PUC BULLETIN

A Publication of the Public Utility Commission of Texas

Volume 13, No. 5 January 1988

TELEPHONE

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Editor's Note: The Examiner's Report, Phases I and II, and final Orders in Docket No. 5113, Petition of the Public Utility Commission of Texas for an Inquiry Concerning the Effects of the Modified Final Judgment and the Access Charge Order upon Southwestern Bell Telephone Company and the Independent Telephone Companies of Texas, will be continued in the January, February, March, and April issues of the **PUC Bulletin**, Volume 13, Nos. 5-8.

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DOCKET NO. 5113

PETITION OF THE PUBLIC UTILITY COMMISSION OF TEXAS FOR AN INQUIRY CONCERNING THE EFFECTS OF THE MODIFIED FINAL JUDGMENT AND THE ACCESS CHARGE ORDER UPON SOUTHWESTERN BELL TELEPHONE COMPANY AND THE INDEPENDENT TELEPHONE COMPANIES OF TEXAS	PUBLIC UTILITY COMMISSION OF TEXAS

EXAMINERS' REPORT

I. Procedural History

This docket was instituted on April 19, 1983, when the General Counsel of the Public Utility Commission of Texas filed his original petition for an inquiry pursuant to Section 8 of the Public Utility Regulatory Act, Tex. Rev. Civ. Stat. Ann. art. 1446c (1980, as reenacted 1983 Tex. Sess. Law Serv. 1258) (hereinafter cited as "PURA" or "the Act"). The first prehearing conference in this docket was held on May 3, 1983, with Rhonda Colbert Ryan and Mary Ross McDonald presiding. It was reiterated that all telephone companies providing local exchange service in the State of Texas were named parties to the docket. The motions to intervene of the following entities were granted:

U. S. Telephone, Inc. (U. S. Tel)
MCI Telecommunications Corporation (MCI)
Texas Retailers Association (TRA)
Texas Association of Telephone Answering Services (TATAS)
Southern Pacific Communications Company (Sprint)
State Purchasing and General Services Commission
Mr. Jack Sanders
City of Lake Jackson
City of Fort Worth
Texas Municipal League and Cities (TML)

At this first prehearing conference, Southwestern Bell Telephone Company (SWB) was ordered to file, by May 23, 1983, testimony and tariffs relating to the issues raised in the Commission General Counsel's initial pleading. All parties were ordered to file comments on the issues and on proposed procedures no later than May 31, 1983. The following issues were identified as those on which the parties should file comments, but parties were also urged to address additional issues which they felt should be resolved in this proceeding:

I. Must the states develop intrastate access charges?
If not, is it still in the public interest to do so?
How must/should the present structure change in order to implement intrastate access charges?
Should intrastate access charge structure mirror the interstate access charge structure?
Is there a bypass threat?
If so, does this Commission have the authority to prohibit bypass and is it in the public interest to prohibit bypass?

II. Should there be an intrastate Universal Service Fund?
If so, how should it be established and administered?
Should there be an intrastate High Cost Factor; if so, should it be the same as the interstate High Cost Factor?

III. Should the intrastate toll rate structure be determined using averaged or deaveraged costs?
What will be the impact of the future method of toll settlements?
Should there be an intrastate counterpart to the ECA?
If so, should SWB be directed to file the initial tariffs?
Should pooling be mandatory or voluntary?

IV. What will be the relationship between SWB's LATAs and the Independents' territories?
How will the division of assets between SWB and AT&T affect the relationship?
Does the Commission have authority to prohibit intraLATA competition, and if so, is it in the public interest to do so?

Discovery was ordered to commence on May 4, 1983; no date for the conclusion of discovery was set. After hearing arguments on the motion of SWB for a protective order and balancing the need to determine the proprietary nature of documents and the need to complete extensive discovery in a short period of time, a Protective Order was entered in this docket on May 5, 1983, along with directives for its implementation. Argument was also heard on MCI's motion to join AT&T as a party to Docket No. 5113; that motion was granted and AT&T was joined as a party.

The second prehearing conference in Docket No. 5113 was held on June 8, 1983, with Mary Ross McDonald presiding. The motions to intervene filed by the following entities were granted:

City of Dallas
The Western Union Telegraph Company
Consumers Union
City of El Paso
City of Amarillo

The motion of SWB to modify the protective order previously entered in this docket was not opposed and therefore was granted. A Modified Protective Order was entered on June 24, 1983. Argument was heard on the motion of U. S. Tel for an order requiring the local exchange companies to file an alternative plan for revenue recovery. After consideration of the arguments advanced by the parties, the examiners concluded that while the substance of the motion had merit, an order directing SWB and the Independent telephone companies to file an alternative revenue recovery plan was neither procedurally supportable nor practically workable. If SWB and the Independents had agreed on a method of revenue recovery, it seemed unlikely that there were alternative agreements

available for submission in this case. It seemed equally unlikely, given the extremely short timetable for this docket and the lack of guidelines for developing an alternative revenue recovery plan, that SWB and the Independents could have devised such an alternative plan by the date of the hearing. Because of the unique nature of this proceeding, all parties were permitted to submit their proposals for the structure and operation of intrastate access charges in their direct cases, which proposals might or might not include alternatives to the settlements procedures. U. S. Tel was urged to submit its alternative revenue recovery plan for consideration by all parties in this docket. The motion of U. S. Tel for an order requiring SWB and the Independents to file an alternative revenue recovery plan was denied.

Comments were taken on the proposal made by U. S. Tel that SWB either propose access charges based on intrastate costs or identify intrastate costs associated with the provision of access to the local exchange on the intrastate level. Because U. S. Tel did not frame this request for cost information as a motion, no action was required at that time. The statements on this point by U. S. Tel and other parties were considered to be comments and/or statements of position.

Argument was also heard on the Motion of the General Counsel to Require Publication of Notice. Those parties who offered argument generally agreed that some sort of published notice should be given; however, there was no consensus on the contents of the notice, the frequency of publication or whether additional notice in the form of billing inserts should be required. Because the Commission may determine rates for some or all telephone public utilities in or as a result of this docket the examiners agreed that Section 42 of PURA requires that reasonable notice be given in this proceeding. The examiners therefore granted the motion of the General Counsel and further ordered each telephone public utility to publish the prescribed form of notice (set out below) once a week for four consecutive weeks in a newspaper of general circulation in each county of its service area. Those telephone public utilities who wished to do so were encouraged to supplement the published notice with billing inserts. The published notice was ordered to be no smaller than 4" x 5" and was ordered to be in the following form:

PUBLIC NOTICE

> At the request of the Office of the General Counsel of the Public Utility Commission, the Commission has established Docket No. 5113 to inquire into pressing issues involving the entire telephone industry in Texas. Docket No. 5113 will deal with many issues resulting from the impending divestiture of American Telephone and Telegraph Company and Southwestern Bell Telephone Company. Some of those issues include establishing the service areas of Southwestern Bell after divestiture and assessing the impact on other telephone companies in Texas, including [name of publishing company], of current settlement arrangements between Southwestern Bell and those companies. Additionally, Docket No. 5113 will deal with the issues arising from

the Federal Communications Commission's Final Order in Docket 78-72 (the Access Charge Docket) as they impact all telephone companies, including [name of publishing company]. It is anticipated that Docket No. 5113 will be evidentiary in nature. RATES FOR [NAME OF PUBLISHING COMPANY] MAY BE DETERMINED BY THE COMMISSION IN OR AS A RESULT OF THIS PROCEEDING. Interested parties seeking further information or desiring to participate in Docket No. 5113 are advised to write to Rhonda Colbert Ryan, Secretary and Director of Hearings, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757 or telephone the Public Utility Commission Consumer Affairs Division at (512) 458-0223 or 458-0227, or (512) 458-0221 TTY for the deaf.

Proof of publication, in the form of Publishers' Affidavits with copies of the notice attached, was ordered to be submitted by each telephone public utility as soon as such proof was available.

The issues to be addressed in this docket were further delineated at this second prehearing conference and are set out below:

I. How must/should the present structure change in order to implement intrastate access charges?
Should intrastate access charge structure mirror the interstate access charge structure?

II. Should there be an intrastate Universal Service Fund?
If so, how should it be established and administered?
Should there be an intrastate High Cost Factor; if so, should it be the same as the interstate High Cost Factor?

III. Should there be a uniform intrastate toll rate structure for telephone public utilities, or should access charges be applied to all toll service?
If there is a uniform intrastate toll rate structure, what will be the impact of the future method of toll settlements?
Should there be an intrastate counterpart to the ECA?
If so, should SWB be directed to file the initial tariffs?
Should pooling be mandatory or voluntary?

IV. How will the division of assets between SWB and AT&T affect the relationship between SWB's LATAs and the Independents' territories?

The examiners decided that the issues of certification of OCCs, resellers, and other long distance providers and of intraLATA competition should be handled in a separate proceeding, and left it to the General Counsel to determine whether such proceeding would be an inquiry, a request for Attorney General Opinion or other method. Parties were instructed that they could file written motions to modify the issues in this docket.

After argument on the unresolved objections of SWB to MCI's First Requests for Information and a brief recess, the parties announced that they had reached an agreement; thus, no ruling was made.

The following procedural timetable was established at the second prehearing conference: the hearing on the merits was to begin on August 1, 1983; all parties were to prefile their direct testimony by July 15, 1983; and the staff was to prefile its direct testimony by July 25, 1983. No deadline for filing RFIs was imposed, but answers to RFIs were ordered to be filed within 20 days of receipt by the party to whom the RFIs were directed, and a third prehearing conference was scheduled for June 23, 1983, for the purpose of hearing objections to RFIs. In the order entered after the second prehearing conference, the motion of Satellite Business Systems (SBS) to intervene was granted.

Mary Ross McDonald presided at the third prehearing conference, held on June 23, 1983. Disputes relating to discovery matters were taken up and either resolved by the parties or ruled on by the examiner. The issues to be decided in this docket were discussed again; the examiner confirmed, in response to SWB's motion, that if bypass was relevant to other issues in Docket No. 5113, it could be addressed, but that the specific issues regarding bypass (whether it exists, and, if so, to what extent) would not be part of this docket. In response to questions raised by U. S. Tel, the examiner reiterated that any party could propose any access charge structure in its direct case and that the continuation of present settlements procedures was not assumed.

Discovery disputes were also taken up at the third prehearing conference. Several matters were resolved without the examiner having to rule on them, and General Counsel's motion requesting filing of answers to its First Request for Information by June 30, 1983, was granted. The motion of Southwest Arkansas Telephone Cooperative, Inc. requesting reciprocity and to be relieved of the burden of responding to General Counsel's First Request for Information or, in the alternative for an extension of time for responding was granted in part; the movant was granted additional time to respond to the General Counsel's First Request for Information. The parties also requested clarification of the procedure for filing and service of documents, which was provided in the examiners' written order entered after the third prehearing conference. Finally, prehearing conferences were scheduled for each Thursday for the following five weeks for the purpose of resolving pending discovery disputes and other matters as quickly as possible.

At the fourth prehearing conference, held on June 30, 1983, Angela Marie Demerle presided. Discovery disputes were heard and those that were not resolved were to be made the subject of a pleading to be timely filed in order to be heard on July 14, 1983. Southwestern Bell's motion to order witnesses was

unopposed and was therefore granted. The still-pending motion of Southwest Arkansas Telephone Cooperative, Inc. requesting reciprocity and to be relieved of the burden of responding to the General Counsel's First Request for Information was granted. A tentative order of witnesses was discussed, but final consideration of the order of witnesses, grouping of parties and order of cross-examination as deferred until July 21, 1983. Finally, oral argument was heard on the question of the nature of this proceeding; the examiner deferred ruling on the matter and requested that a proper pleading which fully addressed the issue and which included a definite motion for resolution of the issue--in the form of a prayer for relief--be filed by MCI and/or U. S. Tel, the parties challenging the characterization of this proceeding as "generic."

On July 7, 1983, the fifth prehearing conference was held, at which Angela Marie Demerle presided. Oral argument was heard on MCI's Motion to the Jurisdiction and Motion to Realign Issues and Schedules in PUC Dockets 5113 and 5220, but during a brief recess, the parties agreed to continue their off-the-record discussion on the motions and report on any progress at the July 14, 1983, prehearing conference; rulings on the motions were therefore deferred. Argument and ruling were also deferred on BSTIO's (AT&T's) objections to MCI's Second Request for Information to AT&T, since the parties were attempting to work out their disagreements.

On July 11, 1983, the General Counsel filed his First Amended Petition for an Inquiry.

At the sixth prehearing conference, held on July 14, 1983, the presiding examiner, Mary Ross McDonald, heard argument on the oral motion of the General Counsel that the hearing on the merits be postponed until September. The parties generally agreed that additional discovery and preparation time would be helpful, and the motion was granted. The hearing on the merits was rescheduled to begin on September 12, 1983; parties were to prefile their direct testimony by August 29, 1983 and the staff by September 6, 1983. No further argument was heard on the questions raised by U. S. Tel regarding the issues to be decided in this docket nor on MCI's Motion to the Jurisdiction and Motion to Realign Issues and Schedules in PUC Dockets 5113 and 5220.

The seventh prehearing conference in this docket was held on July 28, 1983. Mary Ross McDonald presided. The motion of Century Telephone Enterprises for clarification of parties was granted; the ruling simply recognized that Century Telephone of Texas, Inc. and Mustang Telephone Company are parties to Docket No. 5113 appearing through their parent company, Century Telephone Enterprises. Arguments on objections to various Requests for Information were heard and rulings made. Some discovery disputes were not taken up by agreement of the parties.

At the eighth prehearing conference, held on August 22, 1983, Mary Ross McDonald presided. The motion of Associated Business Customers to intervene, being unopposed, was granted. Arguments on various discovery disputes were heard and rulings made; other discovery disputes were deferred by agreement of the parties. In the order entered after the eighth prehearing conference, the examiners discussed the issues raised and the relief requested in MCI's Motion to the Jurisdiction and Motion to Realign Issues and Schedules in PUC Dockets 5113 and 5220, the motion of Brazoria Telephone Company, et al., to Bifurcate Hearing, the July 11, 1983, letter from U. S. Tel, and the General Counsel's request for an interim order apprising all parties that the Commission may establish new rates in this proceeding.

The prehearing order issued June 16, 1983 stated clearly that the purpose of the hearing, as contemplated by the examiners, would be to establish the structure of intrastate access charges, and that actual rates for access for Southwestern Bell would be established in its rate case (Docket No. 5220). Actual rates for access for other telephone companies would be determined either in another phase of this docket--separately noticed, with more discovery and more testimony on this issue--or in separate dockets, such as rate cases filed by telephone companies or inquiries instituted by the General Counsel. By virtue of orders issued in Docket No. 5220, it was clear that Southwestern Bell's revenue requirement and actual rates for access charges would be decided in that docket. By analogy, the structure of access charges for any other telephone company which had filed a rate case would be determined in this phase of Docket No. 5113, with revenue requirements and access rates to be established in the rate case, if it was still pending; if not, then in the separately-noticed second phase of this docket or in a new docket or dockets instituted for the purpose of setting rates for access charges. The examiners did not contemplate determining revenue requirements in this phase of Docket No. 5113.

In addition, in the June 16, 1983, order, the examiners clearly indicated that rates might be established at some point in this docket by so stating and by requiring the telephone companies to publish notice of that fact. The General Counsel's Original Petition for an Inquiry, Motion to Require Publication of Notice, and First Amended Petition for an Inquiry pled Commission jurisdiction of the issues herein pursuant to Sections 16, 18, 37, 38, 42, and 67 of the Public Utility Regulatory Act, Tex. Rev. Civ. Stat. Ann. art. 1446c (1980). The examiners were of the opinion that the Commission has jurisdiction and authority to change rates or establish new rates in this docket (although as previously stated, access rates would not be addressed in the phase of this docket on which hearing was to begin September 12, 1983), and agreed that in any proceeding, regardless of which (if any) party has the burden of proof, the Commission must be able to support its findings by substantial evidence.

Finally, assuming arguendo that this docket should be characterized as a pure rulemaking proceeding, the examiners were unable to understand how any party could be deprived of procedural and substantive due process when the docket was being conducted as an adjudicative proceeding, allowing all parties to conduct discovery, to present evidence and argument, and to cross-examine witnesses prior to the Commission or any party even proposing any rule or rules regarding access charges.

Therefore, MCI's Motion to the Jurisdiction and Motion to Realign Issues and Schedules in PUC Dockets 5113 and 5220 and the Motion by Brazoria Telephone Company, et al. to Bifurcate Hearing were, to the extent the relief requested in each motion was inconsistent with the discussion outlined above, overruled. The General Counsel's request for an interim order was granted, and the examiners gave notice to all parties to this docket that the Commission might change rates or establish new rates in this proceeding pursuant to Sections 16, 18, 37, 38, and 42 of the Public Utility Regulatory Act, Tex. Rev. Civ. Stat. Ann. art. 1446c (1980).

The ninth and final prehearing conference in this docket convened on September 8, 1983, Mary Ross McDonald presiding, at which the motion of the Public Utility Counsel to intervene was granted. All motions for continuance of the hearing on the merits were denied. After a discussion of the order of witnesses and of cross-examination which had been established by the examiner, SWB gave notice that it would not offer the prefiled testimony of three of its witnesses; other parties changed the sequence in which their witnesses would appear; and parties offered suggestions for revising the order in which parties would present their direct cases and conduct cross-examination. The suggestions appeared to be premised on the idea that parties presenting similar positions should present their cases in sequence and that parties most adverse on a given issue should cross-examine last. No two parties agreed on every issue, however, and many parties agreed on some issues and disagreed on others; therefore, the examiner would have had to establish a sequence for presenting the direct case and for conducting cross-examination on each issue. The examiner declined to make any adjustment to the previously established order for presenting direct cases and conducting cross-examination, other than to agree to accommodate witnesses who had scheduling conflicts.

Arguments were heard and rulings made on some pending discovery disputes. A deadline for filing supplemental testimony was set for 5:00 p.m. two days prior to the day the witness was expected to take the stand.

The hearing on the merits in this case began as scheduled on Monday, September 12, 1983. At various times throughout the hearing on the merits, appearances were entered by the following persons: Mr. John F. Bell, representing Brazoria Telephone Company, Byers-Petrolia Telephone Company, Lake

Dallas Telephone Company, Inc., Muenster Telephone Corporation of Texas, and Southwest Texas Telephone Company (Brazoria et al.); Mr. Dale Johnson and Mr. David Cosson, appearing on behalf of Texas Statewide Telephone Cooperative, Inc. (representing Big Bend Telephone Company, Brazos Telephone Cooperative, Cap Rock Telephone Company, Inc., Central Texas Telephone Cooperative, Inc., Coleman Telephone Cooperative, Colorado Valley Telephone Cooperative, Comanche County Telephone Company, Cumby Telephone Cooperative, Dell Telephone Cooperative, Eastern New Mexico Rural Telephone Cooperative, Eastex Telephone Cooperative, Etex Telephone Cooperative, Five Area Telephone Cooperative, Ganado Telephone Company, Guadalupe Valley Telephone Cooperative, Hill Country Telephone Cooperative, Mid-Plains Rural Telephone Cooperative, Panhandle Telephone Cooperative, Peoples Telephone Cooperative, Poka-Lambro Rural Telephone Cooperative, Riviera Telephone Company, Santa Rosa Telephone Cooperative, South Plains Telephone Cooperative, Taylor Telephone Cooperative, Valley Telephone Cooperative, West Texas Rural Telephone Cooperative, Wes-Tex Telephone Cooperative and XIT Rural Telephone Cooperative) (TSTCI); Ms. Brook Bennett Brown, appearing for Central Telephone Company of Texas and Central Telephone Company-Midstate (Centel); Mr. John Andrew Martin, appearing on behalf of Continental Telephone Company of Texas (Continental); Ms. Sylvia Lesse, representing Fort Bend Telephone Company (Fort Bend); Mr. Ward W. Wueste, Jr. and Mr. William G. Mundy, appearing on behalf of General Telephone Company of the Southwest (GTSW); Mr. Robert L. Lehr, representing United Telephone Company and Palo Pinto Telephone Company (United/Palo Pinto); Mr. Jackie N. Dukes and Mr. John Clark, appearing for Great Southwest Telephone Corporation (GSTC); Mr. Jon Dee Lawrence, Ms. Barbara Hunt, Ms. Linda Legg, Mr. Gary Buckwalter and Mr. Keith Davis, appearing on behalf of Southwestern Bell Telephone Company; Mr. Paul Hermann, Mr. David Thornberry, Mr. James E. Magee and Mr. Robert L. Sills, appearing on behalf of Southern Pacific Communications Company (Sprint); Mr. Jack O. Sanders, appearing on behalf of himself and residents of the Highlands North Area of Dallas; Ms. Martha Smiley, Ms. Carolyn Shellman, Mr. Steve Bickerstaff, and Mr. Scott McCollough, representing U. S. Telephone, Inc. (U. S. Tel); Mr. Geoffrey M. Gay, appearing on behalf of State Purchasing and General Services Commission (SPGSC); Ms. Grace Hopkins Casstevens and Mr. Steven A. Porter, representing Texas Municipal League and Cities served by Southwestern Bell Telephone Company (TML); Mr. Ray G. Besing and Mr. Thomas McKenzie, appearing for MCI Telecommunications Corporation (MCI); Mr. Mike Willatt, representing Texas Association of Telephone Answering Services (TATAS) and Texas Association of Radio Systems (TARS); Ms. Joyce Beasley, Mr. Lawrence G. Crahan, Mr. Joe N. Pratt, and Mr. Jeptha Hill, representing AT&T Communications of the Southwest, Inc. (also known in this docket as Bell System Texas Interexchange Organization, or BSTIO, prior to its being required to relinquish use of the Bell name, but referred to in this report as AT&T); Mr. Garrett Morris, appearing on behalf of Associated Business Customers (ABC); Mr. Charles Camp, representing Nocona Telephone Company (Nocona); Mr. Mark McCall, appearing for Satellite Business Systems (SBS); Mr. Jim Boyle, Public Utility Counsel; and Mr. Jose Varela, representing the Commission staff.

MCI's Motion to Dismiss and Motion to Strike Testimony were taken up prior to the merits of the case and, after consideration of the arguments, both motions were denied. Argument was also heard on U. S. Tel's Motion to Strike Testimony or Grant Alternative Relief; the rulings on the motion to strike specific testimony of several witnesses were deferred until the testimony of each witness had been offered. No ruling was made on the request for alternative relief, but the opportunity to reurge the request was not foreclosed.

Parties were instructed that objections to testimony, motions to strike testimony and requests to take a witness on voir dire would be in writing. The parties were further instructed that the Texas Rules of Evidence would apply to the proceedings and that objections to and/or motions to strike testimony should cite a specific rule or rules.

AT&T's Motion to Strike and Alternative Motion to Compel Sponsorship of Testimony and Motion to Admonish Counsel were taken up on September 16, 1983, and all relief requested was denied.

Xerox Computer Services' Motion for Leave to Intervene, filed September 23, 1983, was never urged.

MCI's Motion to Strike Testimony and to Admonish Counsel, filed October 4, 1983, was denied.

MCI's Motion to Dismiss at the Close of SWB Testimony, filed October 6, 1983, was denied.

On October 15, 1983, pursuant to an announcement made on the previous day that the local exchange carriers had arrived at a settlement position with respect to access charges and other matters at issue in this docket, the hearing on the merits was recessed and was reconvened on October 24, 1983.

On October 17, 1983, the Western Union Telegraph Company filed its notice of withdrawal as a party.

On October 24, 1983, the motion of Texas Association of Radio Systems (TARS) to intervene in this docket was granted; its motion for severance of proposed access charges for radio common carriers was denied. TARS' Motion for Continuance and for Permission to File Testimony, filed November 7, 1983, was denied on November 15, 1983.

Protest statements were filed on November 14, 1983, by Directline Todco, Inc.; WesTel, Inc.; Qwest Microwave, Inc; Directline HASP, Inc.; Telesphere Network, Inc.; Wiese, Inc. d/b/a Texas Long Distance; and Satelco, Incorporated.

An amended protest statement was filed by Satelco, Incorporated on November 15, 1983.

On November 15, 1983, the motion of TATAS to recall witnesses and to file testimony was denied.

The hearing on the merits concluded on November 15, 1983; after consideration of offers of deposition testimony and exhibits, and the objections thereto, the evidentiary record in this docket closed with the examiner's order admitting and excluding such deposition testimony and exhibits, entered on November 22, 1983.

The Examiner's Interim Order was entered on November 23, 1983, and was clarified by orders entered on December 5, 1983, and December 8, 1983. The interim order was affirmed in part and reversed in part by Commission order issued on December 22, 1983, pursuant to appeals of the interim order heard on December 21, 1983. The interim order, as modified on appeal, required the local exchange telephone companies, which did not have a rate case pending, to file interim access tariffs, subject to refund, which would allow the local exchange telephone companies to maintain, as nearly as possible, the present level of toll revenue, and which would go into effect January 1, 1984; guidelines for developing those interim access tariffs were set forth in the interim order, as modified on appeal.

Briefs were filed on December 1, 1983, except for MCI's brief which was filed on December 9, 1983, due to the illness of its counsel.

On February 24, 1984, the Examiner's Order Ruling on Various Posthearing Motions was signed. The motion of TEXALTEL to intervene was denied without prejudice to its being refiled and reurged in any second phase of this docket. The examiner proposed to take official notice of the FCC's Memorandum Opinion and Order in CC Docket No. 78-72, In the Matter of MTS and WATS Market Structure (FCC 84-36), adopted February 3, 1984, and released February 15, 1984. The examiner also granted various parties' motions to quash, and sustained various parties' objections to, AT&T's RFIs to those parties, and declared discovery closed as of the close of the hearing on the merits. The examiner also granted TML's motion to substitute as intervenors the various cities listed in its motion, and overruled TML's objection to the Independent exchange companies' interim tariffs.

In the Examiner's Order Ruling on Motions to Reopen the Hearing and on Other Matters entered on March 9, 1984, the examiner declared her intention of officially noticing the FCC's Memorandum Opinion and Order in CC Docket No. 83-1145, In the Matter of Investigation of Access and Divestiture Related Tariffs (FCC 84-51), released February 17, 1984. Citing the urgent need for a

final order herein, the examiners overruled the motions to reopen the hearing on the merits. The motions to quash AT&T's First RFI filed by Century Telephone of Texas, Inc. and Mustang Telephone Company were granted.

II. Discussion

A. Introduction

The issues in this docket are similar to those raised in the FCC's access charge docket, that is, whether the toll rate structure for the AT&T/SWB/Independent telephone companies is discriminatory compared to the rates of OCCs in Texas because of the different amount of contribution or support those rates provide toward the non-traffic sensitive (NTS) costs of the local exchange companies; and whether costs which do not vary with usage should be recovered through flat rate pricing instead of a usage sensitive basis and, if so, from whom. A brief explanation of the difference between traffic sensitive plant and non-traffic sensitive plant and of the separations and settlements process in Texas follows. A somewhat detailed summary of the events at the federal level is also provided as background for the controversy in this docket.

1. Traffic Sensitive Plant and Non-Traffic Sensitive Plant

Traffic sensitive plant is generally considered to be that plant for which costs increase as traffic or usage increases, such as interoffice trunks and local exchange switching equipment. Telephone companies do not provide enough switching and trunking equipment to permit every subscriber to use his or her telephone simultaneously, just as an electric utility does not build capacity to allow every customer to operate every connected appliance at the same time. The quantities of telephone equipment are based on usage volumes during busy periods of the day. When usage goes up, equipment is added; therefore, costs increase.

Non-traffic sensitive (NTS) plant is that type of telephone plant for which costs do not increase as traffic or usage increases. Outside plant, such as cables and poles are examples of NTS plant. All the equipment a subscriber would need to access a telephone company's local exchange switch is normally considered to be NTS plant; this would include terminals and station equipment (telephone instruments), protection block, drop line to the customer's premises, and the cable pair (local loop) between the customer and a local exchange switch (central office). A portion of the end office (local dial) switch is also classified as NTS plant under separations procedures to segregate the cost of terminating a line in a switch from the cost of the switch. NTS costs represent a substantial portion of the costs incurred by telephone companies; these costs are incurred regardless of the number or duration of calls made. Total NTS costs are allocated between the federal and state jurisdictions using the procedures set forth in the Separations Manual. For example, 23 percent of

SWB's Texas NTS costs are allocated to the interstate jurisdiction, 21 percent to intrastate toll, and the balance to local exchange service. NTS costs allocated to the interstate jurisdiction pursuant to Separations Manual procedures are presently recovered through minute-of-use charges imposed upon certain services and providers. The majority of interstate NTS costs have been recovered through the minute-of-use charges for AT&T's message toll service (MTS). The FCC concluded in its access charge orders that because of the present pricing scheme, large volume toll users have been paying a disproportionately high share of these NTS costs, that such a pricing plan was unreasonably discriminatory and that NTS costs should be recovered after a transition period through flat rate per line charges on end users rather than through usage-sensitive rates.

2. Separations and Settlements

Separations is the process prescribed by the FCC (in Part 67 of the FCC's rules) by which telephone companies separate their property costs, revenues, expenses and taxes between the interstate and state jurisdictions according to a uniform plan acceptable to regulatory authorities at both the federal and state levels. Presently this process is conducted according to "The Ozark Plan," which refers to the changes in the Separations Manual adopted by the National Association of Regulatory Utility Commissioners (NARUC) at its meeting at the Lake of the Ozarks in Missouri. The Ozark Plan has been in effect since January 1, 1971. The FCC's access charge plan--Part 69 of its rules--relies on Separations Manual definitions, categories, and procedures to identify access costs. In some cases, access charge elements are taken directly from the interstate costs identified by the separations process. In other cases, those interstate costs must be allocated to two or more access charge elements. The NARUC-FCC Joint Board (in FCC Docket No. 80-286) is considering revisions to the Separations Manual. Two revisions already ordered are the freezing of the Subscriber Plant Factor (SPF) at an average 1981 level, beginning April 2, 1982, and the phasing out of the assignment of Customer Premises Equipment (CPE) from the interstate jurisdiction beginning January 1, 1983. These revisions--and others--directly affect the level of interstate costs assigned to various interstate access charge elements.

