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MEMORANDUM

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PUCO

TO: Daisy Crockron, Chief
Docketing Division

FROM: Dan Shields **DFS**
Telecommunications Division

SUBJECT: Comments to be filed in the Telecommunications
Federal Activities Docket No. 93-4000-TP-FAD

DATE: January 29, 1997

Attached are two copies of a document to be filed in Case No. 93-4000-TP-FAD. The daily activities report description of the filing should read verbatim as follows:

The Public Utilities Commission of Ohio's comments filed with the Federal Communications Commission (FCC) in CC Docket No. 96-262 (In the Matter of Access Charge Reform). The comments filed in this proceeding respond to the FCC's December 24, 1996, Notice of Proposed Rulemaking (NPRM) calling for comments on the FCC's proposals to restructure and reform local exchange company (LEC) provided interstate access services.

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Attorney General
Betty D. Montgomery

93-4000-TP-FAD

January 28, 1997

Via Overnight Mail

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RECEIVED-DOCKETING DIV
91 JAN 29 AM 9:00
PUCO

Re: *In the Matter of Access Charge
Reform* CC Docket No. 96-262.


Dear Mr. Caton:

Enclosed please find the original and 17 copies of the Comments of the Public Utilities Commission of Ohio in the above-referenced matter. Please return a time-stamped copy to me in the enclosed stamped, self-addressed envelope.

Thank you for your assistance in this matter.

Respectfully submitted,

Betty D. Montgomery
Attorney General of Ohio


Steven T. Nourse
Assistant Attorney General
Public Utilities Section
180 East Broad Street
Columbus, OH 43215-3793
(614) 466-4396
FAX: (614) 644-8764

STN/kja
Enclosure

cc: International Transcription Services, Inc.
Competitive Pricing, Common Carrier Bureau



**Attorney General
Betty D. Montgomery**

January 28, 1997

Via Overnight Mail

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: *In the Matter of Access Charge
Reform, CC Docket No. 96-262.*


Dear Mr. Caton:

Enclosed please find the MS DOS WP 5.1 ROM diskette of the **Comments of the Public Utilities Commission of Ohio Concerning the Federal Communications Commission Notice of Proposed Rulemaking in the Matter of Access Reform Charge** in the above-referenced matter.

Thank you for your assistance in this matter.

Respectfully submitted,

Betty D. Montgomery
Attorney General of Ohio


Steven T. Nourse
Assistant Attorney General
Public Utilities Section
180 East Broad Street
Columbus, OH 43215-3793
(614) 466-4396
FAX: (614) 644-8764

STN/kja

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)
)
Access Charge Reform) CC Docket No. 96-262
)
)

**EXECUTIVE SUMMARY OF THE
COMMENTS OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

This executive summary is offered as a convenience to the Federal Communications Commission (FCC), and is not intended to replace or modify the more detailed comments submitted by the Public Utilities Commission of Ohio (PUCO) in this docket.

The PUCO opposes any increase to the SLC for all residential and nonresidential access lines. The PUCO maintains that the net effect of this proposal would simply result in a shift in cost recovery from interexchange carriers (IXCs) to end users. As an alternative to placing the entire responsibility on end-user customers for the cost recovery of the local loop, assigned to the federal jurisdiction, the PUCO maintains that IXCs should also be responsible to recover some of the costs of the local loop.

As an alternative to eliminating the subscriber line charge (SLC) cap for business customers and residential lines beyond the primary residential line, the PUCO submits that the FCC should adopt a bulk billing approach as an alternative billing mechanism to the current carrier common line charge

(CCLC). The PUCO maintains that charges to IXCs should be based on each IXC's interstate revenues.

The PUCO maintains that it may be necessary to deaverage the rate for the SLC in an ILEC's service territory based on differing loop costs among the individual service areas operated by the same ILEC within a study area. The PUCO maintains, however, that the caps currently placed on these charges should continue to be employed as rate caps for deaveraged price. The PUCO further maintains that any resulting revenue shortfall from deaveraged SLCs should be included in the alternative method of CCL cost recovery adopted by the FCC in this proceeding.

