Synopsis of Memorandum Opinion and Order

1. The National Exchange Carrier Association, Inc. (NECA) asserts in its reconsideration petition that the Commission should revise on reconsideration the rule provisions governing calculation of NECA carrier common line (CCL) rates, without waiting for the conclusion of a separate proceeding on access charge reform for rate-of-return LECs. In the alternative, NECA requests that the Commission issue an order waiving § 69.105(b)(2)–(3) for NECA's pool, so as to allow NECA to reflect revised long term support (LTS) formula amounts in its CCL tariff rates effective January 1, 1998. No party opposed or supported NECA's petition for reconsideration or waiver of the rule. We have decided to waive the specified rule provisions at this time, and make appropriate rule revisions in the separate proceeding.

2. Section 69.105(b) currently sets the NECA CCL tariff at the average of price-cap LECs' CCL charges. Prior to January 1, 1998, LTS is a variable amount, based on the difference between the revenues earned from charging a nationwide average CCL rate and the NECA pool CCL revenue requirement. In the *Universal Service Order,* we substituted federal universal service support payments for previously-received recovery from the interstate access charge system through LTS. Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96–45, 62 FR 32862 (June 17, 1997) (*Universal Service Order*). The rule revisions in the *First Report and Order* removed LTS amounts from price cap LEC CCL calculations, but postponed making conforming revisions in § 69.105(b) to the CCL rate calculation for NECA tariff participants. Access Charge Reform, CC Docket No. 96–262, First Report and Order, 62 FR 31040 (June 6, 1997).

3. Section 1.3 of our rules empowers the Commission to grant waivers of its rules if good cause is shown. In this situation, NECA must demonstrate that special circumstances justify a departure from the general rule and that such a deviation will serve the public interest. *Northeast Cellular Telephone Co.* v. *FCC,* 897 F.2d 1164 (D.C. Cir. 1990); *WAIT Radio* v. *FCC,* 418 F.2d 1153 (D.C. Cir. 1969). We conclude that NECA has demonstrated that continued application of § 69.105(b)(2)–(3) would be contrary to the public interest in these circumstances. As we stated in the *Universal Service Order,* the ''elimination of price-cap (incumbent LECs') LTS obligations will allow their CCL charges to fall, but there is no corresponding reason for a reduction in the NECA CCL tariff. Yet under our current rules, the NECA CCL charge would fall simply because of our regulatory changes to price-cap (incumbent LECs') LTS payment obligations. We must therefore establish a new method to set the NECA CCL tariff.''

4. Because changes in the recovery of LTS amounts and price-cap carrier CCL rate computations as adopted in the *First Report and Order* and *Universal Service Order* are scheduled to become effective on January 1, 1998, grant of the waiver will allow NECA to conform its rates to decisions reached in the *Universal Service Order* by reflecting revised LTS formula amounts in its CCL tariff rates effective January 1, 1998. We therefore waive § 69.105(b)(2)–(3) for the calculation of NECA's CCL pool rate that will become effective January 1, 1998, on the condition that NECA must compute the Carrier Common Line charge as follows:

(a) From the NECA pool aggregate Carrier Common Line revenue requirement amount, subtract: (1) Aggregate End User Common Line charges; (2) aggregate Special Access Surcharges; and (3) the portion of per-line support that NECA CCL pool participants receive, in the aggregate, pursuant to 47 CFR 54.303.

(b) The premium originating Carrier Common Line charge must be one cent per minute, except as described herein at paragraph (d), and

(c) The premium terminating Carrier Common Line charge must be computed by subtracting the projected revenues generated by the originating Carrier Common Line charges (both premium and non-premium) from the number calculated in paragraph (a), and dividing the remainder by the sum of the projected premium terminating minutes and a number equal to 0.45 multiplied by the projected non-premium terminating minutes, except as described herein at paragraph (d).

(d) If the calculations described in paragraph (c) result in a per minute charge on premium terminating minutes that is less than one cent, both the originating and terminating premium charges for the NECA CCL pool participants must be computed by dividing the number calculated pursuant to paragraph (a) by the sum of the premium minutes and a number equal to 0.45 multiplied by the non-premium minutes for the NECA CCL pool participants.

This NECA CCL charge calculation will reflect that now the CCL charge, rather than LTS, is a residual amount.

Accordingly, *it is ordered,* pursuant to 47 U.S.C. 154(i) and 47 CFR 1.3, that NECA's request for waiver of § 69.105(b)(2)–(3) of the Commissions rules, 47 CFR part 69.105(b)(2)–(3) is granted subject to the limitations and conditions described in this document.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–28544 Filed 10–28–97; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket Nos. 96–262, 94–1, 91–213; FCC 97–368]

Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: On December 23, 1996, the Commission adopted a Notice of Proposed Rulemaking in this docket, 62 FR 4670 (Jan. 31, 1997), seeking comment on how the interstate access charge regime should be revised in light of the local competition and Bell Operating Company entry provisions of the Telecommunications Act of 1996 and state actions to open local markets to competition, the effects of potential and actual competition on incumbent LEC pricing for interstate access, and the impact of the Act's mandate to preserve and enhance universal service. On May 7, 1997, the Commission adopted a First Report and Order, 62 FR 31040 (June 6, 1997), in which it adopted many of the rules it proposed. In this Second Order on Reconsideration, the Commission modifies some of the rules adopted in the First Report and Order. These rule revisions are intended to foster competition, move access charges over time to more economically efficient levels and rate structures, preserve universal service, and lower rates.

EFFECTIVE DATES: The following rules or amendments thereto, shall become effective January 1, 1998: 47 CFR 69.153(g), 69.4, 69.111(c)(1), 69.153(c)(1), 69.153(d)(1)(i), 69.153(d)(2)(i), and 69.155(c). The Commission has requested emergency approval of the information collection requirements to ensure that it may be effective on January 1, 1998. Written comments by the public on the new and/or modified information collections are due November 13, 1997. Written comments must be submitted to the Office of Management and Budget (OMB) on the new and/or modified information collections on or before October xx, 1997.

FOR FURTHER INFORMATION CONTACT: Richard Lerner, Attorney, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1530. For additional information concerning the information collections contained in this Report and Order contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order adopted October 8, 1997, and released October 9, 1997. The full text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., N.W., Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common__Carrier/Orders/1997/fcc97368.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036. The rules adopted in this Second Order on Reconsideration are made in response to petitions for reconsideration to Access Charge Reform, CC Docket No. 96–262, Report and Order, 62 FR 31040 (June 6, 1997) (*First Report and Order),* and to correct clerical errors of the *First Report and Order.* This Second Order on Reconsideration contains new and/or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new and/or modified information collections contained in this proceeding. Please note that the Commission has requested emergency review and approval of this collection by November 13, 1997 under the provisions of 5 CFR 1320.13.

Final Regulatory Flexibility Analysis

In the *First Report and Order,* we conducted a Final Regulatory Flexibility Analysis as required by Section 603 of the Regulatory Flexibility Act, as amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104–121, 110 Stat. 847 (1996). The changes we adopt in this Order do not affect that analysis.

Paperwork Reduction Act

This Order contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Please note that the Commission has requested emergency review and approval of this collection by November 13, 1997 under the provisions of 5 CFR 1320.13. OMB notification of action is due November 13, 1997. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0760.

Title: Access Charge Reform Second Order on Reconsideration

Type of Review: Revised Collection

Respondents: Business and other for profit.

Number of Respondents: 14.

Estimated Time Per Response: 128,907 hours.

Total Annual Burden: 1,804,690 hours.

Estimated Costs Per Respondent: $4,504,388.

Total Annual Estimated Costs: $63,061,430.

Needs and Uses: 1. In the First Report and Order (Order), CC Docket No. 96–262, Access Charge Reform and the Second Order on Reconsideration, the FCC adopts, that, consistent with principles of cost-causation and economic efficiency, non-traffic sensitive (NTS) costs associated with local switching should be recovered on an NTS basis, through flat-rated, per month charges. The information collections are as follows:

a. *Showings Under the Market-Based Approach:* As competition develops in the market, the FCC will gradually relax and ultimately remove existing Part 69 federal access rate structure requirements and Part 61 price caps restrictions on rate level changes. Regulatory reform will take place in two phases. The first phase of regulatory reform will take place when an incumbent Local Exchange Carrier's (LEC) network has been opened to competition for interstate access services. The second phase of rate structure reforms will take place when an actual competitive presence has developed in the marketplace. Detariffing will take place when substantial competition has developed for the access charge elements. In our initial statement, we proposed that in order for LECs to meet this standard, they have to demonstrate that: (1) Unbundled network element prices are based on geographically deaveraged, forward-looking economic costs in a manner that reflects the way costs are incurred; (2) transport and termination charges are based on the additional cost of transporting and terminating another carrier's traffic; (3) wholesale prices for retail services are based on reasonably avoidable costs; (4) network elements and services are capable of being provisioned rapidly and consistent with a significant level of demand; (5) dialing parity is provided by the incumbent LEC to competitors; (6) number portability is provided by the incumbent LEC to competitors; (7) access to incumbent LEC rights-of-way is provided to competitors; and (8) open and non-discriminatory network standards and protocols are put into effect. We propose that the second phase of rate structure reforms would take place when an actual competitive presence has developed in the marketplace. LECs would have to show the following to indicate that actual competition has developed in the marketplace by: (1) Demonstrated presence of competition; (2) full implementation of competitively neutral universal service support mechanisms; and (3) credible and timely enforcement of pro-competitive rules. In the NPRM, we sought comment on four options for a prescriptive approach: reinitializing price cap indices (PCIs) to economic cost-based levels; reinitializing PCIs to levels targeted to yield no more than an 11.25 percent rate of return, or some other rate of return; adding a policy-based mechanism similar to the CPD to the X-Factor; or prescribing economic cost-based rates. We have decided above to rely primarily on a market-based approach, and impose prescriptive requirements only when market forces are inadequate to ensure just and reasonable rates for particular services or areas. We will determine the details of our market-based approach in a future Order. In that Order, we will also discuss in more detail what prescriptive requirements we will use as a backstop to our market-based access charge reform. Because we are not adopting the prescriptive approach at this time, we are removing the collections associated with the prescriptive approach from our statement. If the collections are adopted at a later date, we will request that OMB reinstates them at that time. No change.