The Subscriber Plant Factor is one major separations factor used in the jurisdictional allocation of NTS costs; SLU is a component of this formula. The Subscriber Line Usage (SLU) factor is used in allocating TS costs. For some Texas companies, the SPF formula more than triples the assignment of NTS costs in Texas to the interstate jurisdiction over the amount that would have been assigned to the interstate jurisdiction based on the actual subscriber line usage. Other Joint Board revisions in the Separations Manual could directly affect the level of costs assigned to access charge elements.

The settlements process between Southwestern Bell and the Independent telephone companies in Texas is the subject of detailed contracts between SWB and each Independent company and operates as follows: SWB files the interstate and the intrastate toll tariffs; the Independent companies concur in these tariffs, regardless of what their costs may be. All toll revenues received by the Independent companies are reported to SWB; the Independents then recover from the intrastate toll revenue pool all toll-assigned expenses and taxes. The Texas Independents also receive SWB's achieved settlement rate of return on net plant assigned to intrastate toll. The achieved rate of return is applied to each Independent's net plant investment assigned to state toll. Remaining revenues are retained by SWB. The Independent companies settle on the basis of either individual toll cost studies of their actual costs or the Nationwide Average Settlement Schedules which are based on a composite average of cost studies of hundreds of Independent company exchanges. In Texas, approximately 18 Independent companies settle on Average Schedules and approximately 54 settle on the individual cost studies method.

3. OCCs in Texas

Competition between providers of long distance service within Texas has existed for a number of years. The requirements of the MFJ and the conclusions of the FCC in CC Docket No. 78-72, however, have raised difficult questions regarding the nature of that competition and whether the existing method of recovery of NTS costs by the local exchange companies should be changed. There is nothing in either the MFJ or the orders in CC Docket No. 78-72 which requires this Commission to take any action other than perhaps to fashion an access charge tariff for SWB to use in providing interconnections to AT&T, but there is certainly nothing in those orders which prohibits this Commission from investigating these important issues on its own.

The operation of OCCs within Texas is unique. There are a number of OCCs already providing intrastate services, but their intrastate operations are virtually unregulated. This means that OCCs are able to select the markets where they will serve and can enter and leave such markets at will. Furthermore, they are able to set their own rates and change them at any time. They are not subject to any quality of service guidelines or requirements in Texas.

OCCs do not own their own local exchange networks. SWB currently provides interconnections to OCCs pursuant to its "Facilities for OCC" tariff; those few Independent companies which have (or had) OCC interconnections provide them under contracts. Under the SWB OCC tariff, the connection between the OCC terminal and the local serving office is provided at a rate equal to the PBX trunk rate plus mileage charges for a central office connecting facility (COCF); there is no rate reflecting the NTS costs associated with the NTS facilities of

the OCCs' customers, as there is under the interstate ENFIA tariff's rate element three (NTS plant). The PBX trunk rate paid by an OCC to SWB may recover the NTS costs associated with each line ordered by the OCC, but the PBX trunk rate is not structured to recover the NTS costs associated with any other subscriber plant as are the interstate toll rates of AT&T and the intrastate toll rates of SWB and the Independents. One of the Independents providing OCC interconnection under contract is General Telephone Company of the Southwest. GTSW's intrastate OCC contracts run from $30 to $193 a month for such connections, compared to $384 a month for its interstate ENFIA-type connections--even though the facilities are often identical. The difference in the amount is the NTS cost support in ENFIA rate element three. There is no comparable rate element in intrastate OCC rates.

4. The FCC Access Charge Docket

When CC Docket No. 78-72, In the Matter of MTS and WATS Market Structure, was initiated by the FCC in February 1978 to determine the optimal market structure for the MTS-WATS market, they concluded that it would be necessary to prescribe the compensation which exchange carriers should receive for the use of exchange plant and facilities in originating and terminating the interstate and international services of all interexchange carriers. In the Third Report and Order (FCC 82-579), released February 28, 1983, the FCC recognized that establishing an access compensation scheme for those carriers which compete with MTS or WATS would be impossible without also correcting what it termed the "existing disparities in access compensation among services offered by AT&T and its telephone company partners." The primary cause of such disparities among MTS users, according to the FCC, is the recovery of fixed costs (nontraffic sensitive or NTS costs) through usage charges (interstate toll rates). Citing its concern for preservation of universal service and pointing out that the immediate recovery of high fixed costs through flat end user charges might cause a significant number of subscribers to cancel local exchange service, the FCC adopted rules establishing a transitional plan for eventually transferring the recovery of interstate toll-related NTS costs from usage sensitive toll rates to flat rate end user charges.

The transitional plan would also avoid anomalous effects of existing disparities in interstate costs in different areas, would allow access charges which reflect existing inequalities in the quality of access arrangements to be developed, and would enable the FCC to adjust rules in the future if unexpected developments indicate changes are needed. Two transitions were thus incorporated: some fixed costs plus any high cost or Universal Service Fund were to be recovered through carrier's carrier charges during a 5-year transition period. The remaining costs were to be assessed to end users and recovered through a combination of usage and flat charges during a 7-year transition period. The FCC also established rules for computing carrier's

carrier charges for access services other than exchange plant. Although in 1980 the FCC had limited the definition of access to facilities used in common by exchange and interexchange services, it later expanded the definition of access to correspond with that employed in the MFJ. The FCC's access rules established nine different elements for such carrier's carrier charges: two elements for local dial switching, three elements for operator services, two elements for other switching and transmission facilities, an element for billing and collection services and an element for special access (primarily private line facilities). The FCC ordered the creation of an exchange carrier association to collect and distribute the carrier's carrier portion of the NTS charges, to file tariffs and to administer revenue pools for those telephone companies choosing to join the association's common tariffs for other access elements. Although AT&T was directed to prepare the initial tariffs for the association, the Central Staff Organization (CSO) of the Bell Operating Companies (BOCs) actually prepared the tariffs.

The FCC characterized its proceedings as having been instituted to determine first whether existing methods of compensating exchange companies for use of local exchange plant in interstate telephone service should be replaced by a tariffed access charge arrangement and, second, what the structure of such tariffs should be. In the FCC's opinion, entry of the MFJ rendered the first question moot because it terminated the Bell System Division of Revenues process and required that such a tariffed system of access charges be substituted. Conceding that the existing settlements system of access compensation for the Independent companies could theoretically remain in place while tariffed access charges were implemented for the BOCs and AT&T, the FCC determined that the public interest required the FCC to set the basic structure of access tariffs. The FCC limited the application of the access rules to basic or regulated services within its jurisdiction, i.e., interstate and foreign services. The FCC also assumed that the present Separations Manual correctly identifies the costs assignable to interstate and foreign telecommunications services. Even though the separations procedures were currently being investigated by a Joint Board and were beyond the scope of Docket 78-72, the FCC recognized that changes in separations procedures would have an impact on the costs identified as appropriate for recovery from the interstate jurisdiction via access charges. Questions about apportionment or allocation of non-access interstate facilities and services were assumed to be resolved by reference to the Interim Cost Allocation Manual.

The FCC reiterated its conclusion that it would be impossible to establish access compensation for MTS-WATS equivalent services of new interexchange facilities "without correcting existing disparities in access compensation that is paid directly or indirectly by users of services offered by the telephone company partnership." AT&T's proposal to establish charges for MTS-WATS equivalent services that purported to be at parity with the access compensation

for MTS and WATS received by the BOCs through the division of revenues process was challenged by the carriers that provided the MTS-WATS equivalent service. Those carriers claimed that the proposal resulted in unlawful discrimination because the MTS-WATS equivalent charges would be much higher than those for foreign exchange (FX) service even though the service was identical to FX. The FCC, acknowledging that a negotiated rate for an interim period would be in the public interest, allowed an interim agreement (ENFIA, or Exchange Network Facilities for Interstate Access) between AT&T, USITA and certain other carriers, including MCI and Sprint, which established a rate for MTS-WATS equivalent access (or Execunet/Sprint type), to go into effect. The ENFIA agreement recognizes that those carriers--other than the Bell partnership--which provide MTS-WATS equivalent services should pay part of the costs of the local exchange network they use in originating and terminating interstate or foreign services. Under the ENFIA tariff, local exchange companies provide facilities and access to the local exchange networks used by the OCCs for their MTS-WATS-type end-to-end interstate services such as Execunet and Sprint.

The ENFIA tariff has three separate rate elements: (1) voice grade central office connecting facility (VGCOCF) used to connect the OCC's terminal location with a local exchange company's central office, the rate for which is based on the mileage distance between the OCC's terminal location and the local telephone company central office which normally serves that location; (2) local switching and trunking, which includes local central office switching and interoffice trunking where required, and for which a flat monthly rate based on 5,435 minutes of use per line is charged; and (3) local distribution plant (NTS), for which a flat monthly rate is charged for the jointly used subscriber plant, including station equipment, subscriber loops and termination of those loops in a local central office. (The average in Texas is 9,312 minutes of use per line.) Those OCCs utilizing the ENFIA tariff pay a flat rate charge for NTS plant. Because ENFIA does not apply to the resale of MTS and WATS provided by AT&T nor to resold OCC MTS-WATS-type services, some interstate carriers--such as WATS resellers--have not made a similar contribution to the recovery of interstate NTS costs. Thus some, but not all, providers of interstate toll services contribute to the recovery of interstate NTS costs; even those which do contribute to such costs do not do so at the same level of contribution.

ENFIA rates were originally set to recover 35 percent of the NTS costs reflected in AT&T's interstate rates. The ENFIA rates were increased to recover 45 percent of those costs and are presently set to recover only 55 percent of AT&T's interstate NTS costs. This means that under the ENFIA agreements, BOCs are compensated for use of their facilities for OCC interconnection at a 45 percent discount from the amount AT&T calculates that the BOCs receive for exchange access through the division of revenues process. In connection with its discussion of the ENFIA negotiations and agreements, the FCC pointed out that "the discrimination problem" was not confined to differences in access

compensation among MTS, WATS, FX, CCSA, and MTS-WATS equivalent services, but also extended to origination and termination of private line services because of their interchangeability (as with other services) with MTS. This broader approach was confirmed in the Third Report and Order when the FCC adopted the MFJ definition of access service as including all tariffed services and facilities that the BOCs (and exchange companies) will provide for origination and termination of interstate calls, even though that definition included some services and facilities which the FCC might have excluded had it limited its access plan to merely establishing parity among MTS and those other services (provided by telephone company or other carrier) which are close substitutes for MTS.

The FCC originally viewed "access" as the services a local exchange company provides to a long haul carrier, and assumed that the local company would be compensated by the long haul carrier through the carrier's carrier charge. In the Third Report and Order, however, the FCC used the term "access" to mean a combination of the services the local exchange company provides to long haul carriers (access to the local exchange network for origination and termination of interexchange services) and to end users or subscribers (access to interexchange carriers through local exchange facilities). Thus, as the FCC uses the term "access charges," it encompasses both end user and carrier's carrier charges. The FCC further clarified its use of the terms "interexchange" as usually synonymous with "interLATA," and "exchange facilities" as meaning "intraLATA facilities," as used in the MFJ.

The rationale for implementing its access charge scheme was articulated by the FCC as follows:

> The inequities between existing forms of compensation for the identical use of such access plant by different interstate services make these forms an inappropriate model for the development of access tariffs. We have decided that a single, uniform and non-discriminatory structure for interstate access tariffs covering those services that make identical or similar use of access facilities is required by the Communications Act. While we have provided considerable flexibility for telephone companies within our access rules, we believe that the development of the competitive interstate telecommunications market requires certain uniform principles covering both BOC and Independent telephone company access tariffs.

(Third Report and Order, par. 24.) In moving away from the present system of recovering interstate toll-related NTS costs through interstate usage-sensitive toll rates to a new system of recovering those costs through flat charges to end users which do not vary with usage, the FCC recognized that it was taking an important step representing "a significant departure from interstate pricing approaches," but defended its action as the sole means of furthering the goals of universal service, non-discrimination, network efficiency and prevention of uneconomic bypass.

The FCC perceived a "substantial danger" to the nation's telephone system from the continuation of the inefficient method of recovering, through usage sensitive rates, costs which do not vary with usage. This "danger" is the threat of uneconomic bypass; that is, abandonment of the telephone network by subscribers--particularly the large volume telecommunications users--for less efficient alternatives. The FCC was unable to determine, however, what constitutes uneconomic bypass. Since some users' needs may not be adequately served by existing telecommunications services, they may turn to a wholly new service which attracts a new set of users, enhancing the ability of all users to make full use of telecommunications potential. What may be an efficient means of providing service to some users may be the uneconomic bypass of others. Despite the FCC's inability to define uneconomic bypass or to quantify bypass in terms of number of customers lost or revenues lost to the telephone companies, the FCC nevertheless determined that the bypass threat is of sufficient magnitude to justify immediate implementation of the new access compensation rules. The FCC perceived that bypass is so imminent a danger that any delay in implementing the access charge plan would preclude the option of a several-year transition to full end user flat rate charges for interstate toll-related NTS costs.

The FCC carefully pointed out that its decision with respect to NTS cost recovery through flat rates was not a judgment that subsidizing the costs of basic telephone services for certain customers or for all customers is improper; rather, the access charge plan is a decision that attempting to generate the subsidy by recovering NTS costs through toll rates is "harmful and futile." Refuting the argument that Smith v. Illinois Bell Telephone, 282 U. S. 133 (1930), precludes the FCC from pricing interstate toll access on a flat rate basis, the FCC determined that Smith addresses only the jurisdictional assignment of costs, not pricing methodologies.

While the FCC limited the scope of its access charge rules to the interstate and foreign services within its jurisdiction, and Docket 78-72 does not require state commissions to follow the FCC approach, the FCC nevertheless expressed hope that states would move toward uniformity in access plans in the interest of promoting administrative efficiency and decreasing the disparity between interstate and intrastate toll rates. The FCC concluded that such flat rate pricing of NTS costs to end users reflects cost-causation principles and provides the correct economic signals to the marketplace, to investors and consumers both. The FCC's rationale for assessing flat rate end user charges to recover interstate toll NTS costs is that the cost of the loop is incurred regardless of the number of calls made; it is the opportunity to make interstate toll calls (interstate access) for which the end user pays. In the FCC's view, this pricing plan comports with the principle that costs should be recovered from the cost-causative ratepayer.

The FCC also noted little disagreement that the quality of interconnection received by the OCCs through their ENFIA-A (line-side) arrangements is distinctly inferior to that received by the traditional interexchange partnership, and that even under ENFIA-B and ENFIA-C (trunk-side) arrangements (where such connections are available), the interconnection is inferior. It found that such quality differences would be a substantial advantage to the carriers offering MTS and WATS, unless the pricing reflected the difference until the time when equal access is available to all interexchange carriers, even though the FCC could not find such inferior connection was any cheaper to provide. Since cost-based pricing would appear to require that each carrier pay its full cost regardless of quality differences, the FCC decided not to characterize OCC rates as discounted (although under ENFIA, OCCs pay 45 percent less than AT&T does). Instead, the FCC found that AT&T enjoys a unique level of access, unavailable to any other carrier, and it should pay the opportunity cost for this preferred level of access. An auction to determine the value of such access being infeasible, the FCC instead estimated the premium value of such access and required that premium access payments be deducted from the local exchange companies' carrier common line revenue requirement in order to compute usage charges. Because of the MFJ requirement that by September 1986 the quality of interconnection offered to OCCs must be much closer to that offered to the premium carrier, a decreasing surcharge was deemed appropriate. In the Third Report and Order a lump sum premium was found to be consistent with the economic justification for imposing a premium.

Finding little evidentiary value in the submissions it requested from proponents of a large or a small differential in the access compensation paid by OCCs and the telephone company partnership, the FCC exercised its best judgment to determine an appropriate premium amount. The FCC concluded that the 1984 premium should be smaller than an amount which would equal the discounts OCCs receive under the ENFIA agreement, but should be substantial because of significant disparities in the quality of access in 1984. A phased elimination of the access premium was, in the FCC's judgment, the best way to encourage full and fair competition, with neither the potentially adverse effects of the abrupt discontinuation of the differential on existing competitors nor the artificial advantages the present differential might allow to new competitors. The FCC set the premium differential at the dollar amount of interstate CPE costs (estimated to be about $1.4 billion for 1984) as a default formula which could be adjusted if necessary during the four-year phase-out period if the premium value of access declines at a much faster or slower rate than the interstate CPE costs.

Upon the FCC's reconsideration and clarification of the Third Report and Order pursuant to thirty-five petitions seeking review and revision of almost every aspect of the access charge plan, a Memorandum Opinion and Order (83-356) was released on August 22, 1983; this is referred to as the Reconsideration Order. Although the access charge plan remained in effect, (that is, there was

no change in the ultimate goal of gradually transferring the recovery of all interstate NTS costs to flat rate end user charges), several important modifications to that plan were ordered. The changes called for a reduction of the maximum initial level of the interstate revenue requirement to be charged to local exchange customers and a corresponding increase of the amount to be charged to interexchange carriers. The end user common line charge was changed from a monthly minimum of $2 for residence lines and $4 for business lines to a monthly maximum of $2 and $6, respectively. The transition period to full flat rate end user NTS cost recovery was changed from five to six years and the option of a transitional usage sensitive end user common line charge was eliminated; thus all end user charges were ordered to be flat monthly rates.

Some changes and clarifications in cost calculation procedures and rate design matters were also ordered. Some major changes included the clarification that access minutes are the uniform unit of measure for charging carrier common line, line termination, local switching and intercept. The FCC also redefined the method for charging the premium to those interstate interexchange carriers receiving premium access from an additional charge to premium carriers' access charges to a discount to the chargeable access minutes associated with carrier common line charges. In 1984, the discount was to be 35 percent, and was to be reduced over the three year period as equal access is made available. The discount applies only to carrier common line access minutes and to no other rate elements. This change has the effect of increasing the premium differential between AT&T and the OCCs during the first year and of shortening the phase-out period.

In addition, the FCC removed billing and collection services from the traffic sensitive pool and set them up as a separate voluntary pool; clarified the application of surcharges to interstate private line service, the closed ends of FX service, and the closed end of WATS access lines; clarified the two rate elements for local switching; and prohibited the further disaggregation of the revenue requirement into more discrete rate levels.

In the Reconsideration Order, the FCC reiterated that CC Docket No. 78-72 was an effort to balance the four stated objectives--the elimination of unreasonable discrimination and undue preferences among rates for interstate services; efficient use of the local network; prevention of uneconomic bypass; and preservation of universal service--and to preserve an opportunity for fair competition during the transition period during which existing inequalities in interconnection options offered to interexchange carriers will be eliminated. The FCC continued to maintain its position that flat rate pricing of interstate toll assigned NTS costs is necessary for society to maximize efficient network use and to realize the benefits of increasing competition in the interexchange marketplace. The FCC dismissed what it termed artificial pricing structures as appropriate for use in achieving social objectives under the right conditions

but unable to withstand the pressures of a competitive marketplace. Uneconomic bypass of the local exchange was again cited as the threat to universal service: as high volume users abandon the local exchange, the cost of existing local exchange plant must be recovered from the fewer remaining subscribers, causing their rates to rise; if those rates rise to unacceptable levels, more customers may leave the system, leaving the still-fewer remaining subscribers to pay for the same costs.

On October 19, 1983, the FCC released its Memorandum Opinion and Order in CC Docket No. 83-1145, In the Matter of Investigation of Access and Divestiture Related Tariffs (FCC 83-470), in which it ordered the suspension until April 3, 1984, of all access and divestiture related tariffs filed pursuant to its previous orders regarding implementation of access charges.

On February 15, 1984, the FCC released another Memorandum Opinion and Order in CC Docket No. 78-72 (FCC 84-36), in which it reaffirmed its commitment to the goals of this proceeding, as set forth in previous orders, but announced several changes in its plans for achieving those goals. One important change was the deferral, until June 1, 1985, of end user charges for residential and single-line business customers in order to enable the FCC to devise an exemption for subscribers who cannot afford to pay any end user charge, to reevaluate the transition plan for end user charges and to explore various mechanisms for assisting customers of small telephone companies. The FCC also announced plans to conduct further studies of the elasticity of demand and bypass.

The FCC also reconsidered the premium access differential, in terms of the amount and the method of calculation. The FCC did not depart from its belief that establishing a differential between access charges for MTS-WATS and access charges for MTS-WATS equivalent services equal to the opportunity cost of premium access would achieve the best results, but it concluded that because of the deferral of a substantial portion of the end user charges until 1985, use of the Reconsideration Order formula in conjunction with an increased Carrier Common Line revenue requirement posed a greater adverse risk on interexchange competition. The FCC decided that it was impossible to determine a precise premium value and that therefore a total differential for all access elements related to the total differential produced by the current ENFIA rates should be established. The FCC decided that a per minute charge for unequal access should be converted to a charge per line, using 9,000 minutes of use per line to compute the initial monthly per line charge.

The FCC also adopted revised rules establishing a non-premium rate for FX-CCSA Open End Access, modified its rules relating to charges for closed end WATS and for exemptions from the private line surcharge, and discussed other issues raised by the parties.

The FCC also released a Memorandum Opinion and Order in CC Docket No. 83-1145, In the Matter of Investigation of Access and Divestiture Related Tariffs (FCC 84-51), on February 17, 1984, in which the FCC analyzed the ECA tariff methodology and rates, and provided specific instructions for local exchange companies in making changes in all the access tariffs to correct errors and deficiencies and taking other action deemed necessary.

5. The Modification of Final Judgment

This historic consent decree (United States v. AT&T, 552 F.Supp. 131 (D.D.C. 1982), aff'd. sub. nom. Maryland v. United States, 103 S.Ct. 1240 (1983)) modified the final judgment which had been entered on January 24, 1956, in the complaint originally filed by the United States on January 14, 1949, by vacating that judgment in its entirety and replacing it with new terms and provisions. The major requirement of this decree is that AT&T would transfer from itself--divest--sufficient facilities, personnel, systems and rights to technical information to allow the Bell Operating Companies (BOCs) not only to perform exchange telecommunications and exchange access functions independently of AT&T, but also to meet the requirements of equal access imposed on the BOCs.

AT&T was to file its plan of reorganization (POR) within six months of the entry of the MFJ. The decree prohibits joint ownership between AT&T and a BOC of facilities, but multifunction facilities can be shared pursuant to a lease or some other method, as long as the separated portion of each BOC is insured control over exchange telecommunications and exchange access functions. The BOCs are allowed to support and maintain a centralized organization for the provision of engineering, administrative, and other services. The BOCs are required, however, to provide to all interexchange carriers and information service providers exchange access, information access, and exchange services for such access on an unbundled, tariffed basis that is equal in type, quality and price to that provided to AT&T and its affiliates, beginning no later than September 1, 1984. The MFJ sets out in detail in Appendix B the obligations of the BOCs to provide equal access. AT&T is prohibited from taking action that interferes with the BOCs' requirements of nondiscrimination between AT&T and its affiliates and other persons in the provision of their services; the BOCs are prohibited from providing interexchange telecommunications services or information services, manufacturing telecommunications products or customer premises equipment, and providing any other product or service, except exchange telecommunications and exchange access service, that is not a natural monopoly service actually regulated by tariff.

The MFJ defined exchange access as the provision of exchange services for the purpose of originating or terminating interexchange telecommunications, and went into some detail as to what exchange access services include:

> Exchange access services include any activity or function performed by a BOC in connection with the origination or termination of interexchange telecommunications, including but not limited to, the provision of network control signalling, answer supervision, automatic calling number identification, carrier access codes, directory services, testing and maintenance of facilities and the provision of information necessary to bill customers. Such services shall be provided by facilities in an exchange area for the transmission, switching, or routing, within the exchange area, of interexchange traffic originating or terminating within the exchange area, and shall include switching traffic within the exchange area above the end office and delivery and receipt of such traffic at a point or points within an exchange area designated by an interexchange carrier for the connection of its facilities with those of the BOC. Such connections, at the option of the interexchange carrier, shall deliver traffic with signal quality and characteristics equal to that provided similar traffic of AT&T, including equal probability of blocking, based on reasonable traffic estimates supplied by each interexchange carrier. Exchange services for exchange access shall not include the performance by any BOC of interexchange traffic routing for any interexchange carrier. In the reorganization specified in section I, trunks used to transmit AT&T's traffic between end offices and class 4 switches shall be exchange access facilities to be owned by the BOCs.

(United States v. AT&T, id. at 228-229.)

The BOCs were to establish exchange areas or exchanges in accordance with the following criteria set forth in the MFJ:

> 1. any such area shall encompass one or more contiguous local exchange areas serving common social, economic, and other purposes, even where such configuration transcends municipal or other local governmental boundaries;
>
> 2. every point served by a BOC within a State shall be included within an exchange area;
>
> 3. no such area which includes part or all of one standard metropolitan statistical area (or a consolidated statistical area, in the case of densely populated States) shall include a substantial part of any other standard metropolitan statistical area (or a consolidated statistical area, in the case of densely populated States), unless the Court shall otherwise allow; and
>
> 4. except with approval of the Court, no exchange area located in one State shall include any point located within another State.

(United States v. AT&T, id. at 229.)

These geographic exchange areas were termed "LATAs" (Local Access and Transport Areas) in the scheme submitted to the court for approval. These LATAs define the areas within which BOCs may provide telecommunications services and between which BOCs may not provide such services; thus, they also assist AT&T and the BOCs in identifying those facilities, personnel, systems, etc., necessary for providing exchange telecommunications and exchange access functions which would be transferred to the BOCs. The court approved 15 LATAs for Texas. Finally, the MFJ ends the division of revenues process of the Bell System in requiring access services to be provided on a tariffed basis.

Although the MFJ technically does not apply to the Independent telephone companies, it has a profound "shadow" effect on the way in which telecommunications services are provided by the Independents. Under the requirements of the MFJ, the BOCs (including SWB) were to develop exchange areas (LATAs) for the purpose of separating intrastate local exchange traffic from interexchange traffic. The LATAs serve two purposes: they define the areas within which SWB may operate and they assist in identifying assets to be transferred to SWB in order to enable it to perform exchange telecommunications and exchange access functions. The term "exchange," under the MFJ, means LATA. Although SWB may not provide interLATA intrastate services, the Independents are not subject to such restrictions. However, AT&T will succeed to SWB's ownership of the interLATA facilities formerly used to provide statewide toll services; therefore, because of the network configuration the Independent telephone companies must establish a separate relationship with AT&T for the provision of such interLATA services. The Independents' joint provision of toll service with SWB will be restricted to intraLATA toll services because of the MFJ limitations on SWB's operations.

Because SWB can no longer provide interLATA intrastate services, the SWB toll tariffs in which all exchange companies concurred will not be effective after divestiture. And since the present settlement agreements provide for the division of interLATA toll revenues, those agreements will no longer be valid. The scope of the traditional joint provision of intrastate toll service by SWB and the Independents has changed because of divestiture. An example (from Roger Hutton's testimony, SWB Ex. No. 12, p. 15) will illustrate the change:

> For example, an intrastate toll call today placed between the cities of San Antonio (served by Southwestern Bell) and Dripping Springs (served by General Telephone Company of the Southwest (General)) is a jointly provided toll service between Southwestern Bell and an Independent company. However, post-divestiture, San Antonio falls within one Southwestern Bell LATA while Dripping Springs is associated with a completely different Southwestern Bell LATA. Hence, Southwestern Bell, not being an interexchange carrier, will not be able to complete this call as it has in the past. The call must also involve an interexchange carrier. Today, Southwestern Bell and General recover their exchange access costs for such toll services through the tariffs and the toll settlement process. After divestiture, the interexchange carriers providing interLATA toll will receive the revenues and Southwestern Bell and General will recover their costs of exchange access through access charges. Under current settlement agreements it would be impossible to effect a proper division of revenue for this traffic. Today's settlement agreements do not address these circumstances.

While SWB is prohibited from providing intrastate interexchange (interLATA) service, AT&T is not prohibited by the MFJ from providing intraexchange (intraLATA) service. At the present time, the only obstacle to AT&T providing such service is the network configuration. All one-plus calls will continue to be routed over the same network as it existed prior to January 1, 1984. If the call originates in one LATA and terminates in a different LATA (interLATA), it

is identified and billed as AT&T traffic; if it originates and terminates within the same LATA (intraLATA), it is identified and billed as Southwestern Bell traffic. Until equal access, customers will continue to get SWB or AT&T automatically if they dial one-plus.

Furthermore, the OCCs are not directly affected by the MFJ; the LATA boundaries do not restrict where they may carry toll traffic or provide telecommunications services. Insofar as the MFJ defines the exchange access services which the BOCs must provide on a non-discriminatory basis to all interexchange carriers, there could be a question as to whether SWB must provide such exchange access services to OCCs carrying toll traffic within a LATA; however, since the exchange companies cannot identify the destination of OCC traffic, they will treat it all as exchange access.

It is AT&T's succession to ownership of SWB's plant and facilities for providing interexchange (interLATA) services which has the most important indirect effect on the Independent companies. The joint provision of toll services is no longer statewide in scope. All exchange companies projected a loss of toll revenue (since it would go to AT&T as owner of the plant and facilities) as a result of divestiture--the toll revenue which prior to divestiture provided one source of recovery of NTS costs.

It was against this background that the General Counsel filed the petition for inquiry.

B. PUC Jurisdiction

Some parties to this docket asserted that the Commission lacks jurisdiction to hear this docket, which has been termed a generic proceeding, i.e., neither ratemaking nor rulemaking. Although these contentions were addressed and ruled upon in prehearing orders, the examiners feel that it is appropriate to set out--once again--the jurisdictional basis for Commission action in this docket. The assertions of these parties--that proceedings before this Commission must be either ratemaking or rulemaking, each of which is conducted pursuant to different procedural requirements--are, in the examiners' opinion, based on interpretations of the PURA and the Administrative Procedure and Texas Register Act, Tex. Rev. Civ. Stat. Ann. art. 6252-13a (Vernon Supp. 1983) (hereinafter cited as "APTRA") which are so narrow that they are unsupported by even the most casual reading of these statutes.

Section 2 of the PURA set forth the legislative intent regarding utility regulation in the State of Texas:

> This Act is enacted to protect the public interest inherent in the rates and services of public utilities. . . . The purpose of this act is to establish a comprehensive regulatory system which is

adequate to the task of regulating public utilities as defined by this Act, to assure rates, operations, and services which are just and reasonable to the consumers and to the utilities.