The PUCO believes that the market-based approach is the more appropriate method to achieve the FCC goal of increased local telephone competition. The distinctive advantage of the market-based approach is that it allows market forces, rather than regulation, to determine the level and timing of price changes in the access market. The PUCO believes that the market-based approach should include a requirement that caps interstate access charges at FCC price cap rates and sets the floor at the estimated total element long run incremental cost (TELRIC) price if available.

The FCC should not attempt to circumvent the Eighth Circuit stay order by requiring strict compliance with the FCC's own pricing method as a condition for access reform. The PUCO assumes and believes that the FCC did not consciously intend to "backdoor" the effect of the Eighth Circuit stay order, and urges the FCC to clarify that issue. The easiest and most rational way to clarify the UNE trigger for phase one of the market-based approach is to conclusively presume that, where a state commission has lawfully adopted UNE rates through an order that is effective under applicable state law and

where the ILEC actually offers UNEs for purchase under those rates, the ILEC has sufficiently satisfied the UNE trigger for phase one.

If the FCC uses intrastate revenues to assess contributions for USF (and, consequently, uses intrastate revenues to distribute assistance to the recipients of USF), the intrastate portion of revenues received by an ILEC who is a net beneficiary under the federal USF program should be available for a downward adjustment to intrastate costs or intrastate exogenous price cap calculations. Consistent with Ohio's comments in the Universal Service docket, any cost recovery of Universal Service contributions based on intrastate revenues should be determined by the local state jurisdictions.

The PUCO agrees with the FCC's observation that there is a continued need for the regulation of terminating access prices regardless of the level of competition for access services, since long distance carriers have little or no control on whose network their calls will terminate. To address potential pricing abuses for terminating access, the PUCO maintains that the FCC should adopt a policy that requires all carriers, including new entrants, to cap terminating access rates at levels that are set equal to or below their originating access rate.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)
)
) CC Docket No. 96-262
Access Charge Reform)
)

**COMMENTS OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

INTRODUCTION AND BACKGROUND

The Public Utilities Commission of Ohio (PUCO) hereby submits its comments pursuant to the Federal Communication Commission's (FCC's) December 24, 1996, Notice of Proposed Rulemaking in CC Docket No. 96-262 (In the Matter of Access Charge Reform) (FCC 96-488). In its proceeding, the FCC seeks comments on reforming its system of interstate access charges to make it compatible with the competitive paradigm established by the Telecommunications Act of 1996 (1996 Act) and with state actions to open local networks to competition. The FCC maintains that the structure and dynamics of the 1996 Act now necessitate a review of its existing access charge regulations to ensure that they are compatible with the 1996 Acts far reaching changes. The FCC submits that competition highlights the inefficiencies and distortions present in the CFR Title 47, Part 69 access charge rules.

The FCC's NPRM in this investigation proposes specific access reform for incumbent price cap local exchange carriers (ILECs), rate structure

modifications, and alternative approaches to access reform modifications (which include a market-based approach and a more prescriptive approach). The NPRM also identifies a variety of specific transitional issues and other miscellaneous issues and requests input on these issues.

In these comments, the PUCO submits its responses to following issues: (1) the alternative methods of billing the carrier common line charge (CCLC); (2) adoption of a market-based approach to access reform; (3) the regulation of terminating access charges; and (4) the carriers to which the rule changes should be subject. Comments in this proceeding are due at the FCC on January 29, 1997.

DISCUSSION

NPRM Section III - Rate Structure Modifications

Alternative Methods of Billing the CCLC

The FCC tentatively concludes that several provisions in Part 69 of its Rules compel ILECs to impose charges for access services in a manner that does not accurately reflect the way ILECs incur cost of providing those services. NPRM at ¶ 55. In particular, the FCC observes that the CCLC, which is intended to recover that portion of loop costs (allocated to the federal jurisdiction) that the subscriber line charge (SLC) does not recover, is assessed to interexchange carriers (IXCs) on a traffic-sensitive basis and does not reflect the manner in which loop costs are incurred. NPRM at ¶ 58. The FCC further observes that the Federal-State Joint Board on universal service concluded that the current usage-sensitive CCLC recovery mechanism is inefficient, because the costs of the loop generally do not vary with the minutes of use transmitted over the loop. NPRM at ¶ 59. Consequently, the FCC proposes