b. *Cost Study of Local Switching Costs:* The FCC does not establish a fixed percentage of local switching costs that incumbent LECs must reassign to the Common Line basket or newly created Trunk Cards and Ports service category as NTS costs. In light of the widely varying estimates in the record, we conclude that the portion of costs that is NTS costs likely varies among LEC switches. Accordingly, we require each price cap LEC to conduct a cost study to determine the geographically-averaged portion of local switching costs that is attributable to the line-side ports, as defined above, and to dedicated trunk side cards and ports. These amounts, including cost support, should be reflected in the access charge elements filed in the LEC's access tariff effective January 1, 1998. No Change.

c. *Cost Study of Interstate Access Service That Remain Subject to Price Cap Regulation:* The 1996 Act has created an unprecedented opportunity for competition to develop in local telephone markets. We recognize, however, that competition is unlikely to develop at the same rate in different locations, and that some services will be subject to increasing competition more rapidly than others. We also recognize, however, that there will be areas and services for which competition may not develop. We will adopt a prescriptive ''backstop'' to our market-based approach that will serve to ensure that all interstate access customers receive the benefits of more efficient prices, even in those places and for those services where competition does not develop quickly. To implement our backstop to market-based access charge reform, we require each incumbent price cap LEC to file a cost study no later than February 8, 2001, demonstrating the cost of providing those interstate access services that remain subject to price cap regulation because they do not face substantial competition. No Change.

The Order also adopts the following collection of information:

d. *Tariff Filings:* In the *First Report and Order,* the Commission requires the filing of various tariffs, with modifications. For example, the FCC directs incumbent LECs to establish separate rate elements for the multiplexing equipment on each side of the tandem switch. LECs must establish a flat-rated charge for the multiplexers on the SWC side of the tandem, imposed pro-rata on the purchasers of the dedicated trunks on the SWC side of the tandem. Multiplexing equipment on the EO side of the tandem shall be charged to users of common EO-to-tandem transport on a per-minute of use basis. These multiplexer rate elements must be included in the LEC access tariff filings to be effective January 1, 1998. In the *Second Order on Reconsideration,* the FCC clarifies that the TIC exemption for access customers using competitive transport providers only applies to that portion of the residual per-minute TIC that is related to transport facilities, and directs incumbent local exchange carriers to include, in their access tariff filing, the amount of per-minute transport interconnection charge (TIC) they anticipate will be allocated to facilities-based rate elements in the future.

e. *Third-Party Disclosure*: In the *Second Order on Reconsideration*, the Commission requires LECs to provide IXCs with customer-specific information about how many and what type of presubscribed interexchange carrier charges (PICCs) they are assessing for each of the IXC's presubscribed customers. One of the primary goals of our *First Report and Order* was to develop a cost-recovery mechanism that permits carriers to recover their costs in a manner that reflects the way in which those costs are incurred. Without access to information that indicates whether the LEC is assessing a primary or non-primary residential PICC, or about how many local business lines are presubscribed to a particular IXC, the IXC will be unable to develop rates that accurately reflect the underlying costs.

SYNOPSIS OF REPORT AND ORDER

I. Presubscribed Interexchange Carrier Charge

A. Implementation Issues

1. Background

1. In the *First Report and Order,* we adopted common line rate structure modifications that will permit price cap LECs to shift gradually from a cost-recovery mechanism that recovers a significant portion of non-traffic sensitive common line costs through per-minute CCL charges to one that recovers these costs through flat-rated charges. The cost-recovery mechanism we adopted retains the current $3.50 ceiling on the SLC for primary residential and single-line business lines and increases the SLC ceilings on other lines to permit LECs to recover a greater amount of the common line costs through flat-rated charges assessed on the end user. To the extent that SLC ceilings prevent price cap LECs from recovering their allowed common line revenues from end users, LECs will recover the shortfall, subject to a maximum charge, through a presubscribed interexchange carrier charge (PICC), a flat, per-line charge assessed on the end-user's presubscribed interexchange carrier.

2. The PICC, which over time will shift revenue recovery from the per-minute CCL charges to a flat-rated charge assessed on IXCs, was designed to allow price cap LECs to recover the difference between revenues collected through the SLCs and the total revenue permitted for the common line basket. In order to provide price cap LECs and IXCs with adequate time to adjust to the new rate structure, we adopted an approach that will gradually phase in the PICC over time. Specifically, effective January 1, 1998, we capped PICCs for primary residential and single-line business lines at $0.53 per month for the first year. Beginning January 1, 1999, the ceiling on the monthly PICC on primary residential and single-line business lines will be adjusted for inflation and will increase by $0.50 per year until it equals the monthly per-line common line revenues and residual interconnection charge revenues permitted under our price cap rules, less the maximum SLC charge allowed under our rules.

3. In addition, to the extent that the SLC ceilings on all lines and the PICC ceilings on primary residential and single-line business lines prevent recovery of the full common line revenues permitted by our price cap rules, the new rate structure we adopted for price cap LECs permits these carriers to recover the shortfall through PICCs assessed on non-primary residential and multi-line business lines. For the first year, the ceiling on the PICC will be $1.50 per month for non-primary residential lines and $2.75 per month for multi-line business lines.

4. Beginning January 1, 1999, the PICC ceilings for price cap non-primary residential and multi-line business lines will be adjusted for inflation and will increase by a maximum of $1.00 and $1.50 per year, respectively, until incumbent LECs can recover all of their permitted common line revenues through a combination of flat-rated SLCs and PICCs. As the PICC ceilings on primary residential and single-line business lines increase, the residual per-minute CCL charge will decrease until it is eliminated. After the residual per-minute CCL charge is eliminated and

the PICC ceilings for primary residential and single-line business lines increase, price cap LECs will reduce their PICCs on non-primary residential and multi-line business lines by a corresponding amount. Reductions will be targeted first to the PICCs on multi-line business lines until the PICCs for those lines are equal to the PICCs for non-primary residential lines. Thereafter, price cap LECs will apply the annual reductions to both classes of customers equally until the combined SLCs and PICCs for primary residential and single-line business lines recover the full average per-line common line revenues permitted under our price cap rules, and the additional PICCs on non-primary residential and multi-line business lines no longer recover common line revenues.

2. Sprint's Petition for Reconsideration

5. On July 11, 1997 Sprint filed a Petition for Expedited Reconsideration and Clarification in which it requests that the Commission reconsider certain implementation issues related to the PICCs adopted in the *First Report and Order.* Sprint argues that these issues need to be resolved prior to January 1, 1998, the effective date of the PICCs. Specifically, Sprint requests that the Commission require LECs to provide IXCs with customer-specific billing information that specifies the number and type(s) of PICCs LECs will be assessing for each of the IXCs' presubscribed customers. Sprint asserts that because LECs will be assessing IXCs different PICCs for primary and non-primary residential lines, IXCs may choose to develop different residential rates for these lines. Sprint argues that IXCs will therefore need the customer-specific PICC information in order to develop separate toll rates for calls originated on these lines.

6. In addition, Sprint contends that in a typical multi-line business configuration IXCs are unable to determine how many multi-line business lines are presubscribed to them. According to Sprint, unless the LECs provide customer-specific PICC information, IXCs are unable to know how many of these local lines exist or how many PICCs are being assessed for these lines. Sprint argues that IXCs need access to customer-by-customer PICC data so that they have the ability to pass through the PICCs directly to their customers if they so choose.

7. In its petition, Sprint seeks guidance from the Commission on how LECs should assess PICCs where a LATA encompasses territory in more than one state, and a customer has one IXC handling intraLATA interstate calls and another IXC handling interLATA interstate calls. Sprint suggests that the PICC should be assessed on the interLATA interstate carrier.

