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DOCKETING DIVISION
PUBLIC UTILITIES COMMISSION OF OHIO

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION)
INVESTIGATION RELATIVE TO)
ESTABLISHMENT OF INTRASTATE)
ACCESS CHARGES.)

Case No. 83-464-TP-COI

TESTIMONY OF

WILLIAM W. DUNKEL

ON BEHALF OF THE STATE OF OHIO, DEPARTMENT OF
ADMINISTRATIVE SERVICES

QUALIFICATIONS

Q. Please state your name, occupation and business address.

A. My name is William W. Dunkel. I am a consultant in telephone regulations. My business address is R. R. #2, Pleasant Plains, Illinois, 62677.

Q. What type of consulting services do you provide?

A. I am an independent consulting engineer specializing in telephone rate proceedings.

Q. Have you previously testified before the Public Utilities Commission of Ohio?

A. Yes. I have previously testified before this Commission in the Ohio Bell general rate increase request Docket #79-1184-TP-AIR. I also have testified before this Commission in the General Telephone Company general rate increase request Docket #81-627-TP-AIR. In addition, I have testified before this Commission in the United Telephone Company general rate increase request Docket #81-627-TP-AIR. I also participated in the Ohio Bell general rate proceeding Docket #81-1433-TP-AIR. In the latter case, the parties reached a stipulated agreement on the issues of concern, so my prefiled testimony was withdrawn.

Q. What other regulatory proceedings have you previous participated in?

A. I have participated in over 100 telephone regulatory proceedings.

Including telephone and electric cases, I have participated in approximately 160 state utility regulatory proceedings. The list of proceedings in which I have participated is attached as Appendix A.

Q. Please briefly describe your experience in the field of telecommunications.

A. In November of 1975, I transferred from the Electric Section of the Illinois Commerce Commission to the Telephone Section of the Illinois Commerce Commission and from that time to July of 1980 I participated in essentially all telephone rate cases and other telephone rate matters that were set for hearing in the State of Illinois. During this period, I testified as an expert witness in many rate cases and tariff filings. During this period I was the Separations and Settlements expert for the Staff of the Illinois Commerce Commission.

From July, 1977 to July, 1980, I was a Staff member of the F.C.C.-State Joint Board on Separations, on the "Impact of Customer Provision of Terminal Equipment on Jurisdictional Separations," in F.C.C. Docket No. 20981 on behalf of the Illinois Commerce Commission. That Joint Board had the responsibility of recommending if and what changes in the Separations Manual were required due to the customer ownership of terminal equipment.

In January of 1976, I attended the AT&T Division of Revenues School held in Chicago, Illinois.

I attended the General Telephone Toll Revenues Management Course in September of 1976.

These schools are conducted by the respective telephone companies to educate their own personnel in Separations and Settlements.

Since July of 1980, I have been regularly employed for my expertise in telephone rate proceedings across the country.

Q. Please briefly describe your other business experiences.

A. In February of 1970, I was employed by the Sangamo Electric Company as a Design Engineer initially in Navy sonar equipment and later in the design of electric watt-hour meters. During this period, I was granted patent No. 3822400 entitled a Solid State Pulse Initiator. In April of 1974, I was employed by the Illinois Commerce Commission in the Electric Section as a Utility Engineer. I have testified before the Illinois House of Representatives Subcommittee on Communications. I have participated in numerous schools and conferences pertaining to the utility industry.

Q. What is your educational background?

A. I graduated from the University of Illinois in February of 1970 with a Bachelor's of Science Degree in Engineering Physics with emphasis on economics and other business related subjects. I have taken several post-graduate courses since my graduation.

THE RATES FOR THE FACILITIES USED TO PROVIDE TELPAK
SHOULD NOT BE INCREASED UNTIL THE REPLACEMENT IS READY

Q. What is Telpak private line service?

A. Telpak service is a group private line service for customers with a large number of private lines between two exchanges. The Telpak services range from 12 to 240 channels. Telpak service is currently grandfathered to the present customers. The State is by far the largest Ohio Telpak customer. We believe that government services are the only customer subscribing to the largest Telpak service, Telpak D. Telpak is the major private line service currently used by the State.