several alternative common line rate structures. Examples of these alternatives include the following: (1) ILECs would assess the CCLC-related charges to IXCs on a flat-rate dollar amount for each customer that has presubscribed to that carriers interstate interexchange services; (2) the ILECs could utilize 'bulk billing' and assess IXCs charges based upon their percentage share of interstate minutes of use or interstate revenues; (3) the ILECs could utilize 'bulk billing' and assess IXCs assessed a charge based upon the number of their trunk ports; and (4) the elimination of the SLC cap for business customers and residential lines beyond the primary residential line. NPRM at ¶¶ 60 -62.

The PUCO opposes any increase to the SLC for all residential and nonresidential access lines. The PUCO maintains that the net effect of this proposal would simply result in a shift in cost recovery from IXCs to end users. Moreover, assessing an increased SLC on second lines only serves to discourage access to the internet and other state-of-the-art computer services. Such an approach cannot be consistent with Congress' persistent desire to bring the benefits of the information age to every telephone subscriber in the nation.

As an alternative to placing the entire responsibility on end-user customers for the cost recovery of the local loop, assigned to the federal jurisdiction, the PUCO maintains that IXCs should also be responsible to recover some of the costs of the local loop assigned to the federal jurisdiction, since this portion of the local network — like local switching — provides access to the IXCs' customers. The PUCO notes, without such access, interstate carriers would be incapable, in a majority of situations, to provided service to their end user customers.

As an alternative to eliminating the SLC cap for business customers and residential lines beyond the primary residential line, the PUCO submits that the FCC should adopt a bulk billing approach as an alternative billing mechanism to the current CCLC. Under a bulk billing arrangement, IXCS would not be assessed traffic-sensitive charges for their use of the local loop, but would be assessed flat rate charges based on factors such as the number of pre-subscribed customers or total revenues. Cost recovery of such charges would be determined by the individual IXC. The PUCO maintains that charges to IXCs should be based on each IXCs interstate revenues. The PUCO notes that its recommendation on this matter is consistent with its cost recovery recommendations to the FCC concerning universal service funding. PUCO Comments (96-45) at 20-26 (December 19, 1996.)

The FCC seeks comment on whether it should permit or require ILECs to deaverage SLCs as part of the baseline rate structure that would be imposed on all price cap ILECs. NPRM at ¶ 67. The FCC notes that section 254(e) of the 1996 Act requires the FCC to adopt only explicit support subsidies for universal support. Consequently, the FCC seeks comment on whether geographic averaging of SLCs is an implicit subsidy that is inconsistent with the requirements of section 254(e), and whether it is required to deaverage SLCs.

The PUCO maintains that it may be necessary to deaverage the rate for the SLC in an ILEC's service territory based on differing loop costs among the individual service areas operated by the same ILEC within a study area. The PUCO, maintains, however, that the caps currently placed on these charges should be employed as rate caps for deaveraged price. Consequently, any future deaveraged SLC rates must be priced equal to or below today's existing

rates levels. The PUCO further maintains that any resulting revenue shortfall from deaveraged SLCs should be included in the alternative method of CCL cost recovery adopted by the FCC in this proceeding. Finally, on this matter, the PUCO observes that assessing IXCs charges for their use of the loop to access end user customers should not be considered a subsidy since absent access to the portion of the local network IXCs could not, in most cases, access their customers.

NPRM Sections V and VI

Prescriptive vs. Market-Based Approaches to Access Reform

The FCC's goal in these two sections of its NPRM is to adopt revisions to the access charge rules that will foster competition for services and eventually enable marketplace forces to eliminate the need for price regulation of these services. The FCC offers two possible methods, prescriptive and market, to achieve its goal. The prescriptive method requires the ILECs to move their access prices to FCC specified levels (which may or may not include embedded costs), and allows such ILECs limited pricing flexibility until the ILECs can prove they face actual competition for local services. Under the market method, the FCC would define three phases of increasing competition and with each successive phase, would afford the ILECs with additional pricing flexibility in meeting competition. Once the marketplace is considered fully competitive, the FCC indicates that it would no longer regulate access. NPRM at ¶ 140.