Section 16(a) of the PURA gives the Commission

> . . . the general power to regulate and supervise the business of every public utility within its jurisdiction and to do all things, whether specifically designated in this Act or implied herein, necessary and convenient to the exercise of this power and jurisdiction. The commission shall make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission. The commission may call and hold hearings, administer oaths, receive evidence at hearings, issue subpoenas to compel the attendance of witnesses and the production of papers and documents, and make findings of fact and decisions with respect to administering the provisions of this Act or the rules, orders, or other actions of the commission. (Emphasis added.)

The General Counsel's pleadings in this docket assert that the Commission has jurisdiction over the issues in this docket pursuant to PURA Section 16, regardless of whether any allegation is made that existing rates are unreasonable or in violation of some provision of law. The examiners agree that Section 16 confers upon the Commission broad powers in the regulation and supervision of the public utilities within its jurisdiction, and the authority to exercise such powers in a manner convenient to it. It cannot reasonably be argued that this Commission lacks the authority to investigate the effects on Texas telecommunications services of events at the federal level which involve the entire telecommunications industry--specifically, the MFJ and the FCC's access charge orders--simply because there is nothing in those orders which requires this Commission to take any action. The examiners conclude that an investigation into the effects of the MFJ and the FCC's access charge orders on Texas telephone utilities is, at the very least, among the implied powers granted to this Commission pursuant to PURA Sections 16 and 18, and that the Commission has the authority to take any action necessary to insure that rates and services of Texas telephone utilities are just, fair, and reasonable.

The examiners further note the newly enacted Section 18(a) of the PURA, which became effective during the pendency of this case. While the examiners do not construe this section to enlarge the Commission's authority or discretion under PURA Section 16 to investigate the issues raised in this docket, it does serve as a clear indication of the legislature's view that federal judicial and administrative actions affecting the telecommunications industry will have a significant impact on the citizens of this state. That section is set out in full below:

> It is the policy of this state to protect the public interest in having adequate and efficient telecommunications service available to all citizens of the state at just, fair, and reasonable rates. The legislature finds that the telecommunications industry through technical advancements, federal judicial and administrative actions, and the formulation of new telecommunications enterprises has become

> and will continue to be in many and growing areas a competitive industry which does not lend itself to traditional public utility regulatory rules, policies, and principles; and that therefore, the public interest requires that new rules, policies, and principles be formulated an applied to protect the public interest and to provide equal opportunity to all telecommunications utilities in a competitive marketplace. It is the purpose of this section to grant to the commission the authority and the power under this Act to carry out the public policy herein stated.

The General Counsel also asserted Commission jurisdiction pursuant to PURA Section 42, alleging that the existing rates for many services provided by Texas telephone companies--such as MTS, WATS, private line, OCC services and local exchange services--may be unreasonable or in violation of some provision of law and should be changed or such services restructured. MCI argues in brief that under PURA Section 42, the OCC tariff cannot be restructured or cancelled unless there is proof that it is either unreasonable or unlawful and that no party so pled. MCI further argues in support of this reading of the General Counsel's pleadings that neither the MFJ nor the FCC's access charge orders even remotely suggest that the Texas OCC tariff is unlawful, therefore, until some "interested party" pleads and proves that the existing OCC tariff is unreasonable or unlawful, it is binding on this Commission. The examiners point out that no person has a vested right to any particular rate or rate structure. MCI, as a customer of SWB and other local exchange companies, has the same right as any other customer to utility rates that are just, fair and reasonable; there is no vested right to any other rate. Contrary to the assertions of MCI, the General Counsel did plead that existing rates may be unreasonable or in violation of the law.

Furthermore, the fact that telephone company rates may be affected as a result of these proceedings does not transform this docket into a rate case to be conducted under PURA Section 43. PURA Section 42 gives the Commission the authority to conduct an investigation of the reasonableness of existing rates. Under this section, if this Commission finds that the existing rates of any public utility for any service are unreasonable or in violation of any provision of law, it has the authority to establish different, more reasonable rates. See, Complaint of GTSW, Docket No. 3957, 8 P.U.C. BULL. 459, 474 (May 19, 1983).

Likewise, the fact that important statewide policy issues may be addressed in this docket does not make this a rulemaking proceeding pursuant to Section 5 of the Administrative Procedure and Texas Register Act, Tex. Rev. Civ. Stat. Ann. art. 6252-13a (Vernon Supp. 1983) (hereinafter cited as "APTRA"). See, Public Hearings of the Public Utility Commission of Texas on the Cost of Service Ratemaking Standards of §111(d)(1) of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §2601, et seq., Docket No. 3437, 7 P.U.C. BULL. 250 (August 20, 1981). The APTRA provides only minimum standards of uniform practice and procedure before state agencies; nothing in the APTRA prohibits an agency from imposing its own more stringent procedural safeguards. With respect

to agency adoption of rules, the hallmark requirement of the APTRA is that agencies must give notice to interested persons and provide them an opportunity to submit data, views or arguments. Assuming arguendo that this docket is a rulemaking proceeding, this phase of the docket could only be likened to the informal conferences and consultations which agencies may use in order to obtain the viewpoints and advise of interested persons concerning contemplated rulemaking under APTRA Section 5(f), since no rule has been proposed. The difference is that here, the viewpoints and advice of interested persons were obtained in the course of a contested case: parties filed comments, then conducted discovery up until the record was closed on November 15, 1984; they were afforded the opportunity to present arguments and witnesses in support thereof and to cross-examine all witnesses; and they presented their arguments in post-hearing briefs. The examiners maintain that in a rulemaking proceeding, use of such contested case procedures goes far beyond the minimum requirements of the APTRA in protecting the right of interested parties to participate in rulemaking. Furthermore, the Commission has inherent discretion in making the choice whether to proceed by general rulemaking or by ad hoc adjudication, since there is no statutory mandate to the contrary.

The examiners therefore hold that the Commission has jurisdiction over the issues presented in this docket pursuant to Sections 2, 16, 18, 37, 38, and 42 of the PURA, and that this docket was properly conducted as a contested case pursuant to Sections 3(2), 13, 14, 14a, 15, and 16 of the APTRA.

C. Bypass

Although the issue of bypass--its existence, the extent to which it may exist, its impact on local exchange company revenues and subscribers, etc.--was removed from the scope of the inquiry in this docket, SWB presented the testimony of Dr. Joseph S. Kraemer. Dr. Kraemer presented the results of a study performed by Touche Ross & Co. for SWB to analyze the nature, extent and implications of bypass in the SWB region. Joseph E. Kirk, Telephone Utility Specialist for the Commission, also presented testimony regarding bypass. Dr. Kraemer defined bypass as the origination and/or termination of a call without the use of a local telephone company's plant. Mr. Kirk, however, pointed out that the term has various meanings depending on the context in which it is used and in its broadest sense, means the provision of any alternative telecommunications facility which satisfies one or both of two goals: the reduction of costs or the provision of enhanced technology to satisfy a specific need.

A further distinction is made between economic and uneconomic bypass. Economic bypass occurs when the cost of providing the alternative facilities is less than the cost-based price of equal facilities provided by the local exchange company. Uneconomic bypass occurs when the price of the local exchange

company facilities is set at a level so far above its cost that a competitor with higher costs can still price its services lower than the local exchange company. Thus, the uneconomic bypass is less economically efficient and in theory would not occur under a system of cost-based pricing of local exchange company facilities.

Current technologies available for bypass include private microwave and radio systems, guided systems (such as coaxial cable and fiber optics), satellite transmission systems and atmospheric optical systems. These technologies are very expensive, however, and are presently economical only for relatively large volumes of traffic. Because local exchange company revenue is disproportionately concentrated in a small number of high volume business users, and because such users also tend to be concentrated geographically, local exchange companies perceive themselves to be highly vulnerable to a loss of these users to bypass technologies. The fear is that a competitor would need only to build a bypass system capable of handling the high volume traffic originating from a limited number of large customers in a small geographic area (instead of duplicating the entire local exchange plant) to jeopardize the revenue of a local exchange company. When such high revenue customers leave the network, the remaining customers must make up this loss by paying higher rates. When rates go up, more customers leave the network, resulting in the still-fewer remaining customers having to pay even higher rates, sparking another loss of customers and revenues.

This doomsday scenario was not supported with any substantial evidence. Dr. Kraemer testified that 77 of SWB's 320 largest customers currently use one or more technologies to bypass local exchange plant. In Texas the survey showed that 39 percent currently bypass and 56 percent either currently bypass or intend to do so within the next three years. There was no correlation of the bypass survey data to any lost revenues and no showing that the loss of these customers to bypass has caused rates for remaining customers to increase more sharply than they otherwise would have.

Mr. Kirk points out in his testimony that every bypass technology has some bad points as well as good points. For example, point-to-point terrestrial microwave radio, the most commonly used bypass technology, requires a clear line-of-sight path between antennas and some frequencies are susceptible to interference from precipitation. The frequency spectrum is crowded and few frequencies are available for new installation. Newer microwave technology has overcome some of these obstacles for short-haul intracity voice and data transmissions, but all microwave systems suffer from a relative lack of communications security. Encoding transmission to prevent interception by unauthorized parties increases costs.

Satellite transmission between earth stations also uses microwave frequencies but is not usually economical for distances of less than 200 miles. Such satellites must be in geosynchronous orbit--that is, they must be placed at a distance from the earth which requires a speed precisely that of earth's rotational speed so that they remain stationary relative to a given spot on the earth's surface. Placing satellites in such a precise orbit is extremely expensive, and the space available to place them so that they do not interfere with one another is very limited. These satellites require antennas with a minimum diameter of about 30 feet for reliable two-way transmission; even so, because of the nearly 50,000 mile round-trip from earth station to satellite to earth station, there is a noticeable delay in voice transmission.

Two-way cable TV is another technology theoretically available for bypass. Existing TV cable systems use coaxial cable to provide one-way transmission of television programming in urban and suburban areas. Because of broad bandwidth requirements of video transmission, there is sufficient bandwidth for highspeed data and voice transmission; two-way transmission capability would require additional electronics. TV cable systems do not have nearly the installation density of local telephone networks, and there is some question of their reliability during severe weather.

Fiber optics, a medium which provides very high capacities in very small cables has the potential for replacing all existing copper or metallic facilities. Although rapidly decreasing in cost, it too faces serious obstacles as a bypass technology. It must be buried directly, placed in underground conduit or strung in the air on poles between served locations, all of which require obtaining rights-of-way.

Finally, cellular radio, a new version of land mobile radio, solves the problem of the limited availability of frequencies needed for land mobile radio by greatly reducing transmitted power so that only a small area (or cell) is covered. Thus, the same frequency can be used again several cells away. The combination of sophisticated circuitry and solid-state large-scale integration results in a mobile telephone that is able to switch automatically to a new frequency as the user's vehicle travels from one cell to another with no noticeable interruption of the call. Mr. Kirk pointed out that as circuitry is miniaturized further and as costs of manufacture go down, it is conceivable that this technology could replace a large part of the local exchange network with each person having a pocket phone, although if such a scenario takes place at all, it will be many years hence.

The examiners agree with Mr. Kirk's conclusion that the extreme scenario (the customer-abandonment, higher rates spiral) is unlikely even in the long term, since much of the value of telecommunications depends on the fact that "everyone" can be reached by using it. Even if large users shift their data

communications and part of their voice communications to bypass facilities, it seems likely that they would still need access to the local exchange network in order to communicate with the local community. The examiners note also the FCC's inability to classify particular technologies as uneconomic bypass. A conviction that uneconomic bypass is an imminent danger to universal service formed the basis for the implementation of the FCC's decision to price interstate toll NTS costs as end user flat rates but in the Memorandum Opinion and Order in CC Docket No. 78-72, adopted February 3, 1984, the FCC elected to continue to develop information in order to analyze the extent and danger of such bypass.

The examiners offer two observations regarding bypass. One is that in terms of the revenues flowing to local exchange companies, it makes no difference whether they are bypassed economically or uneconomically. Unquestionably in either instance the local exchange company has suffered a loss of revenue which must somehow be recouped from remaining customers. The second is that, to some degree, the bypass issue is a red herring. If large users of interexchange services have the incentive (because of their disproportionately high contribution to NTS plant due to recovery of those NTS costs in usage sensitive rates) and the means to bypass--as the FCC is convinced--then the solution proposed by the FCC makes no difference to the end users. This is because when a large volume toll customer leaves the existing network, the local exchange company loses the contribution to NTS costs which that customer made through the high toll revenues it paid. Under the FCC's plan to price NTS costs on a flat basis--in other words, removing that cost recovery from usage sensitive toll rates--even if that customer stays on the network its contribution to NTS costs through toll rates will diminish over the transition period and then disappear. In either event, large toll users will cease to contribute to NTS cost recovery through usage sensitive toll rates. Given the likelihood that most large volume toll users will remain subscribers to the local exchange network in order to communicate locally, as local subscribers their local flat rates may increase due to flat-rate pricing of NTS costs, but their local rates will increase whether they bypass the network for interexchange calls or not.

Large scale bypass is expensive, technically complex, and does not take place overnight. Local exchange companies are not without the means to defend against bypass, as both Dr. Kraemer and Mr. Kirk explain. While this Commission should not ignore the ramifications of new technology and the advent of competition in some areas, neither should we rush to thwart the creation of bypass facilities and technologies without a better understanding of the dimensions of the threat to local exchange companies and a clearer policy regarding the proper regulatory cures for the problems the local exchange companies might be able to solve for themselves. Even cost-based pricing cannot prevent bypass of the local exchange network if the local exchange

company is unable to meet the specific service requirements of its customers, such as accessibility, privacy, quality and reliability. By being more responsive to customer needs for planning assistance, a greater variety of technologies, a greater degree of traffic, cost and configuration control, and enhanced technology in dedicated, non-switched private line offerings, local exchange companies themselves could mitigate the predicted dire effects of bypass. It seems highly unlikely that local exchange companies will be unable to develop new uses for local exchange facilities which would compensate for the loss of large volume toll customers.

D. Recovery of NTS Costs

Even those parties most strenuously opposed to implementing intrastate access rates for interexchange carriers at any level, much less full parity with the FCC's rates, supported some level of flat rate end user access charges. The tactic utilized by the proponents of end user charges to convince the examiners that a flat rate access charge on local subscribers is necessary and appropriate in order to achieve "cost-based pricing" was the droning repetition--frequently by well-known economists--of the maxim "costs should be borne by the cost causer." As a general principle of pricing, it might be helpfully employed; as guide to the determination of actual cost causation, it is useless. It assumes the conclusion one is asked to reach in using it: that local subscribers "cause" the local exchange companies to incur NTS costs by subscribing to local exchange service, costs that allegedly do not vary with the type (local, intrastate interexchange, interstate interexchange) or duration of use. Even if the assumption is accurate--that subscribing to local service is the direct cause of the NTS costs of local exchange companies--the assignment of all such costs to end users on the sole basis of economic principles of causation may or may not be in the public interest. This Commission has never blindly followed such dubious concepts, and should not do so now.

Dr. Alfred E. Kahn, testifying on behalf of SWB, stated that end users cause local exchange companies to incur NTS costs (without an explanation of how such causation occurs) and asserted that the only proper way to recover costs which allegedly do not vary with usage is in a flat monthly charge to subscribers since

> it is in the act of becoming and remaining subscribers that they cause the system to incur those [NTS] costs; and it is that decision--to become a subscriber or not--that should, as a matter of pure economics, be confronted with a price that reflects all of the additional costs it imposes on society.... [T]he total, clearly assignable costs of access should, as a matter of economics, be recovered in the lump-sum monthly charges.

(SWB Ex. No. 4, pp. 8-9.) Dr. Kahn further asserts that despite such a pricing scheme, most subscribers would insist on continuing local service; that such local or basic service is the most inelastic "except for the small percentage of

the population that would drop off." He views the present pricing scheme as "inefficient...because it holds the monthly charge down to all users, rather than merely to the comparatively few who might be induced by sharp increases in the monthly rates to be forced off the system." Dr. Kahn suggests that, as with other social welfare policies, we should seek more efficient methods of targeting subsidies to those who truly need them, rather than holding prices to all users below cost. He questioned whether the heavy users of the system for interexchange calling--who bear the greatest burden of the "subsidy" (that is, pay more of the NTS costs than they impose)--are really interested in being able to reach and be reached by those customers who would drop off the system if flat rates went up, and suggests that the relatives of such customers--who would presumably be the only persons particularly interested in reaching them--are the ones with an incentive to help them pay their bills.

Without itemizing the extraordinary assumptions underlying such an argument and with all due respect to Dr. Kahn, the examiners cannot agree with this glib dismissal of what could be as serious a threat to universal service--customer drop-off--as bypass by large volume toll users is alleged to be. TSTCI notes in brief that any elasticity study is based on sheer conjecture of what the human response will be to future occurrences in an unknown future context, and argues--correctly, in the examiners' opinion--that this Commission can ill-afford to ignore the possibility of customer drop-off as a result of sharply increased rates. Furthermore, it is difficult for the examiners not to be somewhat skeptical of the economic bliss promised--if only we would price telephone service according to cost causation principles--by the economist who deregulated the airlines for us.

The examiners are fully aware that all costs are eventually paid by consumers, either directly or indirectly. Dr. Kahn argues that a targeted, government-administered subsidy for those truly unable to pay the full "economic" cost of telephone service is more efficient than the present subsidy mechanism which he likens to a tax. There is doubt, at least in the examiners' minds, that this is necessarily so. Government programs often add administrative costs far above the cost of the aid they seek to administer; there is simply nothing to demonstrate that such a program would or would not be a more efficient means of retaining customers who would otherwise drop off the network than are present telephone pricing schemes. The determination of costs, or of which costs should be assigned or allocated to which services is arbitrary at best in the regulatory arena, since such an exercise is merely a surrogate for market determinations of value. Assigning costs on the basis of causation principles can never be more than one of many tools available to regulatory authorities for pricing utility services since such regulatory bodies are concerned with more than simply promoting economic efficiency. Even Dr. Kahn acknowledged that there are valid social, political, and ethical considerations in ratemaking.

The proposals in this docket which are grounded in what is purported to be pure economic theory are nothing more than a best case scenario--speculation in common parlance. Real people frequently do not behave as economists would have them do, that is, according to the principles of economic efficiency; witness the non-result of President Reagan's tax cuts which were implemented to stimulate increased savings, not spending. The examiners are of the opinion that not only might the poorest subscribers be driven off the system by something less than a sharp increase in monthly flat rates, but that many subscribers who could otherwise afford even a sharp increase in monthly flat rates might leave the network if they did not perceive any additional value or benefit from the increased rates.

Furthermore, the contention that the impact of increased monthly flat rates will be "offset" by the predicted lower toll rates is from the Marie Antoinette School of Rate Design: those subscribers who presently make few or no toll calls will not derive any benefit from this "Let them make toll calls!" resolution of the problem of increased monthly flat rates. The examiners agree with the General Counsel that most ratepayers are more concerned about the total amount they have to pay for telephone service each month; most ratepayers will not perceive that they have received any benefit from paying for the ability to access the toll networks if they do not make toll calls. It is conceivable that such customers could also leave the network even though they might be able to afford to stay.

It appears to the examiners that end users have been assumed to be the NTS cost causers because they are easily identified; they are the ones ordering local telephone service. Even if the ordering of local service can be said to be a causal event, the examiners have seen no evidence in this docket that local subscribers have any control over the costs incurred by local exchange companies in constructing such facilities. For example, many local exchange companies have eliminated or reduced the availability of multi-party line local service even though some customers might want such service, or might take it as an alternative if single party line service was too costly. Some argue that since the local loops are "dedicated" to particular subscribers that somehow the location of the NTS plant determines who caused its cost and thus who should pay for it. But even the FCC had difficulty with the location-causation approach when attempting to arrive at an access charge pricing scheme for public pay telephones; ultimately, the FCC concluded that the costs of public pay telephones should be apportioned among the interexchange carriers upon whom public pay phone users rely to provide interexchange services, even though the FCC considered that a second-best solution for NTS cost recovery. Its first choice was to recover those costs in flat rates to public pay phone users--but could not come up with a way to implement that plan. The examiners are not convinced that subscribers cause the NTS costs assigned to end users under the FCC access charge plan; even if subscribers do in fact cause such NTS costs, the

examiners do not believe that end users should bear any additional NTS costs in local flat rates in 1984 because of the threat to universal service in this state.

General Counsel points out in brief that the protection and promotion of universal telephone service has been a national policy since the passage of the Communications Act of 1934. The existing high level of telephone service in Texas and in the rest of the nation is the result of the traditional residual pricing approach to the setting of rates for local service. In Texas, the Commission has done this by first determining a telephone company's statewide revenue requirement, then designing rates to insure that local subscribers pay as low a rate as possible. One such rate design technique is to put more of a revenue burden on business service, terminal equipment and other vertical services such as Touch-Tone and Custom Calling features than on residential service. Pricing business local exchange rates higher than residential rates is based on the concept of "value of service," that is, that those who receive the greater benefit ought to pay more. Intrastate toll rates have been set so that revenue from that service exceeds its incremental unit cost and thereby contributes revenue that otherwise would have had to come from local flat rates. This Commission has continued to price local exchange service residually in order to retain universal service. Such pricing methodologies have been fervently attacked by those who argue that they are economically unsound and inefficient because they are not cost-based. Again, the examiners cannot agree that "cost assignments" in the regulatory context are anything more than surrogates for market value.

General Counsel reminds us in brief that AT&T's divestiture of the BOCs was not intended to do harm to universal service; in his opinion of August 11, 1982, Judge Greene concluded that divestiture would not necessarily have the effect of increasing the cost of local telephone service. The MFJ version of access charges was the mechanism federal and state regulators could use to require a subsidy from intercity (long distance) service to local service. Regulators could use the access charge mechanism to maintain local rates at present levels, or raise or lower local rates.

Judge Greene reiterated his position that divestiture provides no legitimate basis for undermining the goal of universal service or for raising local rates in his opinion of April 20, 1983. Judge Greene pointed out that various regulatory methods were readily available to regulators to protect local rates, if only they were willing to use them. He was openly critical of the FCC's access charge plan in its imposition on local ratepayers of the access costs of interexchange carriers, and voiced his opinion that the FCC's access charge decision was directly counter to one of the MFJ's principal assumptions and purposes: that promotion of competition in the telecommunications field need not and should not be the cause of increases in local telephone rates.

While the internecine skirmishing between Judge Greene and the FCC and between Congress and the FCC continues, this Commission is confronted with its own legislative mandate to protect and promote the public interest in having adequate and efficient telecommunications service available to all citizens of the state at just, fair and reasonable rates. This Commission has no control over the FCC's decision whether to impose end user charges as a mechanism for recovering interstate toll related NTS costs, but in fashioning an access charge plan for Texas, this Commission must consider the effect on universal service in this state of not only any interstate end user access charges which may be mandated by the FCC but also the mirroring of such interstate end user access charges at the intrastate level. Regardless of the FCC's final determination on whether to impose end user access charges, the examiners agree with the General Counsel that no such charges are necessary in Texas in 1984, because on an average basis, the majority of intrastate NTS costs are already being recovered in rates for local exchange service. As pointed out in brief by General Counsel, since the FCC does not regulate local exchange services, imposing a specific monthly flat rate on end users is simply one pricing mechanism for recovery of interstate toll related NTS costs; therefore, such a pricing mechanism is superfluous at the state level.

Furthermore, any arguments advancing the notion that because NTS facilities are dedicated to individual end users those end users are the only beneficiaries of such facilities and thus should bear the cost are disingenuous. The value of the telecommunications network resides in its ubiquitous, integrated presence. Any NTS cost recovery mechanism should be based on an analysis of the use and benefit of that network. No party to this docket maintained that interexchange carriers neither use nor need the local exchange network to originate and terminate the interexchange traffic they carry. Clearly, without such a network already in place, the competition in interexchange markets would not exist--indeed, could never have begun at all. As TML points out in brief, the cost of duplicating the local exchange network would be enormous; the examiners consider the cost probably inestimable. The value derived by interexchange carriers from the presence of the local exchange network then is nothing less than their ability to exist at all.

One group of interexchange carriers--the OCCs--argued with stentorian zeal that the costs they impose on the local exchange network are no different from the costs imposed by any large business subscriber, such as a department store or a grocery store, and that therefore the rates they pay should include only the NTS costs of the interconnections to which they subscribe and no one else's. But department stores and grocery stores do not use local exchange plant to originate and terminate interexchange telecommunications traffic; interexchange carriers do. They use local exchange plant in offering the end-to-end toll services on which they make a profit. The use to which interexchange carriers put local exchange plant is fundamentally different from the use made by other

types of business subscribers; the value they derive from such use is substantial. Common sense tells us that that value is not only more than zero, it is more than the costs interexchange carriers impose by virtue of their line-side or trunk-side connections. Access is a two-way street: not only do subscribers have access to interexchange carriers' networks, interexchange carriers have access to subscribers. There is nothing unreasonably discriminatory, unjust or unfair in requiring all interexchange carriers--not just one or two--to share the NTS costs of the local exchange plant to which they have access, which they use to offer and sell their own services and for which many presently pay nothing above their own NTS costs.

Interexchange carriers benefit directly not only from the existence of the local exchange network but also from the high rate of subscription to local service--the universality of service--fostered by the ratemaking principles utilized by this Commission. There is nothing arcane in such a proposition: the more local service subscribers there are, the greater is the pool of potential customers for all interexchange carriers. Any increase in monthly flat rates which would cause a substantial number of subscribers to leave the system--for whatever reason--reduces the value of the network as an integrated whole. All analogies to the pricing of other goods and services, even other utility services, fail when applied to telephone service; it is unique. Even the subscriber loop cannot be analogized to the customer-specific service lines of other utilities. For example, the line from a water meter to a customer's house is truly "dedicated" to that customer. No other water customer receives a benefit from that particular piece of the facility. On the other hand, all telephone customers, but especially interexchange carriers, benefit from each additional subscriber loop because that loop can be used by all interexchange carriers and local subscribers. Subscriber loops are part of the integrated network--in fact, without them, the network would be useless, particularly to interexchange carriers who market and sell their services on the assumption that that existing, integrated network is available to them.

The present toll rates for AT&T and for the local exchange companies in Texas recover part of the total NTS costs of local exchange companies; the rates paid by OCCs recover no more NTS costs than those associated with their own interconnections. The OCCs offered for the examiners' entertainment several specious arguments for why their rates should remain at current levels. One particularly vituperative assertion was that since AT&T had engaged in the anticompetitive and predatory acts leading to the consent decree ordering divestiture, and since AT&T had at least promoted, if not developed, the procedures currently embodied in the Separations Manual (including the SPF formula which assigns so much of the NTS costs to interstate toll that it had to be frozen at average 1981 levels), it is equitable to require AT&T--and its so-called "partners in crime"--to continue paying the same level of NTS costs and the lost toll revenue to the local exchange companies in their access rates.

This is utter nonsense. First, this docket was not instituted to decide whether AT&T had violated the antitrust laws; that issue became moot even at the federal level upon entry of the consent decree. As the examiners repeatedly stated, this docket rests on divestiture as an operative fact. Second, this argument ignores the very heart of the FCC's five-year investigation in CC Docket No. 78-72 and its conclusion that the present access compensation mechanisms do not produce results consistent with the Congressional prohibitions on unreasonable discrimination and undue preferences, and that the existing combination of access service compensation arrangements violates Section 202(a) of the Communications Act and also conflicts with Congressional goals other than the elimination of discrimination or preferences. This docket contains ample factual support for a similar conclusion as to the present rate structures in Texas.

While this Commission may not be compelled to implement the FCC's plan in Texas, there is nothing which prevents this Commission from investigating present access compensation arrangements in Texas and changing them if they are found to be unreasonably discriminatory. Any assertion that this Commission must retain the existing OCC tariff structure in Texas because it is the only one which this Commission has scrutinized and found to be lawful is simply without merit. If carried to its logical conclusion, such a position would mean this Commission could never entertain alternative rate structures for any type of service despite technological advances or competitive market requirements. Under such a concept, once a rate structure is found to be lawful, no other could ever be found so. Clearly, this is such a restrictive reading of the Commission's authority and mandate that it can only be interpreted as another self-serving invention of the desperate.

Yet a third argument offered by the OCCs goes something like this: OCCs have had to struggle to gain even the relatively small share of the market they presently hold. The OCC tariff and contract arrangements, even if not cost-based, represent the true differences in the quality of interconnection received by AT&T, SWB and the Independents and that received by the OCCs. It is this price differential which has allowed the OCCs to enter the interexchange business in the first place; therefore, in order to protect competition in Texas, that identical price differential must be maintained until equal access is available. Then, cost-based pricing will allow the benefits of competition to flow to Texas consumers. This argument is seductive, since it promises so much if only we will wait a little longer, but ultimately, this is a no-win proposition.

The first problem with this argument is that competition is not going to be a benefit to very many Texans. Out of approximately 73 local exchange companies in Texas, only a few have physical OCC interconnections. Out of the local exchange companies with OCC interconnections, only two--SWB and

GTSW--participated in the hearing. Those Texas customers lucky enough to reside in high-density, high-traffic areas of the state may have a smorgasbord of telecommunications services from which to select, provided they make enough toll calls each month to justify the monthly subscription price most OCCs charge. These ratepayers may indeed reap some financial benefit from competition. It comes at the expense of the customers of the rest of the local exchange companies who do not have any alternative to the traditional toll network and of the customers of those local exchange companies where OCCs do interconnect who do not place enough toll calls each month to recoup the monthly subscription price. Under the present pricing mechanism, every time subscribers place a call over OCC facilities they avoid paying the NTS cost support built into the toll rates for use of the toll network of AT&T/SWB/Independents that other customers without an alternative must pay. This is discriminatory pricing in favor of OCC customers.

