believe that sufficient time has elapsed to allow state regulators to adjust intrastate rates and therefore recommend that flat-rate Centrex charges be increased to the full multi-line business SLCs. Our recommendation regarding increased SLCs for embedded Centrex lines is similar to that suggested in the Unity 1-A proposal and since no objections were filed to the Unity 1-A proposal to increase the SLC for these lines, all concerns regarding embedded Centrex pricing appear to have been alleviated.

80 See infra paras. 136-138.

81 What the record does reveal is that high charges assessed for commencing telephone service is one key factor keeping subscribers off the

benefits with regard to the other three goals of this proceeding--bringing efficiency gains, decreasing service price discrimination and mitigating of bypass incentives. Moreover, we believe that the concerns that we focused on during our consideration of SLCs two years ago do not loom as large at this time. First, substantial pressures on local service rates have dropped dramatically in the past few years.⁸² Second, we now have some experience with subscriber line charges as a method of NTS cost recovery. Thus, we believe that limited further steps in subscriber line charge recovery can bring about the same positive effects with minimal effects on our universal service goal.

46. Nevertheless, we are very sensitive to the position taken by several parties that past experience with SLCs may not necessarily assure the same favorable results in the future.⁸³ It is for this reason that we are proposing a very gradual schedule for implementation of these increases in this charge--more gradual than the schedule developed for the original subscriber line charge levels. We believe that our proposal to increase the maximum charge by two \$.60 and one final \$.30 increment, rather than \$1.00 increments, as well as to spread out the total increase over a 25 month period, addresses the universal service concerns by lessening the potential for any possible harm to subscribers that might result from increased subscriber line charges.⁸⁴ Moreover, our recommended

network. To address this problem, we are recommending an additional lifeline assistance program to offset these charges. See infra paras. 68-70. Furthermore, we are recommending that the benefits under the subscriber line charge waiver measures of the existing federal lifeline program increase as SLCs increase.

82 At the end of 1983, state commissions were faced with \$6.9 billion in pending intrastate revenue requests. By the end of 1984, the total value of pending revenue requests had fallen to \$3.7 billion; by December 31, 1985, the value of pending state rate requests was down to \$1.4 billion; and by December 31, 1986, pending revenue requests were down to a record low of \$323 million. See News Release, FCC Releases Summary of State Telephone Rate Cases, Mimeo No. 1567 (released January 20, 1987).

83 We note that several parties express a concern that the second dollar of the SLC has only been in effect since June 1986, and sufficient time to fully study its effect may therefore not have elapsed. While we recognize this concern, when we recommended the present limited SLCs in 1984 we expressly called for a reexamination of SLCs in 1986.

84 In addition, we note that ratepayers may benefit from recent changes in the federal tax laws, specifically the reduction in the corporate tax rate, which should result in substantial decreases in the LECs' total

schedule for implementing this final phase-in of SLCs for residential and single-line business subscribers includes a 90-day study period in advance of the final two increases. This will ensure effective monitoring by this Joint Board pursuant to our proposed plan, and will permit timely regulatory action in the event of any negative impact on universal service resulting from our recommendations.

47. While we have specifically addressed the universal service concerns, we believe that our recommendation for a more gradual phase-in of SLC increases will not sacrifice future progress we should achieve toward reaching our other three goals. We view our proposed increase in subscriber line charges as the linchpin in the integrated approach we are presenting in this Order to resolve all of the issues raised in the Further Notice. In particular, the increased SLC will allow for our proposed restructuring of the existing mandatory common line pooling system, discussed in detail below, by substantially limiting the disparities between CCL rates. This enables LECs to leave the mandatory pool without creating undue pressures to deaverage interstate toll rates.⁸⁵

48. A number of commenters, particularly state commissions, believe that further movement in implementing subscriber line charges may result in subscribers paying an undue proportion of NTS costs, with the IXCs paying less than their "fair share" of the cost burden. The pricing theories of other commenters and the Commission's original access charge decision call for a subscriber line charge that would ultimately recover all the interstate allocation of NTS loop costs from the end user except for high cost assistance.⁸⁶