Market-Based Approach

The PUCO believes that the market-based approach is the more appropriate method to achieve the FCC goal of increased local telephone competition. The distinctive advantage of the market-based approach is that it allows market forces, rather than regulation, to determine the level and timing of price changes in the access market. In addition, the PUCO believes that the market-based approach should include a requirement that caps interstate access charges at FCC price cap rates and sets the floor at the estimated total element long run incremental cost (TELRIC) price if available. The PUCO notes that the ceiling would prevent abuses in an emerging competitive market and the estimated TELRIC floor would eliminate the temptation of setting the prices temporarily too low to discourage potential entrants into the market (*i.e.*, predatory pricing)

The PUCO believes that the market-based approach with these additional requirements should insulate end-use consumers. This is especially true for residential customers who may be indifferent on the make-up of their overall "phone bill," but would be concerned if their total phone bill increases without any adjustment to their calling behavior. The market-based approach would also cushion against the potential negative effects of the quick-moving prescriptive method.

Market-Based Phases

The market-based approach outlined in the NPRM contemplates three phases of competition. Phase One (Potential Competition) essentially consists of requiring an ILEC to meet the FCC's interconnection rules established in CC Docket No. 96-98 (In the Matter of the Local Competition Provisions in the

Telecommunications Act of 1996), which includes the provision of forward-looking priced unbundled network elements, geographic deaveraging costs, access to rights of way, etc. When the Phase One requirements have been achieved, the FCC proposes to allow: geographic deaveraging of access prices, volume and term discounts, contract tariffs and individual responses to requests for proposal and the ability to offer new access services. All of these would require the LEC to compete more effectively in the access market. NPRM at ¶ 163.

UNE Trigger for Phase I of Market-Based Approach

The NPRM tentatively concludes that the FCC should impose as a primary condition on Phase One of the market-based approach that the ILEC have unbundled network elements (UNEs) "available at forward-looking economic cost, i.e., on the basis of the TELRIC of the network element (also known as the Total Element Long Run Incremental Cost), plus a reasonable allocation of common cost." NPRM at ¶ 170. This pricing standard is, of course, the same standard adopted by the FCC in its interconnection proceeding, CC Docket 96-98. The PUCO urges the FCC to clarify and acknowledge that, where a state commission has approved an interconnection rate for UNEs and those UNEs are made available by an ILEC, the ILEC will have conclusively satisfied this trigger for Phase One of the market-based approach.

The FCC's interconnection order required that the interconnection rates set by state commissions in arbitration proceedings utilize that precise pricing standard, but that portion of the order has been stayed by the United States Court of Appeals for the Eighth Circuit. *Iowa Utilities Board et al., v. FCC*, No. 96-3321, *Partial Stay Granted* (8th Cir. Oct. 15, 1996). Consequently,

the interconnection rates actually set by state commissions have used methodologies that may differ in varying degrees from the FCC's chosen methodology. In Ohio, the PUCO has employed a pricing method believed to be entirely consistent with the FCC's TELRIC method, by using LRSIC plus a reasonable allocation of common costs. The fact remains, however, that the FCC should not attempt to "backdoor" the Eighth Circuit stay order by requiring strict compliance with the FCC's own pricing method as a condition for access reform.

The PUCO assumes and believes that the FCC did not intend to circumvent the effect of the Eighth Circuit stay order, and urges the FCC to clarify that issue. The easiest and most rational way to clarify the UNE trigger for phase one of the market-based approach is to conclusively presume that, where a state commission has lawfully adopted UNE rates through an order that is effective under applicable state law and where the ILEC actually offers UNEs for purchase under those rates, the ILEC has sufficiently satisfied the UNE trigger for phase one. That approach would also be the most efficient and straightforward, from an administrative and regulatory perspective.