Second, such a contention assumes that preserving the OCCs' competitive position should be the paramount concern of this Commission regardless of whether the existing rate structure is unreasonably discriminatory. This is a short-sighted interpretation of the PURA. Section 18(a) of the PURA begins with the statement of policy: that of protecting the public interest in having adequate and efficient telecommunications service available to all citizens of the state at just, fair and reasonable rates, and then a statement that, in the new competitive telecommunications environment, the Commission should protect the public interest and provide equal opportunity to all telecommunications utilities in the competitive marketplace. The examiners interpret PURA Section 18(a) as the Legislature's determination of policy priorities: first, protection of universal service, then providing competitive opportunities. In determining whether all interexchange carriers should be required to share in NTS cost recovery, this Commission must consider and weigh all goals. The Commission is not required to reach a perfect result, only a reasonable one, but in balancing these goals in the hope of achieving a reasonable result the priority is--must be--the protection and preservation of universal service. Contrary to the strident contentions of the OCCs, competition is not a god to whom this Commission should make living sacrifices of local ratepayers on the theoretical altar of cost-based pricing. OCCs have attempted to portray themselves as ordinary business customers of local exchange companies and argued that the impact of greatly increased rates will cause them to go out of business. Even if we assume that the evidence in this docket supports that contention, the examiners nevertheless conclude that the Commission can reasonably elect to preserve universal service in a manner which causes the least customer impact and can reasonably decide that preserving universal service for several million local ratepayers must take priority over protecting the competitive enterprises of relatively few business customers.

Regardless of the way in which OCC rates have been set in this state or the reasons for it, it is clear that those rates do not include the same contribution to NTS costs as the toll rates of AT&T, SWB and the Independents. Such disparity produces discrimination among the users of various interexchange carriers' services as well as among interexchange carriers. The evidence of such disparity in this record is not just substantial, it is overwhelming. The examiners conclude that PURA Sections 38 and 45 prohibit unreasonable discrimination and preferences; to the extent that interexchange carriers make similar use of local exchange plant and facilities but do not make equitably similar contributions to NTS cost recovery under present pricing schemes, there is unreasonable discrimination. Such unreasonable discrimination will have an adverse affect on both AT&T and its customers, while allowing OCCs and their customers to enjoy an unreasonable preference. PURA Sections 37 and 38 empower this Commission to determine classifications of customers and to insure that rates are, among other things, consistent in application to each class of customers. Interexchange carriers are not just business customers, they are a distinct class of business customers offering a distinctly identifiable service utilizing local exchange facilities to originate and terminate calls. It is therefore not unreasonably discriminatory to require all such interexchange carrier customers to contribute to the recovery of the NTS costs of all local exchange plant, not just their own interconnections, which they use in their own enterprises of offering end-to-end toll services on which they make a profit. PURA Section 45 requires that no corporation or person within any classification be subjected to any unreasonable prejudice or disadvantage; thus, AT&T cannot lawfully be the only interexchange carrier contributing to NTS costs. All interexchange carriers must contribute equitably to such NTS cost recovery.

E. AT&T Should Pay a Premium

The issue of whether AT&T should pay a premium for the type of interconnection which it receives was the one point on which it deviated from its position that access rates in parity with the FCC access rates should be implemented in Texas. All telephone companies participating in this hearing, along with TML, the OCCs and the Commission staff agreed that any parity rate structure should include a premium to AT&T. Although the FCC changed the way in which such a premium was to be calculated and levied in the access rate elements, the FCC did not depart from its original conclusion that AT&T should pay a premium because of its superior trunk-side connections. The examiners agree that the evidence presented in this case--arguments for parity aside--overwhelmingly supports imposition of such a premium.

The predominantly line-side (ENFIA-A type) connections which are provided to the OCCs are local-grade access. Under the access charge nomenclature, this is called Feature Group A (FG-A) access. It is substantially inferior to the predominantly trunk-side toll grade interconnection enjoyed by AT&T, called

Feature Group C (FG-C). (AT&T interconnects via line-side arrangements for interLATA foreign exchange (FX) services.) Feature Group A requires OCC customers placing a call to input 22 to 24 digits instead of the 8 to 11 digits AT&T customers must dial. OCC customers must use push-button telephones or tone access; customers with rotary dial telephones cannot access an OCC switch because FG-A cannot transmit dial pulse signals to an OCC switch. This line-side connection does not provide Automatic Number Identification (ANI), which means OCC customers must input a Personal Identification Number (PIN) in order for the OCC to bill the customer; OCCs incur additional holding time on calls because of the extra digits OCC customers must input; and the OCC has no way of knowing from which central office its customers are calling, making traffic forecasting difficult. Use of PINs increases the likelihood of fraudulent use of OCC facilities and of uncollectibles due to fraud. OCC uncollectibles are higher than those for the carriers with trunk-side connections which have ANI. The FG-A interconnection also cannot provide Answer Supervision, which triggers the timing and billing mechanism; OCCs cannot obtain this feature with FG-A and must use approximations to begin billing. The transmission performance of FG-A access is inferior to FG-C access in terms of noise, echo and loss, requiring OCCs to incur additional expense for conditioning equipment.

Under Feature Group B (FG-B) OCCs do have access to trunk-side connections. However, this trunk-side connection is not an offering with uniform availability of features. Feature Group B-Tandem performance--although superior to FG-A--is still inferior to FG-C access because it typically employs local trunking and switching (requiring conditioning equipment to compensate for increased noise and echo) and still requires the OCC customer to input extra digits. ANI is not available under FG-B-Tandem, nor can an OCC switch be accessed from a rotary dial telephone with FG-B-Tandem. Feature Group B-Direct will allow access from rotary dial telephones and does provide ANI, although in a different signalling format than with FG-C access, thus increasing holding time. The difficulty with the FG-B offering is that the tandem and direct routing is determined by the facilities available in each end office; thus, an OCC operating in a large metropolitan area such as Houston or Dallas could offer only some of its customers the convenience of access from rotary dial telephones and ANI. In addition, these features are available depending on the end office of the originating call, such that a customer whose business office is served by an end office offering FG-B-Direct could use her rotary dial telephone to access an OCC switch; if her residence is served by an end office with FG-B-Tandem, her residence rotary dial telephone will not work to access the OCC switch.

The OCCs have no incentive to convert to FG-B--which is a hodge-podge of features--when equal access, Feature Group D, will be available beginning in September of this year. In some instances, the steps required to convert to FG-B are inconsistent with the steps required to convert to FG-D. Feature

Group B may be useful for some types of OCC service offerings, but it does not even remotely approach the quality and uniformity of service and features available to AT&T under FG-C. It is not reasonable to expect OCCs to utilize FG-B connections to any great extent, even though its transmission quality might be better and Answer Supervision is available, because of the cost involved and the complicated and confusing instructions OCCs would have to give their customers. OCC customers already experience greater relative inconvenience by dialing extra digits, but at least OCC marketing and advertising can be uniform with FG-A interconnections.

AT&T attempted to demonstrate that trunk-side connections (FG-B-Tandem and Direct) are presently available to OCCs and argued that the fact that OCCs have not ordered such connections on a wide scale is irrelevant to the consideration of the comparable quality of interconnection arrangements. AT&T argues that the proper comparison is between FG-B and FG-C. The examiners disagree. The widely varying quality, features and scope of FG-B make it not only an inferior interconnection as compared to FG-C, but less desirable than to FG-A in some respects; furthermore, conversion to FG-B, even if it could be accomplished, is an unreasonable expectation. Thus the OCCs cannot be said to have "voluntarily" elected to continue subscribing to inferior connections. AT&T in fact receives a superior form of access because it is the only interLATA carrier with the ability to offer its customers one-plus dialing. This alone provides AT&T with a substantial advantage over the OCCs, and would justify imposition of higher access charges to AT&T.

AT&T can also have access to all customers in Texas, regardless of whether the customer has a rotary or push-button telephone. While the examiners cannot agree with a contention that the OCCs' inability to access rotary dial customers has been the result of deliberate and intentional acts by the local exchange companies and AT&T (since customers choose rotary dial telephones for a variety of reasons), it is a fact that OCCs with FG-A interconnections cannot serve rotary dial customers on an originating basis. In order to be able to do so, someone--the customer or the OCC--will incur the cost of the equipment (push-button telephone or tone generator) necessary for that customer to access an OCC switch through a line-side connection. This, too, is a significant advantage to AT&T.

Finally, AT&T attempted to make much of its present inability to provide intraLATA toll service and its obligation, as the successor to SWB, to serve all telephone customers in Texas, as compared to the OCCs' ability to serve both interLATA and intraLATA routes and to choose which markets they will serve. The examiners cannot agree that these so called "disadvantages" somehow make FG-C a less desirable form of interconnection. While it is true that AT&T cannot presently offer one-plus intraLATA toll service (because SWB is the one-plus intraLATA toll carrier), it is not legally restricted from offering intraLATA

toll service, as SWB is restricted from offering interLATA service. AT&T would simply be required to offer its intraLATA toll services via line-side connections, something it may or may not elect to do. In addition, AT&T enjoys the corresponding benefit of being the only toll provider in some Texas markets where no OCC interconnects.

The examiners therefore conclude that the proper comparison for determining whether AT&T should pay a premium is between FG-A (line-side) and FG-C (trunk-side) connections, and that the evidence in this record supports a finding that AT&T enjoys a superior form of access via FG-C for which it should pay a premium. The examiners agree with the staff's proposal that the method for charging a premium to AT&T should mirror the FCC's premium mechanism, since it will be phased out as equal access becomes available. The examiners note, however, that the premium payment should be linked only to AT&T's trunk-side connections. Where AT&T interconnects via line-side arrangements, as it does for interLATA foreign exchange (FX) services, no premium should be applicable.

F. IntraLATA Toll Pooling

Although originally not all exchange companies agreed on the procedures for continuation of toll pooling and settlements on an intraLATA basis, they did agree that intraLATA toll pooling in some fashion was necessary in order to provide a mechanism (other than the imposition of access charges on their own toll business) by which local exchange carriers are compensated for their joint participation in the provision of intraLATA toll service. Those exchange companies participating in the hearing in this docket agreed that the USITA/SWB pooling proposal was acceptable as a second-best alternative, at least as a transition. The staff witnesses also recommended that pooling and settlements continue for jointly provided intraLATA toll services, but on a slightly different basis that proposed in the USITA/SWB plan.

As many witnesses testified, the primary objective of a pooling and settlements process is the promotion of uniform tariffed statewide rates to customers for services which may be provided over the facilities of more than one exchange company such that, regardless of the originating location of a call, the same distance- and time-sensitive rate applies. These common tariffed rates are developed on the average cost of the participating companies, which share in the revenues on the basis of settlements contracts as discussed in greater detail above in Section II. A. 2. Without such a compensation arrangement, it is possible that all other things being equal--time of day, duration, etc.--the direction of a call completed over the facilities of more than one exchange company would determine its cost, and therefore the rate. For example, a call from College Station to Austin could, under deaveraged rates, cost more or less than a call from Austin to College Station. Thus, a pooling and settlements compensation mechanism has the advantages of assuring customer

understanding and of eliminating the incentive for "code calling," by which customers signal each other in order to achieve the lowest rate on toll calls.

The exchange carriers' proposal for intraLATA toll pooling using the USITA/SWB plan was part of what was termed the "Industry Proposal," which included imposition of end user charges, a ten percent increase in intraLATA toll revenues and an ICAC (Interexchange Carrier Access Charge) recoverable from interexchange carriers, as presented in the testimony of Jackie N. Dukes. The staff proposal, presented by Charles D. Land and Jo Shotwell, would continue pooling intraLATA toll in 1984 and 1985, with reconsideration prior to 1986 and elimination of such pooling if no undesirable results were produced. The staff also proposed that the intrastate SPF be frozen for the same period as the interstate SPF, that settlements be based on return on equity (rather than return on investment as proposed by the exchange carriers) beginning January 1, 1984, and that all intrastate toll NTS costs be assigned to intrastate interLATA access, rather than separating them between intraLATA toll and interLATA access based on subscriber line minutes of use. The staff proposal regarding intraLATA toll pooling differed from the "Industry Proposal" in that no end user charges of any amount were proposed and no increase in intraLATA toll rates and revenues was included.

MCI challenged any pooling arrangement as a conspiracy to adhere to a common pricing policy, therefore per se illegal as a price-fixing scheme. This absurd argument is grounded on the mere assumption that local exchange companies should compete in the marketplace as separate entities instead of as a single partnership entity, a proposition which remains untested, much less proved.

U. S. Tel and Sprint articulated more serious concerns about the competitive effect on the intraLATA toll business of OCCs if all intrastate toll NTS costs are assigned to interLATA access under the staff's proposal. Since local exchange companies cannot determine the intraLATA/interLATA nature of OCC traffic, all OCC traffic will be considered interLATA (to which access charges apply); OCCs will be charged for access-assigned NTS costs even on intraLATA traffic.

Despite the superficial appearance of unfairness, however, the effect of such an arrangement is to assess to interexchange carriers a portion of the NTS costs of the local exchange plant they use regardless of the intraLATA/interLATA nature of their service. The staff's proposal to shift all intrastate toll NTS costs to interLATA access is a reasonable one in the examiners' opinion. Presently, on average, 21 percent of the total state NTS costs are assigned to intrastate toll; under the staff's recommendation, which includes freezing the intrastate SPF for the same period that the interstate SPF is frozen, this is the percentage of NTS costs shifted to access for 1984 and 1985. This is a slightly smaller percentage of NTS costs than would be allocated to interLATA

access under a gross allocator formula similar to that recommended by the Joint Board in CC Docket No. 80-286, which would allocate 25 percent of NTS costs to the interstate jurisdiction. The remaining 75 percent of NTS costs could--under the same logic--then be allocated 1/3 (25 percent) each to local exchange, intraLATA toll and interLATA access.

U. S. Tel further argues that it is inappropriate to use interstate separations formulas and procedures as the basis for intrastate toll settlements but not for identifying intrastate access costs. U. S. Tel alleges that under this scheme, mirrored access rates will recover more than the costs which would be assigned using interstate separations methodologies and thus contributing to NTS costs of local exchanges companies, but that the intraLATA toll rates of these same local exchange companies will not recover more than their costs, if that. U. S. Tel fails to recognize, however, that local exchange companies provide more services than just intraLATA toll service; they also provide local exchange service, the rates for which, on average, recover more than half of the total NTS costs. That is, local exchange flat rates for the majority of Texas ratepayers already recover the NTS costs that under a gross allocator formula would be assigned to both local and intraLATA toll services. U. S. Tel's argument also assumes that the "make-whole" revenue requirement calculation used for interim access rates is permanent. On the contrary, it is just that--an interim measure. As discussed below, the examiners are recommending use of separations procedures and methodologies to determine access revenue requirements.

U. S. Tel also suggested in this docket that this Commission has failed to regulate most of the small local exchange companies in this state in that, because such companies have never filed for rate increases, this Commission has no knowledge of whether pooling and settlements arrangements are providing a windfall to these small companies. U. S. Tel charged that such small local exchange companies have been able to use their toll settlements revenues to stave off any local rate increases, at the expense of the ratepayers of the larger telephone companies which file a rate case every year. While these allegations deserve serious consideration, the conclusions some parties might hope to draw are beyond the evidence adduced in this docket.

Despite the fact that the Independent telephone companies of Texas were not parties to the MFJ, their operations have been directly affected by AT&T's divestiture of SWB. High cost, low density companies are affected most by the disruption in the toll revenue stream caused by divestiture. Regardless of whether the local rates of these small companies "should" have increased or of whether this Commission "should" have scrutinized their operations more closely, the fact remains that complete discontinuation of pooling and settlements could be the death blow for some of these smaller companies. As Mr. Land reminded the parties in his testimony, Texas has some of the greatest extremes of operating

costs and densities that exist anywhere in the country. Before we completely dismantle the existing pooling and settlements arrangements, we need to know the effect such a change on all the local exchange companies in the state. Rather than risk the loss of any of the local exchange companies to the vagaries of the so-called competitive marketplace, the examiners agree that intraLATA toll pooling should continue at least for 1984 and 1985. The examiners note parenthetically that the OCCs' concern over whether the local flat rates of these small companies should have increased in order to recover more of the NTS costs can generously be described as premature at best, since only a few local exchange companies had any OCC interconnections at the time of the hearing in this docket. If intrastate toll rates have increased in order to recover NTS costs which, according to the OCCs, should have been recovered in local flat rates, that has simply worked to their benefit, since the OCCs base their enterprises on their ability to underprice the end-to-end toll services of the traditional toll partnership.

III. Opinion and Recommendation

Although the parties fought each other on virtually every issue, the examiners have discussed only the major issues presented in this docket. The exchange companies and the interexchange carriers disagreed on just about everything, except the fact that local subscribers should pay end user access charges. With the exception of TSTCI, these parties were more than willing to impose end user access charges on local subscribers almost without regard to other regulatory events which create different--but equally potentially damaging to universal service--upward pressures on local rates.

The OCCs in particular attempted to cast themselves simultaneously in the roles of victim (ordinary business customers being unjustly forced to "subsidize" the local exchange companies--by paying part of the NTS costs of local exchange plant and facilities they use in competing with the providers of their local connections and with each other) and hero (bringing the benefits of competition to Texas consumers--but only if they are lucky enough to live in high density, high traffic areas, and make a relatively high number of toll calls on a regular basis). The overwhelming impression created by the OCCs which were parties to this docket is that the future of telecommunications in this state will be characterized--and jeopardized--by the same sort of posturing and invective offerred as a substitute for evidence in this docket, and the self-defeating refusal to acknowledge that all providers of telecommunications have, or should have, a commonality of interest in the preservation and promotion of universal service in Texas.

The examiners have considered the arguments advanced by every party to this docket and weighed the evidence offered in support thereof. Because the examiners believe that the preservation of universal service in this state

remains the paramount policy consideration and the cornerstone of the regulation of telephone service in Texas, and because the imposition of end user access charges is a threat to such universal service, the examiners have recommended that no end user access charges be imposed in 1984, and that any increase in local flat rates on the basis of intrastate costs must be the result of a hearing.

Furthermore, the examiners support the staff's proposal in all respects save three, the first being that intrastate settlements should be based on return on equity beginning January 1, 1984. The examiners do not necessarily agree or disagree with that recommendation; however, the staff witness himself agreed on cross-examination last November that there was probably not adequate time to develop such a plan prior to January 1, 1984, and the proposal drew heavy criticism from TSTCI. The examiners feel that additional examination of the staff's proposal is warranted and should be included in the scope of the inquiry recommended and discussed below. The other staff recommendations which the examiners would alter is the basis on which the ICAC is calculated and the pooling of TS access charges. These departures from the staff's proposal will be discussed in greater detail below.

The examiners recognize that the staff's proposal is not the one favored by either the local exchange companies or the interexchange carriers; however, the Commission staff has developed a plan for implementing access charges in Texas on an equitable basis for all interexchange carriers which, in the examiners' opinion, also causes the least disruption to the operations of the local exchange companies and to the high level of universal service in Texas. While the staff proposal that parity access charges be implemented for the recovery of TS costs and some NTS costs is not based on implementation of rates which would be designed to recover Texas-specific costs, even using separations methodologies, it has the advantage of being available relatively quickly. The examiners agree that Texas access rates should be based on Texas costs, but the exchange companies can hardly be faulted for being unable to predict the outcome of the perennially pending cost studies docket which might have provided some guidance on the type of cost studies the Commission would find acceptable for pricing various services. The examiners also point out that while the Commission staff's proposal is not perfect, that does not mean it is so flawed that it should not be implemented, as the OCCs would have the examiners hold. On the contrary, implementation of an access charge structure which requires all interexchange carriers to contribute equitably to NTS costs recovery is certainly much less discriminatory than the present access compensation arrangement under which AT&T is the only interexchange carrier providing such support, and is therefore preferable to the present plan.

In addition, there are unfortunate--but hardly minor--potential results of implementing non-parity level access charges. As GTSW's witness Richard Funk

testified, GTSW performed live monitoring of some interexchange carriers' intrastate interconnections. The results of this monitoring revealed that some interexchange carriers, which ordered and paid for only intrastate lines, carried interstate traffic over them but did not report it as interstate traffic. The examiners certainly do not take this testimony as evidence of even widespread misreporting, much less of systematic fraud; nothing in this record even remotely indicates that kind of activity by interexchange carriers. Nevertheless, the testimony does demonstrate that the rate disparity between interconnections used for intrastate and interstate traffic which are frequently the same facility could create a powerful incentive for misreporting. Furthermore it is not the examiners' position that any interexchange carrier would intentionally misreport its traffic given even the slightest incentive to do so--if anything, the interexchange carriers participating in this docket appear to be scrupulous about jurisdictional reporting even though present rate disparities are significant; however, some interexchange carriers have misreported--unintentionally or intentionally--some traffic over some connections, and the potential for underrecovery of exchange company revenue requirements does exist. Implementing access rates at the intrastate level at parity with interstate rates would obviate the necessity of imposing potentially burdensome monitoring or reporting requirements on exchange companies, interexchange carriers, or both, in addition to the massive restructuring of access tariffs and rate elements which is being recommended by the examiners.

The examiners are recommending that the Texas access tariffs should be in parity with the interstate access tariffs as filed with the FCC which incorporate the changes ordered by the FCC in its February 15, 1984, order in CC Docket No. 78-72 and its February 17, 1984, order in CC Docket No. 83-1145, with two exceptions. The first exception to parity is that no end user access charges--not even for multi-line business customers--should be authorized. Instead, an ICAC rate element as recommended by the Commission staff (but calculated and assessed on a minute-of-use basis rather than as a flat rate) should replace the end user access charge rate element. Although it is possible that no interstate access charge tariffs will be in place as of the Final Order Meeting at which this Examiners' Report will be considered, the examiners are of the opinion that it is in the public interest to implement some access charge structure as soon as possible rather than delay a final order herein indefinitely until the FCC acts on the interstate tariffs. The changes required by the FCC in its orders of February 15 and 17 are reasonable and implementation of those changes (with the exception of the Special Access tariff discussed below) will still provide an equitable NTS cost contribution from the interexchange carriers. If the interstate access charge tariffs as finally adopted by the FCC differ significantly from the intrastate tariffs filed pursuant to a final order in this docket, that issue can be addressed in the access revenue requirement dockets recommended by the examiners and discussed below.

Second, parity with the Special Access section of the interstate tariff will not be authorized for any local exchange company unless that local exchange company's interstate Special Access tariff (or one in which it concurs) has been approved by the FCC by the time this Examiners' Report comes up for consideration at a Final Order Meeting of this Commission. The FCC found, in paragraphs 48-49 of the February 17 order in CC Docket No. 83-1145, that the proposed Special Access rate structure was unreasonable and discriminatory and would have to be replaced. The FCC expects that by March 15, new Special Access tariffs will have been developed and filed in order that they can go into effect April 3, 1984. However, there is the possibility that the ordered changes cannot or will not be made in time, or that further changes could be ordered by the FCC. If no interstate Special Access tariffs are in effect by the time this Commission must enter a final order herein, the examiners recommend that the local exchange companies resume their concurrence in the intrastate private line tariffs as they existed prior to divestiture or as such tariffs are changed pursuant to a final order in Docket No. 5220. Any local exchange company desiring not to concur in the intrastate private line tariffs but to implement its own intrastate private line tariff would be required to submit such a tariff in a rate case.

The examiners acknowledge that the course of action recommended here is perhaps not the one they would recommend if every nuance of the FCC's current proposal could be explored in further proceedings in this docket and if Texas-specific cost data were presently available. The recommendation that an access structure for Texas be based on parity with the FCC's structure is merely a good starting point, not a blanket endorsement of every element of that structure. The examiners stress that this Commission is in no manner obligating itself to adopt without question every FCC rate and structure for access. The exigencies of the present situation, however, simply outweigh other considerations and require that some type of access tariff be implemented in Texas; the parity structure is available for use fairly quickly and the intrastate tariffs will involve relatively few changes from the interstate tariffs. No doubt the parties here will avail themselves of every opportunity to fine tune the various provisions of those tariffs in future proceedings. The examiners conclude that implementation of parity tariffs to the extent recommended herein will result in a rate structure for interexchange carriers which is neither unreasonably discriminatory against AT&T nor unreasonably preferential in favor of the OCCs and is therefore reasonable and appropriate.

The centerpiece of the staff's proposal is the ICAC--Interexchange Carrier Access Charge--which functions as a substitute for the end user access charge, but may or may not recover the same revenue as would mirrored or parity end user access charges. As the staff originally proposed it, the ICAC was to be calculated as a flat monthly charge to each interexchange carrier based on the number of local customers that use the exchange companies' plant to access that

carrier's services. For FG-A, the ICAC was to be based on the number of access codes representing customers authorized to originate calls from cities in Texas. For FG-B and FG-C, the ICAC was to be based on the number of lines programmed to permit access. If a subscriber uses more than one interexchange carrier, the ICAC would be applicable more than once, and the calculation of the revenue requirement was to be made with this multiple application in mind. The examiners agree that an ICAC is necessary to permit the exchange companies to recover the revenue which would otherwise have been recovered through end user access charges. However, pursuant to the Examiner's Interim Order of November 23, 1983, the local exchange companies calculated the ICAC as a minute-of-use rate based on the pooled residual of the make-whole revenue requirement of all local exchange companies. Because the companies have already calculated and imposed the ICAC on a minute-of-use basis, the examiners recommend that the ICAC continue to be a uniform minute-of-use charge calculated on a pooled revenue basis separately from the intraLATA toll pool.

The examiners also depart from the staff's recommendation that revenue from premium access and from mirrored traffic sensitive charges for the High Cost Factor be pooled by those local exchange companies concurring in intrastate access tariffs. The local exchange companies are not presently pooling such revenues pursuant to the interim access charge tariffs and the examiners therefore recommend that, as with the continuation of the interim procedure for calculating the ICAC, the interim non-pooling of TS access charges not be altered. The examiners recommend that only NTS access charges--that is, the Carrier Common Line and Interexchange Carrier Access Charge rate elements--be pooled. The NTS access charge revenues should be pooled separately from intraLATA toll, which is discussed below.

The staff's proposal also includes recommendations that the Commission reconsider the continuation of intraLATA toll pooling prior to 1986 and review in 18 months the effects on the local exchange companies of interstate and state separations changes and access charge implementation. The examiners agree that further investigation of the issues associated with intraLATA toll pooling is warranted and strongly urge that an inquiry be instituted as soon as possible so that the review will be finished prior to 1986. That inquiry should address a number of questions regarding various NTS cost recovery mechanisms which revolve around two basic scenarios. The first scenario assumes the elimination of intraLATA toll pooling and the application of access charges to all toll services in order to explore whether this would necessitate deaveraged rates and, if so, the impact of such deaveraging on local exchange companies, interexchange companies and subscribers; other issues attendant on the elimination of pooling would also be addressed. The second scenario assumes the continuation of intraLATA toll pooling but would examine various alternatives to the present pooling and settlements arrangements, such as settling on return on equity instead of return on rate base; using an intrastate

separations formula--the one proposed by the staff in this docket or an alternative developed by some other party--instead of continued use of interstate separations formulas and procedures. The inquiry should also explore whether a state High Cost Factor (HCF) and Universal Service Fund are necessary and if so, how the HCF should be developed and applied, given the considerations outlined in Mr. Land's testimony (Staff Ex. No. 5, pp. 8-11, 17-18).

The examiners recognize that a great deal of the frustration experienced by all participants in this docket was caused by the inability to identify Texas-specific costs. As pointed out previously, the local exchange companies have not received specific directives from this Commission regarding appropriate cost study methodologies. Docket No. 2944 was instituted in November 1979; briefs were submitted three years ago. In all likelihood, the factual circumstances on which that proceeding was based have changed over time, if for no other reason than that divestiture has occurred. It is apparent that in the absence of a clear mandate from this Commission, the exchange companies will continue to rely on separations methodologies and procedures for deriving intrastate costs and for assigning such costs to interLATA access, intraLATA toll and local exchange. The examiners therefore urge the Commission to engage an outside consultant to work with the staff and the local exchange companies to develop appropriate cost studies for identifying Texas-specific costs in order to establish intrastate access charge structures and rates. The examiners contemplate that such cost studies should identify all intrastate costs, both TS and NTS, for local, intraLATA and interLATA services, if such cost studies are possible at all.

The final recommendations of the examiners involve the procedures for reviewing the access revenue requirements for exchange companies, which are presently calculated as the revenue needed to replace lost toll revenues--the "make-whole" revenue requirement--pursuant to the interim order in this docket. Since the largest access revenue requirements will be associated with the largest local exchange companies--SWB, GTSW, Centel, Continental, and United/Palo Pinto--it seems appropriate to deal with these companies not only separately from all the other exchange companies but separately from each other as well. SWB's present access revenue requirement will be determined in Docket No. 5220. Since GTSW has a rate case presently pending (Docket No. 5610), it would seem to be more efficient to review its access revenue requirement in the rate case instead of in a separate proceeding. The examiners suggest that the General Counsel institute at least four new inquiry dockets--in lieu of a second phase in Docket No. 5113--for the purpose of reviewing access revenue requirements: one each for Centel, Continental, and United/Palo Pinto, and one for all other local exchange companies, with the qualification that the docket for all other local exchange companies could be further segregated between Average Schedule settlement companies and cost settlement companies. The examiners further recommend that in the absence of Texas-specific cost data,

access revenue requirements for these companies should be determined using separations methodologies and should not be based on the net lost toll revenue. These access revenue requirements should be developed using standard rate case procedures to derive a historical test period. The examiners recommend that the historical test period be the most recent twelve month period for which there is actual data, and suggest that the companies be given sixty days from the date of the final order in this docket to develop and file the tariffs based on this historical data and to establish the NTS access charge pool. The new tariffs should be allowed to go into effect after review by the Commission staff, since the four inquiry dockets will be the forums for reviewing the new access tariffs and the revenue requirements on which they were based.

The examiners further recommend that since the interim access charges must remain in effect until the new tariffs are approved, the calculation of any refunds be handled as follows. The books on the interim access charges should close no later than sixty days from the implementation of the approved tariffs. The local exchange companies would then have ten days to calculate any refunds which might be due interexchange carriers and file their statements of refunds along with supporting documentation with the Commission and with the interexchange carriers. The examiners also would require the local exchange companies to allow the interexchange carriers to audit the back-up work papers on the refund calculations prior to the refund statements being filed. The entities which calculated and filed the interim access tariffs should calculate and file the refund statements; that is, those local exchange companies whose interim access tariffs were developed and filed by the Texas Exchange Carriers (TEC) should have TEC develop and file the refund calculations and statements.

Along with the refund statements, each local exchange company should also file a plan for making any refunds which may be due if that local exchange company is unable to make the refunds in a single lump sum payment. In any event, the refunds should commence no later than thirty days after the refund statements are filed.

If the new tariffs result in access charges which are higher than the interim access rates, the examiners are not recommending that that new rates be made retroactive until January 1, 1984. The examiners further recommend that should any exchange company file a rate case during the pendency of these access revenue requirement inquiry dockets, that exchange company's access revenue requirement should then be severed from the inquiry and considered in the rate case.