3. Discussion

8. We grant Sprint's request that LECs be required to provide IXCs with customer-specific information about the number and type(s) of PICCs they are assessing for each of the IXC's presubscribed customers. We agree with Sprint that this measure is necessary to provide IXCs the opportunity to develop a rate structure that recovers these costs in a cost-causative manner. One of the primary goals of our *First Report and Order* was to develop a cost-recovery mechanism that permits carriers to recover their costs in a manner that reflects the way in which those costs are incurred. If an IXC were to receive a bill for the aggregate amount of the PICCs assessed on its presubscribed lines and did not have access to information that indicates for which lines the LEC is assessing a primary or non-primary residential PICC, the IXC would be unable to develop residential rates that accurately reflect the underlying costs of providing service over those lines. Similarly, in a multi-line business configuration, without information about the number of local business lines that are presubscribed to a particular IXC and the amount of PICCs being charged for which lines, the IXC will not be able to recover the costs of serving its customers in an efficient manner. We therefore conclude that LECs must provide IXCs with information about how many and what type of PICCs they are charging IXCs for each customer.

9. We conclude that there is insufficient evidence in the record to support arguments that providing customer-specific PICC data to IXCs will be overly burdensome and that discrepancies can be resolved through normal billing reconciliation processes. In order to bill IXCs the proper amount, LECs will presumably have to create a database for purposes of determining how many lines are presubscribed to each IXC and what type of PICC is being assessed for each of those lines. We conclude that LECs must provide this information to the IXCs to enable them to develop rate structures that will recover these costs efficiently.

10. We also grant Sprint's request to clarify how LECs assess PICCs in situations where a customer for a particular line has one presubscribed carrier for interstate intraLATA calls and another for interstate interLATA calls. Dividing the PICC between two IXCs based on actual calling patterns would create an unnecessary administrative burden that would outweigh any minimal benefit. Moreover, LATA boundaries that cross state lines are the exception rather than the rule, and interstate calls within a LATA thus represent only a small portion of interstate traffic. We therefore conclude that in such cases, the PICC shall be assessed on the interstate interLATA carrier.

B. PICC Calculation

1. Background

11. In its petition for reconsideration, Sprint argues that the Commission's formula for calculating PICCs will not allow sufficient recovery of loop costs, because the formula relies on base period revenues divided by the projected number of loops in use for such annual period. Sprint contends that such a formula would force PICCs downward because revenues determined on a base period would not adequately reflect revenue growth commensurate with projected growth in loops. In turn, Sprint argues, under-recovery of loop costs through flat-rated PICCs will necessitate greater reliance on usage charges to recover non-traffic-sensitive costs, undermining the Commission's efforts to align access charges with the manner in which costs are incurred.

2. Discussion

12. We clarify in this Order that the rule describing the formula for calculating PICCs relies on projected revenues and projected loop counts. The use of projected revenues and projected loop counts is applicable to PICC calculations conducted under sections 69.153(c) and 69.153(d) of our rules. We note that the rule setting forth the method of calculating SLCs expressly incorporates projected revenues and projected loop numbers. Although the PICC rule does not expressly state that projected revenues are to be used in the formula, the rule has been designed to use projected revenues rather than revenues derived from a base period. Accordingly, there is no ''mismatch'' caused by dividing projected loops by base period revenues. We will, however, amend our rules to state explicitly that the projected revenues must be used to conduct the PICC calculation.

13. In our *First Report and Order,* we adopted section 69.153(c)(1) in which we directed incumbent LECs to calculate the maximum monthly PICC for primary residential subscriber lines and single-line business lines by using ''one twelfth of the sum of annual common line revenues and residual

interconnection charge revenues permitted under our price cap rules divided by the projected average number of local exchange service subscriber lines in use during such annual period, minus $3.50.'' On further consideration of section 69.153(c)(1), we recognize that, as written, this rule may not permit an incumbent LEC to recover its residual interconnection charge revenues from primary residential and single-line business lines when its maximum primary residential and single-line business SLC is less than $3.50. On our own motion, therefore, we take this opportunity to reconsider this issue and revise section 69.153(c)(1). We replace the phrase ''minus $3.50'' with the phrase ''minus the maximum subscriber line charge computed pursuant to section 69.152(d)(2).''

In the *First Report and Order,* we also adopted section 69.153(d)(2)(i), which instructs incumbent LECs how to calculate the maximum monthly PICC for multi-line business lines when the maximum charge for the non-primary residential PICC is at its cap. The rule was intended to provide that the calculation be performed by taking ''[o]ne twelfth of the annual common line, residual interconnection charge, and § 69.156(a) marketing expense revenues permitted,'' less the maximum amounts permitted to be recovered through the SLC, the other PICCs, and other marketing expense recovery mechanisms. In crafting the language of the rule, however, we identified the maximum amount permitted to be recovered from the non-primary residential PICC as section 69.153(d)(1)(i) instead of section 69.153(d)(1). We correct this error to take into account the fact that the cap on the non-primary residential PICC limits the amount that charge can recover.

C. Application of PICCs to Centrex Lines

1. Background

15. The *First Report and Order* requires that the PICC recover common line revenues not recovered from the SLC and other common line charges, and that the PICC be applied on the same basis as the SLC. Centrex arrangements are charged more SLCs than are similarly-sized PBX arrangements. Consequently, the *First Report and Order* requires that Centrex arrangements be assessed a greater number of PICCs than are similarly-sized PBX arrangements.

22. Petitions

16. USTA, ICA, and the County of Los Angeles (Los Angeles) assert that the number of PICCs that are assessed on Centrex arrangements should equal the number of PICCs assessed on similarly-sized PBX arrangements. They contend that the revenues recovered from Centrex arrangements by the PICC are unrelated to the costs of providing Centrex service. They argue that Centrex customers currently pay one SLC per line, which recovers the full interstate portion of common line costs used to provide Centrex service. They further contend that the disproportionate level of PICC Centrex charges unfairly subjects Centrex systems to anticompetitive and arbitrary charges, which is contrary to the clear intent of Congress that subsidies be explicit and cost-based.

17. ICA observes that the Commission's rules appear to apply to lines that are toll restricted, thereby penalizing customers that attempt to control costs and reduce the possibility of toll fraud. According to ICA, many Centrex customers require that a portion of their Centrex lines be toll restricted. ICA argues that toll-restricted Centrex lines should not be subject to any PICCs.

18. Petitioners propose that LECs be permitted to reflect trunk equivalency. They propose that the PICC on Centrex lines be assessed using a line-to-trunk equivalency ratio. Such ratios are already set forth in intrastate tariffs. In the absence of an intrastate tariff, the LECs could develop such a ratio, or there could be agreed upon industry relationships between the Centrex lines and trunks. USTA also suggests that LECs should be permitted to count Network Access Registers (NARs) for purposes of assessing the PICC on Centrex customers. USTA contends that NARs are equivalent to PBX trunks since one NAR provides one link to the switch. In an *ex parte* filing, USTA has indicated that in order to address the complexity and verification problems of using individual state tariffs or individual company ratios, the Commission should adopt a uniform line-to-trunk equivalency ratio of 9 to 1.

3. Discussion

19. We grant the petitions of USTA, ICA, and Los Angeles that the PICC be assessed on Centrex lines using a line-to-trunk equivalency ratio. For the reasons discussed below, we adopt USTA's proposal to use a uniform 9:1 ratio. In large part, the multi-line business PICC is not a cost-based charge, but a contribution, ''for a limited period, to the recovery of common line costs that incumbent LECs incur to serve single-line customers.'' It is therefore reasonable to consider non-cost factors in determining how to assess the PICC. We conclude that with respect to the PICC, Centrex customers should be treated similarly to PBX customers, because the two arrangements are functionally equivalent.

20. Petitioners state that Centrex and PBX arrangements are functionally equivalent, and opposing parties do not dispute this assertion. We do not wish to encourage a large customer to choose one of these arrangements, PBX, over another, Centrex, simply because, as a result of its IXC being charged substantially more PICCs, *i.e.*, non-cost-related charges, for Centrex service, the PBX service becomes cheaper.

21. In addition, many Centrex users are government, education, and health care facilities. We note that more than 25 percent (18,640) of Los Angeles's 67,000 Centrex lines, which do not include Los Angeles County public schools are used by health care facilities. Without using a line-to-trunk equivalency ratio, Los Angeles could be required to pay an additional $2.8 million annually in PICCs, if its presubscribed IXC passes these charges through. New York could see the implementation of the PICC increase its rates by over $2.4 million annually, if these charges are passed through by its IXC. Boston University, with its 10,000 Centrex lines, faces a potential increase of $330,000 per year in PICCs. By granting the petitions for relief, we ensure that all multi-line business customers shoulder a similar portion of the PICC contribution, irrespective of whether they use Centrex or PBX arrangements.

22. Centrex arrangements are charged SLCs on a per-line basis, even though this difference results in a higher rate than equivalent PBX arrangements have to pay. That differential is due to the additional common line costs that Centrex lines incur. Historically, the Commission has declined to apply a trunk equivalency ratio for Centrex services, under the rationale that ''[i]f Centrex uses more lines, then Centrex necessarily creates more line costs.'' Unlike the SLC, in most instances, the multi-line business PICC will not recover loop costs of multi-line businesses. Instead, it will contribute to the recovery of the cost of single-line business and residential loops, which have lower SLC and PICC caps. Centrex and PBX are functionally equivalent in most respects. Taking these factors into consideration, it would be inequitable to require Centrex users to cause its presubscribed IXC to bear a significantly larger PICC contribution than do similarly-sized PBX users.