49. We believe that our recommendation regarding NTS cost recovery strikes a proper balance among all users of the switched network. With our proposal, end users will pay for connection to the network on a flat-rate basis, thereby achieving the economic benefits of flat-rate recovery. At the same time, by maintaining SLCs at a \$3.50 cap, we will

revenue requirements. State commissions are, of course, free to deal with the reductions in intrastate revenue requirements in whatever manner they believe best serves the public. As an option, they may take this opportunity to reduce the basic local service rates charged to customers, or simply create a credit on the customer's bill, and thereby offset to some degree any impact of the increases in the SLC.

85 See discussion infra, paras. 117-119. This Joint Board is concerned about the potential adverse effects of widespread deaveraging of interstate toll rates. Thus, we recommend that the Commission continue uniform nationally averaged MTS and WATS rates for the dominant interexchange carrier.

ensure continued recovery of a substantial portion of NTS loop costs from the IXCs on a nationwide basis. Even with full implementation of SLCs in 1989, IXCs will be paying approximately 50% of the total interstate revenue requirement for those costs that are incurred by the exchange carriers independent of IXC usage of the network.⁸⁷ As a result, IXCs will not only continue to pay fully for those costs they directly cause by using the network (i.e., traffic-sensitive or directly assignable costs), but they will also continue to pay a substantial part, approximately 50 percent of the interstate allocation, of the fixed costs presently recovered through the NECA common line pool.⁸⁸

50. Additionally, we recommend that the residential and single-line business SLC in a particular study area be capped at the same level as the multi-line business SLC in that same study area. Furthermore, we recommend that LECs use the increased SLC revenues resulting from our recommendation to reduce their CCL rates according to the following principles. First, we recommend that the Commission require the LECs to apply the first \$.60 increase to the originating CCL charge, and thus limit the bypass threat on the originating end of the call, which is more susceptible to bypass. Second, with the further increases in SLCs, we recommend that the LECs consider the existing special access rates to determine the level of CCL charges necessary to limit bypass within their particular study areas.

51. Third, we believe that LECs have the responsibility to maintain some level of CCL charges on the terminating end of calls. Even with the proposed increase in SLCs, most LECs will have a number of costs that are not eligible to be recovered through SLC revenues and must therefore be recovered through CCL rates. These costs should include the

86 See supra note 5.

87 These costs include not only NTS local loop costs, but also other costs assigned to interexchange carriers such as CPE phase-out, inside wire phase-out, NECA expenses, certain pay telephone costs, high cost assistance, and lifeline assistance funding.

88 . We believe that the substantial costs the IXCs will be paying under our proposal adequately addresses stated concerns that IXCs pay a fair share of the interstate revenue requirement. Some commenters, in particular state commissions, suggest that IXCs continue to pay an amount based on a relative use factor, e.g. a "subscriber line usage" factor, while other commenters, specifically LECs, suggest that IXCs pay an "appropriate" portion. We recognize the concerns that IXCs should continue to pay for use of the local

revenue requirements for: 1) inside wire, which is in the process of being phased-out, but still will be part of the revenue requirement paid by the IXCs until 1993; 2) a portion of CPE, which was not detariffed under the Commission's order on detariffing of CPE; 3) pay telephone, which currently amounts to over \$500 million in interstate revenue requirement and is expected to grow in the future; and 4) Long Term Support (LTS) and (any Transitional Support (TRS)) paid by those LECs that do not participate in the NECA common line pool.⁸⁹

52. Pursuant to the pooling changes we recommend herein, all LECs that opt out of the NECA common line pool will be responsible for LTS contributions, and some LECs will be responsible for TRS (with TRS contributions ending in 1994). We recommend that the Commission require LECs to recover their LTS and any TRS contributions through a CCL rate applied on terminating access minutes. This requirement is designed to ensure that IXCs will pay reasonable CCL rates on each terminating access minute.