The examiners agree that access charges should not apply to RCCs at this time; however, there is nothing about the way RCCs use local exchange plant to originate and terminate calls which distinguishes such use from the use OCCs make of the same plant. It may be questionable whether the distance the RCC

carries the traffic (that is, whether such traffic is local or interexchange) should have a bearing on whether the use of the plant is for access or not. The examiners recommend that local exchange companies who wish to classify RCC interconnections as access services make such proposals in their next rate cases.

IV. Findings of Fact and Conclusions of Law

The examiners further recommend adoption of the following:

A. Findings of Fact

1. This docket was instituted by the General Counsel of the Public Utility Commission of Texas on April 19, 1983, in a petition for an inquiry into the effects of the Modification of Final Judgment, United States v. AT&T, 552 F.Supp. 131 (D.D.C. 1982), aff'd. sub. nom. Maryland v. United States, 103 S.Ct. 1240 (1983), and the FCC's Access Charge Orders in CC Docket No. 78-72 on the local exchange telephone companies operating in Texas; the General Counsel filed his First Amended Petition for an Inquiry on July 11, 1983.

2. All telephone companies providing local exchange service in Texas were named parties to the docket; AT&T was joined as a necessary party to the docket. The following were allowed to intervene as parties: U. S. Telephone, Inc. (U. S. Tel), MCI Telecommunications Corporation (MCI), Texas Retailers Association (TRA), Texas Association of Telephone Answering Services (TATAS), Southern Pacific Communications Company (Sprint), State Purchasing and General Services Commission (SPGSC), Mr. Jack Sanders, City of Lake Jackson, City of Fort Worth, Texas Municipal League (for which specific cities served by SWB were later substituted as parties), Satellite Business Systems (SBS), City of Dallas, Western Union (which later withdrew as a party), Consumers Union, City of El Paso, City of Amarillo, Texas Association of Radio Systems (TARS), Associated Business Customers, and the Office of the Public Utility Counsel.

3. Protest statements were filed by Directline Todco, Inc.; WesTel, Inc.; Qwest Microwave, Inc.; Directline HASP, Inc.; Telesphere Network, Inc.; Wiese, Inc. d/b/a Texas Long Distance; and Satelco, Incorporated.

4. Prehearing conferences were held in this docket on May 3, June 8, June 23, June 30, July 7, July 14, July 28, August 22 and September 8, 1983.

5. The hearing on the merits convened on September 12, 1983, recessed on October 15, 1983, reconvened on October 24, 1983, and adjourned on November 15, 1983.

6. The Examiner's Interim Order was entered on November 24, 1983. Clarifying orders were entered on December 5 and 8, 1983. The interim order (as clarified) was affirmed in part and reversed in part by Commission order entered on December 22, 1983.

7. The motion of Xerox Corporation to intervene was never urged.

8. The posthearing motion of TEXALTEL to intervene was denied without prejudice by order entered February 24, 1984.

9. The motions of various parties to reopen the hearing on the merits were denied by order entered on March 9, 1984.

10. The examiners took official notice of two FCC Memorandum Opinion and Orders: one in CC Docket No. 78-72, In the Matter of MTS and WATS Market Structure (FCC 84-36), released on February 15, 1984, and the other in CC Docket No. 83-1145, In the Matter of Investigation of Access and Divestiture Related Tariffs (FCC 84-51), released on February 17, 1984.

11. Objections and motions to quash AT&T's posthearing RFIs directed to various local exchange companies were sustained or granted by the examiners.

12. Notice of this docket was required to be published by each local exchange telephone company once a week for four consecutive weeks in a newspaper of general circulation in each county of its service area, with proof of publication to be submitted as soon as it was available.

13. Discovery commenced on May 4, 1983, and continued until adjournment of the hearing on the merits on November 15, 1983.

14. A Protective Order was entered on May 5, 1983 and a Modified Protective Order was entered on June 24, 1983.

15. Traffic sensitive (TS) plant is that telephone plant for which costs increase as traffic or usage increases, such as interoffice trunks and local exchange switching equipment.

16. Telephone companies do not provide enough switching and trunking equipment to permit all subscribers to use their telephones simultaneously.

17. Quantities of telephone equipment are based on usage volumes during busy periods of the day.

18. When usage increases, TS equipment is added, thus increasing costs.

19. Non-traffic sensitive (NTS) plant is that telephone plant for which costs do not increase as traffic or usage increases.

20. Examples of NTS plant are outside plant (cables and poles), terminals and station equipment (telephone instruments), protection block, drop line to each customer's premises, and the cable pair (local loop) between the customers and a local exchange switch (central office).

21. A portion of the end office (local dial) switch is also classified as NTS plant to segregate the cost of terminating a line in a switch from the cost of the switch.

22. NTS costs are incurred regardless of the number or duration of calls made.

23. Total NTS costs are allocated between the federal and state jurisdictions using procedures set forth in the Separations Manual (Part 67 of the FCC rules).

24. NTS costs allocated to the interstate jurisdiction pursuant to Separations Manual procedures are presently recovered through minute-of-use charges imposed upon certain services and providers.

25. The majority of NTS costs allocated to the interstate jurisdiction have been recovered through the minute-of-use charges for AT&T's message toll service (MTS).

26. Separations is the process by which telephone companies separate their property costs, revenues, expenses and taxes between the interstate and state jurisdictions.

27. The present separations process is conducted pursuant to "The Ozark Plan," which refers to changes in the Separations Manual adopted by the National Association of Regulatory Utility Commissioners (NARUC) at its meeting at Lake of the Ozarks in Missouri.

28. The Ozark Plan has been in effect since January 1, 1971.

29. The FCC's access charge plan (Part 69 of the FCC rules) relies on Separations Manual definitions, categories and procedures to identify access costs.

30. The NARUC-FCC Joint Board is considering revisions to the Separations Manual in FCC Docket No. 80-286.

31. The Subscriber Plant Factor (SPF) is a separations factor used in the jurisdictional allocation of NTS costs; SLU is a component of this formula.

32. The Subscriber Line Usage (SLU) is a separations factor used in the jurisdictional allocation of TS costs.

33. For some Texas companies, the SPF formula more than triples the assignment of NTS costs to the interstate jurisdiction over the amount that would have been assigned to the interstate jurisdiction based on the actual subscriber line usage.

34. The NARUC-FCC Joint Board has ordered that the SPF be frozen at the average 1981 level and that the assignment of Customer Premises Equipment (CPE) to the interstate jurisdiction be phased out beginning January 1, 1983.

35. Other revisions in the Separations Manual will directly affect the level of interstate costs assigned to various interstate access charge elements.

36. In Texas, the settlements process between Southwestern Bell Telephone Company (SWB) and the Independent telephone companies is the subject of detailed contracts.

37. SWB develops and files interstate and intrastate toll tariffs in which the Independent companies concur regardless of what their costs may be.

38. All toll revenues received by the Independent companies are reported to SWB.

39. The Independents recover from the toll revenue pool all toll-assigned expenses and taxes.

40. The Independents also receive SWB's achieved settlement rate of return on net plant assigned to intrastate toll.

41. The achieved rate of return is applied to each Independent's net plant investment assigned to intrastate toll.

42. SWB retains the revenues remaining after settlement with the Independents.

43. Approximately 54 Texas Independent companies settle on the basis of individual toll cost studies of their actual costs.

44. Approximately 18 Texas Independent companies settle on the Nationwide Average Settlement Schedules which are based on a composite average of cost studies of hundreds of Independent company exchanges.

45. Other Common Carriers (OCCs) provide intrastate toll services in some markets in Texas.

46. OCCs' intrastate operations are not regulated by the State of Texas.

47. OCCs can select the markets where they wish to serve and can enter or leave such markets at will.

48. OCCs may set their own rates within Texas and change them at will.

49. OCCs do not own their own local exchange networks.

50. OCCs interconnect with local exchange companies which provide the equipment and facilities for OCC customers to originate and terminate interexchange calls; thus, OCCs are customers of the local exchange companies.

51. SWB provides interconnections to OCCs pursuant to its "Facilities for OCC" tariff.

52. Independent companies with OCC interconnections provide them pursuant to contracts.

53. Under the SWB OCC tariff, line-side connections between the OCC terminal and the local serving office are provided at a rate equal to the PBX trunk rate plus mileage charges for a central office connecting facility (COCF).

54. SWB's OCC tariff rate does not include a rate element reflecting the costs associated with the NTS facilities of the OCCs' customers comparable to the interstate ENFIA tariff rate element three (NTS plant).

55. The PBX trunk rate paid by an OCC to SWB is not structured to recover the NTS costs associated with any other subscriber's plant, unlike the intrastate toll rates of SWB and the Independents.

56. In CC Docket No. 78-72, In the Matter of MTS and WATS Market Structure, the FCC adopted rules establishing a transitional plan for eventually transferring the recovery of interstate toll-related NTS costs from usage sensitive toll rates to flat rate end user charges.

57. The Modification of Final Judgment, United States v. AT&T, 552 F.Supp. 131 (D.D.C. 1982), aff'd. sub. nom. Maryland v. United States, 103 S.Ct. 1240 (1983), ordered the termination of the Bell System Division of Revenues process and required that a tariffed system of access charges be substituted.

58. During the pendency of CC Docket No. 78-72, the FCC allowed a negotiated interim rate for MTS-WATS equivalent access to go into effect. The interim agreement is known as ENFIA, or Exchange Network Facilities for Interstate Access.

59. Under the ENFIA agreement, toll carriers other than the Bell partnership pay part of the NTS costs of the local exchange network they use in originating and terminating interstate or foreign services in addition to the NTS costs of their own interconnections.

60. OCCs utilizing the ENFIA tariff pay a flat rate charge for NTS plant.

61. ENFIA does not apply to the resale of MTS and WATS provided by AT&T nor to resold OCC MTS-WATS-type services.

62. Not all providers of interstate toll services contribute to the recovery of interstate toll costs; those that do contribute do not do so at the same level of contribution.

63. ENFIA rates are presently set to recover only 55 percent of AT&T's interstate NTS costs.

64. In its access charge orders in CC Docket No. 78-72, the FCC used the MFJ's definition of access service as including all tariffed services and facilities the exchange companies will provide for origination and termination of interstate calls.

65. In its access charge orders, the FCC uses the term "access" to mean a combination of the services the local exchange company provides to long haul carriers and to end users or subscribers.

66. The FCC used the term "interexchange" as usually synonymous with "interLATA" and "exchange facilities" as meaning "intraLATA facilities," as used in the MFJ.

67. The FCC determined that uneconomic bypass posed a substantial danger to the nation's telephone system because of the continuation of recovering through usage sensitive rates costs which do not vary with usage.

68. The FCC defined uneconomic bypass as the abandonment of the telephone network by large volume telecommunications users for less efficient alternatives.

69. The FCC did not identify what services constitute uneconomic bypass and did not quantify it in terms of numbers of customers lost or revenues lost.

70. The FCC concluded that flat rate pricing of NTS costs to end users reflects cost-causation principles and provides the correct economic signals to the marketplace.

71. In its order of February 28, 1983, in CC Docket No. 78-72, the FCC ordered monthly flat rate end user charges of no less than $2 per residential line and $4 per business line to recover interstate assigned NTS costs.

72. In its order of August 22, 1983, in CC Docket No. 78-72, the FCC ordered monthly flat rate end user charges of no more than $2 per residential line and $6 per business line to recover interstate assigned NTS costs.

73. In its order of February 15, 1984, in CC Docket No. 78-72, the FCC deferred until June 1, 1985, the end user charges for residential and single-line business customers.

74. The FCC concluded that the quality of interconnection received by the OCCs through ENFIA-A (line-side) connections is inferior to that received by the traditional interexchange partnership.

75. The FCC also concluded that the quality of interconnection received by the OCCs through ENFIA-B and ENFIA-C (trunk-side) connections are inferior to that received by the traditional interexchange partnership.

76. The FCC found that the difference in the quality of interconnection provided a substantial advantage to the carriers offering MTS and WATS.

77. The FCC found that AT&T enjoys a unique level of access, unavailable to any other interstate toll carrier, and should pay the opportunity cost for this preferred level of access.

78. The FCC's February 15, 1984, order in CC Docket No. 78-72 stated the impossibility of determining a precise premium value for AT&T's interconnection and ordered that a total differential for all access elements related to the total differential produced by the current ENFIA rates be established.

79. In its order of October 19, 1983, in CC Docket No. 83-1145, In the Matter of Investigation of Access and Divestiture Related Tariffs, the FCC suspended until April 3, 1984, all access and divestiture related tariffs filed pursuant to its orders in CC Docket No. 78-72.

80. On February 17, 1984, in CC Docket No. 83-1145, the FCC provided specific instructions to the exchange companies for making changes in the access tariffs to correct errors and deficiencies.

81. The Modification of Final Judgment, United States v. AT&T, 552 F.Supp. 131 (D.D.C. 1982), aff'd. sub. nom. Maryland v. United States, 103 S.Ct. 1240 (1983), required AT&T to divest itself of sufficient facilities, personnel, systems and rights to technical information to allow the Bell Operating

Companies (BOCs) to perform exchange telecommunications and exchange access functions independently of AT&T and to provide equal access to all interexchange carriers.

82. The MFJ prohibits joint ownership between AT&T and a BOC of facilities; however, multifunction facilities can be shared pursuant to a lease or some other method provided that the BOC is insured control over exchange telecommunications and exchange access functions.

83. The BOCs are required by the MFJ to provide to all interexchange carriers and information service providers exchange access, information access, and exchange services for such access on an unbundled, tariffed basis that is equal in type, quality and price to that provided to AT&T and its affiliates, beginning no later than September 1, 1984.

84. The MFJ required the BOCs to establish geographic exchange areas, termed Local Access and Transport Areas (LATAs), to define the areas within which BOCs may provide telecommunications services and between which BOCs may not provide such services.

85. The LATAs also assisted AT&T and the BOCs in identifying the facilities, personnel, systems, etc., necessary for providing exchange telecommunications and exchange access functions which would be transferred to the BOCs.

86. The terms "exchange" and "LATA" are synonymous in the MFJ.

87. Fifteen LATAs were approved for Texas.

88. Under the MFJ, the BOCs may not provide interexchange (interLATA) telecommunications services or information services, manufacture telecommunications products or customer premises equipment, or provide any other product or service (except exchange telecommunications and exchange access service) that is not a natural monopoly service actually regulated by tariff.

89. The MFJ defines exchange access as the provision of exchange services for the purpose of originating or terminating interexchange telecommunications, including but not limited to the provision of network control signalling, answer supervision, automatic calling number identification, carrier access codes, directory services, testing and maintenance of facilities and the provision of information necessary to bill customers.

90. Under the MFJ, exchange services are to be provided by facilities in an exchange area for the transmission, switching or routing, within an exchange area, of interexchange traffic originating or terminating within the exchange area.

91. The MFJ requires that such exchange services include switching traffic within the exchange area above the end office and delivery and receipt of such traffic at a point within an exchange area designated by an interexchange carrier for the connection of its facilities with those of the BOC.

92. At the option of the interexchange carrier, its connections must deliver traffic with signal quality and characteristics equal to that provided similar traffic of AT&T, including equal probability of blocking, based on reasonable traffic estimates supplied by each interexchange carrier, according to the MFJ.

93. The MFJ definition of exchange services for exchange access does not include the performance by any BOC of interexchange traffic routing for any interexchange carrier.

94. The Independent telephone companies are not subject to the terms of the MFJ.

95. The Independents may provide interLATA intrastate toll services.

96. Because of AT&T's succession to SWB's ownership of the interLATA facilities formerly used to provide statewide toll services and because of the network configuration, the Independents must establish a separate relationship with AT&T for provision of interLATA services.

97. The joint provision of toll service between the Independents and SWB in Texas will be restricted to intraLATA toll services.

98. The SWB toll tariffs for Texas in which all Texas exchange companies concurred will not be effective after divestiture.

99. The settlement agreements providing for the division of interLATA toll revenues will not be valid after divestiture.

100. AT&T is not prohibited from providing intrastate intraLATA service.

101. AT&T does not presently provide intrastate intraLATA service but could do so if it ordered line-side connections from the local exchange companies.

102. After January 1, 1984, all one-plus calls will continue to be routed over the same network as it existed prior to that date; interLATA calls are AT&T's and intraLATA calls are SWB's.

103. The LATA boundaries do not affect where OCCs may carry toll traffic or provide telecommunications services.

104. Because of AT&T's succession to ownership of SWB's plant and facilities for interLATA services, the exchange companies will lose some toll revenues which prior to divestiture provided one source of recovery of NTS costs.

105. Bypass in its narrowest sense is the origination and/or termination of a call without the use of a local telephone company's plant.

106. In its broadest sense, bypass means the provision of any alternative telecommunications facility which satisfies one or both of two goals: the reduction of costs or the provision of enhanced technology to satisfy a specific need.

107. Economic bypass occurs when the cost of providing the alternative facilities is less than the cost-based price of equal facilities provided by the local exchange company.

108. Uneconomic bypass occurs when the price of the local exchange company facilities is set at a level so far above its cost that a competitor with higher costs can still price its services lower than the local exchange company.

109. Theoretically, uneconomic bypass, being less economically efficient, would not occur under a system of cost-based pricing of local exchange company facilities.

110. Current technologies available for bypass include private microwave and radio systems, guided systems (such as coaxial cable and fiber optics), satellite transmission systems and atmospheric optical systems.

111. Each bypass technology has some serious drawbacks to its widespread use.

112. Each bypass technology is very expensive and is presently economical only for relatively large volumes of traffic.

113. Local exchange company revenue is disproportionately concentrated in a small number of high volume business users which tend to be concentrated geographically.

114. Local exchange companies perceive themselves to be highly vulnerable to a loss of the revenue generated by high volume business users by means of a competitor building a bypass system capable of handling the high volume traffic originating from the limited number of large users in a small geographic area.

115. The theory that uneconomic bypass poses a danger is that once the high revenue customers leave the network, the remaining customers must make up the lost revenue by paying higher rates; as rates go up, more customers leave the

network, resulting in the still-fewer remaining customers having to pay even higher rates, sparking another loss of customers and revenues.

116. There was no evidence in this docket demonstrating that present bypass has resulted in lost revenues or than any loss of customers to bypass has caused the rates of the remaining customers to increase more sharply than they otherwise would have.

117. The extreme bypass scenario (the customer-abandonment, higher rates spiral) is not likely to occur even in the long term because of the complexity and expense of bypass technologies, the long lead time for planning and construction and the fact that even large users which shift to bypass facilities for long haul transmission are likely to remain connected to the local network in order to communicate with the local community.

118. It is difficult to classify a particular technology as specifically a bypass technology; since some users' needs may not be adequately served by existing telecommunications services, they may turn to a wholly new service which local exchange companies might not be providing--or be able to provide--efficiently.

119. It makes no difference whether a local exchange company is bypassed economically or uneconomically, because in either instance the local exchange company suffers a loss of revenue which must be recouped from remaining customers.

120. Flat rate pricing of NTS costs to end users will result in the same effect on end users as bypass by large revenue customers, because in either event, the contribution to NTS costs provided by toll revenue will disappear.

121. Bypass is largely irrelevant at the present time to considerations of the proper pricing of NTS costs.

122. Cost-based pricing cannot prevent bypass of the local exchange network if the local exchange companies are unable to meet specific service requirements of their customers.

123. The proposal that end users should pay for NTS costs in monthly flat rates is justified by its proponents on the basis of cost causation principles, that is, that costs should be borne by cost causers.

124. The maxim "costs should be borne by cost causers" does not identify actual cost causation; it is simply a pricing principle.

125. Use of the maxim in justifying flat rate end user access charges assumes the conclusion that local subscribers cause local exchange companies to incur NTS costs simply by subscribing to local service.

126. Even if the assumption is accurate that subscribing to local service is the direct cause of the NTS costs of local exchange companies, the assignment of all such costs to end users on the sole basis of economic principles of causation is not necessarily in the public interest.

127. The effect of mirroring at the state level the FCC's end user access charges on the demand for local telephone service is unknown.

128. Sharp increases in customers' flat monthly rates could lead to significant customer drop-off, thereby threatening universal service.

129. All costs are eventually paid by consumers, either directly or indirectly.

130. There is no evidence supporting the theory that a targeted, government-administered subsidy for the subscriber unable to pay the "true economic cost" of telephone service is a more efficient means of retaining universal service.

131. The determination of costs, or of which costs should be assigned or allocated to which services, is arbitrary at best in the regulatory arena, because regulation is a surrogate for market determinations of value.

132. Assigning costs on the basis of causation principles is only one of the many tools available to regulatory authorities for pricing utility services.

133. Regulatory authorities must consider valid social, political, and ethical issues in ratemaking, and do not just promote economic efficiency.

134. Consumers frequently do not behave according to principles of economic efficiency.

135. It is likely that sharp increases in monthly flat rates would not only drive the poorest subscribers off the network but would also prompt customers who could afford such increases to leave the network if they did not perceive any additional value or benefit from the increased rates.

136. Customers who presently make few or no toll calls will not receive any offsetting benefit to higher monthly flat rates from the predicted lower toll rates.

137. It is likely that ratepayers who do not make toll calls will not perceive any value or benefit from paying a flat monthly rates for the ability to access the toll networks; such customers could drop off the system despite their ability to pay the increased monthly flat rates.

138. Local subscribers do not have any control over the NTS costs of their local loops and cannot be said to have caused such costs merely by becoming local subscribers.

139. Local loops are not "dedicated" to individual subscribers in the same way that water lines or gas lines to individual customers are dedicated; since other subscribers can use the local loops, each subscriber is not the sole beneficiary of his or her loop.

140. Protection and promotion of universal service has been a national policy since passage of the Communications Act in 1934.

141. The existing high level of telephone service in Texas is the result of the traditional residual pricing approach to the setting of rates for local telephone service.

142. Residual pricing is accomplished by first determining a telephone company's statewide revenue requirement, then designing rates to insure that local subscribers pay as low a rate as possible.

143. One rate design technique is to put more of a revenue burden on business service, terminal equipment and other vertical services such as Touch-Tone and Custom Calling features than on residential service.

144. Pricing business local exchange rates higher than residential rates is based on the concept of "value of service," that is, that those who receive the greater benefit ought to pay more.

145. Intrastate toll rates have been set so that revenue from that service exceeds its incremental unit cost and thereby contributes revenue that otherwise would have had to come from local flat rates.

146. This Commission has continued to price local exchange service residually in order to retain universal service.

147. In fashioning an access charge plan for Texas, this Commission must consider the effect on universal service of not only any interstate end user access charges mandated by the FCC but also the mirroring of such end user access charges at the intrastate level.

148. Implementation of intrastate end user access charges in 1984 is a threat to universal service in Texas.

149. Local subscribers are not the sole beneficiaries of their local loop facilities.

150. The value of the telecommunications network resides in its ubiquitous, integrated presence.

151. NTS cost recovery mechanisms should be based on an analysis of the use and benefit of the telecommunications network.

152. Interexchange carriers are customers of the local exchange companies.

153. Interexchange carriers need and use the local exchange network to originate and terminate the interexchange traffic they carry.

154. Without the local exchange network already in place, competition in the interexchange markets would not exist.

155. The cost of duplicating the local exchange network is inestimable.

156. The value derived by interexchange carriers from the presence of the local exchange network is nothing less than their ability to exist at all.

157. The use which interexchange carriers make of the local exchange network is fundamentally different from the use made by other business customers such as department stores, because interexchange carriers--unlike department stores--use the local exchange plant to originate and terminate interexchange telecommunications traffic.

158. Interexchange carriers use local exchange plant in offering the end-to-end toll services on which they make a profit; therefore, the value they derive from such use is substantial.

159. The value of the local exchange network to interexchange carriers is not only more than zero, it is more than the costs those carriers impose by virtue of their own interconnections.

160. Access is a two-way street: not only do subscribers have access to the interexchange carriers' network, the interexchange carriers have access to the subscribers.

161. It is not unreasonably discriminatory, unjust or unfair to require all interexchange carriers to share the NTS costs of the local exchange plant to

which they have access, which they use to offer and sell their own services and for which many presently pay nothing above their own NTS costs.

162. Interexchange carriers benefit directly from the high rate of subscription to local service fostered by the ratemaking principles employed by this Commission, since that has created a large pool of potential customers for interexchange carriers' services.

163. Any increase in monthly flat rates which would cause a substantial number of subscribers to leave the system--for whatever reason--reduces the value of the network as an integrated whole.

164. All subscribers--but especially interexchange carriers--benefit from each additional subscriber loop because that loop can be used by all interexchange carriers and local subscribers.

165. The interexchange carriers market and sell their services on the assumption that the existing, integrated network is available to their customers to originate and terminate interexchange calls.

166. Under the present NTS cost recovery structure in Texas, toll rates for AT&T and for the local exchange companies recover part of the total NTS costs of local exchange companies; the rates paid by OCCs recover the NTS costs of only their own interconnections.

167. The present NTS cost recovery structure in Texas results in interexchange carriers paying different rates for similar or identical use of local exchange plant and facilities.

168. The record in this case does not support the contention that the present price differential between OCCs and the traditional toll partnership must be maintained until equal access is available in order to preserve and protect competition in the toll markets.

169. Competition will benefit only those Texans residing in high-density, high-traffic areas who make enough toll calls each month to justify the monthly subscription price most OCCs charge.

170. Texas customers who do not reside in high-density, high-traffic areas or who do not make enough toll calls each month to recoup the subscription fee will not benefit from competition in the interexchange markets.

171. Under the present pricing scheme, each time subscribers place calls over OCC facilities, they avoid paying the NTS cost support built into the toll rates for AT&T/SWB/Independents that customers without a choice of interexchange carriers must pay.

172. OCC rates do not include the same contribution to NTS costs as the toll rates of AT&T, SWB and the Independents, even though their use of local exchange plant and facilities is functionally identical.

173. OCCs receive predominantly line-side connections, which are local-grade access; these connections are Feature Group A (FG-A) access.

174. AT&T receives predominantly trunk-side, or toll-grade, connections; this is called Feature Group C (FG-C).

175. Feature Group A access requires OCC customers to input 22 to 24 digits, compared to the 8 to 11 digits AT&T customers dial.

176. OCC customers must have push-button or tone access; rotary dial telephones cannot access an OCC switch because FG-A cannot transmit dial pulse signals to the OCC switch.

177. AT&T customers can reach its switches with either rotary dial or push-button telephones because FG-C can transmit both types of signals.

178. OCCs' FG-A connections cannot provide automatic calling number identification (ANI), thus requiring OCC customers to input a personal identification number (PIN) for billing purposes.

179. AT&T receives automatic number identification through its FG-C interconnection.

180. OCCs incur additional holding time on calls because of the extra digits OCC customers must input.

181. Because of lack of ANI on FG-A interconnections, OCCs cannot identify from which central office its customers are calling, making traffic forecasting difficult.

182. Use of PINs increases the likelihood of fraudulent use of OCC facilities and of uncollectibles due to fraud.

183. OCC uncollectibles are higher than those for carriers with FG-C interconnections.

184. The FG-A interconnection cannot provide Answer Supervision, which triggers the timing and billing mechanism; FG-C can provide Answer Supervision.

185. The transmission performance of FG-A access is inferior to FG-C access in terms of noise, echo and loss, requiring OCCs to incur additional expense for conditioning equipment.

186. Feature Group B (FG-B) is a trunk-side interconnection available to OCCs, providing both direct and tandem routing.

187. The FG-B interconnection is not an offering with uniform availability of features.

188. The FG-B-Tandem employs local trunking and switching, requiring conditioning equipment to compensate for increased noise and echo; FG-B-Tandem also requires OCC customers to input the extra digits for their PINs.

189. ANI is not available under FG-B-Tandem, nor can an OCC switch be accessed from a rotary dial telephone with FG-B-Tandem.

190. Feature Group B-Direct (FG-B-Direct) will allow access to an OCC switch from rotary dial telephones.

191. ANI is available under FG-B-Direct, but in a different signalling format than with FG-C access, thus increasing holding time for OCCs.

192. The type of routing available under the FG-B offering--tandem or direct--is determined by the facilities available in each end office.

193. An OCC operating in a large metropolitan area could offer only some of its customers the convenience of access from rotary dial telephones and ANI, depending on the equipment in the end office from which calls originate.

194. In some instances, conversion to the FG-B offering will require some steps inconsistent with those necessary to convert to equal access--Feature Group-D--when it becomes available beginning in September 1984.

195. Although it is presently available to OCCs, FG-B has serious drawbacks for OCCs because of the non-uniformity of the features such as ANI and rotary dial access.

196. Even though some FG-B interconnections can provide superior transmission and some desirable features, the non-uniformity of FG-B makes it less desirable than FG-A.

197. Because of the non-uniformity of the FG-B offering, it is not reasonable to expect that OCCs should convert to FG-B; OCCs have not voluntarily elected to continue subscribing to a less desirable interconnection.

198. The quality of transmission, the uniformity of services and features and the availability in every end office of FG-C make it a superior form of interconnection; AT&T is the only interLATA carrier with FG-C interconnections.

199. As the only interLATA carrier offering one-plus dialing, AT&T receives a substantial advantage over the OCCs.

200. AT&T is the only interexchange carrier with access to all Texas subscribers, since it can be accessed by both rotary dial or push-button telephones.

201. Local subscribers choose rotary dial telephones rather than push-button telephones for a variety of reasons.

202. For OCCs with FG-A to be able to serve rotary dial customers on an originating basis, the OCC or the customer will have to incur the cost of providing the equipment (push-button telephone or tone generator) necessary to access an OCC switch via FG-A.

203. AT&T's ability to serve rotary dial customers on an originating basis through FG-C provides it with a significant advantage over OCCs with FG-A.

204. AT&T can provide intraLATA toll services through FG-A interconnections.

205. AT&T is the only interexchange carrier in some Texas markets, which is also an advantage to AT&T.

206. The proper comparison for determining whether AT&T enjoys a superior form of access is between FG-A and FG-C; the evidence in this record demonstrates that FG-C is in fact a superior form of interconnection and is available only to AT&T on an interLATA basis.