23. Therefore, we will limit the PICC charges that may be assessed on IXCs serving Centrex customers on a line-to-trunk equivalency basis, except where the multi-line business SLC ceiling does not permit the recovery of all interstate-allocated loop costs from the end user. In those instances, a somewhat greater PICC—one that includes the difference between the per-line loop cost and the multi-line business SLC cap—will be assessed on Centrex lines. Thus, for example, if on January 1, 1998, in a particular region the loop cost is $9.40, and the maximum permitted multi-line business PICC is being assessed, *i.e.*, $2.75, each Centrex line would be assessed a $0.71 PICC, which is equal to one-ninth of $2.75 plus the difference between the $9.40 loop cost and the $9.00 SLC.

24. In determining the appropriate line-to-trunk equivalency ratio, we consider several factors. First, we observe that many states, but not all, already have trunk equivalency tables for their intrastate tariffs. USTA has indicated that although these tables are similar, they are not identical. For example, USTA states that a Centrex customer with 70 lines is equivalent to a PBX customer with 13 trunks, while Ameritech states that in Illinois, the equivalency tariff for 70 Centrex lines is 8 PBX trunks. Adopting the trunk equivalency ratios set out in intrastate tariffs would result in different equivalency ratios being used in different states and would not provide a trunk equivalency ratio for many states. Because the trunk equivalency ratio we adopt today is for an interstate charge, a national standard for trunk equivalency ratio is appropriate.

25. We also desire administrative ease in calculating trunk equivalency. Adoption of a single ratio would simplify the assessment of PICCs on Centrex lines by eliminating the use of multiple ratios from multiple tables or state tariffs. IXCs would have the benefit of knowing that they will be assessed a set fraction of the PICC for each Centrex line that is presubscribed to their service, even when Centrex customers have lines presubscribed to different IXCs. Therefore, we have elected to adopt a single trunk equivalency ratio for establishing PICC charges for all Centrex lines. USTA suggested a ratio of nine (9) Centrex lines to one (1) PBX trunk. It bases its recommendation on the average of the weighted average trunk equivalency ratios or relationship between NARs and Centrex lines that are employed in several jurisdictions. Applying a 9:1 ratio would result in a maximum PICC on Centrex lines of approximately $0.30 per line in 1998 for the overwhelming majority of Centrex lines. We note that the ratio under some state tariffs can approach 18 to 1 for certain Centrex customers. Reducing the PICC from up to $2.75 to less than $0.31 achieves the goal of spreading the PICC contribution more equitably among multi-line business customers. Using a more complicated approach to establish equivalency may only add a marginal benefit, increasing or reducing PICCs by less than $0.16, and does not outweigh the additional administrative costs. We adopt the 9:1 ratio proposed by USTA, finding it to be reasonable and administratively simple.

26. Time Warner is correct in observing that our treatment of Centrex arrangements differs from how we addressed ISDN service in the *First Report and Order*. There, we set the SLC for PRI ISDN to be up to five times the amount assessed multi-line business subscribers, because that figure reflects the ratio of non-traffic sensitive loop costs associated with PRI ISDN service to non-traffic sensitive costs associated with other multi-line business loops. We also elected to permit incumbent LECs to assess up to five PICCs on PRI ISDN service because ''prohibiting incumbent LECs from charging as many as five PICCs for PRI ISDN service could prevent them from recovering the common line costs associated with providing PRI ISDN service in cases where the common line costs exceed the SLC ceiling.''

27. In both our treatment of ISDN lines and Centrex lines, our goal is to establish an equitable sharing of the multi-line business PICC. Prior to the adoption of the *First Report and Order*, we had no rules relating to the PICC. We had no evidence to the contrary that the assessment of five PICCs for PRI ISDN was inappropriate, so we elected to be consistent as between SLC and PICC assessment. Previously, however, ISDN lines could be charged up to 24 SLCs. The adjustment from 24 SLCs to five SLCs and five PICCs does not create undue hardship on ISDN subscribers, and the *First Report and Order* should reduce their overall rates.

28. Time Warner also argues that imposing the PICC on Centrex on a per-line basis is part of the Commission's access charge transition to a more cost-causative rate structure. Although the multi-line PICC is part of our transition, this alone does not justify requiring Centrex customers to make a greater contribution toward recovery of the loop cost of residential customers than do PBX customers. Teleport's assertion that petitioners are exaggerating the impact of the PICC on Centrex users, because the amount of the charge is substantially less than the SLC, ignores the fact that the SLC recovers the additional costs imposed by Centrex customers, while the PICC does not.

29. We deny ICA's petition that we not assess PICCs on toll-restricted Centrex lines. Although the PICC is assessed upon IXCs for all lines that are presubscribed to an IXC, the PICC is not a charge based on toll usage or on the ability to place toll calls. The Commission anticipated that some lines might not be used for long distance when it adopted a rule allowing PICCs to be assessed directly upon end users for any line not presubscribed to an IXC. The fact that toll-restricted Centrex lines incur no long-distance charges is, therefore, irrelevant. Also, costs for these lines are assigned to the interstate jurisdiction by separations, regardless of whether the lines are toll-restricted.

II. Transport

A. TIC Exemption

1. Background

30. The Commission created the TIC originally as a residual charge to ensure that its adoption of the 1992 interim transport rate structure was revenue-neutral for the incumbent LECs. As such, the Commission required that the TIC be assessed on a per-minute basis on all interstate access customers that interconnect with the LEC switched access network. A portion of the TIC represented the 80 percent of the costs of the tandem switch remaining after the Commission set the tandem-switching rate to recover only 20 percent of the tandem-switching revenue requirement. The rest of the revenues collected from the TIC represented costs previously recovered through transport charges that could not, at that time, be associated definitively with specific facilities or services related to transport. The Commission stated in the *First Transport Order* that, in addition to tandem-switching costs, the TIC likely recovered: (a) Costs more appropriately recovered through other rate elements; (b) costs that more properly belong in the intrastate jurisdiction, but that the Part 36 jurisdictional separations rules allocate to the interstate jurisdiction; (c) costs of facilities that were then in place, but not needed for transport under the more efficient transport rate structure being adopted; and (d) costs of not-fully-depreciated copper plant that was nevertheless being replaced by less expensive fiber optic facilities. Transport Rate Structure and Pricing, Report and Order and Further Notice of Proposed Rulemaking, 57 FR 54717 (November 20, 1992) *(First Transport Order)*. The Commission also cited

assertions by parties to that proceeding that the TIC also recovered (e) general support facilities (GSF) and central office equipment (COE) maintenance expenses and GSF investment that were overallocated to the transport category; and (f) additional costs that the Commission had not then identified.

31. In reviewing the Commission's interim transport rate structure, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) found that the just and reasonable rates required by Sections 201 and 202 of the Communications Act, 47 U.S.C. §§ 201–202, must ordinarily be cost-based, absent a clear explanation of the Commission's reasons for a departure from cost-based ratemaking. *Competitive Telecommunications Ass'n* v. *FCC,* 87 F.3d 522, 529 (D.C. Cir. 1996) *(''CompTel'').* The D.C. Circuit, therefore, directed the Commission to develop a cost-based alternative to the TIC, or to provide a reasoned explanation for its departure from the principles of cost-based ratemaking.

32. In the *First Report and Order,* we reformed the TIC and set forth a plan that will eliminate per-minute TIC charges over the next few years. We initially identified TIC amounts that could be associated with particular network facilities and directed incumbent LECs to reallocate these TIC amounts to access rate elements more closely corresponding to those network facilities. These LECs will perform the required reallocations in access tariffs filed to become effective January 1, 1998, with some exceptions. For example, the portion of tandem-switching costs that the Commission initially allocated to the TIC will be reallocated to the tandem-switching rate element in three approximately equal steps concluding January 1, 2000. In addition, the costs of the incumbent LECs' tandem-switched transport transmission facilities that are not recovered from tandem-switched transport users under the unitary rate structure will be recovered through the TIC until July 1, 1998.

33. For price cap LECs, the ''residual TIC,'' consisting of amounts that the LEC has not reallocated as described above, will be recovered through per-line PICCs, to the extent possible while remaining within the PICC caps. Residual TIC amounts that the price cap LEC cannot recover through PICCs will be recovered through a per-minute TIC on originating access, up to a cap, with any remainder recovered from per-minute charges assessed on terminating access.

In the *First Report and Order,* we recognized that the per-minute TIC, because it is assessed on all transport minutes carried on facilities that interconnect with the incumbent LEC's local switch, may give the incumbent LEC a competitive advantage in the transport market. We therefore provided a TIC exemption for switched minutes carried by competitive access providers (CAPs) that interconnect with the incumbent LEC switched access network at the end office, stating that, ''if the incumbent LEC's transport rates are kept artificially low and the difference is recovered through the TIC, competitors of the incumbent LEC pay some of the incumbent LEC's transport costs.'' This TIC exemption is scheduled to take effect on January 1, 1998.

