ATTACHMENT 1

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

AT&T Communications of the Midwest, Inc., Complainant, -vs- Absaraka Coop. Tel. Co., et al, Respondents.	CASE NO. 10,694
In The Matter of The Investigation of North Dakota Access Charges and Intercompany Compensation for the Provision of Intrastate Toll Service	CASE NO. 10,699 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

APPEARANCES:

Public Service Commissioners present: Commissioner Leo M. Reinbold, Commissioner Dale V. Sandstrom, Commissioner Bruce Hagen.

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W. Richard Morris, Attorney at Law, 10825 Old Mill Road, Omaha, Nebraska 68154 AND Frank J. Magill of Nilles, Hansen, Magill & Davies, Attorneys at Law, P.O. Box 2626, Fargo, North Dakota 58108, on behalf of AT&T Communications of the Midwest, Inc.

Dean Winkjer of Rolfstad, Winkjer, McKennett & Stenehjem, Attorneys at Law, P.O. Box 1366, Williston, North Dakota 58801, on behalf of Absaraka Coop Telephone Company, BEK Telephone Mutual Aid Corporation, Consolidated Telephone Cooperative, Dickey Rural Telephone Cooperative, Gilby Telephone Company, Griggs County Telephone Company, Intercommunity Telephone Company, Midstate Telephone Company, Moore & Liberty Telephone Company, Nemont Telephone Corporation, Noonan Farmers Telephone Company, Northwest Mutual Aid Telephone Corporation, Polar Communication Mutual Aid Corporation, Red River Telephone Association, Inc., Reservation Telephone Coop., United Telephone Mutual Aid Corporation, West River Mutual Aid Telephone Corporation, Wolverton Telephone Company, and York Telephone Company.

Fabian E. Noack, Attorney at Law, P.O. Box 15, Carrington, North Dakota 58421, on behalf of Dakota Central Rural Telephone Cooperative Association.

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David M. Sparby, Attorney at Law, 414 Nicollet Mall, Minneapolis, Minnesota 55402, AND R. W. Wheeler of Wheeler, Wolf, Peterson, Schmitz, McDonald & Johnson, Attorneys at Law, P.O. Box 2056, Bismarck, North Dakota 58502, on behalf of Northern States Power.

Richard A. Karre AND Jo Bass, Attorneys at Law, 1314 Douglas, Omaha, Nebraska 68102, on behalf of Northwestern Bell Telephone Company.

Mark F. Purdy AND Jo Noack of Pringle & Herigstad, Attorneys at Law, P.O. Box 1000, Minot, North Dakota 58702, on behalf of Souris River Telephone Mutual Aid Cooperative and the North Dakota Association of Telephone Cooperatives.

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PROCEDURAL HISTORY

On December 13, 1983, this Commission issued its order in Case No. 10,444 adopting interim measures addressing changes in the telecommunications industry resulting from the divestiture of the Bell System and the Federal Communications Commission's decision in Docket 78-72. The order in Case No. 10,444 adopted a Memorandum of Recommendation proposed by the North Dakota local exchange companies providing for a two year mechanism to compensate local exchange companies for the origination and termination of toll calls. Compensation for intrastate interLATA toll calls was to be provided by a system of access charges to interexchange carriers such as AT&T Communications of the Midwest, Inc. The interLATA access charges were established at the same level as the interstate carrier access

charges that the local exchange companies were proposing at that time.

Compensation between Northwestern Bell Telephone Company and the other local exchange companies for intraLATA toll traffic was to be based upon the then existing settlement process for intrastate toll settlements. The intraLATA compensation level was to be reduced in 1985 by removal of ten percent of the non-traffic sensitive costs from the settlement base.

Our order in Case No. 10,444 also provided for the establishment of an ongoing committee of local exchange company representatives to study and provide recommendations on a number of telephone issues including intercompany toll compensation and charges for intrastate toll service.

On April 22, 1985, AT&T filed a complaint against the North Dakota local exchange companies alleging that the access charges assessed to AT&T by the local exchange companies were discriminatory and unreasonable in violation of Chapter 49 of the North Dakota Century Code. On April 25, 1985, the Commission issued a notice that the complaint had been filed and set a hearing on the complaint for July 8, 1985.