53. In addition to these revenue requirements, most LECs will have a residual revenue requirement for their NTS loop costs in a majority of their study areas that will not be recovered through their SLC revenues.⁹⁰ We recommend that LECs with residual NTS loop costs, not recovered through SLCs, also recover these costs primarily through terminating CCL charges.

54. Finally, we decline to adopt the suggestions by some state commissions that jurisdictional separations changes be considered at this

loop, and we believe that approximately 50% of the interstate revenue requirement constitutes a significant level of payment and is responsive to those concerns.

89 See infra paras. 99-100, 124.

90 Based on current estimates, certain study areas will have all their NTS loop costs recovered through the SLC revenues with a \$3.50 SLC in 1989. If the total interstate revenue requirement for the NTS loop costs increases

time.⁹¹ We recently instituted the 25% interstate basic allocation factor presently in the second year of an eight-year phase-in. That allocator was adopted after careful consideration of a comprehensive record, and we believe that it remains the correct approach to jurisdictional cost allocation. Moreover, we do not believe that reducing the interstate cost allocation is an appropriate response to the question of the proper approach to NTS cost recovery. Reductions in the interstate allocator will merely result in increases in intrastate revenue requirements, which may necessitate a concomitant increase in intrastate rates. These increases could potentially inhibit further progress toward attaining our goals in this proceeding and could have particularly harsh effects on rural high cost areas and many small LECs. In addition, much of the efficiency gains and other benefits we have experienced so far might be lost with such action.

over time and SLCs are not increased beyond \$3.50, an even smaller number of LECs will be in a position to recover all their NTS loop costs through their SLC revenues.

91 These suggestions were presented as an alternative to further subscriber line charge recovery from end users.

V. Federal Lifeline Assistance Measures

A. Comment Summary

55. Among the IXCs, AT&T and US Sprint support the current federal lifeline assistance program⁹² and believe that assistance to low income households is an important complement to subscriber line charges. AT&T supports increasing the matching federal benefits if SLCs are increased.

56. The individual local exchange carriers had a variety of reactions to the federal lifeline program. CP National and United Telephone state that it is too early to evaluate the lifeline program. Both NYNEX and Southwestern Bell support the existing federal lifeline program, noting that the availability of low-cost local service options and other measures to assist low income subscribers also work to preserve universal service.⁹³ Alternatively, Ameritech, Rochester, and SNET maintain that low-cost service options in their areas obviate the need for any federal lifeline assistance. Ameritech states that federal lifeline assistance is unnecessary since it is in its interest to maintain high subscribership levels. On the other hand, Puerto Rico Telephone argues that the federal lifeline assistance program should be expanded and that the Commission's

92 As discussed supra para. 11, this program consists of a waiver of the subscriber line charge for qualifying low income households in states providing certified matching assistance.

93 New York Telephone Company provides additional assistance to its low income subscribers with respect to the installation and maintenance of telephone service. These provisions include: 1) elimination of the deposit requirement for most new customers including all subscribers receiving public assistance; 2) adjusted payment schedules for subscribers with fixed incomes that reflect the subscriber's periodic receipt of income; 3) a 10-month deferred payment plan for arrears of up to \$450; and 4) a 12-month interest-free deferred payment option for non-recurring service connection charges. Southwestern Bell, in addition to its "budget," "thrift," and regular measured service options, allows residential customers to spread the initial installation charge over a fixed number of months. Additionally, it does not require a security deposit based on interexchange carrier toll billing; customers who have paid a debt to an IXC for which Southwestern Bell provides billing and collection services will not be asked for a security deposit, even though they may have a history of delinquency, and customers who are temporarily suspended for non-payment are not asked to provide security deposits based on IXC billing as a condition for restoration of service.

universal service goal should be redefined as promoting subscribership levels, not merely preserving them.⁹⁴

57. The sponsors of the Unity 1-A agreement do not support the federal lifeline assistance program as it is presently established. The Unity 1-A agreement states that lifeline assistance should be established, where necessary, on a state-by-state basis, with qualifications determined by appropriate state organizations. The Unity 1-A agreement also provides that funding for lifeline assistance should be derived from sources other than telephone services, although it does not propose any specific funding mechanism.