2. Petitions for Reconsideration and Petitions for Stay

a. AT&T and Teleport. 35. On reconsideration, AT&T and Teleport request that we permit the per-minute residual TIC exemption for switched minutes carried by CAPs that interconnect with the incumbent LEC switched access network at the end office to take effect immediately, rather than on January 1, 1998. According to Teleport, the Commission, having recognized that the imposition of TIC charges on CAP-transported minutes is ''inconsistent with the pro-competitive goals of the 1996 Act,'' should not permit the practice to continue throughout the balance of calendar 1997.

b. RCN. 36. RCN argues that the TIC exemption contained in the *First Report and Order* preserves the incumbent LECs' competitive advantage because it exempts CAP-transported minutes only from the ''residual'' TIC. In making this argument, RCN interprets the term ''residual TIC'' to include only non-facilities-related TIC amounts. Under RCN's interpretation, the ''residual TIC'' would not include facilities-related TIC amounts that will remain in the TIC until they are reallocated as late as January, 2000.

c. U S West and NYNEX Petitions for Stay. 37. NYNEX and U S West separately have filed petitions requesting that the Commission stay the effectiveness, pending appeal, of 47 CFR 69.155(c), the rule we adopted in the *First Report and Order* prohibiting local exchange carriers from assessing the per-minute residual TIC on traffic that uses the LEC's local switching services, but that does not use the LEC's local transport services. NYNEX and U S West argue that such a stay is warranted because they are likely to prevail on the merits of their respective appeals and that the balance of equities favors a stay. NYNEX and U S West further argue that the rule should be stayed in its entirety, to allow them to recover the entire per-minute TIC, without regard for the transport provider. In the alternative, however, NYNEX requests a partial stay to allow it to so recover the non-facilities-related portion of the TIC.

38. Procedurally, NYNEX maintains that the Commission failed to offer an adequate opportunity for public comment on the residual TIC exemption, in that the Commission's *Notice,* Access Charge Reform, CC Docket No. 96–262, Notice of Proposed Rulemaking, 62 FR 6270 (January 31, 1997) *(Notice),* failed to provide adequate notice of the TIC exemption and that the Commission improperly relied on a CompTel/Teleport *ex parte* presentation made three weeks before the Order was adopted.

39. Substantively, NYNEX argues that the Commission's decision to prohibit assessment of the residual TIC on minutes that use CAP transport networks is inconsistent with the Commission's findings that a large portion of the TIC is not related to any specific transport or other facilities.

40. NYNEX also argues that the Commission has failed to explain why it is reasonable for the LEC to recover both service-related and non-service-related TIC amounts from PICCs, but neither component from the per-minute residual TIC.

41. NYNEX also argues that the use of price cap X-factor reductions to decrease the per-minute TIC will effectively reallocate the per-minute residual TIC to other rate elements as the per-minute TIC is reduced to the exclusion of all other rate elements. According to NYNEX, the residual TIC is completely excluded only to the extent that the X-factor targeting has not reallocated it to a permitted rate element. NYNEX argues that the Commission has not offered a justification for disallowing TIC recovery only during this transition period.

42. NYNEX argues that the CAP TIC exemption is arbitrary in that it will have a disproportionately harsh effect on NYNEX, and that this non-uniform impact will hinder the development of ''full and fair'' competition. Similarly, U S West argues that, by making it difficult or impossible for it to collect the per-minute TIC, the TIC exemption is contrary to the Commission's decision not to disallow any portion of the current TIC.

43. NYNEX also argues that the TIC exemption contradicts the Commission's conclusion that access

reform, in itself, should not produce overall rate reductions because the price cap LECs' per-minute TIC revenues are likely to be less than those calculated in the restructure. As a result, the price cap LECs will be unable to collect the full amount of revenues from per-minute residual TIC rates or PICCs that will be included in their January 1, 1998, tariff revisions.

44. NYNEX and U S West argue that an exemption for the service-related portion of the TIC is inconsistent with the Commission's continued reliance on subsidization of tandem-switching rates by direct-trunked transport customers until December 31, 1999.

45. U S West argues that, after January 1, 1998, the TIC will consist of implicit tandem switching and universal service support subsidies (including the higher costs of providing rural transport) and that the TIC exemption results in a collection system for this subsidy that is non-sustainable, discriminatory, and inequitable.

3. Discussion

46. We decline to modify the effective date of 47 CFR 69.155(c) as AT&T and Teleport request. Although some of the Commission's actions to reform the interstate access charge system took effect in access tariffs filed to become effective July 1, 1997, the majority of the Commission's rate structure changes take effect on January 1, 1998, or later. Because the TIC exemption at issue here is one part of our larger effort to reform the system of interstate access charges to preserve and promote competition, we believe that the rule should take effect on January 1, 1998, at the same time as many of our other rules relating to the transport rate structure. Incumbent LEC access tariffs filed to become effective on that date will reallocate many of the currently-identified facilities-related TIC amounts to other rate elements. In addition, on January 1, 1998, for the first time, the incumbent LECs will begin collecting remaining TIC amounts from PICCs assessed to IXCs on a flat-rate, per-line basis. Because a portion of the TIC, including some facilities-related TIC amounts, will be allocated to PICCs on January 1, 1998, we conclude that the extent of the exemption we adopt here will not be evident until these tariff revisions take effect. Thus, we conclude that the exemption should take effect only in concurrence with the implementation of the PICC.

47. We agree with RCN and MCI that we should clarify the extent of the TIC exemption described in the *First Report and Order.* In addition, in response to concerns raised in NYNEX's and U S West's petitions for stay, we reconsider on our own motion our adoption of the TIC exemption provided in the *First Report and Order.* 47 CFR 1.108. Under long-established Commission practice, the filing of a petition for reconsideration tolls the thirty day period our rules provide for *sua sponte* reconsideration. *E.g., Central Fla. Enters., Inc.* v. *FCC,* 598 F.2d 37, 48 n.51 (D.C. Cir. 1978), *cert. dismissed,* 441 U.S. 957 (1979), *and cert. denied* 460 U.S. 1084 (1983); *Radio Americana, Inc.* 44 F.C.C. 2506, 2510 (1961). Upon further consideration, we conclude that the TIC exemption provided in the *First Report and Order* could provide an unjustified windfall to competitive providers of local transport. Because the non-facilities-related portion of the residual TIC does not relate to the use of the incumbent LEC's interstate transport facilities, we need not exempt competitors from paying this portion of the TIC in order to prevent them from paying for the incumbent LEC's transport when that transport is not used. Therefore, incumbent LECs may continue, after January 1, 1998, to assess upon all local switching traffic that portion of their per-minute TIC charges that they do not anticipate will be reallocated in the future to facilities-based rate elements. This is the only portion of the per-minute TIC, however, that may be assessed upon traffic that uses the incumbent LEC's local switching services, but that does not use the incumbent LEC's local transport services. Under this rule, interexchange traffic that is switched at the incumbent LEC's local switch, but that is not transported on the incumbent LEC's local transport network, will be subject to the per-minute TIC, less the portion of the per-minute TIC attributable to incumbent LEC tandem-switching and tandem-switched transport transmission costs that have not yet been reallocated to facilities-based rate elements. In access tariff revisions filed to become effective January 1, 1998, incumbent LECs must show all such facilities-related amounts that they anticipate will be reallocated in the future, including appropriate documentation, and calculate separate per-minute TIC charges for those minutes that use the incumbent LEC's local transport facilities and those that do not.

48. In remanding the interim rate structure, the D.C. Circuit instructed the Commission to ''move expeditiously * * * to a cost-based alternative to the [TIC], or to provide a reasoned explanation of why a departure from cost-based ratemaking is necessary and desirable in this context.'' For our rate structure to be ''cost-based,'' costs must be recovered (1) only from the party that causes the costs to be incurred; and (2) in the manner in which the costs are incurred (*e.g.,* non-traffic-sensitive costs should be recovered on a non-traffic sensitive basis).

49. Our *First Report and Order* identified certain costs within the TIC that more properly should be recovered through other access rate elements. These costs include additional trunking costs left unrecovered by rates set assuming a uniform loading of 9000 minutes of use per month on shared trunks, rather than rates set using actual traffic levels, as well as misallocated costs of central office equipment maintenance. In addition, we identified costs related to multiplexing, SS7 signalling, and host/remote trunking that are currently recovered through the TIC. LECs must reallocate all of these costs to facilities-based rate elements in access tariffs filed to become effective January 1, 1998. In addition, one third of the 80 percent of the costs of the tandem switch currently assigned to the TIC will be reallocated to the tandem switching rate element on that date.