On May 2, 1985, the Commission received a report from the local exchange company study committee in the form of a memorandum of understanding on the issue of intrastate toll compensation arrangements. In response to the report, the Commission passed a motion on May 7, 1985 to initiate an investigation on the issue of intrastate toll compensation and to hold the hearing in conjunction with the previously scheduled hearing on AT&T's Complaint. The

notice of hearing set forth the following issues to be addressed at the hearing:

1. Should the method of intercompany compensation for the provision of intrastate toll service be changed in favor of access charges?

2. Should the amount of contribution required from interexchange carriers of intrastate toll service to exchange companies for reimbursement of non-traffic sensitive costs be reduced?

3. If the amount of contribution for non-traffic sensitive costs from interexchange carriers should be reduced, how much should it be reduced?

4. If the amount of contribution for non-traffic sensitive costs from interexchange carriers is reduced, how should those non-traffic sensitive costs be recovered?

5. If the amount of contribution for non-traffic sensitive costs from interexchange carriers is reduced, how should that reduction be reflected in intrastate toll rates?

On May 15, 1985, Northwestern Bell requested a continuance of the scheduled hearing to enable the Commission to consider a proposed access tariff Northwestern Bell planned to file. The motion for a continuance was approved and the hearings rescheduled to commence on August 12, 1985. Northwestern Bell's proposed tariff was filed with the Commission on June 21, 1985. Hearings were held as scheduled on August 12 through August 15, 1985 in the Pioneer Room of the State Capitol, Bismarck, North Dakota.

Upon consideration of the evidence of record, the Commission makes the following:

FINDINGS OF FACT

The report submitted by the local exchange company study committee provided recommendations regarding intrastate toll

compensation for a two year period beginning January 1, 1986. The report addressed compensation for both interLATA and intraLATA toll service and was supported by all the North Dakota local exchange companies with the exception of North Dakota Telephone Company which is a wholly-owned subsidiary of Continental Telecom, Inc. North Dakota Telephone Company provided its own recommendations regarding intrastate toll compensation as did the Commission staff. While AT&T supported the study report, it also recommended the Commission consider modifications to the report in certain areas.

INTERLATA COMPENSATION

Our order in Case No. 10,444 directed that interLATA toll compensation was to be provided through carrier access charges. Northwestern Bell was to file carrier access charges at the same level as its then proposed interstate access charges and the independents were given the option of mirroring Northwestern Bell's tariff or mirroring their own interstate tariff.

The local exchange companies' access charges to carriers of interLATA toll can be categorized into four groups: traffic sensitive, billing and collecting, nontraffic sensitive, and special access. Traffic sensitive charges are for switched access services such as local transport, local switching, line termination, and intercept.

a. Traffic Sensitive Access Charges

The study committee recommended that for 1986 and 1987, traffic sensitive access charges assessed by the independent local exchange companies should equal Northwestern Bell's intrastate interLATA charges, however, individual local exchange companies

would not be precluded from filing state specific cost based rates for traffic sensitive charges. Although the report implies that Northwestern Bell's traffic sensitive rates will be cost based, no recommendation was made as to the type of cost study that should be used in setting traffic sensitive rates.

Northwestern Bell states it developed its proposed tariff for traffic sensitive access charges based upon incremental costs. The specific cost studies supporting those rates were not supplied as a part of its filing because Northwestern Bell considered them proprietary although the Company offered to make them available for review by the Commission staff.

It is Northwestern Bell's position that the incremental costs of providing carrier access are the only relevant costs in the pricing of access service or any other good or service. Northwestern Bell recognizes, however, that prices can be set above incremental costs to provide a contribution to a firm's common or fixed costs where the level of competition permits. Northwestern Bell states its proposed traffic sensitive access charges contain such a market adjustment above incremental costs. It recommends the present carrier common line charge should be phased out and the entire charge for access be recovered thru market adjusted traffic sensitive rates. AT&T supports both Northwestern Bell's position and proposed traffic sensitive access charges.