207. Because AT&T enjoys a superior form of interconnection, it should pay a premium for that access.

208. The premium should be phased out as equal access becomes available to all interexchange carriers.

209. The premium should apply only to AT&T's FG-C interconnections, not its line-side or FG-A interconnections.

210. The FCC's premium mechanism is reasonable, since it phases out as equal access becomes available, and should be mirrored in Texas.

211. Some telephone services may be provided over the facilities of more than one exchange company.

212. The primary objective of a pooling and settlements process is the promotion of uniform tariffed statewide rates to customers for services provided by more than one exchange company.

213. The result of uniform tariffed rates is that regardless of the originating location of a call, the same distance- and time-sensitive rate applies.

214. Common tariffed rates are developed on the average cost of the participating companies.

215. Participating companies share in the toll revenues on the basis of their settlement contracts.

216. Without a pooling and settlements process, it is possible that all other things being equal (time of day, duration, etc.) the direction of a call completed over the facilities of more than one exchange company would determine its cost and therefore the rate.

217. The pooling and settlements compensation mechanism assures customer understanding and eliminates the incentive for "code calling," by which customers signal each other in order to achieve the lowest rate on toll calls.

218. Since local exchange companies cannot determine the intraLATA/interLATA nature of OCC traffic (because of the line-side connection), all OCC traffic will be considered interLATA, to which access charges apply, even though it may be wholly intraLATA.

219. It is reasonable to shift all intrastate toll NTS costs to interLATA access because the effect is to assess to interexchange carriers a portion of the NTS costs of the local exchange plant they use in originating and terminating their calls regardless of their interLATA or intraLATA nature.

220. Local flat rates on the average already recover more than half the NTS costs of the local exchange companies.

221. The operations and revenues of the Independents have been directly affected by AT&T's divestiture of SWB; high cost, low density companies are affected most by the disruption in the toll revenue stream caused by divestiture.

222. Nothing in the record in this docket supports the contention that local exchange rates for the small telephone companies which have never filed rate cases before this Commission should have increased.

223. Texas telephone companies have some of the greatest extremes of operating costs and densities as exist anywhere in the nation.

224. Termination of intraLATA toll pooling and settlements could result in unforeseen negative consequences, such as causing some smaller telephone

companies to go out of business; therefore such termination should not be undertaken without further investigation.

225. Rather than risk the loss of any local exchange company, intraLATA toll pooling and settlements should continue through 1984 and 1985 while the investigation proceeds.

226. Only a few local exchange companies have any OCC interconnections.

227. Any increase in intrastate toll rates to recover NTS costs (rather than an increase in local flat rates) has worked to the advantage of the OCCs, since their enterprises are based on their ability to underprice the end-to-end toll services of the traditional toll partnership.

228. The staff's recommendation that intraLATA intrastate toll settlements should be based on return on equity deserves further investigation before being either rejected or implemented.

229. The staff's proposal for implementing access charges is equitable for all interexchange carriers and causes the least disruption to the operations of the local exchange companies and to the high level of universal service in Texas.

230. The staff proposal has the advantage of being available relatively quickly because it uses parity rates for recovery of traffic sensitive costs and for some non-traffic sensitive costs.

231. Texas access rates should be based on Texas costs, but until such costs are developed, it is reasonable to implement an access charge structure and rates mirroring (with some exceptions) the FCC's access charge plan.

232. Under the present pricing scheme, interexchange carriers contribute to NTS cost recovery at widely varying levels.

233. Implementing a parity access charge structure, with some modifications, will require all interexchange carriers to contribute equitably to NTS cost recovery.

234. Implementing a parity access charge structure, with some modifications, will prevent the potential underrecovery of exchange company access revenue requirements due to misreporting the jurisdiction of interexchange carrier traffic.

235. The Interexchange Carrier Access Charge (ICAC) rate element will replace the end user access charge rate element at the intrastate level.

236. The ICAC functions as a substitute at the Intrastate level for end user access charges, but may or may not recover the same revenue as would mirrored or parity end user access charges.

237. Under the Interim Order in this docket, the local exchange companies calculated the ICAC as a minute-of-use rate.

238. Because the companies have already calculated and imposed the ICAC on a minute-of-use basis and are familiar with the procedure, continuation of that procedure pursuant to the final order herein is reasonable.

239. The consequences of terminating and continuing toll pooling and other issues related to toll pooling deserve further investigation.

240. In the absence of Texas-specific cost data, it is reasonable to use separations methodologies to identify the intrastate access revenue requirements of the local exchange companies because it is consistent with use of separations methodologies to identify other intrastate revenue requirements.

241. Because the local exchange companies are not presently pooling revenues from premium access and from mirrored traffic sensitive charges for the High Cost Factor under the interim access charge tariffs in this docket, the continuation of non-pooling of TS access charges is reasonable.

242. Only NTS access charges--the Carrier Common Line and Interexchange Carrier Access Charge rate elements--should be pooled.

243. The NTS access charge revenue pool should be separate from the intrastate intraLATA toll revenue pool.

244. The access revenue requirements of the local exchange companies can be more easily investigated in several separate dockets than in a second phase of this docket.

245. Because the largest access revenue requirements will be associated with the largest exchange companies (SWB, GTSW, Centel, Continental and United/Palo Pinto), their revenue requirements should be investigated in separate dockets.

246. The access revenue requirements for SWB and GTSW will be part of their pending rate cases.

247. The access revenue requirements for Centel, Continental and United/Palo Pinto can be more easily investigated in dockets separate from each other.

248. The access revenue requirements for all other exchange companies can be investigated in one docket, or in two dockets divided between cost settlement companies and Average Schedule settlement companies.

249. Access revenue requirements should be developed using standard rate case procedures to derive a historical test period which should be the most recent twelve month period for which there is actual data.

250. Sixty days from the date of the final order herein is a reasonable amount of time to allow the local exchange companies to develop their access revenue requirements and tariffs and to establish the NTS access charge pool.

251. The interim access charge structure and rates must be allowed to remain in effect until the new tariffs can be filed; otherwise, there will be no mechanism in place by which local exchange carriers can be compensated by interexchange carriers which use the local exchange plant.

252. Local exchange companies or the entity which calculated and filed the interim tariffs on behalf of any local exchange company should calculate any refunds which might be due and file statements within seventy days of the filing of the tariffs. Interexchange carriers must be allowed to audit the back-up work papers on the refund calculations prior to the refund statements being filed at the Commission.

253. Any local exchange company unable to make refunds in a single lump sum payment should file a plan for making such refunds along with the refund statements; in any event, refunds should commence within thirty days of the filing of the refund statements.

254. If the new tariffs result in access charges which are higher than the interim access rates, the new rates should not be retroactive to January 1, 1984.

255. The new tariffs should be allowed to go into effect upon review and approval of the Commission staff, since there will be an opportunity to review the access revenue requirements in the new inquiry dockets.

256. Access charges should not apply to interconnections provided to radio common carriers (RCCs) at the present time.

B. Conclusions of Law

1. The Commission has jurisdiction over the issues presented in this docket pursuant to Sections 2, 16, 18, 37, 38 and 42 of the Public Utility Regulatory Act, Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon 1980) as reenacted 1983 Tex. Sess. Law Serv., ch. 274, §1, at 1258 (Vernon), hereinafter cited as "PURA."

2. This docket was properly conducted as a contested case pursuant to Sections 3(2), 13, 14, 14a, 15 and 16 of the Administrative Procedure and Texas Register Act, Tex. Rev. Civ. Stat. Ann. art. 6252-13a (Vernon Supp. 1983), hereinafter cited as "APTRA."

3. Nothing in the FCC's Access Charge Orders in CC Docket No. 78-72, In the Matter of MTS and WATS Market Structure, and CC Docket No. 83-1145, In the Matter of Investigation of Access and Divestiture Related Tariffs, or in the Modification of Final Judgment, United States v. AT&T, 552 F.Supp. 131 (D.D.C. 1982), aff'd. sub. nom. Maryland v. United States, 103 S.Ct. 1240 (1983), requires this Commission to investigate the issues in this docket, likewise, nothing in the Access Charge Orders and the MFJ prohibits this Commission from investigating the issues herein.

4. The Commission has authority under PURA Section 2, 16 and 18 to investigate the effects of the MFJ and the Access Charge Orders on Texas telephone utilities and to take any action necessary to insure that the rates and services of Texas telephone utilities are just, fair, and reasonable.

5. Under PURA Section 42, this Commission has the authority to conduct an investigation of the reasonableness of existing rates and, if the existing rates are found to be unreasonable or in violation of any provision of law, to establish different, more reasonable rates. See, Complaint of GTSW, Docket No. 3957, 8 P.U.C. BULL. 459, 474 (May 19, 1983).

6. The fact that telephone company rates may be affected as a result of these proceedings does not transform this docket into a rate case to be conducted under PURA Section 43. See, Complaint of GTSW, id.

7. The fact that important statewide policy issues may be addressed in this docket does not make this a rulemaking proceeding under APTRA Section 5. See, Public Hearings of the Public Utility Commission of Texas on the Cost of Service Ratemaking Standards of §11(d)(1) of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §2601, et seq., Docket No. 3437, 7 P.U.C. BULL. 250 (August 20, 1981).

8. The APTRA provides only minimum standards of uniform practice and procedure before state agencies; nothing in the APTRA prohibits an agency from imposing its own more stringent procedural safeguards.

9. Assuming arguendo that this docket is a rulemaking proceeding, the APTRA requirements that agencies give notice to interested persons and provide them an opportunity to submit data, views or arguments have been met in conducting this docket as a contested case pursuant to APTRA.

10. This Commission has inherent discretion in deciding whether to proceed by general rulemaking or by ad hoc adjudication, since there is no statutory mandate to the contrary.

11. The requirement of PURA Section 42 that reasonable notice be given has been met in this docket.

12. SWB may not provide interLATA services; the Independents are not so restricted.

13. AT&T may provide intraLATA services.

14. The OCCs presently provide both intraLATA and interLATA services; the MFJ does not restrict where they may serve.

15. The OCCs' operations in Texas are not regulated by the State of Texas; OCCs may enter and leave markets and set their own rates at will.

16. The MFJ prohibits a Division of Revenue process between SWB and AT&T.

17. Because SWB can no longer provide intrastate interLATA toll services, the SWB toll tariffs in which all exchange companies concurred were no longer valid after divestiture.

18. Because SWB can no longer provide intrastate InterLATA toll services and because of AT&T's succession to ownership of SWB's plant and facilities for providing interLATA services, the settlement agreements between SWB and the Independents were not valid after divestiture.

19. Even if subscribing to local exchange service is the direct cause of the NTS costs of local exchange companies, the assignment of all NTS costs to end users on the basis of economic efficiency is not necessarily in the public interest.

20. Regulatory authorities are concerned with more than the promotion of economic efficiency in designing rates; they must also consider valid social, political and ethical goals.

21. Universal telephone service in Texas remains a valid ratemaking principle of this Commission under PURA; residual pricing of local service and value of service pricing are two methods of promoting and preserving universal service.

22. Because implementation of end user access charges presents a threat to universal service in Texas, such charges are not in the public interest.

23. This Commission cannot control whether the FCC will implement end user access charges as a mechanism for recovering interstate toll related costs; however, in carrying out its statutory mandate to protect and promote the public interest in having adequate and efficient telecommunications service available to all citizens of the state at just, fair and reasonable rates, this Commission must consider the effect on universal service of both interstate end user access charges and mirrored intrastate end user access charges.

24. The use interexchange carriers make of the local exchange network is fundamentally different from the use made by other business customers, as set forth in Findings of Fact Nos. 153, 157 and 158; therefore, it is reasonable to establish interexchange carriers as a distinct class of customers pursuant to PURA Section 37.

25. Because of the way in which interexchange carriers utilize the local exchange network and because the value of the local exchange network to interexchange carriers is substantial, as set forth in Findings of Fact Nos. 149 through 165 inclusive, it does not violate PURA Section 38 to require all interexchange carriers to contribute to the NTS costs of local exchange companies in excess of the costs interexchange carriers themselves impose under a value of service pricing concept, so long as such contribution is equitable as among the members of the interexchange carrier customer class.

26. It is not unreasonably discriminatory, unjust or unfair to require all interexchange carriers to share equitably the NTS costs of the local exchange network.

27. The present NTS cost recovery structure in Texas is in violation of PURA Sections 38 and 45 because within the class of interexchange carriers, OCCs receive an unreasonable preference and AT&T is unreasonably prejudiced in that OCCs do not contribute to any NTS costs other than their own and AT&T does so contribute.

28. The present NTS cost recovery structure in Texas results in interexchange carriers paying different rates for similar or identical use of local exchange plant and facilities in violation of Sections 38 and 45.

29. The Commission is not required to preserve competition at the risk of sacrificing universal service; instead the Commission must balance the goals of the PURA in achieving a reasonable--not a perfect--resolution of the issues in this docket.

30. The preservation and promotion of universal service remains the paramount policy consideration of the Commission.

31. The Commission can reasonably elect to implement a plan which preserves universal service in a manner which causes the least customer impact and can reasonably conclude that preserving universal service for several million local ratepayers must take priority over the protection of the competitive enterprises of the relatively few interexchange customers.

32. The fact that some interexchange carriers' rates have in the past been set at levels which yield inequitable contributions to NTS cost recovery does not give those interexchange carriers a vested right to those rates. No customer has a vested right to any particular rate; all customers have the same right to rates that are just and reasonable under PURA Section 38.

33. Pursuant to PURA Section 45, AT&T cannot lawfully be the only interexchange carrier contributing to NTS cost recovery; all interexchange carriers must contribute equitably.

34. Because AT&T receives a superior form of interconnection as set forth in Findings of Fact Nos. 173 through 206 inclusive, it is neither unreasonably discriminatory nor unreasonably prejudicial under PURA Sections 38 and 45 to require that AT&T pay a premium for such access.

35. It is appropriate to assess a premium for superior interconnection only against AT&T's FG-C (trunk-side) interconnections and not its FG-A (line-side) interconnections.

36. It is appropriate to phase out the premium charge to AT&T as equal access becomes available to all interexchange carriers.

37. Shifting all intrastate toll NTS costs to interLATA access is not unreasonably discriminatory or prejudicial under PURA Section 38, because the monthly flat rates charged by local exchange companies on the average already recover more than half the total NTS costs. The effect of the shifting of intrastate toll NTS costs to interLATA access is to assess interexchange carriers a portion of the NTS costs of the local exchange plant they use in originating and terminating both interLATA and intraLATA calls.

38. Because termination of intraLATA toll pooling might have negative consequences, it is reasonable to allow intraLATA toll pooling to continue through 1984 and 1985 in order to protect universal service.

39. Until Texas-specific cost data are available, it is reasonable to determine access costs using separations methodologies because it is consistent with the way other intrastate costs are determined.

40. Implementation of intrastate access charges mirroring the structure and rates (with some changes) developed by the FCC for interstate access charges is reasonable because it is available for use relatively quickly, will require few changes in order to be implemented in Texas and because it will result in a rate structure for interexchange carriers which is neither unreasonably discriminatory against AT&T nor unreasonably preferential in favor of other interexchange carriers.

41. The Interexchange Carrier Access Charge (ICAC) is a reasonable substitute for end user charges because it requires the interexchange carriers using local exchange plant to originate and terminate interexchange calls to share in the NTS costs of that plant.

42. It is reasonable to continue calculating and assessing the ICAC on a minute-of-use basis rather than as a flat monthly rate based on the number of subscribers of each interexchange carrier because it is a more accurate reflection of the interexchange carriers' use of local exchange plant and it requires no alteration of the interim methodology.

43. Because of the unknown effects of terminating intraLATA toll pooling, an investigation of such pooling is necessary to determine whether it should continue and, if so, in what manner; the Commission has the authority to conduct such an investigation pursuant to PURA Sections 2, 16 and 18.

44. The Commission has authority to engage a consultant to direct the local exchange companies in conducting cost studies to identify all intrastate costs, both TS and NTS, for local, intraLATA and interLATA services, pursuant to PURA Sections 2, 16 and 18.

45. The procedures recommended in Findings of Fact Nos. 242 through 256 inclusive for developing, implementing and investigating the tariffs pursuant to the final order herein are reasonable and appropriate because they allow interested parties to participate in the determination of the access revenue requirements while allowing the local exchange companies a mechanism for assessing the interexchange carriers on an equitable basis for their use of local exchange plant.

46. All relief not affirmatively granted herein should be denied.

Respectfully submitted,

Mary Ross McDonald
MARY ROSS McDONALD
HEARINGS EXAMINER

Angela Marie Demerle
ANGELA MARIE DEMERLE
ADMINISTRATIVE LAW JUDGE

APPROVED AT AUSTIN, TEXAS, on this the 29th day of March, 1984.

Rhonda Colbert Ryan
RHONDA COLBERT RYAN
DIRECTOR OF HEARINGS

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V. Appendix of Acronyms and Definitions

ANI - Automatic [Calling] Number Identification. Central office equipment which allows automatic identification of the number from which a call is placed.

BOC - Bell Operating Company. A local exchange company divested from AT&T such as SWB.

CCSA - Common Control Switching Arrangement. An interexchange network configured for the use of an individual customer, such as the State Telecommunications System (TEX-AN).

CPE - Customer Premises Equipment. Telephone instruments and PBX equipment are examples of CPE.

CSO - Central Staff Organization. The joint central engineering and administrative staff of all the Bell Operating Companies.

EAS - Extended Area Service. Service beyond the local calling scope which is charged by flat rates and not usage-sensitive (toll) rates.

ECA - Exchange Carrier Association. Association mandated by the FCC to develop and file the interstate access tariffs.

ENFIA - Exchange Network Facilities for Interstate Access. The interim interstate agreements under which interexchange carriers other than the traditional toll partnership (AT&T/BOCs/Independents) compensate the exchange companies for their interconnections.

FCC - Federal Communications Commission.

FG-A - Feature Group A. Line-side interconnection of an interexchange carrier with a local exchange company.

FG-B - Feature Group B. Trunk-side interconnection of an interexchange carrier with a local exchange company; can be routed tandem or direct.

FG-C - Feature Group C. AT&T's trunk-side interconnection to the local exchange companies.

FG-D - Feature Group D. Equal access interconnection. BOCs must provide equal access beginning September 1984.

FX - Foreign Exchange. Local exchange service provided to a customer's physical location from a serving office located in another exchange.

HCF - High Cost Factor. A formula used in the FCC's access charge plan to assign to the interstate jurisdiction NTS costs for outside plant above 250% of the national average. It is designed to assist companies with NTS costs higher than average.

ICAC - Interexchange Carrier Access Charge. An access charge rate element replacing end user access charges at the intrastate level in Texas.

LATA - Local Access and Transport Area. Used synonymously with "exchange," it defines the areas within which BOCs may provide certain telecommunications services and between which they may not.

MFJ - Modification of Final Judgment. The consent decree ordering divestiture of the BOCs by AT&T.

MOU - Minute(s) of use. A measure of usage time.

MTS - Message Telecommunications Service. Interexchange service the rates for which are time of day-, duration-, and distance-sensitive.

NARUC - National Association of Regulatory Utility Commissioners.

NTS - Non-Traffic Sensitive. The type of local exchange plant for which costs do not vary with usage, such as telephone instruments, protection block, drop line and cable pair.

OCC - Other Common Carrier. An interexchange carrier other than AT&T and the traditional partnership, such as MCI, Sprint and U. S. Tel.

PBX - Private Branch Exchange. A switch located at the customer's premises which connects stations at the customer's premises to local exchange lines.

PIN - Personal Identification Number. Must be manually input by OCC customers to identify the party to be billed.

POP - Point of Presence. An interexchange carrier's switch or a point of demarcation where interexchange carrier facilities meet local exchange company facilities.

POR - Plan of Reorganization. AT&T's plan for divestiture submitted to the federal district court for approval.

SLU - Subscriber Line Usage. A separations formula used for jurisdictional allocation of TS costs.

SPF - Subscriber Plant Factor. A separations formula used for jurisdictional allocation of NTS costs.

TS - Traffic Sensitive. The type of local exchange plant for which costs vary with usage, such as switching and trunking equipment.

USF - Universal Service Fund. An access charge element which provides continued NTS contribution through usage-sensitive toll rates in order to support the high-cost local exchange companies.

USITA - United States Independent Telephone Association.

VGCOCF - Voice Grade Central Office Connecting Facility. The connection between a local exchange company's central office and an interexchange carrier's switch.

WATS - Wide Area Telecommunications Service. Bulk-billed flat-rated interexchange service.

DOCKET NO. 5113

PETITION OF THE PUBLIC UTILITY COMMISSION OF TEXAS FOR AN INQUIRY CONCERNING THE EFFECTS OF THE MODIFIED FINAL JUDGMENT AND THE ACCESS CHARGE ORDER UPON SOUTHWESTERN BELL TELEPHONE COMPANY AND THE INDEPENDENT TELEPHONE COMPANIES OF TEXAS	PUBLIC UTILITY COMMISSION OF TEXAS

ORDER

In a public meeting at its offices in Austin, Texas, the Public Utility Commission of Texas finds that the above styled application was processed in accordance with applicable statutes and Commission rules by examiners who prepared and filed a report containing Findings of Fact and Conclusions of Law, which Examiners' Report is hereby ADOPTED and made a part hereof. The Commission further issues the following Order:

1. The local exchange companies other than Southwestern Bell Telephone Company shall file access tariffs in compliance with this Final Order within sixty (60) days of the date of this Final Order. Such access tariffs shall conform to the structure and guidelines as set forth in the Examiners' Report.

2. The access tariff sheets shall be filed in four copies with the Commission Filing Clerk. The Commission staff shall have thirty (30) days from the date such access tariffs are filed to review them for approval or rejection. The access tariff sheets shall be deemed to be approved and shall become effective upon the expiration of thirty (30) days after filing or sooner upon notification by the Commission. In the event of rejection, the local exchange company shall be notified by the Commission and it shall have thirty (30) additional days to file amended access tariff sheets with the same procedure then to be repeated.

3. The approved access rates shall be charged only for access services rendered after the access tariff approval date. If the access tariff approval date falls within the billing period of any local exchange company, the local exchange company is authorized hereby to prorate each access customer's bill to reflect that customer's use of access services at the appropriate rates.

4. Approval of the access tariffs filed in compliance with this Final Order shall be deemed to be Final either by operation of Item 2 of this Final Order or by notification of approval, whichever occurs first.

5. The local exchange companies shall close the books on their interim access charges within sixty (60) days of implementing the tariffs filed in compliance with this Final Order and approved pursuant to the procedures set forth in Item 2 above. Within ten (10) days of closing the books on the interim access charges, each local exchange company, or its designated agent, shall file with the Compliance Section of the Hearings Division and the Telephone Section of the Engineering Division of the Commission and with each interexchange carrier a "Statement of Refunds," setting forth the refunds due interexchange carriers, along with supporting documentation. The local exchange companies are expressly required to allow the interexchange carriers to audit the work papers on the refund calculations prior to the time the Statements of Refunds are filed. Any local exchange company which is unable to make lump sum payment of any refunds which may be due shall file with its Statement of Refund its plan for making such refunds. Refunds shall commence within thirty (30) days of the filing of the Statements of Refund.

6. The General Counsel shall institute a minimum of four inquiry dockets--one each for Centel, Continental, and United/Palo Pinto, and one for all other Independent local exchange companies--for the purpose of investigating the access revenue requirements on which the tariffs filed in compliance with this Final Order are based.

7. The access revenue requirement for General Telephone Company of the Southwest shall be investigated as part of its pending rate case, Docket No. 5610.

8. The General Counsel shall institute an inquiry for the purpose of investigating intraLATA toll pooling and related issues such as the effects of terminating toll pooling versus the effects of continuing such pooling; whether pooled toll revenue should be settled on the basis of return on equity; whether an intrastate separations formula should be used, etc. This inquiry should also address whether a state High Cost Factor and Universal Service Fund are necessary and if so, how they should be developed and applied.

9. All relief not affirmatively granted herein is denied.

SIGNED AT AUSTIN, TEXAS, on this the _____ day of _____, 1984.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED: _____
ALAN R. ERWIN

SIGNED: _____
PHILIP F. RICKETTS

SIGNED: _____
PEGGY ROSSON

ATTEST:

_____
RHONDA COLBERT RYAN
SECRETARY OF THE COMMISSION

1b

PETITION OF THE PUBLIC UTILITY COMMISSION OF TEXAS FOR AN INQUIRY CONCERNING THE EFFECTS OF THE MODIFIED FINAL JUDGMENT AND THE ACCESS CHARGE ORDER UPON SOUTHWESTERN BELL TELEPHONE COMPANY AND THE INDEPENDENT TELEPHONE COMPANIES OF TEXAS

PUBLIC UTILITY COMMISSION

OF TEXAS

ORDER

In a public meeting at its offices in Austin, Texas, the Public Utility Commission of Texas finds that the above-styled application was heard and processed in accordance with applicable statutes and Commission rules by an administrative law judge and an examiner (hereinafter referred to as examiners) who prepared and filed a report containing Findings of Fact and Conclusions of Law, which Examiners' Report is hereby ADOPTED and made a part hereof, with the following changes:

1. The second paragraph under the heading "III. Opinion and Recommendation" on page 47 of the Examiners' Report is deleted.

2. The examiners' recommendation that all intrastate intraLATA toll NTS costs should be assigned to intrastate interLATA access is not adopted. The portion of intrastate intraLATA toll NTS costs of local exchange companies currently being recovered from the intraLATA toll pool should remain at the same level as under the interim order in this docket. Finding of Fact No. 219 is therefore amended to read as follows: "219. All intrastate intraLATA toll NTS costs should not be assigned to intrastate interLATA access. The portion of intrastate intraLATA toll NTS costs of local exchange companies currently being recovered from the intraLATA toll pool should remain at the same level as under the interim order in this docket." Conclusion of Law No. 37 is therefore amended to read as follows: "37. All intrastate intraLATA toll NTS costs should not be shifted to intrastate interLATA access. It is reasonable to allow the intrastate intraLATA toll NTS costs of local exchange companies to continue to be recovered from the intraLATA toll pool at the same level as under the interim order in this docket."

3. The examiners' recommendation that the Carrier Common Line rate element be pooled is not adopted. The Carrier Common Line rate element should continue to be billed and kept by each local exchange company as it has been under the interim order in this docket. Finding of Fact No. 242 is therefore amended to read as follows: "242. Only the Interexchange Carrier Access Charge (ICAC) should be pooled." Finding of Fact No. 243 is amended to

read as follows: "243. The ICAC revenue pool should be separate from the intrastate intraLATA toll revenue pool."

4. The Interexchange Carrier Access Charge (ICAC) should be discounted to the OCCs on the same basis as the Carrier Common Line (CCL) rate element, since the ICAC rate element is designed in part as a substitute for end user charges as is the CCL rate element. Finding of Fact No. 235 is therefore amended to read as follows: "235. The Interexchange Carrier Access Charge (ICAC) rate element will replace the end user access charge rate element at the intrastate level and should be discounted to the OCCS on the same basis as the mirrored Carrier Common Line (CCL) rate element."

5. The examiners' recommendation that local exchange companies resume either use of their own, or their concurrence in, intrastate private line tariffs as they existed prior to divestiture or as such tariffs are changed pursuant to a final Order in Docket No. 5220 is not adopted. Local exchange companies should be allowed to continue the Special Access tariffs approved under the interim order in this docket; therefore, Finding of Fact No. 257 is added and shall read as follows: "257. It is reasonable for local exchange companies to continue the Special Access tariffs approved under the interim order in this docket rather than reverting to the private line tariffs."

6. The access tariffs to be filed pursuant to the final Order herein should conform to the following guidelines:

   a. Non-recurring charges should not be assessed for changes from one Feature Group to another. Finding of Fact No. 234a is therefore added and shall read as follows: "234a. Non-recurring charges should not be assessed for changes from one Feature Group to another."

   b. The FCC-ordered tariff provisions regarding special construction should be implemented on a parity basis in Texas. Finding of Fact No. 234b is therefore added and shall read as follows: "234b. The FCC-ordered tariff provisions regarding special construction should be implemented on a parity basis in Texas."

   c. The FCC-ordered tariff provisions regarding presubscription should be implemented on a parity basis in Texas. Finding

of Fact No. 234c is therefore added and shall read as follows: "234c. The FCC-ordered tariff provisions regarding presubscription should be implemented on a parity basis in Texas."

d. Finding of Fact No. 229 is amended to read as follows: "229. Implementing an access charge structure at parity, with some modifications, is equitable for all interexchange carriers and causes the least disruption to the operations of the local exchange companies and to the high level of universal service in Texas."

e. Finding of Fact No. 230 is amended to read as follows: "230. Implementing an access charge structure as recommended herein has the advantage of being available relatively quickly because it uses parity rates for recovery of traffic sensitive costs and for some non-traffic sensitive costs."