Q. What rate is proposed for special access services required for Telpak service?

A. For the access services required for Telpak, the rates are not specified in the propose Special Access tariff. For the facilities used to provide Telpak the rate listed is only "ICB" (Individual Case Basis). This may be seen on the proposed tariff Original Page 447. The "Group", "Supergroup", and "Mastergroup" rates are for 12 or more private lines in a service, as required for Telpak.

Q. What problem is there with the rates for the services required for Telpak not having a tariffed rate?

A. There is no rate listed in the tariff for the services required for Telpak. There is no way to tell from the

tariff if the rates determined by Ohio Bell on the Individual Case Basis (ICB) will be higher than the present rates, lower than the present rates, or the same as the present rates.

Further, there are several different methods of calculating costs. With the "cost" to be developed by Ohio Bell separately for each application, there is no tariff protection for the customer from errors of Ohio Bell in estimating the "costs".

The definition of Individual Case Basis is :

'The term "Individual Case Basis" denotes a condition in which the regulations, if applicable, rates and charges for an offering under the provisions of this tariff are developed based on the circumstances in each case.' (Section 2, Original Sheet No. 97)

This offers no protection to the customer. Almost any charge could be made to fit this definition depending on how "the circumstances in each case" were viewed by the Ohio Bell.

Q. What significance does this discretion of Ohio Bell to determine the rate special access rate for private lines in groups of 12 or more have?

A. The by far the largest telpak customer is the State. The State is currently constructing a microwave system to replace the Telpak service which A T&T and Ohio Bell wish to abandon. The State replacement for Telpak will not be finished until June of 1985. If Telpak is terminated before that date both the State and Ohio Bell will incur

the cost and effort of restructuring the State private line system when Telpak is withdrawn, and again go through the same cost and effort of restructuring the State private line system when the microwave system is finished.

We do not believe that Ohio Bell would wish to cause the State and themselves the needless cost of restructuring the large State private line system twice.

What is required of Ohio Bell is that it exercise its discretion under the ICB tariff in a manner that does not preclude the survival of Telpak through June of 1985.

Q. What do you recommend with regard to Telpak?

A. If Ohio Bell is allowed to determine the rates for the special access services used to provide Telpak on an Individual Case Basis, that discretion should not be used by Ohio Bell to raise the Telpak rates above the present levels.

The present Telpak rate has a separate rate element for the exchange facilities used for Telpak. These are the facilities which will be retained by Ohio Bell. Ohio Bell's discretion in setting these rates should be limited to charging not more than the current Service Terminal recurring and non-recurring rates for the existing Telpak customers. Ohio Bell should be instructed to consider the existing rate paid by the Telpak customers as the controlling circumstance for Telpak

customers for at least the next year and one half.

Q. Is there an alternative to the recommendation that Ohio Bell limit the increases on the special access required to provide Telpak?

A. A less desirable alternative is that Ohio Bell be required to report all access services provided under the ICB rates. This report should include separately for each service provided under the ICB tariff, the tariff item and code under which the service is provided, the number of channels or equivalent channels for each provision, the total rate charged, and the rate charged per equivalent channel. The State should be provided the information as to which of the designated services were provided for the State.

CUSTOMERS SHOULD NOT BE REQUIRED TO PAY AN INSTALLATION
CHARGE JUST TO CONTINUE EXISTING INTERLATA SERVICES

Q. Is there any other area in which the Commission should be concerned regarding special access charges?

A. Yes. The customers should not be charged an installation charge just to maintain their existing interLATA services. The interLATA private lines that are now provided by Ohio Bell after divestiture will be provided by an interLATA carrier with certain of the local facilities normally leased from Ohio Bell. For example, if a service exists from a given location in Columbus to a given location in Cleveland, the customer after divestiture will be most interested in having that service simply continue as it now exists. The customer should not be charged an installation charge to simply continue this existing service.

Specifically in the case of interLATA private line services which now exists, it is not clear what non-recurring charges will be placed upon the customers simply to maintain the existing interLATA services which they now have.

Also the termination of Telpak also may lead to the Company attempting to collect non-recurring charges from customers who simply attempt to maintain the existing services that they now have. The termination of Telpak

private line services is a Company initiated action. The costs incurred to reorganize the private line services that are now provided by Telpak should not be construed as a cost caused by the customer. This is a cost caused by the Company.