58. While a number of state commissions commenting in this proceeding generally support continuing the present federal lifeline assistance program,⁹⁵ a few state commissions recommend some modifications to the current plan. Michigan proposes that federal assistance, which matches the amount of state-provided benefits up to the full amount of the SLC, be increased with any additional increases in SLCs. Texas contends that there should be added flexibility in the federal program; the present federal program would require it to conduct administrative proceedings for each of the 72 LECs operating in Texas, in addition to obtaining legislative approval, before it could qualify for federal funds.⁹⁶ California maintains that the federal lifeline assistance program should not require verification of subscriber income or other eligibility criteria as a prerequisite for qualifying for the full federal assistance. It recommends that the federal program permit the state lifeline program to contain provisions for self-certification.⁹⁷

94 Puerto Rico Telephone maintains that because 75% of its population lives below the poverty level and only 50% of its population has telephone service, it is unable to take advantage of the matching federal lifeline program since it would essentially require subsidizing certain low income households by increasing the charges that other low income families pay.

95 These include commissions in Pennsylvania and Michigan.

96 Texas notes that it has approved a discount rate for Southwestern Bell customers, which is not subject to any means test as required by the federal lifeline assistance program. It argues that the federal program should be more flexible and allow for the development of programs, like this discount rate, that it believes may be better suited to achieving the goal of universal service in particular areas.

97 Pacific Bell supports California's request for elimination of the verification requirements for the federal lifeline assistance program. In contrast, US West contends that verification of eligibility must be a part

59. Furthermore, the District of Columbia argues that it is too soon to evaluate the federal lifeline assistance program since it was only established in early 1986.⁹⁸ In late-filed comments to the Further Notice, the Vermont Public Service Board (Vermont) presented a proposal that included a revised federal lifeline assistance fund.⁹⁹ In deriving its proposed lifeline fund, Vermont reviewed the Census Bureau's data regarding telephone penetration and poverty levels, and estimates \$75 million as a reasonable, conservative estimate of the lifeline funding that should be provided annually by mandatory pooling.¹⁰⁰ The proposal did not specify how

of any certified state lifeline assistance plan. It argues that, while states are allowed to devise whatever social policies their citizens may approve, they should not be allowed to pass the costs of those programs onto citizens of other states. Furthermore, US West claims that California has not offered facts to support its conclusion that there has been no abuse of the California lifeline program as a result of its provision for self-certification of income eligibility.

98 The District of Columbia notes that its lifeline program was only implemented in June 1986, and states that it is as yet unable to draw any conclusions about the effectiveness of its plan.

99 Even though Vermont submitted its comments on October 28, 1986, almost one month after the close of the pleading cycle for the Further Notice, we will consider the proposals raised in them, since no party will be prejudiced by such consideration and it will aid us in completing a full disposition of all relevant issues. In its comments, Vermont proposed that the mandatory common line pool be dissolved within two years and replaced with a mandatory contribution for a revised high cost fund, lifeline assistance and separations transitions. The high cost fund proposal is discussed infra para. 82. Regarding the separations transition element of its plan, Vermont maintains that several recent separations changes, which shift dollars to the intrastate jurisdiction, have been accompanied by transitions over reasonable time periods. Vermont contends that these transitions (e.g., the revenue needed to fund the transition to the nationwide 25% basic allocator was estimated at \$1.409 billion in 1985, declining to \$24 million in 1993) should continue to be funded through mandatory contributions. As the Vermont proposal was late-filed, no parties have had an opportunity to comment on it.

100 To arrive at this number, Vermont first estimated that under the present federal lifeline assistance program, the maximum "exposure" would be \$242.7 million per year in reduced CCL charge revenues (\$2 per month for those low income households with telephones (85% of 11.9 million low income households based on March 1985 census figures in 50 states). It then

these funds would be collected or distributed.