7. The examiners' recommendations regarding the procedures for calculating, reviewing and implementing the access revenue requirements for local exchange companies are modified according to the following guidelines:

a. Access revenue requirements should be developed using as the test period calendar year 1983; the rate of return used to calculate access revenue requirements should be each local exchange company's actual earned return on toll for 1983, but no greater than the 12.3 percent industry return used pursuant to the interim order in this docket. The pooled or industry ICAC should be redetermined considering 1) any increase in toll revenues due to the company's concurrence in the increased intraLATA toll rates determined in Docket No. 5220; 2) any reduction in Southwestern Bell's ICAC revenues determined in Docket No. 5220; and 3) any increase in private line revenues due to the company's concurrence in the increased intraLATA private line rates determined in Docket No. 5220. Finding of Fact No. 249 is therefore amended to read: "249. Access revenue requirements should be developed using as the test period calendar year 1983. The rate of return used to calculate access revenue requirements should be each local exchange company's actual earned return on toll for 1983, but no greater than the 12.3 percent industry return used pursuant to the interim order in this docket. The pooled or industry ICAC should be

redetermined considering 1) any increase in toll revenues due to the company's concurrence in the increased intraLATA toll rates determined in Docket No. 5220; 2) any reduction in Southwestern Bell's ICAC revenues determined in Docket No. 5220; and 3) any increase in private line revenues due to the company's concurrence in the increased intraLATA private line rates determined in Docket No. 5220."

b. The method of calculating access revenue requirements is limited to the independent local exchange companies; Southwestern Bell's Access Charges shall be calculated in Docket No. 5220. Finding of Fact No. 246 is therefore amended to read: "246. The access revenue requirement for SWB will be determined as part of its pending rate case, Docket No. 5220."

c. The independent companies shall file new interim access charge tariffs in compliance with this order within twenty (20) days of the date of this order. The new interim tariffs should be submitted to all parties in Docket No. 5113 for review and comment. The examiners should issue an interim order approving or disapproving these new interim tariffs within twenty (20) days of filing. Finding of Fact No. 250 is therefore amended to read: "250. Twenty days from the date of the final Order herein is a reasonable amount of time to allow the local exchange companies to develop their access revenue requirements and tariffs and to establish the ICAC pool." Finding of Fact No. 251 is amended to read as follows: "251. The new interim access tariffs should be allowed to go into effect, otherwise there will be no mechanism in place by which local exchange carriers can be compensated by interexchange carriers which use the local exchange plant." Finding of Fact No. 255 is amended to read as follows: "255. The new interim tariffs should be allowed to go into effect after review and approval by the examiners since there will be an opportunity in Phase II of Docket No. 5113 to review the calculations of the independent companies' access revenue requirements and their access tariffs to insure that they comply with the final Order in Phase I of Docket No. 5113."

d. The calculations of the access revenue requirements and the access tariffs of the independent local exchange companies should be the subject of evidentiary hearings in a second phase of this docket to insure that they comply with the

final Order in Phase I of Docket No. 5113. Finding of Fact No. 244 is therefore amended to read: "244. The calculations of the access revenue requirements and the access tariffs of the independent local exchange companies should be reviewed in a second phase of Docket No. 5113 to insure that they comply with the final Order in Phase I of Docket No. 5113."

e. In Phase II of Docket No. 5113, an evidentiary hearing should be held on each of the tariffs in accordance with the grouping proposed by the examiners. Finding of Fact No. 245 is therefore amended to read: "245. Because the largest access revenue requirements will be associated with the largest exchange companies (GTSW, Centel, Continental and United/Palo Pinto), the calculations of their access revenue requirements and their access tariffs should be reviewed in separate hearings to insure that they comply with the final Order in Phase I of Docket No. 5113." Finding of Fact No. 247 is amended to read: "247. The calculations of the access revenue requirements and the access tariffs of GTSW, Centel, Continental and United/Palo Pinto can be more easily reviewed in hearings separate from each other." Finding of Fact No. 248 is amended to read: "248. The calculations of the access revenue requirements and the access tariffs of all other exchange companies can be reviewed in one hearing, or in two hearings divided between cost settlement companies and Average Schedule settlement companies."

f. Upon completion of these hearings and submission of an Examiners' Report, a final Order should be issued in Phase II of this docket pertaining to the revenue levels of access charges for the independent telephone companies.

g. Refunds of interim access charges set previously in Docket No. 5113 should not be determined until a final Order is issued in Phase II. Refunds should be calculated on a customer-by-customer basis, on the difference between the total access charges paid under the interim tariffs in this docket and the total access charges which would have been paid under the final Order in Phase II of this docket. Finding of Fact No. 252 is therefore amended to read as follows: "252. Refunds should be calculated by the local exchange companies for each customer based on the difference between the total access charges paid under the interim tariffs in this docket and the total access charges which

would have been paid under the final Order in Phase II of this docket." Finding of Fact No. 253 is amended to read: "253. Refunds of interim access charges should be determined in Phase II of this docket."

h. Conclusion of Law No. 45 is amended to read as follows: "45. The procedures recommended in Findings of Fact Nos. 229 through 257 inclusive for developing, implementing and reviewing the access tariffs pursuant to the final Order herein are reasonable and appropriate because they allow interested parties to participate in the review of the access revenue requirements and the access tariffs while allowing the local exchange companies a mechanism for assessing the interexchange carriers on an equitable basis for their use of local exchange plant."

The Commission further issues the following Order:

8. The independent local exchange companies shall file new interim access tariffs in compliance with this final Order within twenty (20) days of the date of this final Order. Such new interim access tariffs shall conform to the structure and guidelines set forth in the Examiners' Report as amended by this final Order.

9. The new interim access tariff sheets shall be filed in four (4) copies with the Commission Filing Clerk and shall be served on all parties to this docket. The parties shall have ten (10) days from the date such new interim access tariffs are filed to review such tariffs and file comments. The examiners shall have twenty (20) days from the date such new interim access tariffs are filed to review them for approval or rejection. The new interim access tariff sheets shall be deemed to be approved and shall become effective upon the expiration of twenty (20) days after filing or sooner upon notification by the Commission. In the event of rejection, the local exchange company shall be notified by the Commission and it shall have fifteen (15) additional days to file amended new interim access tariff sheets with the same procedure then to be repeated.

10. The approved new interim access rates shall be charged only for access services rendered after the access tariff approval date. If the new interim access tariff approval date falls within the billing period of any local exchange company, the local exchange

company is authorized hereby to prorate each access customer's bill to reflect that customer's use of access services at the appropriate rates.

11. Approval of the new interim access tariffs filed in compliance with this final Order shall be deemed to be final either by operation of Item 9 of this final Order or by notification of approval, whichever occurs first.

12. Review of the specific permanent level of the access revenue requirements of the independent local exchange companies and of the amount of any refunds which might be due shall be taken up in Phase II of this docket, pursuant to the guidelines set forth in Item 7 of this final Order.

13. This final Order is an administratively final and appealable order in Phase I of this docket, which concerned the structure of access charges.

14. The motions of MCI and U.S. Tel to strike AT&T's Post-Hearing Memorandum from the record are GRANTED.

15. The motion of AT&T to include its Post-Hearing Memorandum in the record as an offer of proof is GRANTED.

16. The motions of MCI and U.S. Tel to strike from the record the exceptions filed by Charles D. Land on behalf of Lufkin Telephone Exchange, Sugar Land Telephone Company and Kerrville Telephone Company are GRANTED.

17. The motion of AT&T to strike from the record the testimony of Charles D. Land as a witness for the Commission staff is DENIED.

18. Any Motions for Rehearing shall be filed within fifteen (15) days of the date this Order is signed.

19. The General Counsel shall institute an inquiry for the purpose of investigating intraLATA toll pooling and related issues such as the effects of terminating toll pooling versus the effects of continuing such pooling; whether pooled toll revenue should be settled on the basis of return on equity; whether an intrastate separations formula should be used, etc. This inquiry should also address whether a State High Cost Factor and Universal Service Fund are necessary and if so, how they should be developed and applied.

20. All relief not affirmatively granted herein is expressly denied.

The Findings of Fact and Conclusions of Law as amended by this final Order are restated and attached to this final Order for convenience of the parties.

SIGNED AT AUSTIN, TEXAS, on this the 14th day of May, 1984.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED: _____
ALAN R. ERWIN

SIGNED: _____
PHILIP F. RICKETTS

SIGNED: _____
PEGGY ROSSON

ATTEST:

_____
RHONDA COLBERT RYAN
SECRETARY OF THE COMMISSION

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IV. Findings of Fact and Conclusions of Law

The examiners further recommend adoption of the following:

A. Findings of Fact

1. This docket was instituted by the General Counsel of the Public Utility Commission of Texas on April 19, 1983, in a petition for an inquiry into the effects of the Modification of Final Judgment, United States v. AT&T, 552 F.Supp. 131 (D.D.C. 1982), aff'd. sub. nom. Maryland v. United States, 103 S.Ct. 1240 (1983), and the FCC's Access Charge Orders in CC Docket No. 78-72 on the local exchange telephone companies operating in Texas; the General Counsel filed his First Amended Petition for an Inquiry on July 11, 1983.

2. All telephone companies providing local exchange service in Texas were named parties to the docket; AT&T was joined as a necessary party to the docket. The following were allowed to intervene as parties: U. S. Telephone, Inc. (U. S. Tel), MCI Telecommunications Corporation (MCI), Texas Retailers Association (TRA), Texas Association of Telephone Answering Services (TATAS), Southern Pacific Communications Company (Sprint), State Purchasing and General Services Commission (SPGSC), Mr. Jack Sanders, City of Lake Jackson, City of Fort Worth, Texas Municipal League (for which specific cities served by SWB were later substituted as parties), Satellite Business Systems (SBS), City of Dallas, Western Union (which later withdrew as a party), Consumers Union, City of El Paso, City of Amarillo, Texas Association of Radio Systems (TARS), Associated Business Customers, and the Office of the Public Utility Counsel.

3. Protest statements were filed by Directline Todco, Inc.; WesTel, Inc.; Qwest Microwave, Inc.; Directline HASP, Inc.; Telesphere Network, Inc.; Wiese, Inc. d/b/a Texas Long Distance; and Satelco, Incorporated.

4. Prehearing conferences were held in this docket on May 3, June 8, June 23, June 30, July 7, July 14, July 28, August 22 and September 8, 1983.

5. The hearing on the merits convened on September 12, 1983, recessed on October 15, 1983, reconvened on October 24, 1983, and adjourned on November 15, 1983.

6. The Examiner's Interim Order was entered on November 24, 1983. Clarifying orders were entered on December 5 and 8, 1983. The interim order (as clarified) was affirmed in part and reversed in part by Commission order entered on December 22, 1983.

7. The motion of Xerox Corporation to intervene was never urged.

8. The posthearing motion of TEXALTEL to intervene was denied without prejudice by order entered February 24, 1984.

9. The motions of various parties to reopen the hearing on the merits were denied by order entered on March 9, 1984.

10. The examiners took official notice of two FCC Memorandum Opinion and Orders: one in CC Docket No. 78-72, In the Matter of MTS and WATS Market Structure (FCC 84-36), released on February 15, 1984, and the other in CC Docket No. 83-1145, In the Matter of Investigation of Access and Divestiture Related Tariffs (FCC 84-51), released on February 17, 1984.

11. Objections and motions to quash AT&T's posthearing RFIs directed to various local exchange companies were sustained or granted by the examiners.

12. Notice of this docket was required to be published by each local exchange telephone company once a week for four consecutive weeks in a newspaper of general circulation in each county of its service area, with proof of publication to be submitted as soon as it was available.

13. Discovery commenced on May 4, 1983, and continued until adjournment of the hearing on the merits on November 15, 1983.

14. A Protective Order was entered on May 5, 1983 and a Modified Protective Order was entered on June 24, 1983.

15. Traffic sensitive (TS) plant is that telephone plant for which costs increase as traffic or usage increases, such as interoffice trunks and local exchange switching equipment.

16. Telephone companies do not provide enough switching and trunking equipment to permit all subscribers to use their telephones simultaneously.

17. Quantities of telephone equipment are based on usage volumes during busy periods of the day.

18. When usage increases, TS equipment is added, thus increasing costs.

19. Non-traffic sensitive (NTS) plant is that telephone plant for which costs do not increase as traffic or usage increases.

20. Examples of NTS plant are outside plant (cables and poles), terminals and station equipment (telephone instruments), protection block, drop line to each customer's premises, and the cable pair (local loop) between the customers and a local exchange switch (central office).

21. A portion of the end office (local dial) switch is also classified as NTS plant to segregate the cost of terminating a line in a switch from the cost of the switch.

22. NTS costs are incurred regardless of the number or duration of calls made.

23. Total NTS costs are allocated between the federal and state jurisdictions using procedures set forth in the Separations Manual (Part 67 of the FCC rules).

24. NTS costs allocated to the interstate jurisdiction pursuant to Separations Manual procedures are presently recovered through minute-of-use charges imposed upon certain services and providers.

25. The majority of NTS costs allocated to the interstate jurisdiction have been recovered through the minute-of-use charges for AT&T's message toll service (MTS).

26. Separations is the process by which telephone companies separate their property costs, revenues, expenses and taxes between the interstate and state jurisdictions.

27. The present separations process is conducted pursuant to "The Ozark Plan," which refers to changes in the Separations Manual adopted by the National Association of Regulatory Utility Commissioners (NARUC) at its meeting at Lake of the Ozarks in Missouri.

28. The Ozark Plan has been in effect since January 1, 1971.

29. The FCC's access charge plan (Part 69 of the FCC rules) relies on Separations Manual definitions, categories and procedures to identify access costs.

30. The NARUC-FCC Joint Board is considering revisions to the Separations Manual in FCC Docket No. 80-286.

31. The Subscriber Plant Factor (SPF) is a separations factor used in the jurisdictional allocation of NTS costs; SLU is a component of this formula.

32. The Subscriber Line Usage (SLU) is a separations factor used in the jurisdictional allocation of TS costs.

33. For some Texas companies, the SPF formula more than triples the assignment of NTS costs to the interstate jurisdiction over the amount that would have been assigned to the interstate jurisdiction based on the actual subscriber line usage.

34. The NARUC-FCC Joint Board has ordered that the SPF be frozen at the average 1981 level and that the assignment of Customer Premises Equipment (CPE) to the interstate jurisdiction be phased out beginning January 1, 1983.

35. Other revisions in the Separations Manual will directly affect the level of interstate costs assigned to various interstate access charge elements.

36. In Texas, the settlements process between Southwestern Bell Telephone Company (SWB) and the Independent telephone companies is the subject of detailed contracts.

37. SWB develops and files interstate and intrastate toll tariffs in which the Independent companies concur regardless of what their costs may be.

38. All toll revenues received by the Independent companies are reported to SWB.

39. The Independents recover from the toll revenue pool all toll-assigned expenses and taxes.

40. The Independents also receive SWB's achieved settlement rate of return on net plant assigned to intrastate toll.

41. The achieved rate of return is applied to each Independent's net plant investment assigned to intrastate toll.

42. SWB retains the revenues remaining after settlement with the Independents.

43. Approximately 54 Texas Independent companies settle on the basis of individual toll cost studies of their actual costs.

44. Approximately 18 Texas Independent companies settle on the Nationwide Average Settlement Schedules which are based on a composite average of cost studies of hundreds of Independent company exchanges.

45. Other Common Carriers (OCCs) provide intrastate toll services in some markets in Texas.

46. OCCs' intrastate operations are not regulated by the State of Texas.

47. OCCs can select the markets where they wish to serve and can enter or leave such markets at will.

48. OCCs may set their own rates within Texas and change them at will.

49. OCCs do not own their own local exchange networks.

50. OCCs interconnect with local exchange companies which provide the equipment and facilities for OCC customers to originate and terminate interexchange calls; thus, OCCs are customers of the local exchange companies.

51. SWB provides interconnections to OCCs pursuant to its "Facilities for OCC" tariff.

52. Independent companies with OCC interconnections provide them pursuant to contracts.

53. Under the SWB OCC tariff, line-side connections between the OCC terminal and the local serving office are provided at a rate equal to the PBX trunk rate plus mileage charges for a central office connecting facility (COCF).

54. SWB's OCC tariff rate does not include a rate element reflecting the costs associated with the NTS facilities of the OCCs' customers comparable to the interstate ENFIA tariff rate element three (NTS plant).

55. The PBX trunk rate paid by an OCC to SWB is not structured to recover the NTS costs associated with any other subscriber's plant, unlike the intrastate toll rates of SWB and the Independents.

56. In CC Docket No. 78-72, In the Matter of MTS and WATS Market Structure, the FCC adopted rules establishing a transitional plan for eventually transferring the recovery of interstate toll-related NTS costs from usage sensitive toll rates to flat rate end user charges.

57. The Modification of Final Judgment, United States v. AT&T, 552 F.Supp. 131 (D.D.C. 1982), aff'd. sub. nom. Maryland v. United States, 103 S.Ct. 1240 (1983), ordered the termination of the Bell System Division of Revenues process and required that a tariffed system of access charges be substituted.

58. During the pendency of CC Docket No. 78-72, the FCC allowed a negotiated interim rate for MTS-WATS equivalent access to go into effect. The interim agreement is known as ENFIA, or Exchange Network Facilities for Interstate Access.

59. Under the ENFIA agreement, toll carriers other than the Bell partnership pay part of the NTS costs of the local exchange network they use in originating and terminating interstate or foreign services in addition to the NTS costs of their own interconnections.

60. OCCs utilizing the ENFIA tariff pay a flat rate charge for NTS plant.

61. ENFIA does not apply to the resale of MTS and WATS provided by AT&T nor to resold OCC MTS-WATS-type services.

62. Not all providers of interstate toll services contribute to the recovery of interstate toll costs; those that do contribute do not do so at the same level of contribution.

63. ENFIA rates are presently set to recover only 55 percent of AT&T's interstate NTS costs.

64. In its access charge orders in CC Docket No. 78-72, the FCC used the MFJ's definition of access service as including all tariffed services and facilities the exchange companies will provide for origination and termination of interstate calls.

65. In its access charge orders, the FCC uses the term "access" to mean a combination of the services the local exchange company provides to long haul carriers and to end users or subscribers.

66. The FCC used the term "interexchange" as usually synonymous with "interLATA" and "exchange facilities" as meaning "intraLATA facilities," as used in the MFJ.

67. The FCC determined that uneconomic bypass posed a substantial danger to the nation's telephone system because of the continuation of recovering through usage sensitive rates costs which do not vary with usage.

68. The FCC defined uneconomic bypass as the abandonment of the telephone network by large volume telecommunications users for less efficient alternatives.

69. The FCC did not identify what services constitute uneconomic bypass and did not quantify it in terms of numbers of customers lost or revenues lost.

70. The FCC concluded that flat rate pricing of NTS costs to end users reflects cost-causation principles and provides the correct economic signals to the marketplace.

71. In its order of February 28, 1983, in CC Docket No. 78-72, the FCC ordered monthly flat rate end user charges of no less than $2 per residential line and $4 per business line to recover interstate assigned NTS costs.

72. In its order of August 22, 1983, in CC Docket No. 78-72, the FCC ordered monthly flat rate end user charges of no more than $2 per residential line and $6 per business line to recover interstate assigned NTS costs.

73. In its order of February 15, 1984, in CC Docket No. 78-72, the FCC deferred until June 1, 1985, the end user charges for residential and single-line business customers.

74. The FCC concluded that the quality of interconnection received by the OCCs through ENFIA-A (line-side) connections is inferior to that received by the traditional interexchange partnership.

75. The FCC also concluded that the quality of interconnection received by the OCCs through ENFIA-B and ENFIA-C (trunk-side) connections are inferior to that received by the traditional interexchange partnership.

76. The FCC found that the difference in the quality of interconnection provided a substantial advantage to the carriers offering MTS and WATS.

77. The FCC found that AT&T enjoys a unique level of access, unavailable to any other interstate toll carrier, and should pay the opportunity cost for this preferred level of access.

78. The FCC's February 15, 1984, order in CC Docket No. 78-72 stated the impossibility of determining a precise premium value for AT&T's interconnection and ordered that a total differential for all access elements related to the total differential produced by the current ENFIA rates be established.

79. In its order of October 19, 1983, in CC Docket No. 83-1145, In the Matter of Investigation of Access and Divestiture Related Tariffs, the FCC suspended until April 3, 1984, all access and divestiture related tariffs filed pursuant to its orders in CC Docket No. 78-72.

80. On February 17, 1984, in CC Docket No. 83-1145, the FCC provided specific instructions to the exchange companies for making changes in the access tariffs to correct errors and deficiencies.

81. The Modification of Final Judgment, United States v. AT&T, 552 F.Supp. 131 (D.D.C. 1982), aff'd. sub. nom. Maryland v. United States, 103 S.Ct. 1240 (1983), required AT&T to divest itself of sufficient facilities, personnel, systems and rights to technical information to allow the Bell Operating Companies (BOCs) to perform exchange telecommunications and exchange access functions independently of AT&T and to provide equal access to all interexchange carriers.

82. The MFJ prohibits joint ownership between AT&T and a BOC of facilities; however, multifunction facilities can be shared pursuant to a lease or some other method provided that the BOC is insured control over exchange telecommunications and exchange access functions.

83. The BOCs are required by the MFJ to provide to all interexchange carriers and information service providers exchange access, information access, and exchange services for such access on an unbundled, tariffed basis that is equal in type, quality and price to that provided to AT&T and its affiliates, beginning no later than September 1, 1984.

84. The MFJ required the BOCs to establish geographic exchange areas, termed Local Access and Transport Areas (LATAs), to define the areas within which BOCs may provide telecommunications services and between which BOCs may not provide such services.

85. The LATAs also assisted AT&T and the BOCs in identifying the facilities, personnel, systems, etc., necessary for providing exchange telecommunications and exchange access functions which would be transferred to the BOCs.

86. The terms "exchange" and "LATA" are synonymous in the MFJ.

87. Fifteen LATAs were approved for Texas.

88. Under the MFJ, the BOCs may not provide interexchange (interLATA) telecommunications services or information services, manufacture telecommunications products or customer premises equipment, or provide any other product or service (except exchange telecommunications and exchange access service) that is not a natural monopoly service actually regulated by tariff.

89. The MFJ defines exchange access as the provision of exchange services for the purpose of originating or terminating interexchange telecommunications, including but not limited to the provision of network control signalling, answer supervision, automatic calling number identification, carrier access codes, directory services, testing and maintenance of facilities and the provision of information necessary to bill customers.

90. Under the MFJ, exchange services are to be provided by facilities in an exchange area for the transmission, switching or routing, within an exchange area, of interexchange traffic originating or terminating within the exchange area.

91. The MFJ requires that such exchange services include switching traffic within the exchange area above the end office and delivery and receipt of such traffic at a point within an exchange area designated by an interexchange carrier for the connection of its facilities with those of the BOC.

92. At the option of the interexchange carrier, its connections must deliver traffic with signal quality and characteristics equal to that provided similar traffic of AT&T, including equal probability of blocking, based on reasonable traffic estimates supplied by each interexchange carrier, according to the MFJ.

93. The MFJ definition of exchange services for exchange access does not include the performance by any BOC of interexchange traffic routing for any interexchange carrier.

94. The Independent telephone companies are not subject to the terms of the MFJ.

95. The Independents may provide interLATA intrastate toll services.

96. Because of AT&T's succession to SWB's ownership of the interLATA facilities formerly used to provide statewide toll services and because of the network configuration, the Independents must establish a separate relationship with AT&T for provision of interLATA services.

97. The joint provision of toll service between the Independents and SWB in Texas will be restricted to intraLATA toll services.

98. The SWB toll tariffs for Texas in which all Texas exchange companies concurred will not be effective after divestiture.

99. The settlement agreements providing for the division of interLATA toll revenues will not be valid after divestiture.

100. AT&T is not prohibited from providing intrastate intraLATA service.

101. AT&T does not presently provide intrastate intraLATA service but could do so if it ordered line-side connections from the local exchange companies.

102. After January 1, 1984, all one-plus calls will continue to be routed over the same network as it existed prior to that date; interLATA calls are AT&T's and intraLATA calls are SWB's.

103. The LATA boundaries do not affect where OCCs may carry toll traffic or provide telecommunications services.

104. Because of AT&T's succession to ownership of SWB's plant and facilities for interLATA services, the exchange companies will lose some toll revenues which prior to divestiture provided one source of recovery of NTS costs.

105. Bypass in its narrowest sense is the origination and/or termination of a call without the use of a local telephone company's plant.

106. In its broadest sense, bypass means the provision of any alternative telecommunications facility which satisfies one or both of two goals: the reduction of costs or the provision of enhanced technology to satisfy a specific need.

107. Economic bypass occurs when the cost of providing the alternative facilities is less than the cost-based price of equal facilities provided by the local exchange company.

108. Uneconomic bypass occurs when the price of the local exchange company facilities is set at a level so far above its cost that a competitor with higher costs can still price its services lower than the local exchange company.

109. Theoretically, uneconomic bypass, being less economically efficient, would not occur under a system of cost-based pricing of local exchange company facilities.

110. Current technologies available for bypass include private microwave and radio systems, guided systems (such as coaxial cable and fiber optics), satellite transmission systems and atmospheric optical systems.

111. Each bypass technology has some serious drawbacks to its widespread use.

112. Each bypass technology is very expensive and is presently economical only for relatively large volumes of traffic.

113. Local exchange company revenue is disproportionately concentrated in a small number of high volume business users which tend to be concentrated geographically.

114. Local exchange companies perceive themselves to be highly vulnerable to a loss of the revenue generated by high volume business users by means of a competitor building a bypass system capable of handling the high volume traffic originating from the limited number of large users in a small geographic area.

115. The theory that uneconomic bypass poses a danger is that once the high revenue customers leave the network, the remaining customers must make up the lost revenue by paying higher rates; as rates go up, more customers leave the network, resulting in the still-fewer remaining customers having to pay even higher rates, sparking another loss of customers and revenues.

116. There was no evidence in this docket demonstrating that present bypass has resulted in lost revenues or than any loss of customers to bypass has caused the rates of the remaining customers to increase more sharply than they otherwise would have.

117. The extreme bypass scenario (the customer-abandonment, higher rates spiral) is not likely to occur even in the long term because of the complexity and expense of bypass technologies, the long lead time for planning and construction and the fact that even large users which shift to bypass facilities

for long haul transmission are likely to remain connected to the local network in order to communicate with the local community.

118. It is difficult to classify a particular technology as specifically a bypass technology; since some users' needs may not be adequately served by existing telecommunications services, they may turn to a wholly new service which local exchange companies might not be providing--or be able to provide--efficiently.

119. It makes no difference whether a local exchange company is bypassed economically or uneconomically, because in either instance the local exchange company suffers a loss of revenue which must be recouped from remaining customers.

120. Flat rate pricing of NTS costs to end users will result in the same effect on end users as bypass by large revenue customers, because in either event, the contribution to NTS costs provided by toll revenue will disappear.

121. Bypass is largely irrelevant at the present time to considerations of the proper pricing of NTS costs.

122. Cost-based pricing cannot prevent bypass of the local exchange network if the local exchange companies are unable to meet specific service requirements of their customers.

123. The proposal that end users should pay for NTS costs in monthly flat rates is justified by its proponents on the basis of cost causation principles, that is, that costs should be borne by cost causers.

124. The maxim "costs should be borne by cost causers" does not identify actual cost causation; it is simply a pricing principle.

125. Use of the maxim in justifying flat rate end user access charges assumes the conclusion that local subscribers cause local exchange companies to incur NTS costs simply by subscribing to local service.

126. Even if the assumption is accurate that subscribing to local service is the direct cause of the NTS costs of local exchange companies, the assignment of all such costs to end users on the sole basis of economic principles of causation is not necessarily in the public interest.

127. The effect of mirroring at the state level the FCC's end user access charges on the demand for local telephone service is unknown.

128. Sharp increases in customers' flat monthly rates could lead to significant customer drop-off, thereby threatening universal service.

129. All costs are eventually paid by consumers, either directly or indirectly.

130. There is no evidence supporting the theory that a targeted, government-administered subsidy for the subscriber unable to pay the "true economic cost" of telephone service is a more efficient means of retaining universal service.

131. The determination of costs, or of which costs should be assigned or allocated to which services, is arbitrary at best in the regulatory arena, because regulation is a surrogate for market determinations of value.

132. Assigning costs on the basis of causation principles is only one of the many tools available to regulatory authorities for pricing utility services.

133. Regulatory authorities must consider valid social, political, and ethical issues in ratemaking, and do not just promote economic efficiency.

134. Consumers frequently do not behave according to principles of economic efficiency.

135. It is likely that sharp increases in monthly flat rates would not only drive the poorest subscribers off the network but would also prompt customers who could afford such increases to leave the network if they did not perceive any additional value or benefit from the increased rates.

136. Customers who presently make few or no toll calls will not receive any offsetting benefit to higher monthly flat rates from the predicted lower toll rates.

137. It is likely that ratepayers who do not make toll calls will not perceive any value or benefit from paying a flat monthly rates for the ability to access the toll networks; such customers could drop off the system despite their ability to pay the increased monthly flat rates.

138. Local subscribers do not have any control over the NTS costs of their local loops and cannot be said to have caused such costs merely by becoming local subscribers.

139. Local loops are not "dedicated" to individual subscribers in the same way that water lines or gas lines to individual customers are dedicated; since other subscribers can use the local loops, each subscriber is not the sole beneficiary of his or her loop.

140. Protection and promotion of universal service has been a national policy since passage of the Communications Act in 1934.

141. The existing high level of telephone service in Texas is the result of the traditional residual pricing approach to the setting of rates for local telephone service.

142. Residual pricing is accomplished by first determining a telephone company's statewide revenue requirement, then designing rates to insure that local subscribers pay as low a rate as possible.

143. One rate design technique is to put more of a revenue burden on business service, terminal equipment and other vertical services such as Touch-Tone and Custom Calling features than on residential service.

144. Pricing business local exchange rates higher than residential rates is based on the concept of "value of service," that is, that those who receive the greater benefit ought to pay more.

145. Intrastate toll rates have been set so that revenue from that service exceeds its incremental unit cost and thereby contributes revenue that otherwise would have had to come from local flat rates.

146. This Commission has continued to price local exchange service residually in order to retain universal service.

147. In fashioning an access charge plan for Texas, this Commission must consider the effect on universal service of not only any interstate end user access charges mandated by the FCC but also the mirroring of such end user access charges at the intrastate level.

148. Implementation of intrastate end user access charges in 1984 is a threat to universal service in Texas.

149. Local subscribers are not the sole beneficiaries of their local loop facilities.

150. The value of the telecommunications network resides in its ubiquitous, integrated presence.

151. NTS cost recovery mechanisms should be based on an analysis of the use and benefit of the telecommunications network.

152. Interexchange carriers are customers of the local exchange companies.

153. Interexchange carriers need and use the local exchange network to originate and terminate the interexchange traffic they carry.

154. Without the local exchange network already in place, competition in the interexchange markets would not exist.

155. The cost of duplicating the local exchange network is inestimable.

156. The value derived by interexchange carriers from the presence of the local exchange network is nothing less than their ability to exist at all.

157. The use which interexchange carriers make of the local exchange network is fundamentally different from the use made by other business customers such as department stores, because interexchange carriers--unlike department stores--use the local exchange plant to originate and terminate interexchange telecommunications traffic.

158. Interexchange carriers use local exchange plant in offering the end-to-end toll services on which they make a profit; therefore, the value they derive from such use is substantial.

159. The value of the local exchange network to interexchange carriers is not only more than zero, it is more than the costs those carriers impose by virtue of their own interconnections.

160. Access is a two-way street: not only do subscribers have access to the interexchange carriers' network, the interexchange carriers have access to the subscribers.

161. It is not unreasonably discriminatory, unjust or unfair to require all interexchange carriers to share the NTS costs of the local exchange plant to which they have access, which they use to offer and sell their own services and for which many presently pay nothing above their own NTS costs.