Q. What do you recommend?

A. The Commission should find that the existing customers have a right to maintain their existing private line services without paying additional non-recurring charges. The customer who desires no change in the existing service should not be charged a non-recurring charge to maintain that existing service throughout the demise of Telpak and divestiture. Any restructuring that must occur in the paper work or the routing associated with that line is not the cost that was caused by the customer. In addition in the Telpak environment, the private lines of a customer were often grouped in routings between cities in order to accommodate the Telpak tariff. With the removal of a Telpak tariff that specific routing will no longer be required and must be replaced by individual circuit routings. The customer should not be charged for the establishment of efficient individual routings which replace the Telpak routings which were discontinued by the Company.

We do not believe that there is reason to discontinue Telpak at any time. However, if Telpak is discontinued the customer should not be charged non-recurring charges

to install the replacement for Telpak.

I would propose the following wording be placed in the tariff by the Commission,

"Ohio Bell Telephone Company shall not apply a non-recurring charge to those revisions which are necessary to continue services which are presently provided under tariffs that are being discontinued by Ohio Bell Telephone Company. This specifically including the rearrangements required by the discontinuance of Telpak (Series 5000) and interLATA private line service offerings. This requirement applies only to the continuation of existing service, to existing locations, by existing customers routed in the most economical manner. The full non-recurring charges shall apply to any additional services ordered at each location."

The customer should not be charged for the costs caused by the Company abandoning Telpak.

THE REASONS FOR THE INTERSTATE \$25 "LEAKAGE" CHARGE ON
INTERSTATE PRIVATE LINES DO NOT EXIST ON A STATE LEVEL

Q. Is the proposal for a \$25.00 per termination surcharge on intrastate interLATA private line access appropriate?

A. No. Ohio Bell proposes a \$25 surcharge be placed on private line services as a copy of a Federal \$25 surcharge. This interstate charge is for the interstate use of the local loops by means of private line systems. This \$25 Federal charge as specified in CC Docket #78-72 was determined to be necessary due to the fact that the interstate use of the local loop and exchange facilities were not being measured or charged for as an interstate usage. It was pointed out that the customer does pay for the use of the local loops by means of an intrastate usage charge under measured usage. The cost of usage is also included in the intrastate flat rates. These local service revenues are under the State jurisdiction. The FCC stated:

"This charge, however, is not applied to recovery of the interstate revenue requirement where the local exchange is used to originate or terminate interstate calls." (Paragraph 82, FCC Docket #78-72, August 22, 1983)

Of course, this jurisdictional issue does occur in the State private line use of the local loops, if any. Both

the local usage and any usage that may occur due to intrastate private line usage are both under the jurisdiction of the Ohio Public Utilities Commission. Any usage of exchange facilities is paid for by the customer through measured rates or flat rates. These revenues are credited to intrastate. Even if an intrastate private line connects to these local facilities, the customer is paying for all parts of the service under intrastate rates. There is no intrastate traffic passing over facilities for which no intrastate rate is being paid. There is no reason for the \$25.00 surcharge on intrastate private lines.

Regardless of whether a intrastate service is locally originated or is interexchange, both are under the jurisdiction of the Ohio Public Utilities Commission. The jurisdictional problem that effects interstate private lines terminating in a local area does not effect intrastate services.

Q. Can the \$25.00 surcharge be approved based on a "tax" for using private line services instead of the toll network?

A. There is no reason to do so. The addition of a surcharge or "tax" on private line services is contrary to the principal of free competition in the market. Further the \$25.00 per termination "tax" is even to be applied to private line services which cannot be provided by toll services. High speed data transmission cannot

easily be placed over the toll network. The \$25.00 surcharge applies to data lines as well as voice.

Further even some of the state voice services must be provided over private line instead of using the toll network. It is especially important that the State disaster services, police and public safety functions, and highway maintenance services be able to communicate during storms, heavy snowfall, or other disasters. During these crises periods the public telephone network is often overloaded. It is important that the public agencies during these times have secure communications through the dedicated private lines.

Q. Is the \$25.00 surcharge significant to the State?

A. Yes. The charge would apply at each termination. Some data circuits have several terminations. Since the surcharge applies to each termination, the additional "tax" per circuit can be quite large. Also for a customer such as the state which has a large number of lines, the total "tax" is significant.