50. After January 1, 1998, the costs contained in the TIC that the Commission has identified as facilities-related will have two primary sources. The majority of the facilities-related TIC will consist of the portion of the incumbent LEC's tandem-switching costs not yet reallocated to the tandem-switching rate element. These costs will be reallocated to the tandem-switching rate element in two additional installments in tariffs filed to become effective on January 1, 1999, and January 1, 2000. In addition, from January 1, 1998, until July 1, 1998, the TIC will also recover the costs of tandem-switched transport transmission facilities that are not recovered by the incumbent LEC from tandem-switched transport customers electing the unitary rate structure. These TIC amounts are also facilities-related. In the *First Report and Order,* we directed incumbent LECs to remove costs from the TIC ''equal to the additional revenues realized from the new tandem-switched transport rates * * * implemented in accordance with the [final transport] rate structure.'' Because the three-part rate structure will not take effect until July 1, 1998, we require incumbent LECs to estimate in their tariffs filed to become effective January 1, 1998, the amount by which their tandem-switched transport transmission revenues will increase under the three-part rate structure. This amount, currently contained in the TIC, is facilities-related and therefore subject to the exemption described in this order.

51. Neither the tandem-switching costs nor the tandem-switched transport transmission costs contained in the TIC relate to facilities used by purchasers of competitive alternatives to the incumbent LEC's transport facilities. The D.C. Circuit remanded the interim transport rate structure to the Commission in part because that rate structure did not recover the costs of the tandem switch in a cost-causative manner. Our *First Report and Order*, in reallocating these costs, remedies this situation as expeditiously as possible while minimizing the potential for rate shock that otherwise might accompany such a shift. Because these costs are incurred on behalf of the incumbent LEC's own transport operation, however, it would be inconsistent with the principles of cost-causation to prolong the recovery of these costs from users of competing transport facilities.

52. Our approach to access reform relies first on increasing market-based pressures as competition develops to place downward pressure on access charge levels. We conclude that, for this approach to succeed, we should develop a rate structure that permits maximum competitive pressure on each incumbent LEC revenue stream, absent compelling public policy reasons to the contrary. It would impair the effectiveness of our market-based approach for us to insulate a significant portion of the costs of the incumbent LEC's transport facilities from competition by mandating recovery of these costs from incumbent LEC competitors.

53. We recognize that, during the two-year transition period, our rules will continue to prohibit the incumbent LEC from allocating the full, embedded cost of the tandem switch to the tandem-switching rate element. The effect of our three-step reallocation process will be to permit a continued subsidy of the incumbent LEC's tandem switch by users of the incumbent LEC's direct-trunked transport facilities and minimize any rate shock for tandem-switched transport customers. Because the incumbent LEC's competitors offering transport services will not be subject to this subsidy, they may enjoy a slight competitive advantage over the incumbent LEC.

54. We find, however, that the competitive benefits to be gained from recovering these costs only from the incumbent's customers and not from customers using competitive transport providers outweigh any potential dangers resulting from the small, temporary asymmetry caused by the TIC exemption we provide here. Even though the full costs of the incumbent LEC's tandem switch will not be borne by the users of the tandem switch until January, 2000, the effects of the TIC exemption will be reduced substantially before that time as the incumbent LEC collects an increasing proportion of the tandem-switching costs remaining in the TIC through PICCs. As discussed below, we continue to permit the incumbent LEC to assess the full PICC on each of its loops, without regard for the type or provider of the transport the IXC uses to transport the minutes generated by that loop from the end office to the IXC's facilities. As the portion of the incumbent LEC's tandem-switching costs that is recovered through the per-minute TIC decreases, any potential adverse effects of this small asymmetry will rapidly decrease. In contrast, if we were to mandate recovery of this portion of the incumbent LEC's tandem-switching costs from all customers using the incumbent LEC's local switching facilities, without regard for whether they make use of the incumbent LEC's transport facilities, we would insulate this revenue from much of the pressure we anticipate will develop as competitors enter the local service and access markets. The resulting delay in competitive entry would be harmful to consumers, who will benefit most from increased competition.

55. We revise the TIC exemption contained in our *First Report and Order*, however, to permit the incumbent LEC to impose the remaining non-transport costs assigned to the TIC on all minutes switched by the incumbent LEC at its end office, without regard for whether those minutes are carried on incumbent LEC or competitive transport facilities. In contrast to the portion of the incumbent LEC's tandem-switched transport costs that will remain in the TIC after January 1, 1998, we did not find in the *First Report and Order* that the remainder of the TIC could be associated definitively with particular interstate facilities on the record before us. Instead, we stated that a portion of these TIC amounts may result from the operation of the jurisdictional separations process, which allocates the costs of private line and switched services differently between the state and interstate jurisdictions, despite the fact that these two types of services use comparable facilities. As a result, we recognized in the *First Report and Order* the possibility that rates for direct-trunked transport and tandem-switched transport transmission facilities may not recover the full amount of the costs of switched facilities the separations process allocates to the interstate jurisdiction.

56. We have recently begun a broad re-examination of the jurisdictional separations process that may eventually correct this problem. In the meantime, however, we are unable to associate these TIC amounts with any particular interstate facilities. Instead, to the extent that this portion of the TIC may result in part from overallocation of costs to the interstate jurisdiction, thereby lowering intrastate rates, this portion of the TIC may be a form of implicit universal service support. As such, it would be inequitable to mandate recovery of this portion of the per-minute TIC only from the incumbent LEC's transport customers. Because these amounts do not appear to be any more closely related to the incumbent LEC's interstate transport facilities than they are to any other interstate facilities of the incumbent, it is appropriate for all of the incumbent LEC's access customers, and not just its transport customers, to pay a share of this portion of the per-minute TIC. In the *First Report and Order*, we stated our commitment to minimize the potential of the per-minute TIC artificially to suppress demand for interstate toll services. Because the non-facilities-related TIC is composed of amounts that have not been demonstrated to reflect usage-sensitive costs, it does have this undesirable effect. We have therefore required that it be eliminated expeditiously through targeting of the X-factor reductions to the interconnection charge service category and through conversion of the residual TIC to a flat-rated charge.

57. In addition, we stated in the *First Report and Order* that a portion of the costs remaining in the TIC may result from our use of special access rates to develop initial geographically-averaged direct-trunked transport and tandem-switched transport transmission rates. We agreed in the *First Report and Order* that, while the use of such rates appears to have been appropriate in urban areas, these rates may not fully recover the higher costs of transport in less densely populated rural areas. Because we are unable to quantify these cost differences, and because it is likely that the cost differential varies greatly across LECs and across study areas served by the same LEC, we did not mandate any immediate reallocation of costs from the TIC to rural transport rates. Instead, we expect that, as competition develops, the incumbent LECs will come under increasing pressure to deaverage transport rates under our existing deaveraging rules. We observe that, as with the costs discussed in the previous paragraph, recovery of rural transport

costs through the TIC supports a conclusion that at least a portion of the non-facilities-related TIC may be related to the provision of universal service.

58. We also here clarify that the ''residual TIC'' that the incumbent LEC should recover from PICCs includes all TIC amounts that have not been reassigned to other facilities-based rate elements, including the portion of the incumbent LEC's tandem switching costs that have not been reassigned to the tandem-switching rate element in tariffs filed to become effective on January 1, 1998, and January 1, 1999. We direct price cap LECs that will recover only a portion of their residual TIC from PICCs to allocate non-facilities-related TIC amounts and facilities-related TIC amounts between PICCs and per-minute charges on a *pro rata basis.* The incumbent LECs must reallocate the full amount of the costs of their tandem switch to the tandem switching rate element in installments on January 1, 1998, 1999, and 2000, whether they are then contained in per-minute charges or in PICCs.

59. Accordingly, we revise the TIC exemption contained in our *First Report and Order* to permit the incumbent LEC, in tariffs filed to become effective January 1, 1998, to impose that portion of the per-minute TIC that is not expected to be reassigned to particular facilities on a cost-causative basis on all transport minutes switched at its end office, without regard for whether those minutes are carried on incumbent LEC or competitive transport facilities. Per-minute TIC amounts that the LEC expects to reallocate to facilities-based rate elements, in contrast, may be assessed only on minutes transported on the incumbent LEC's own transport facilities.

60. TIC amounts that a price cap LEC will recover through PICC charges may be assessed to an IXC for a particular loop without regard for the type or provider of the transport the IXC uses to transport the minutes generated by that loop from the end office to the IXC's facilities. Although certain price cap LECs will recover a portion of the costs of their tandem-switching facilities during the transition through PICCs from IXCs that do not use the price cap LEC's transport facilities to transport all of the minutes generated on a particular loop, the administrative difficulties associated with calculating partial PICCs in this context outweigh the benefits to be gained from doing so. If an IXC were to use a combination of competitive- and incumbent LEC-provided transport facilities between an end office and its serving wire center, it would be needlessly complicated to determine the portion of the minutes generated on each loop that were carried on competitive transport links. Furthermore, unlike the per-minute TIC, the flat-rated PICC will not substantially alter the incremental cost of additional transport minutes transported over competitive transport facilities. Thus, even if an IXC pays a full PICC, this payment will not affect the IXC's decision whether to purchase additional transport minutes from the incumbent LEC or a competitive transport provider. As a flat-rated charge, the PICC will not artificially suppress demand for interstate toll telecommunications services.