162. Interexchange carriers benefit directly from the high rate of subscription to local service fostered by the ratemaking principles employed by this Commission, since that has created a large pool of potential customers for interexchange carriers' services.

163. Any increase in monthly flat rates which would cause a substantial number of subscribers to leave the system--for whatever reason--reduces the value of the network as an integrated whole.

164. All subscribers--but especially interexchange carriers--benefit from each additional subscriber loop because that loop can be used by all interexchange carriers and local subscribers.

165. The interexchange carriers market and sell their services on the assumption that the existing, integrated network is available to their customers to originate and terminate interexchange calls.

166. Under the present NTS cost recovery structure in Texas, toll rates for AT&T and for the local exchange companies recover part of the total NTS costs of local exchange companies; the rates paid by OCCs recover the NTS costs of only their own interconnections.

167. The present NTS cost recovery structure in Texas results in interexchange carriers paying different rates for similar or identical use of local exchange plant and facilities.

168. The record in this case does not support the contention that the present price differential between OCCs and the traditional toll partnership must be maintained until equal access is available in order to preserve and protect competition in the toll markets.

169. Competition will benefit only those Texans residing in high-density, high-traffic areas who make enough toll calls each month to justify the monthly subscription price most OCCs charge.

170. Texas customers who do not reside in high-density, high-traffic areas or who do not make enough toll calls each month to recoup the subscription fee will not benefit from competition in the interexchange markets.

171. Under the present pricing scheme, each time subscribers place calls over OCC facilities, they avoid paying the NTS cost support built into the toll rates for AT&T/SWB/Independents that customers without a choice of interexchange carriers must pay.

172. OCC rates do not include the same contribution to NTS costs as the toll rates of AT&T, SWB and the Independents, even though their use of local exchange plant and facilities is functionally identical.

173. OCCs receive predominantly line-side connections, which are local-grade access; these connections are Feature Group A (FG-A) access.

174. AT&T receives predominantly trunk-side, or toll-grade, connections; this is called Feature Group C (FG-C).

175. Feature Group A access requires OCC customers to input 22 to 24 digits, compared to the 8 to 11 digits AT&T customers dial.

176. OCC customers must have push-button or tone access; rotary dial telephones cannot access an OCC switch because FG-A cannot transmit dial pulse signals to the OCC switch.

177. AT&T customers can reach its switches with either rotary dial or push-button telephones because FG-C can transmit both types of signals.

178. OCCs' FG-A connections cannot provide automatic calling number identification (ANI), thus requiring OCC customers to input a personal identification number (PIN) for billing purposes.

179. AT&T receives automatic number identification through its FG-C interconnection.

180. OCCs incur additional holding time on calls because of the extra digits OCC customers must input.

181. Because of lack of ANI on FG-A interconnections, OCCs cannot identify from which central office its customers are calling, making traffic forecasting difficult.

182. Use of PINs increases the likelihood of fraudulent use of OCC facilities and of uncollectibles due to fraud.

183. OCC uncollectibles are higher than those for carriers with FG-C interconnections.

184. The FG-A interconnection cannot provide Answer Supervision, which triggers the timing and billing mechanism; FG-C can provide Answer Supervision.

185. The transmission performance of FG-A access is inferior to FG-C access in terms of noise, echo and loss, requiring OCCs to incur additional expense for conditioning equipment.

186. Feature Group B (FG-B) is a trunk-side interconnection available to OCCs, providing both direct and tandem routing.

187. The FG-B interconnection is not an offering with uniform availability of features.

188. The FG-B-Tandem employs local trunking and switching, requiring conditioning equipment to compensate for increased noise and echo; FG-B-Tandem also requires OCC customers to input the extra digits for their PINs.

189. ANI is not available under FG-B-Tandem, nor can an OCC switch be accessed from a rotary dial telephone with FG-B-Tandem.

190. Feature Group B-Direct (FG-B-Direct) will allow access to an OCC switch from rotary dial telephones.

191. ANI is available under FG-B-Direct, but in a different signalling format than with FG-C access, thus increasing holding time for OCCs.

192. The type of routing available under the FG-B offering--tandem or direct--is determined by the facilities available in each end office.

193. An OCC operating in a large metropolitan area could offer only some of its customers the convenience of access from rotary dial telephones and ANI, depending on the equipment in the end office from which calls originate.

194. In some instances, conversion to the FG-B offering will require some steps inconsistent with those necessary to convert to equal access--Feature Group-D--when it becomes available beginning in September 1984.

195. Although it is presently available to OCCs, FG-B has serious drawbacks for OCCs because of the non-uniformity of the features such as ANI and rotary dial access.

196. Even though some FG-B interconnections can provide superior transmission and some desirable features, the non-uniformity of FG-B makes it less desirable than FG-A.

197. Because of the non-uniformity of the FG-B offering, it is not reasonable to expect that OCCs should convert to FG-B; OCCs have not voluntarily elected to continue subscribing to a less desirable interconnection.

198. The quality of transmission, the uniformity of services and features and the availability in every end office of FG-C make it a superior form of interconnection; AT&T is the only interLATA carrier with FG-C interconnections.

199. As the only interLATA carrier offering one-plus dialing, AT&T receives a substantial advantage over the OCCs.

200. AT&T is the only interexchange carrier with access to all Texas subscribers, since it can be accessed by both rotary dial or push-button telephones.

201. Local subscribers choose rotary dial telephones rather than push-button telephones for a variety of reasons.

202. For OCCs with FG-A to be able to serve rotary dial customers on an originating basis, the OCC or the customer will have to incur the cost of providing the equipment (push-button telephone or tone generator) necessary to access an OCC switch via FG-A.

203. AT&T's ability to serve rotary dial customers on an originating basis through FG-C provides it with a significant advantage over OCCs with FG-A.

204. AT&T can provide intraLATA toll services through FG-A interconnections.

205. AT&T is the only interexchange carrier in some Texas markets, which is also an advantage to AT&T.

206. The proper comparison for determining whether AT&T enjoys a superior form of access is between FG-A and FG-C; the evidence in this record demonstrates that FG-C is in fact a superior form of interconnection and is available only to AT&T on an interLATA basis.

207. Because AT&T enjoys a superior form of interconnection, it should pay a premium for that access.

208. The premium should be phased out as equal access becomes available to all interexchange carriers.

209. The premium should apply only to AT&T's FG-C interconnections, not its line-side or FG-A interconnections.

210. The FCC's premium mechanism is reasonable, since it phases out as equal access becomes available, and should be mirrored in Texas.

211. Some telephone services may be provided over the facilities of more than one exchange company.

212. The primary objective of a pooling and settlements process is the promotion of uniform tariffed statewide rates to customers for services provided by more than one exchange company.

213. The result of uniform tariffed rates is that regardless of the originating location of a call, the same distance- and time-sensitive rate applies.

214. Common tariffed rates are developed on the average cost of the participating companies.

215. Participating companies share in the toll revenues on the basis of their settlement contracts.

216. Without a pooling and settlements process, it is possible that all other things being equal (time of day, duration, etc.) the direction of a call completed over the facilities of more than one exchange company would determine its cost and therefore the rate.

217. The pooling and settlements compensation mechanism assures customer understanding and eliminates the incentive for "code calling," by which customers signal each other in order to achieve the lowest rate on toll calls.

218. Since local exchange companies cannot determine the intraLATA/interLATA nature of OCC traffic (because of the line-side connection), all OCC traffic will be considered interLATA, to which access charges apply, even though it may be wholly intraLATA.

219. All intrastate intraLATA toll NTS costs should not be assigned to intrastate interLATA access. The portion of intrastate intraLATA toll NTS costs of local exchange companies currently being recovered from the intraLATA toll pool should remain at the same level as under the interim order in this docket.

220. Local flat rates on the average already recover more than half the NTS costs of the local exchange companies.

221. The operations and revenues of the Independents have been directly affected by AT&T's divestiture of SWB; high cost, low density companies are affected most by the disruption in the toll revenue stream caused by divestiture.

222. Nothing in the record in this docket supports the contention that local exchange rates for the small telephone companies which have never filed rate cases before this Commission should have increased.

223. Texas telephone companies have some of the greatest extremes of operating costs and densities as exist anywhere in the nation.

224. Termination of intraLATA toll pooling and settlements could result in unforeseen negative consequences, such as causing some smaller telephone companies to go out of business; therefore such termination should not be undertaken without further investigation.

225. Rather than risk the loss of any local exchange company, intraLATA toll pooling and settlements should continue through 1984 and 1985 while the investigation proceeds.

226. Only a few local exchange companies have any OCC interconnections.

227. Any increase in intrastate toll rates to recover NTS costs (rather than an increase in local flat rates) has worked to the advantage of the OCCs, since their enterprises are based on their ability to underprice the end-to-end toll services of the traditional toll partnership.

228. The staff's recommendation that intraLATA intrastate toll settlements should be based on return on equity deserves further investigation before being either rejected or implemented.

229. Implementing an access charge structure at parity, with some modifications, is equitable for all interexchange carriers and causes the least disruption to the operations of the local exchange companies and to the high level of universal service in Texas.

230. Implementing an access charge structure as recommended herein has the advantage of being available relatively quickly because it uses parity rates for recovery of traffic sensitive costs and for some non-traffic sensitive costs.

231. Texas access rates should be based on Texas costs, but until such costs are developed, it is reasonable to implement an access charge structure and rates mirroring (with some exceptions) the FCC's access charge plan.

232. Under the present pricing scheme, interexchange carriers contribute to NTS cost recovery at widely varying levels.

233. Implementing a parity access charge structure, with some modifications, will require all interexchange carriers to contribute equitably to NTS cost recovery.

234. Implementing a parity access charge structure, with some modifications, will prevent the potential underrecovery of exchange company access revenue requirements due to misreporting the jurisdiction of interexchange carrier traffic.

234a. Non-recurring charges should not be assessed for changes from one Feature Group to another.

234b. The FCC-ordered tariff provisions regarding special construction should be implemented on a parity basis in Texas.

234c. The FCC-ordered tariff provisions regarding presubscription should be implemented on a parity basis in Texas.

235. The Interexchange Carrier Access Charge (ICAC) rate element will replace the end user access charge rate element at the intrastate level and should be

discounted to the OCCs on the same basis as the mirrored Carrier Common Line (CCL) rate element.

236. The ICAC functions as a substitute at the Intrastate level for end user access charges, but may or may not recover the same revenue as would mirrored or parity end user access charges.

237. Under the Interim Order in this docket, the local exchange companies calculated the ICAC as a minute-of-use rate.

238. Because the companies have already calculated and imposed the ICAC on a minute-of-use basis and are familiar with the procedure, continuation of that procedure pursuant to the final order herein is reasonable.

239. The consequences of terminating and continuing toll pooling and other issues related to toll pooling deserve further investigation.

240. In the absence of Texas-specific cost data, it is reasonable to use separations methodologies to identify the intrastate access revenue requirements of the local exchange companies because it is consistent with use of separations methodologies to identify other intrastate revenue requirements.

241. Because the local exchange companies are not presently pooling revenues from premium access and from mirrored traffic sensitive charges for the High Cost Factor under the interim access charge tariffs in this docket, the continuation of non-pooling of TS access charges is reasonable.

242. Only the Interexchange Carrier Access Charge (ICAC) should be pooled.

243. The ICAC revenue pool should be separate from the intrastate intraLATA toll revenue pool.

244. The calculations of the access revenue requirements and the access tariffs of the independent local exchange companies should be reviewed in a second phase of Docket No. 5113 to insure that they comply with the final Order in Phase I of Docket No. 5113.

245. Because the largest access revenue requirements will be associated with the largest exchange companies (GTSW, Centel, Continental and United/Palo Pinto), the calculations of their access revenue requirements and their access tariffs should be reviewed in separate hearings to insure that they comply with the final Order in Phase I of Docket No. 5113.

246. The access revenue requirement for SWB will be determined as part of its pending rate case, Docket No. 5220.

247. The calculations of the access revenue requirements and the access tariffs of GTSW, Centel, Continental and United/Palo Pinto can be more easily reviewed in hearings separate from each other.

248. The calculations of the access revenue requirements and the access tariffs of all other exchange companies can be reviewed in one hearing, or in two hearings divided between cost settlement companies and Average Schedule settlement companies.

249. Access revenue requirements should be developed using as the test period calendar year 1983. The rate of return used to calculate access revenue requirements should be each local exchange company's actual earned return on toll for 1983, but no greater than the 12.3 percent industry return used pursuant to the interim order in this docket. The pooled or industry ICAC should be redetermined considering 1) any increase in toll revenues due to the company's concurrence in the increased intraLATA toll rates determined in Docket No. 5220; 2) any reduction in Southwestern Bell's ICAC revenues determined in Docket No. 5220; and 3) any increase in private line revenues due to the company's concurrence in the increased intraLATA private line rates determined in Docket No. 5220.

250. Twenty days from the date of the final Order herein is a reasonable amount of time to allow the local exchange companies to develop their access revenue requirements and tariffs and to establish the ICAC pool.

251. The new interim access tariffs should be allowed to go into effect, otherwise there will be no mechanism in place by which local exchange carriers can be compensated by interexchange carriers which use the local exchange plant.

252. Refunds should be calculated by the local exchange companies for each customer based on the difference between the total access charges paid under the interim tariffs in this docket and the total access charges which would have been paid under the final Order in Phase II of this docket.

253. Refunds of interim access charges should be determined in Phase II of this docket.

254. If the new tariffs result in access charges which are higher than the interim access rates, the new rates should not be retroactive to January 1, 1984.

255. The new interim tariffs should be allowed to go into effect after review and approval by the examiners since there will be an opportunity in Phase II of Docket No. 5113 to review the calculations of the independent companies' access revenue requirements and their access tariffs to insure that they comply with the final Order in Phase I of Docket No. 5113.

256. Access charges should not apply to interconnections provided to radio common carriers (RCCs) at the present time.

257. It is reasonable for local exchange companies to continue the Special Access tariffs approved under the interim order in this docket rather than reverting to the private line tariffs.

B. Conclusions of Law

1. The Commission has jurisdiction over the issues presented in this docket pursuant to Sections 2, 16, 18, 37, 38 and 42 of the Public Utility Regulatory Act, Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon 1980) as reenacted 1983 Tex. Sess. Law Serv., ch. 274, §1, at 1258 (Vernon), hereinafter cited as "PURA."

2. This docket was properly conducted as a contested case pursuant to Sections 3(2), 13, 14, 14a, 15 and 16 of the Administrative Procedure and Texas Register Act, Tex. Rev. Civ. Stat. Ann. art. 6252-13a (Vernon Supp. 1983), hereinafter cited as "APTRA."

3. Nothing in the FCC's Access Charge Orders in CC Docket No. 78-72, In the Matter of MTS and WATS Market Structure, and CC Docket No. 83-1145, In the Matter of Investigation of Access and Divestiture Related Tariffs, or in the Modification of Final Judgment, United States v. AT&T, 552 F.Supp. 131 (D.D.C. 1982), aff'd. sub. nom. Maryland v. United States, 103 S.Ct. 1240 (1983), requires this Commission to investigate the issues in this docket, likewise, nothing in the Access Charge Orders and the MFJ prohibits this Commission from investigating the issues herein.

4. The Commission has authority under PURA Section 2, 16 and 18 to investigate the effects of the MFJ and the Access Charge Orders on Texas telephone utilities and to take any action necessary to insure that the rates and services of Texas telephone utilities are just, fair, and reasonable.

5. Under PURA Section 42, this Commission has the authority to conduct an investigation of the reasonableness of existing rates and, if the existing rates are found to be unreasonable or in violation of any provision of law, to establish different, more reasonable rates. See, Complaint of GTSW, Docket No. 3957, 8 P.U.C. BULL. 459, 474 (May 19, 1983).

6. The fact that telephone company rates may be affected as a result of these proceedings does not transform this docket into a rate case to be conducted under PURA Section 43. See, Complaint of GTSW, id.

7. The fact that important statewide policy issues may be addressed in this docket does not make this a rulemaking proceeding under APTRA Section 5. See,

Public Hearings of the Public Utility Commission of Texas on the Cost of Service Ratemaking Standards of §11(d)(1) of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §2601, et seq., Docket No. 3437, 7 P.U.C. BULL. 250 (August 20, 1981).

8. The APTRA provides only minimum standards of uniform practice and procedure before state agencies; nothing in the APTRA prohibits an agency from imposing its own more stringent procedural safeguards.

9. Assuming arguendo that this docket is a rulemaking proceeding, the APTRA requirements that agencies give notice to interested persons and provide them an opportunity to submit data, views or arguments have been met in conducting this docket as a contested case pursuant to APTRA.

10. This Commission has inherent discretion in deciding whether to proceed by general rulemaking or by ad hoc adjudication, since there is no statutory mandate to the contrary.

11. The requirement of PURA Section 42 that reasonable notice be given has been met in this docket.

12. SWB may not provide interLATA services; the Independents are not so restricted.

13. AT&T may provide intraLATA services.

14. The OCCs presently provide both intraLATA and interLATA services; the MFJ does not restrict where they may serve.

15. The OCCs' operations in Texas are not regulated by the State of Texas; OCCs may enter and leave markets and set their own rates at will.

16. The MFJ prohibits a Division of Revenue process between SWB and AT&T.

17. Because SWB can no longer provide intrastate interLATA toll services, the SWB toll tariffs in which all exchange companies concurred were no longer valid after divestiture.

18. Because SWB can no longer provide intrastate InterLATA toll services and because of AT&T's succession to ownership of SWB's plant and facilities for providing interLATA services, the settlement agreements between SWB and the Independents were not valid after divestiture.

19. Even if subscribing to local exchange service is the direct cause of the NTS costs of local exchange companies, the assignment of all NTS costs to end users on the basis of economic efficiency is not necessarily in the public interest.

20. Regulatory authorities are concerned with more than the promotion of economic efficiency in designing rates; they must also consider valid social, political and ethical goals.

21. Universal telephone service in Texas remains a valid ratemaking principle of this Commission under PURA; residual pricing of local service and value of service pricing are two methods of promoting and preserving universal service.

22. Because implementation of end user access charges presents a threat to universal service in Texas, such charges are not in the public interest.

23. This Commission cannot control whether the FCC will implement end user access charges as a mechanism for recovering interstate toll related costs; however, in carrying out its statutory mandate to protect and promote the public interest in having adequate and efficient telecommunications service available to all citizens of the state at just, fair and reasonable rates, this Commission must consider the effect on universal service of both interstate end user access charges and mirrored intrastate end user access charges.

24. The use interexchange carriers make of the local exchange network is fundamentally different from the use made by other business customers, as set forth in Findings of Fact Nos. 153, 157 and 158; therefore, it is reasonable to establish interexchange carriers as a distinct class of customers pursuant to PURA Section 37.

25. Because of the way in which interexchange carriers utilize the local exchange network and because the value of the local exchange network to interexchange carriers is substantial, as set forth in Findings of Fact Nos. 149 through 165 inclusive, it does not violate PURA Section 38 to require all interexchange carriers to contribute to the NTS costs of local exchange companies in excess of the costs interexchange carriers themselves impose under a value of service pricing concept, so long as such contribution is equitable as among the members of the interexchange carrier customer class.

26. It is not unreasonably discriminatory, unjust or unfair to require all interexchange carriers to share equitably the NTS costs of the local exchange network.

27. The present NTS cost recovery structure in Texas is in violation of PURA Sections 38 and 45 because within the class of interexchange carriers, OCCs

receive an unreasonable preference and AT&T is unreasonably prejudiced in that OCCs do not contribute to any NTS costs other than their own and AT&T does so contribute.

28. The present NTS cost recovery structure in Texas results in interexchange carriers paying different rates for similar or identical use of local exchange plant and facilities in violation of Sections 38 and 45.

29. The Commission is not required to preserve competition at the risk of sacrificing universal service; instead the Commission must balance the goals of the PURA in achieving a reasonable--not a perfect--resolution of the issues in this docket.

30. The preservation and promotion of universal service remains the paramount policy consideration of the Commission.

31. The Commission can reasonably elect to implement a plan which preserves universal service in a manner which causes the least customer impact and can reasonably conclude that preserving universal service for several million local ratepayers must take priority over the protection of the competitive enterprises of the relatively few interexchange customers.

32. The fact that some interexchange carriers' rates have in the past been set at levels which yield inequitable contributions to NTS cost recovery does not give those interexchange carriers a vested right to those rates. No customer has a vested right to any particular rate; all customers have the same right to rates that are just and reasonable under PURA Section 38.

33. Pursuant to PURA Section 45, AT&T cannot lawfully be the only interexchange carrier contributing to NTS cost recovery; all interexchange carriers must contribute equitably.

34. Because AT&T receives a superior form of interconnection as set forth in Findings of Fact Nos. 173 through 206 inclusive, it is neither unreasonably discriminatory nor unreasonably prejudicial under PURA Sections 38 and 45 to require that AT&T pay a premium for such access.

35. It is appropriate to assess a premium for superior interconnection only against AT&T's FG-C (trunk-side) interconnections and not its FG-A (line-side) interconnections.

36. It is appropriate to phase out the premium charge to AT&T as equal access becomes available to all interexchange carriers.

37. All intrastate intraLATA toll NTS costs should not be shifted to intrastate interLATA access. It is reasonable to allow the intrastate intraLATA toll NTS costs of local exchange companies to continue to be recovered from the intraLATA toll pool at the same level as under the interim order in this docket.

38. Because termination of intraLATA toll pooling might have negative consequences, it is reasonable to allow intraLATA toll pooling to continue through 1984 and 1985 in order to protect universal service.

39. Until Texas-specific cost data are available, it is reasonable to determine access costs using separations methodologies because it is consistent with the way other intrastate costs are determined.

40. Implementation of intrastate access charges mirroring the structure and rates (with some changes) developed by the FCC for interstate access charges is reasonable because it is available for use relatively quickly, will require few changes in order to be implemented in Texas and because it will result in a rate structure for interexchange carriers which is neither unreasonably discriminatory against AT&T nor unreasonably preferential in favor of other interexchange carriers.

41. The Interexchange Carrier Access Charge (ICAC) is a reasonable substitute for end user charges because it requires the interexchange carriers using local exchange plant to originate and terminate interexchange calls to share in the NTS costs of that plant.

42. It is reasonable to continue calculating and assessing the ICAC on a minute-of-use basis rather than as a flat monthly rate based on the number of subscribers of each interexchange carrier because it is a more accurate reflection of the interexchange carriers' use of local exchange plant and it requires no alteration of the interim methodology.

43. Because of the unknown effects of terminating intraLATA toll pooling, an investigation of such pooling is necessary to determine whether it should continue and, if so, in what manner; the Commission has the authority to conduct such an investigation pursuant to PURA Sections 2, 16 and 18.

44. The Commission has authority to engage a consultant to direct the local exchange companies in conducting cost studies to identify all intrastate costs, both TS and NTS, for local, intraLATA and interLATA services, pursuant to PURA Sections 2, 16 and 18.

45. The procedures recommended in Findings of Fact Nos. 229 through 257 inclusive for developing, implementing and reviewing the access tariffs pursuant to the final Order herein are reasonable and appropriate because they

allow interested parties to participate in the review of the access revenue requirements and the access tariffs while allowing the local exchange companies a mechanism for assessing the interexchange carriers on an equitable basis for their use of local exchange plant.

46. All relief not affirmatively granted herein should be denied.

DOCKET NO. 5113

PETITION OF THE PUBLIC UTILITY COMMISSION OF TEXAS FOR AN INQUIRY CONCERNING THE EFFECTS OF THE MODIFIED FINAL JUDGMENT AND THE ACCESS CHARGE ORDER UPON SOUTHWESTERN BELL TELEPHONE COMPANY AND THE INDEPENDENT TELEPHONE COMPANIES OF TEXAS	PUBLIC UTILITY COMMISSION OF TEXAS

ORDER

On May 14, 1984, the Public Utility Commission of Texas entered an Order in the above-styled and numbered docket. Motions for Rehearing were filed by the General Counsel, AT&T Communications of the Southwest, Inc., U. S. Telephone, Inc., Texas Association of Long Distance Telephone Companies (TEXALTEL), GTE Sprint Communications Corporation and MCI Telecommunications Corporation. Replies to the General Counsel's Motion for Rehearing were filed by General Telephone Company of the Southwest, Continental Telephone Company, Texas Statewide Telephone Cooperative, Inc., Lufkin Telephone Exchange, Conroe Telephone Company and Alto Telephone Company, Brazoria Telephone Company, Byers/Petrolia Telephone Company, Inc., Lake Dallas Telephone Company, Inc., Muenster Telephone Corporation of Texas and Community Telephone Co., Inc., and AT&T Communications of the Southwest, Inc. In a public meeting at its offices in Austin, Texas, the Public Utility Commission of Texas has considered said Motions and Replies, and hereby issues the following Order:

1. The Motion for Rehearing of the General Counsel is GRANTED insofar as it requests the Commission to clarify its Order of May 14, 1984, by more clearly stating how each company's access revenue requirement will be determined, and Paragraph 7. a. of that Order is hereby amended to read as follows: "7. a. Because the purpose of the access revenue requirement is to replace lost toll revenue, it is appropriate to use traditional toll settlements methodologies in calculating the access revenue requirement. Access revenue requirements should be developed using as the test period calendar year 1983; the rate of return used to calculate access revenue requirements should be each local exchange company's actual earned return on toll for 1983, but no greater than the 12.3 percent industry return used pursuant to the interim order in this docket. The access revenue requirement shall be determined further by using the known and measurable changes as set forth in the Order of December 22, 1983. The pooled or industry ICAC should be redetermined considering 1) any increase in toll revenues due to the company's concurrence in the increased intraLATA toll rates determined in Docket No. 5220; 2) any reduction in Southwestern Bell's ICAC revenues determined in Docket No. 5220; and 3) any increase in private line revenues due to the company's concurrence in the increased intraLATA private line rates determined in Docket No. 5220. Finding of Fact No. 249 is therefore amended to read as follows: 'Because the purpose of

the access revenue requirement is to replace lost toll revenue, it is appropriate to use traditional toll settlements methodologies in calculating the access revenue requirement. Access revenue requirements should be developed using as the test period calendar year 1983; the rate of return used to calculate access revenue requirements should be each local exchange company's actual earned return on toll for 1983, but no greater than the 12.3 percent industry return used pursuant to the interim order in this docket. The access revenue requirement shall be determined further by using the known and measurable changes as set forth in the Order of December 22, 1983. The pooled or industry ICAC should be redetermined considering 1) any increase in toll revenues due to the company's concurrence in the increased intraLATA toll rates determined in Docket No. 5220; 2) any reduction in Southwestern Bell's ICAC revenues determined in Docket No. 5220; and 3) any increase in private line revenues due to the company's concurrence in the increased intraLATA private line rates determined in Docket No. 5220.'"

2. Point 13 of U. S. Tel's Motion for Rehearing is GRANTED in part, and the Commission's May 14, 1984, Order in this docket is hereby amended by adding Paragraph 7. i., which shall read as follows: "7. i. Southwestern Bell Telephone Company shall refund to any interexchange carrier any reduction of the interim pooled ICAC charge as may be finally determined in Phase II of Docket No. 5113. Such refund shall not affect Southwestern Bell's portion of the total statewide ICAC pool as determined in Docket No. 5220. Finding of Fact No. 252a is hereby added and shall be read as follows: '252a. Southwestern Bell Telephone Company shall refund to any interexchange carrier any reduction of the interim pooled ICAC charge as may be finally determined in Phase II of Docket No. 5113. Such refund shall not affect Southwestern Bell's portion of the total statewide ICAC pool as determined in Docket No. 5220.'"

3. Paragraph 6. f. is hereby added to the May 14, 1984, Order of the Commission and shall read as follows: "6.f. The InterLATA Special Access tariffs and the IntraLATA Private Line tariffs of the independent local exchange companies should include the surrogate surcharge except to customers who are certified as exempt from said surcharge by the FCC. Finding of Fact No. 234d is therefore added and shall read as follows: '234d. The InterLATA Special Access tariffs and the IntraLATA Private Line tariffs of the independent local exchange companies should include the surrogate surchage except to customers who are certified as exempt from said surcharge by the FCC.'"

4. Point XI of AT&T Communications' Motion for Rehearing is GRANTED, and Paragraph 16 of the May 14, 1984, Order of the Commission is hereby amended to read as follows: "16. The motions of MCI and U. S. Tel to strike from the

record the exceptions filed by Charles D. Land on behalf of Lufkin Telephone Exchange, Conroe Telephone Company and Alto Telephone Company are GRANTED; the motion of AT&T to include said exceptions in the record as an offer of proof is GRANTED."

5. All other relief requested in the Motions for Rehearing is DENIED.

6. All other motions for relief are DENIED.

SIGNED AT AUSTIN, TEXAS on this the 2nd day of July, 1984.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED: _____
ALAN R. ERWIN

SIGNED: _____
PHILIP F. RICKETTS

SIGNED: _____
PEGGY ROSSON

ATTEST:

_____ for
RHONDA COLBERT RYAN
SECRETARY OF THE COMMISSION

ns

DOCKET NO. 5113

PETITION OF THE PUBLIC UTILITY COMMISSION OF TEXAS FOR AN INQUIRY CONCERNING THE EFFECTS OF THE MODIFIED FINAL JUDGMENT AND THE ACCESS CHARGE ORDER UPON SOUTHWESTERN BELL TELEPHONE COMPANY AND THE INDEPENDENT TELEPHONE COMPANIES OF TEXAS	PUBLIC UTILITY COMMISSION OF TEXAS

ORDER

On July 2, 1984, the Commission entered an Order in the above referenced docket ruling on Motions for Rehearing filed by various parties to the docket. Subsequently, Second Motions for Rehearing were filed by GTE Sprint Communications Corporation, AT&T Communications of the Southwest, Inc., MCI Telecommunications Corporation, TEXALTEL, and U.S. Telephone, Inc.

In public meeting at its offices in Austin, Texas, the Public Utility Commission of Texas has considered the said Second Motions for Rehearing and finds the points urged therein to be without merit. Said Second Motions for Rehearing are DENIED.

SIGNED AT AUSTIN, TEXAS, on this the 14th day of August, 1984.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED: _____

SIGNED: _____
PHILIP F. RICKETTS

SIGNED: _____
PEGGY ROSSON

ATTEST:

_____
RHONDA COLBERT RYAN
SECRETARY OF THE COMMISSION

jlc