60. Several consumer groups contend that the federal lifeline assistance program is not effective.¹⁰¹ Specifically, they argue that the program does not reach a majority of those who need assistance. NASUCA thus concludes that the Commission should focus on maintaining reasonable local rates rather than on establishing a federal lifeline program. AARP, on the other hand, supports increasing the federal assistance measures and makes specific suggestions for additional benefits in such areas as connection and installation charges, and free local calling, as well as assistance with the basic local flat-rate service charge. UCCOC also suggests similar goals and changes to the lifeline assistance program.¹⁰² While the CFA argues that the Commission must implement a more comprehensive lifeline program, it does not offer a specific proposal. However, it does contend that none of the certified state lifeline assistance programs offer any reduction in the high costs of installation, connection or deposits, which it views as obvious barriers to low income subscribership.¹⁰³

61. The Ohio Office of Consumer Counsel recommends that lifeline assistance be available as a one-time waiver of \$24.00 (and not restricted to a monthly waiver) to counterbalance non-recurring service

assumed what it viewed as a more realistic figure for participation in the lifeline program (15 states including 40% of the U.S. poverty population, and with 1/3 of those states offering only a partial credit (40% of 85% of 11.9 million poverty households with an average credit of \$18 per year)) and arrived at an estimated \$72.8 million federal lifeline fund requirement.

101 These groups include AARP, Consumers' Counsels, the District of Columbia Office of the People's Counsel, the NASUCA and the UCCOC.

102 These include: 1) setting an eligibility level at 125% of the federal poverty level; 2) allowing for a minimum of 100 calls per month without added charges in areas with measured or message service; 3) waiving connection or reconnection fees or allowing deferred payment plans for these charges; 4) decreasing rates for pay telephones and allowing incoming calls on these phones; 5) providing for advertising of the availability of the assistance program; and 6) allowing for self-verification of eligibility.

103 Additionally, CPA asserts that two of the certified state programs offer lifeline assistance only to the elderly, although it also argues that the Commission should allow states to decide for themselves whether any eligibility requirements beyond self-certification are necessary or appropriate.

installation charges and customer deposit requirements. Furthermore, it suggests that the Commission should allow for SLC waiver applications by individual subscribers and not just limit them to states or LECs, and that these waivers should not be tied to any matching state assistance.

62. Among user groups and government agencies, Ad Hoc, ICA, and NTIA support the current federal lifeline assistance program. DOJ suggests that lifeline assistance should be funded from general tax revenues rather than through interstate toll charges. CWA, however, states that Congress has already rejected the idea of general public funding for the federal lifeline assistance program.

B. Discussion

63. In late 1985 we recommended, and the Commission subsequently adopted, the existing federal lifeline assistance program in order to preserve universal service and promote subscribership among low income households.¹⁰⁴ We recommended this program because subscribership levels among low income households, while stable, remained below the national average. Since January 1986, ten states and the District of Columbia have been certified for full assistance under the federal program,¹⁰⁵ and many more are moving toward adopting a state lifeline program and requesting federal certification.

64. In the Further Notice, the Commission requested an evaluation of this program and recommendations for further action. As many of the certified state plans are just beginning to take effect, it is not possible to draw any final conclusions about the effectiveness of the plans at this time. We do believe, however, that this program is a properly targeted response to our concerns regarding the general level of subscribership among low income groups as we proceed with final implementation of subscriber line charges. We are confident that the existing federal lifeline assistance program will continue to expand with more low income telephone subscribers receiving these lifeline benefits.

104 See supra note 11 and accompanying text.

105 Certified lifeline programs are in operation in Arizona, Arkansas, Colorado, the District of Columbia, Hawaii, Maryland, North Carolina, Oregon, Utah, Vermont, and West Virginia. Additionally, both California and New York have lifeline assistance programs pursuant to the initial federal subscriber line charge waiver proposed in the Recommended Decision and adopted in the Subscriber Line Charge Order.