61. In addition, the PICC is subject to competitive pressures, whether or not it recovers TIC amounts for traffic transported by the incumbent LEC's competitors. If the end user chooses an alternate provider of local service, the incumbent LEC will no longer recover any portion of the PICC for that loop. Thus, we conclude that the dangers associated with the recovery of the full PICC without regard for the transport provider are far more attenuated than the dangers that would be associated with recovery of facilities-related costs from per-minute TIC charges levied on competitive transport minutes.

62. We deny the petitions filed by U S West and NYNEX requesting a stay of the per-minute TIC exemption rule. In determining whether to stay the effectiveness of one of its rules or orders, the Commission uses the four-factor test established in *Virginia Petroleum Jobbers Ass'n* v. *FPC,* 259 F.2d 921, 925 (D.C. Cir. 1958), as modified in *Washington Metropolitan Area Transit Comm'n* v. *Holiday Tours, Inc.,* 559 F.2d 841, 843 (D.C. Cir. 1977). Under that test, petitioners must demonstrate that: (1) They are likely to succeed on the merits on review; (2) they would suffer irreparable injury absent a stay; (3) a stay would not substantially harm other interested parties; and (4) a stay would serve the public interest. We find that neither NYNEX nor U S West has satisfied any of the four factors for granting a stay. In light of the substantial relief we have granted above, however, we provide only a brief analysis here of the petitioners' arguments. The practical effect of our revisions to the TIC exemption, however, will be to provide a substantial portion of the relief sought in the stay petitions. In light of these revisions, we believe that the petitioners are unlikely to succeed on the merits on review, that they will not suffer irreparable injury absent a stay, that a stay would cause substantial harm to the incumbent LECs' competitors, and that the public interest is best served by the TIC exemption described here. With respect to the portion of the TIC related to the costs of the incumbent LEC's interstate transport facilities, we conclude that there are sound policy reasons underlying our decision to maintain this exemption and, consequently, we find against the petitioners here.

63. We conclude that NYNEX's objections to the sufficiency of our notice are without merit. The *Notice* in this proceeding provided adequate notice of the TIC exemption we ultimately adopted. Our *Notice* in this proceeding stated that ''to the extent that any portion of the TIC should properly be included in LEC transport rates, other than the TIC, the TIC provides the LECs with a competitive advantage for their interstate transport services because incumbent LEC transport rates are priced below cost while the LECs' competitors using expanded interconnection must pay a share of incumbent LEC transport costs through the TIC * * *. Our goal in this proceeding is to establish a mechanism to phase out the TIC in a manner that fosters competition and responds to the *[CompTel]* court's remand.'' We went on to state, in the section of the *Notice* entitled ''Possible Revisions to the TIC,'' that ''our goals are to move towards significantly more cost-based access rates and competition in the access and interexchange markets. The development of a competitive access market will be distorted by the assessment of the TIC as a surcharge on local switching. The TIC therefore will be unsustainable.'' We sought comment on the extent to which various approaches to reducing the TIC would ''achieve the goals of this proceeding'' and asked parties to ''address the relative merits of each [approach], or of other approaches that they may suggest.'' We conclude therefore that, beyond reasonable question, our *Notice* provided adequate notice of ''the terms or substance of the proposed rule or a description of the subjects and issues involved.''

64. In any event, courts require only that the rule, as adopted, constitute a ''logical outgrowth'' of the proposed rule. *E.g., National Mining Ass'n* v. *Mine Safety and Health Admin.,* 116 F.3d 520, 531 (D.C. Cir. 1997). To satisfy this standard, courts ask ''whether 'the purposes of notice and comment have been adequately served.' '' Factors to be considered include ''whether a new round of notice and comment would provide the first opportunity for interested parties to offer comments that could persuade the agency to modify its

rule;'' *American Water Works Ass'n* v. *EPA,* 40 F.3d 1266, 1274 (D.C. Cir. 1994), and whether ''the notice given affords 'exposure to diverse public comment,' 'fairness to affected parties,' and 'an opportunity to develop evidence in the record.' '' We conclude that the *Notice* language quoted above more than adequately meets this standard. The *Notice* in this proceeding discussed possible revisions to the TIC rate element for nine full pages, sought comment on four specific TIC-reduction options, and invited commenters to suggest alternate approaches. The *Notice* in this proceeding discussed expressly the anti-competitive problems associated with the payment of TIC charges by competitive providers of transport services, stated that the TIC would be ''unsustainable'' in that form, and sought comment on approaches to reform that would ''achieve the goals of this proceeding,'' among which was the adoption of a transport rate structure that would foster competition. In such circumstances, we conclude that commenters should have anticipated that the Commission might eventually adopt a TIC exemption for competitive transport providers, that our *Notice* afforded adequate notice of the Commission's eventual adoption of such an exemption, and that we provided an adequate opportunity for diverse public comment.

65. In response to the *Notice,* several commenters, in their initial comments, proposed TIC exemptions for competitive transport. WorldCom, for example, argued that, ''the Commission should restructure the TIC rate element * * * in a manner that maximizes competitive pressure on the charge. As local and full-service competition begin[s] to emerge, competitive carriers should be able to avoid the TIC to the extent that they win customers away from incumbent LECs. This will create competitive pressure for the LECs to reduce their TIC rate levels, without necessitating any prescriptive action by the Commission.'' The fact that several commenters raised this solution in their comments, and in subsequent *ex parte* filings, supports our conclusion that the *Notice* adequately raised this issue.

66. We also conclude that NYNEX's claims of irreparable harm are without merit. Although the TIC exemption may impact some incumbent LECs differently from others, the same can be said for virtually all of the rules we adopt, simply because of differences in the circumstances and business climate facing each LEC. Our focus in the context of a stay petition must be on individualized allegations of irreparable harm. We find that neither petitioner has met that standard with respect to the TIC exemption we provide in this Order. Mere financial or economic losses do not, in and of themselves, constitute irreparable harm. In addition, because this portion of the per-minute TIC is likely to be relatively small, in relation to the remainder of the TIC and other transport charges, the incumbent LECs are unlikely to suffer large-scale competitive losses as a result of the exemption, as modified here. In any event, we have long held that ''revenues and customers lost to competition which can be regained through competition are not irreparable.''

67. In contrast, continued subsidy of the incumbent LECs' tandem switching facilities by competitors is incompatible with the development of competition in the local market. Without an exemption permitting new entrants to cease subsidizing incumbent LEC transport facilities, the incumbent LEC's revenue stream from facilities-related, per-minute TIC charges would be insulated from competition. These new entrants, having already shouldered financial burdens in seeking to compete with the established monopoly incumbent LEC, should not be required in addition to subsidize the facilities of the incumbent LEC against whom they compete. Such a result would cause continued harm to these new entrants, and would further delay the public interest benefits of competition. Thus, we conclude that the petitioners have failed to satisfy either of the last two factors we must consider in evaluating their stay petitions. Accordingly, we deny the stay petitions.

B. Deaveraged Tandem-Switched Transport Transmission Rates

68. We also take this opportunity to amend the language of section 69.111(c)(1) to specify the manner in which minutes are to be determined through June 30, 1998, in calculating tandem-switched transport transmission rates when an incumbent LEC has deaveraged rates by density zone. Section 69.111(c)(2), which applies after July 1, 1998, includes such language. The *First Report and Order* did not intend to take away the ability of incumbent LECs to deaverage transport transmission rates if they have met the requisite qualifications. Finally, we amend the references to section 69.124 in section 69.111 to refer to section 69.123.

III. Rate-of-Return LECs

69. In the *First Report and Order,* we took steps to adopt, *inter alia,* a cost-based transport rate structure and to comply with the D.C. Circuit's *CompTel* remand. As acknowledged in the *First Report and Order,* the *CompTel* remand applied to rate-of-return LECs as well as price cap LECs.

70. Upon further consideration, we recognize that, absent clarification, some language in the *First Report and Order* may be ambiguous in delineating which of our decisions applied to all incumbent LECs, including rate-of-return LECs. For example, in Section III.C. of the *First Report and Order,* we directed ''all incumbent LECs to discontinue the unitary rate structure option for the transmission component of tandem-switched transport, effective July 1, 1998.'' In contrast to this language, we stated at paragraph 335 in the *First Report and Order* that we had restricted ''application of the rules we adopt in this proceeding to the incumbent price cap LECs, with [three] limited exceptions,'' for: (1) ''Universal service support to the interstate revenue requirement for all incumbent LECs in Section VI.D;'' (2) ''the changes to the TIC that we adopt[ed] in Section III.D * * * will also apply to rate-of-return incumbent LECs;'' and (3) ''in Section VI.A * * * our exclusion of unbundled network elements from Part 69 access charges applies to all incumbent LECs.''

71. We take this opportunity to clarify that, with two limited exceptions, the decisions made in Section III.C of the *First Report and Order* relating to the rate structure and rate levels for entrance facilities, direct-trunked transport, and tandem-switched transport apply to all incumbent LECs, including rate-of-return LECs. The two exceptions are that we did not create for rate-of-return LECs separate rate elements for dedicated ports at the tandem switch and for multiplexers at the tandem switch. Thus, for example, rate-of-return LECs must discontinue the unitary rate structure option for tandem-switched transport no later than July 1, 1998, when all incumbent LECs must use only the three-part rate structure for cost recovery. These transport modifications that are applicable to rate-of-return LECs are in addition to those decisions made in Sections III.D, VI.A, and VI.D that also apply to rate-of-return LECs.