In the same vein, the NPRM tentatively concludes that there should be at least three geographic zones of deaveraging for UNE rates, in order for an ILEC to satisfy the UNE trigger for Phase One of the market-based approach. NPRM at ¶ 172. Similar to the requirement that UNE rates be set at TELRIC, the federal requirement that three zones of deaveraging be in place has the effect of extorting ILECs and state commissions into adopting a specific rate structure for local interconnection that is not required by the 1996 Act and that is inconsistent with the Eighth Circuit stay order. In point of fact, Ohio has included in its guidelines and arbitration decisions a requirement for

three geographic zones of deaveraging for UNE rates. *Ohio Local Competition Guidelines*, Rule V.B.2.a.6, (PUCO Case No. 96-845-TP-COI). However, the FCC should clarify that this matter is within the authority and discretion of states (at least pending the outcome in the Eighth Circuit case).

In any case, UNE rates ordered or approved by state commissions pursuant to state law should be conclusively presumed to satisfy the UNE trigger for Phase One.

Additional Conditions for Phase Two and Phase Three

Phase Two (actual competition) requirements include a demonstration of presence of competition and credible and timely enforcement of pro-competitive rules. When Phase Two is achieved the FCC would allow differential pricing for access among different classes of customers, eliminate price-cap service categories within baskets, and end mandatory rate structure rules for switching and trunking. NPRM at ¶ 201. In Phase Three (substantial competition), the FCC proposes eliminating access regulation completely.

The PUCO maintains that the FCC should include additional factor than that proposed in its NPRM when determining the level of actual level of competition prior to affording ILECs Phases Two and Three access pricing flexibility. Specifically, the PUCO agrees with the FCC's proposals to consider the existence of demonstrated competition; its proposal to ensure that universal support flows are available to ILECs and other eligible carriers are available on a competitively-neutral fashion; and its proposal to ensure that state and federal local competition guidelines are enforced vigorously.

In addition to these guidelines, when reviewing the presence of existence of competitive alternatives prior to establishing Phase Two pricing

triggers, the PUCO submits that the FCC should compare the absolute number of customer lines, residential lines, and access minutes among or between competitors for a given region prior to implementation. Additionally, prior to affording an ILEC with Phase Three treatment (*i.e.*, the detariffing of access services), the FCC must ensure that the level of competition in a specific service area satisfies the standard benchmarks established for the Herfindahl-Hirshman Index of market concentration and the four firm concentration ratio, to ensure a reasonable level of competition within a given market place prior to detariffing any access service.

NPRM Section VII - Transition Issues

Relationship of Access Reform and Universal Service Reform

The FCC concludes that "because of the role that access charges have played in funding and maintaining universal service, it is critical to implement changes in the access charge system together with complementary changes in the universal service system." NPRM at ¶ 244. In particular, the FCC expressed concern over the potential for "double recovery" where a new source of revenue (federal Universal Service Mechanism under Section 254) is realized by ILECs who are also collecting access charges designed, in part, to serve the same purpose of supporting service to high-cost customers. *Id.* The PUCO believes that this issue may be more conceptual than real, but that the contemporaneous pursuit of Access Charge reform and Universal Service reform should adequately address any potential for double recovery.

Also relative to the relationship between Access reform and Universal Service reform, the FCC suggests that price cap ILECs would be required to make a downward exogenous cost adjustment to reflect revenues received from any new universal service support mechanism. NPRM at ¶ 245. It

seems unlikely that price cap ILECs will generally be net beneficiaries under the proposed federal Universal Service mechanism, but certain clarifications to the FCC's tentative conclusion should be made.

To the extent that the federal USF program is funded by both interstate and intrastate revenues (*arguendo*), it should be clarified that any downward adjustment to the ILEC's interstate price caps index (PCI) would be based upon only the interstate revenues received as USF assistance. In its Comments to the FCC in Docket No 96-45, the PUCO challenged the FCC's authority to fund the federal USF program with intrastate revenues. If, however, the FCC uses intrastate revenues to assess contributions for USF (and, consequently, uses intrastate revenues to distribute assistance to the recipients of USF), the intrastate portion of revenues received by an ILEC who is a net beneficiary under the federal USF program should be available for a downward adjustment to intrastate costs or intrastate exogenous price cap calculations. Consistent with its comments to the FCC responding to the Joint Board's Recommended decisions on Universal Service, any cost recovery of Universal Service contributions based on intrastate revenues should be determined by the local state jurisdictions. PUCO Comments (96-45) at 17,18 (December 19, 1996).