Q. Must the \$25.00 surcharge be imposed in order to "mirror" the FCC?

A. No. The \$25 should not be imposed just to "mirror" the FCC.

The arguments for mirroring the FCC only apply to the usage charges. The determination of the per line charges can be different for the State than it is for the FCC

with little or no administrative or other difficulties. Interstate private lines are clearly marked as interstate in the Company records. In fact, the \$25 Federal charge would not apply to the intrastate private lines. There is no comparable jurisdictional problem that occurs on the intrastate private lines.

HIGH SPECIAL ACCESS RATES PLUS THE \$25.00 SURCHARGE ARE THE OPPOSITE OF WHAT SHOULD BE DONE IF BYPASS IS A CONCERN

Q. Ohio Bell witnesses in various proceedings claimed to be very concerned about the possibility of bypass of their services by competition. Are the Special Access rates proposed by Ohio Bell in this proceeding the correct rates if the Commission is concerned about bypass?

A. No. The private line special access rates proposed by Ohio Bell in this proceeding are the exact opposite of what should be done if bypass is a concern. The proposed high private line access charge rates in addition to the \$25.00 surcharge is an invitation to interLata carriers to provide their own connections from their microwave towers to the customers' premise.

A T&T in FCC proceedings has stated that the rate level at which bypass becomes attractive is approximately \$50.00 per month. The \$25.00 surcharge in addition to the proposed access rate would put the private line access rate in Ohio to over this \$50.00 level at which bypass becomes attractive. Just the Special Access rate of \$30.80 plus the \$25.00 surcharge puts the total cost over \$50.00. There are other significant charges in addition to these. If the proposed special access charges and the \$25.00 private line surcharge are both approved, this will place the private line special access services at such a high price that Ohio Bell will be at great risk of losing these customers.

Private lines are especially susceptible to competition. In most private line services the customer wants a connection between two of his own locations. This dedicated line is much easier for another supplier to provide than a switched service. To compete with exchange service would require that the competitor have some connection to every telephone in the exchange. This is much more complex than providing private line service between two locations both controlled by the same customer.

On the interstate level, the competitors began by providing private line service. They then expanded from private line to compete in the toll services. MCI was established as a private line competitor. Southern Pacific (SPRINT) began as a private line service. At the interexchange level, the dropping of Telpak will cause the State to put in its own private line network.

If the high special access rates and the \$25.00 private line surcharge are both approved, the total private line access rate will be so high as to invite bypass by the interexchange carriers such as A T&T.

INTERIM RECOMMENDATION

Q. Is there a problem with the interim proposal of Ohio Bell to charge the private line rates as approved in the general rate case as access charges until such time as the FCC has reviewed the access charges?

A. The proposed private line non-recurring rates in Case No. 83-300-TP-AIR are excessive. The proposed non-recurring rates in that case are generally several times higher than the non-recurring special access rates proposed in this case. For example the proposed non-recurring rate for an interexchange voice grade private line special access in this case is \$234.14.

For comparison, the private line non-recurring rate proposed in the general rate case 83-300 is \$758.00. The proposed non-recurring private line rates in the case 83-300 are 3 times higher than the comparable non-recurring special access rate proposed in this case.

We assume that the Commission in the 83-300 case will recognize these non-recurring private line rates as excessive, but regardless, it is not acceptable to charge non-recurring access rates on a interim basis that are three times higher than the final rate sought in this access proceeding.