IV. Ordering Clauses

72. Accordingly, *it is ordered,* pursuant to Sections 1–4, 201–205, 251, 254, 303, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151–154, 201–205, 251, 254, 303, and 405, and pursuant to section 1.108 of the Commission's rules, 47 CFR 1.108 that this Order on Reconsideration is adopted.

73. *It is further ordered* That section 69.153(g) of the Commission's rules, 47 CFR 69.153(g) is amended as set forth in the rule changes.

74. *It is further ordered* that sections 69.4, 69.111(c)(1), 69.153(c)(1), 69.153(d)(1)(i), 69.153(d)(2)(i), and 69.155(c) of the Commission's rules, 47 CFR 69.4, 69.111(c)(1), 69.153(c)(1), 69.153(d)(1)(i), 69.153(d)(2)(i), and 69.155(c) are amended as set forth in the rule changes.

75. *It is further ordered* That the information collections contained in these rules become effective January 1, 1998, following OMB approval, unless a notice is published in the **Federal Register** stating otherwise.

76. *It is further ordered* That, except as otherwise specified herein, the policies and rules adopted here shall be effective January 1, 1998.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

PART 69—ACCESS CHARGES

77. The authority citation for Part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

78. Section 69.4 is amended by removing paragraph (h)(6), and revising paragraph (a) to read as follows:

§ 69.4 Charges to be filed.

(a) The end user charges for access service filed with this Commission shall include charges for the End User Common Line element, and for line port costs in excess of basic, analog service.

* * * * *

79. Section 69.111 is amended by revising paragraph (c) to read as follows:

§ 69.111 Tandem-Switched Transport and Tandem Charge.

* * * * *

(c)(1) Until June 30, 1998:

(i) Except in study areas where the incumbent local exchange carrier has implemented density pricing zones as described in section 69.123, per-minute common transport charges described in paragraph (a)(1) of this section shall be presumed reasonable if the incumbent local exchange carrier bases the charges on a weighted per-minute equivalent of direct-trunked transport DS1 and DS3 rates that reflects the relative number of DS1 and DS3 circuits used in the tandem to end office links (or a surrogate based on the proportion of copper and fiber facilities in the interoffice network), calculated using the total actual voice-grade minutes of use, geographically averaged on a study-area-wide basis, that the incumbent local exchange carrier experiences based on the prior year's annual use. Tandem-switched transport transmission charges that are not presumed reasonable shall be suspended and investigated absent a substantial cause showing by the incumbent local exchange carrier.

(ii) In study areas where the incumbent local exchange carrier has implemented density pricing zones as described in section 69.123, per-minute common transport charges described in paragraph (a)(1) of this section shall be presumed reasonable if the incumbent local exchange carrier bases the charges on a weighted per-minute equivalent of direct-trunked transport DS1 and DS3 rates that reflects the relative number of DS1 and DS3 circuits used in the tandem to end office links (or a surrogate based on the proportion of copper and fiber facilities in the interoffice network), calculated using the total actual voice-grade minutes of use, averaged on a zone-wide basis, that the incumbent local exchange carrier experiences based on the prior year's annual use. Tandem-switched transport transmission charges that are not presumed reasonable shall be suspended and investigated absent a substantial cause showing by the incumbent local exchange carrier.

(2) Beginning July 1, 1998:

(i) Except in study areas where the incumbent local exchange carrier has implemented density pricing zones as described in section 69.123, per-minute common transport charges described in paragraph (a)(2)(i) of this section shall be presumed reasonable if the incumbent local exchange carrier bases the charges on a weighted per-minute equivalent of direct-trunked transport DS1 and DS3 rates that reflects the relative number of DS1 and DS3 circuits used in the tandem to end office links (or a surrogate based on the proportion of copper and fiber facilities in the interoffice network), calculated using the total actual voice-grade minutes of use, geographically averaged on a study-area-wide basis, that the incumbent local exchange carrier experiences based on the prior year's annual use. Tandem-switched transport transmission charges that are not presumed reasonable shall be suspended and investigated absent a substantial cause showing by the incumbent local exchange carrier.

(ii) In study areas where the incumbent local exchange carrier has implemented density pricing zones as described in section 69.123, per-minute common transport charges described in paragraph (a)(2)(i) of this section shall be presumed reasonable if the incumbent local exchange carrier bases the charges on a weighted per-minute equivalent of direct-trunked transport DS1 and DS3 rates that reflects the relative number of DS1 and DS3 circuits used in the tandem to end office links (or a surrogate based on the proportion of copper and fiber facilities in the interoffice network), calculated using the total actual voice-grade minutes of use, averaged on a zone-wide basis, that the incumbent local exchange carrier experiences based on the prior year's annual use. Tandem-switched transport transmission charges that are not presumed reasonable shall be suspended and investigated absent a substantial cause showing by the incumbent local exchange carrier.

* * * * *

80. Section 69.153 is amended by revising paragraphs (c)(1) and (d), and adding paragraph (g) to read as follows:

§ 69.153 Presubscribed interexchange carrier charge (PICC).

* * * * *

(c) The maximum monthly PICC for primary residential subscriber lines and single-line business subscriber lines shall be the lower of:

(1) One twelfth of the sum of projected annual common line revenues and residual interconnection charge revenues permitted under our price cap rules divided by the projected average number of local exchange service subscriber lines in use during such annual period, minus the maximum subscriber line charge calculated pursuant to § 69.152(d)(2); or

(2) * * *

(d) To the extent that a local exchange carrier cannot recover its full common line revenues, residual interconnection charge revenues, and those marketing expense revenues described in § 69.156(a) permitted under price cap regulation through the recovery mechanisms established in §§ 69.152, 69.153(c), and 69.156 (b) and (c), the local exchange carrier may assess a PICC on multi-line business subscriber lines and non-primary residential subscriber lines.

(1) The maximum monthly PICC for non-primary residential subscriber lines shall be the lower of:

(i) One twelfth of the projected annual common line, residual interconnection charge, and § 69.156(a) marketing expense revenues permitted under our price cap rules, less the maximum amounts permitted to be recovered through the recovery mechanisms under §§ 69.152, 69.153(c), and 69.156 (b) and (c), divided by the total number of projected non-primary residential and multi-line business subscriber lines in use during such annual period; or

(ii) * * *

(2) If the maximum monthly PICC for non-primary residential subscriber lines is determined using paragraph (d)(1)(i) of this section, the maximum monthly PICC for multi-line business subscriber lines shall equal the maximum monthly PICC of non-primary residential subscriber lines. Otherwise, the maximum monthly PICC for multi-line business lines shall be the lower of:

(i) One twelfth of the projected annual common line, residual interconnection charge, and § 69.156(a) marketing expense revenues permitted under parts 61 and 69 of our rules, less the maximum amounts permitted to be recovered through the recovery mechanisms under §§ 69.152, 69.153(c) and (d)(1), and 69.156 (b) and (c), divided by the total number of projected multi-line business subscriber lines in use during such annual period; or

(ii) * * *

* * * * *

(g)(1) The maximum monthly PICC for Centrex lines shall be one-ninth of the maximum charge determined under paragraph (d)(2) of this section, except that if a Centrex customer has fewer than nine lines, the maximum monthly PICC for those lines shall be the maximum charge determined under paragraph (d)(2) of this section divided by the customer's number of Centrex lines.

(2) In the event the monthly loop costs for a multi-line business line, as defined in § 69.152(b)(1), exceed the maximum permitted End User Common Line charge, as set in § 69.152(b)(3), the maximum monthly PICC for a Centrex line determined under paragraph (g)(1) of this section shall be increased by the difference between the monthly loop costs defined in § 69.152(b)(1) and the maximum permitted End User Common Line charge set in § 69.152(b)(3). In no event, however, shall the PICC for a Centrex line exceed the maximum established under paragraph (d)(2) of this section.

81. Section 69.155 is amended by revising paragraph (c) to read as follows:

§ 69.155 Per-minute residual interconnection charge.

* * * * *

(c)(1) No portion of the charge assessed pursuant to paragraphs (a) or (b) of this section that recovers revenues that the local exchange carrier anticipates will be reassigned to other, facilities-based rate elements, including the tandem-switching rate element described in § 69.111(g), the three-part tandem switched transport rate structure described in § 69.111(a)(2), and port and multiplexer charges described in § 69.111(l), shall be assessed upon minutes utilizing the local exchange carrier's local switching facilities, but not the local exchange carrier's transport service.

(2) If a local exchange carrier cannot recover its full residual interconnection charge revenues through the PICC mechanism established in § 69.153, and will consequently recover a portion of its residual interconnection charge revenues through per-minute charges assessed pursuant to paragraphs (a) and (b) of this section, then the local exchange carrier must allocate its residual interconnection charge revenues subject to the exemption established in paragraph (c)(1) of this section between the PICC and the per-minute residual interconnection charge in the same proportion as other residual interconnection charge revenues are allocated between these two recovery mechanisms.

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