NPRM Section VIII - Other Issues

Regulation of Terminating Access

The FCC notes that, concerning originating access, a LEC's ability in a competitive market place to charge excessive originating access rates is limited, as IXCs will shift their traffic from that carrier to a competing carrier. NPRM at ¶ 271. For terminating access, however, the FCC observes that the choice of service provider is made by the called party. Consequently, the long

distance provider has little or no ability to influence the called party's local service provider. Therefore, the FCC believes that it appears that there may remain a bottleneck, which is controlled by the LEC that is terminating a particular call, even in a competitive market place. NPRM at ¶ 271. The FCC, therefore, seeks comment on its analysis of this issue, and requests comment on the continued need for regulatory oversight of access prices for termination of interstate calls by price cap LECs. NPRM at ¶ 273.

The PUCO agrees with the FCC's observation that there is a continued need for the regulation of terminating access prices regardless of the level of competition for access services, since long distance carriers have little or no control on whose network their calls will terminate. To address potential pricing abuses for terminating access, the PUCO maintains that the FCC should adopt a policy that requires all carriers, including new entrants, to cap terminating access rates at levels that are set equal to or below their originating access rate. If the carrier is permitted to deaverage its access rates, then it must be required to cap its terminating access rate at levels equal to or below its originating access rate for calls terminating in that same rate zone. Likewise, local carriers providing originating access pursuant to individual contracts (or contract tariffs) must be required to set rates for terminating access that are equal to or less than their originating access rate provided to that end-user customer. For example, if a local carrier is providing originating access at \$.02 per minute to a certain end use customer at a specific location, that local carrier must be required to provide that same \$.02 terminating access rate (or rate less than \$.02) to any IXC that happens to complete on call to that customer at that same location.

Carriers to Which These Rules Should Apply

The FCC questions whether the access reform rules proposed in this proceeding should also apply to incumbent rate-of-return carriers and not just price cap carriers. NPRM at ¶ 65, 167,246.

With the exceptions identified below, the PUCO maintains that the rules adopted in this proceeding should apply initially to price cap ILECs only. The PUCO believes that the rules adopted in this proceeding must be viewed as somewhat provisional or experimental. The PUCO notes that its recommendation on this matter conforms with the FCC's tentative conclusion that the access reforms adopted in this proceeding should apply initially to price cap carriers only. The PUCO, therefore, recommends that the FCC open two additional proceedings to explore the impact of access reform on the unique regulatory environments that the large rate-of-return carriers and small local carriers participating in the National Exchange Carrier Association (NECA) access pool must operate.

The PUCO does believe, however, that two proposed rule revisions should be adopted for all carriers. In particular, should the FCC adopt its proposal to bulk bill IXCs as an alternative to the current method of billing the CCLC for the IXCs use of the local loop, the PUCO believes that this method of billing should apply to all local carriers. As mentioned above, the PUCO does not believe that the FCC should raise the SLC cap for non-primary residential lines and all business lines. Additionally, as mentioned previously in these comments, the PUCO maintains that charges to IXCs for their use of the local loop should be based on each IXCs interstate revenues. Finally, as mentioned above, the PUCO believes to prevent abuses associated with the provision of terminating access that all local carriers, including new

entrants, should be required to cap their rates for terminating access to end use at rates equal to or less than their originating rate.

CONCLUSION

Accordingly, the PUCO urges the FCC to incorporate the above comments into its decision in this proceeding. The PUCO wishes to thank the FCC for the opportunity to file reply comments in this proceeding.

Respectfully submitted,

Betty D. Montgomery
Attorney General



Steven T. Nourse
Assistant Attorney General
Public Utilities Section
180 East Broad Street
Columbus, OH 43215-3793
(614) 466-4396
FAX: (614) 644-8764