Q. Do you have any further recommendation?

A. The access services for Telpak should be continued at the present rates.

UTILITY REGULATORY PROCEEDING PARTICIPATED IN BY WILLIAM DUNKEL

Docket Nos. TR79-213	Missouri Public Service Commission Under contract to Missouri Public Service Commission
TR-80-256	Missouri Public Service Commission Under contract to Missouri Public Service Commission
79-1184-TP-AIR	Office of the Consumers' Counsel Under contract to Ohio's Office of the Consumers' Counsel
802-135	Division of Rate Counsel Under contract to New Jersey Division of Rate Counsel
P-421/M-80-306	Telecommunications Division - Department of Administration Under contract to Minnesota Telecommunications Division - Department of Administration
3231-U	Consumers' Utility Counsel Under contract to Georgia's Consumers' Utility Counsel
80-0546	Department of Transportation, State of Illinois and Certain School Districts in the Commonwealth Edison Co. Under contract to Illinois Department of Transportation and Association School Districts
81-0478	Under contract to the State of Illinois, Department of Administrative Services for this Illinois Bell Telephone general rate request
BPU No. 815-458, OAL No. 3073-81	State of New Jersey, Division of Rate Counsel, Department of the Public Advocate in a New Jersey Bell Telephone general rate request
P-421/GR-80-911, O.A.H. No. PUC-81-080-MG	State of Minnesota, Department of Administration, Northwestern Bell Telephone Company general rate request
PSC No. 3286-U	Consumers' Utility Counsel, State of Georgia, Southern Bell Telephone & Telegraph Company general rate increase request
F-3375	State of South Dakota, Telecommunications Section, Office of Central Service, Bureau of Administration, for a Northwestern Bell Telephone Company general rate request
(81-383-TP-AIR)	State of Ohio, Office of the Consumers' Counsel in a General Telephone of Ohio general rate increase request
(81-627-TP-AIR)	State of Ohio, Office of the Consumers' Counsel in a United Telephone Company general rate request
6720-TR-21	State of Wisconsin, Wisconsin Telephone (Bell) Company, private line
TR-82-199	Missouri Public Service Commission Under contract to the Missouri Public Service Commission

Case No. 81-1433-TP-AIR

For the State of Ohio, Department of Administrative Services, with attention to private lines in an Ohio Bell Telephone Company general rate request.

Docket No. 82-32

For the Staff of the Delaware Public Service Commission in a Diamond State Telephone Company general rate request.

Docket No. 82-0026

For the City of Chicago and also for Certain School Boards in the Edison Service Territory in a general rate filing of Commonwealth Edison Company

Docket No. 1575

For the Colorado Municipal League and Ski Association in Mountain Bell General Rate proceeding. Participation primarily pertains to private line.

Docket Nos. 55524 Supp. (IBTV Gen. Tel.)
(EAS Settlement)

56754
58682
55558
58909
58953 CIPS Sec.55
58985
58999 CIPS Sec.55
59000 CIPS Sec.55
59008 Com Ed Sec. 50
59015
59059
59064 Com Ed. Sec. 55
59078 South Beloit 6, W. + E Rate Increase, General
59082 North Ill. Gas - Complaint
59084
59134
59193
59194
59195
59281 Ill. Power Sec. 55
59308
59314 Com. Ed. Sec. 50
59359
59375
59384
59385
59386
59387
59388
59389
59435 Ill. Power Interconnection
59469
59497 CIPS & Ill. Power Exchange of Facilities
59515
59566
59587 GILCO Sec. 55
59667
59704 Com. Ed. Sec. 55
59784 CIPS General Rate Increase
ESA-165
ESA-167
ESA-169
ESA-170
ESA-173
59700 IBT Complaint
59677 CIPS Sec. 55

Docket Nos.	60019	Illinois Consolidated	\$1.4 million requested
	60128		
	60135		
	60163		
	60248		
	60249		
	60251		
	60263		
	76-0022		
	76-0066	General Telephone	\$11.3 million desired
	76-0075		
	76-0079		
	76-0083		
	76-0087		
	76-0127		
	76-0152		
	76-0171		
	76-0184		
	76-0200	Illinois Bell Private Line	\$15.5 million(21,000,000)
	76-0214		
	76-0215		
	76-0226		
	76-0230		
	76-0340		
	76-0344		
	76-0360	Continental Telephone	\$1.6 million sought
	76-0386		
	76-0409	Illinois Bell	\$110 million requested
	76-0716		
	77-0032	MAB	
	77-0033	Dimension	2,000
	77-0054		
	77-0120		
	77-0153	NW McConnell	
	77-0181		
	77-0226		
	77-0403		
	77-0405		
	77-0482		
	77-0479	MSA	
	77-0511	DID	
	77-0516		
	77-0519	Northwestern Telephone Co. & McConnell	
	77-0552		
	77-0558		
	77-0567		
	77-0584		
	77-0596		
	77-0612	General CATV	
	77-0732	IBT MAB (Met Area Business)	
	77-0742	IBT Call Transfer - PBX	
	77-0745	Eastern Affiliate	

Docket Nos.	77-0755	IBT	Call Lamp indicator
	77-0756	IBT	Com Key 1434
	77-0757	IBT	Card dialers
	78-0005	IBT	Concentration Identifier
	78-0028	IBT	Voice of the People
	78-0034	IBT	General rate increase
	78-0086	IBT	Dimension
	78-0243	IBT	Customer controlled Centrex
	78-0331	IBT	TAS
	78-0473	ILL.	Consolidated lease
	78-0531	EAS	inquiry
	78-0576	IBT vs GTE	Dispute in docket 56160
	78-0595	Central Telephone-Staunton	merger
	79-0041	WUI vs Continental Telephone	stock acquisitions
	79-0132	IBT	Carle Clinic
	79-0141	GTE	Usage sensitive rates
	79-0142	Northwestern	local & EAS rates
	79-0143	IBT	Private Line rates
	79-0234	IBT & Metamore	Toll Data
	79-0237	IBT	Dataphone
	79-0310	GTE	Data Service
	79-0365	IBT	Com Key 718
	79-0380	IBT	Complaint - telephone switchboard
	79-0381	IBT	Porta printer
	79-0438	IBT	rates (zero case)
	79-0499	GTE	certificate
	79-0500	GTE	certificate
	79-0501	IBT	certificate
	79-0519	Northwestern Telephone	EAS
	79-0614	Pick a point	
	80-0010	Bell	rate case
	80-0033	Phillip Buchen & Mary Jane Buchen vs General Telephone Co. & Intra State Telephone Co.	
	80-0100	Aunt Martha's Youth Service Center vs Illinois Bell Telephone Co.	
	80-0220	Home Telephone Co.	
	80-0389	General Telephone Co. of Illinois	

ACCESS SERVICE TARIFF

7. Special Access Service (Cont'd)

7.5 Rates and Charges (Cont'd)

7.5.4 Special Access Lines

	<u>USOC</u>	<u>Monthly Rates</u>	<u>Daily Rates</u>	<u>NonRecurring Charges</u>	
				<u>First</u>	<u>Additional</u>
2-Wire* (for use with NB1-5, VG1-13 and AP1-4)	EUC2X	\$ 30.80	\$ 3.08**	-	-
2-Wire* (For use with Dedicated Access Line Service)	X2W	30.80		\$ 91.85	\$103.54
4-Wire* (for use with NB4-5, VG1-13 and DA1-4)	EUC4X	42.53		-	-
4-Wire* (for use with Dedicated Access Line Service)	X4W	42.53		91.87	103.54
TV* (for use with TV1-2)	EUCTV	948.23	5803.16	-	-
Group* (for use with WA1)	EUJ++	(See Note)			
Supergroup* (for use with WA2)	EUK++	(See Note)			
Mastergroup* (for use with WA2A)	EUL++	(See Note)			
20 kHz* (for use with WA3)	EUN++	(See Note)			

* See 7.4.2 preceding for application of Special Access Service Surcharge.

** Daily rates are applicable only when used with AP1-4

Note: ICB rates apply.

Issued: September 30, 1983

Effective: January 1, 1984

President
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the testimony of William W. Dunkle was served upon all counsel and parties of record as per the attached Service List on the 10th day of November, 1983.



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P.U.C.O. No. 1
ACCESS SERVICE TARIFF

2. General Regulations (Cont'd)

2.6 Definitions (Cont'd)

Grandfathered

The term "Grandfathered" denotes Terminal Equipment, Multiline Terminating Systems and Protective Circuitry directly connected to the facilities utilized to provide services under the provisions of this tariff, and which are considered grandfathered under Part 68 of the F.C.C.'s Rules and Regulations.

Host Office

The term "Host Office" denotes an electronic switching system which provides call processing capabilities for one or more Remote Switching Modules or Remote Switching Systems.

IC Terminal Location

The term "IC Terminal Location" denotes the point at which Access Service Connects to the IC's intrastate telecommunications service.

Impulse Noise

The term "Impulse Noise" denotes any momentary occurrence of the noise on a channel over a specified level threshold. It is evaluated by counting the number of occurrences which exceed the threshold.

Individual Case Basis (ICB)

The term "Individual Case Basis" denotes a condition in which the regulations, if applicable, rates and charges for an offering under the provisions of this tariff are developed based on the circumstances in each case.