The Commission staff notes it is doubtful Northwestern Bell's manner of establishing market prices and its incremental costing methodology could be reviewed prior to the implementation of new

toll compensation arrangements for 1986. While the staff agrees traffic sensitive access charges should have some relation to traffic sensitive costs, it recommends that a fully allocated embedded cost study be used to establish traffic sensitive access charges at least initially. The staff's position for the use of an embedded cost study is supported by North Dakota Telephone Company.

The use of a fully allocated embedded cost study to establish traffic sensitive rates was criticized by Northwestern Bell and AT&T on the grounds that such studies result in arbitrary allocations of past costs and are irrelevant to the company's current costs of providing service. Their expert witnesses testified that economic efficiency is best served when costs are set at incremental costs although some degree of market pricing is acceptable to provide a contribution to common costs.

While we can agree that incremental cost studies, properly performed, provide an indication of a firm's current costs of providing service and are certainly a relevant pricing consideration; we do not agree that embedded costs are irrelevant in establishing prices especially for a regulated utility. As utilities, the local exchange companies have a revenue requirement necessary to recover their costs of operation including a reasonable return on their investment. In setting prices for a utility's goods and services, a regulatory commission must provide the utility a reasonable opportunity to earn its revenue requirement. The revenue requirement is calculated based upon embedded costs and therefore embedded costs are a relevant consideration in setting the utility's prices. While the individual prices established for

a utility's services need not equal the embedded cost of each such service, the total revenue generated by the sale of the company's services should equal its total embedded costs.

Incremental costs, on the other hand, can be either above or below the embedded costs of providing a service. Consequently, if a utilty's prices were based on incremental costs, the revenue received from those prices would bear no relation to the company's revenue requirement. If carrier access charges do not recover the revenue requirement associated with providing that access, the deficiency must be recovered from local exchange rates. While it may be necessary to price a service below its associated revenue requirement but at or above its incremental costs to prevent a loss of sales to a competitive service; we are not convinced that the current level of competition in the telephone industry requires the pricing of access below its revenue requirement.

Certainly, knowledge of the revenue requirement associated with the provision of carrier access is relevant to pricing that access. That information is not available, however, because an embedded cost study has not been conducted. We are therefore reluctant to deviate from the present level of traffic sensitive access charges until we have been presented with a fully allocated embedded cost study for review. We will also consider a properly conducted incremental cost study in setting any new carrier access charges if any of the parties desire to present one, however, the incremental costs will be considered only in conjunction with an embedded cost study. We are therefore directing that prior to July 1, 1986, Northwestern Bell present for our review a fully allocated

embedded cost study for traffic sensitive carrier access. We envision that any adjustment to our present level of traffic sensitive rates based upon the results of the cost studies could be implemented effective January 1, 1987. The new Northwestern Bell traffic sensitive rates will be mirrored by the other local exchange companies during 1987. Prior to May 1, 1987, the Commission staff, the local exchange company study committee, and any other party shall report to the Commission as to the desirability of the independent local exchange companies developing traffic sensitive access tariffs based upon individual cost studies or if they should continue to mirror Northwestern Bell's. Any revenue impact to the local exchange companies resulting from adjustments in the traffic sensitive access charges on January 1, 1987 shall be offset by an adjustment to the carrier common line charge that is assessed to the interexchange carriers.

We recognize that the use of embedded cost studies for the pricing of carrier access may not promote economic efficiency to the degree that reliance on incremental cost studies may. The economic experts in this proceeding recognized, however, that economic efficiency is only one factor the Commission must consider in establishing the price of access. Our position in Case No. 10,444 remains unchanged that a commitment to the preservation of universal telephone service is our foremost objective in dealing with issues arising in the new telecommunications environment. At this point, we believe that objective is best served if charges for traffic sensitive access are priced to recover the revenue requirement associated with that service rather than pricing solely on the

basis of economic efficiency.

We also want to briefly address the positions of Northwestern Bell and AT&T that all contribution from carrier access charges to the fixed costs of an local exchange company should come thru a market adjustment to the traffic sensitive access charges rather than thru a separate non-traffic sensitive access charge. We note the difficulty in attempting to determine an appropriate level of such a market adjustment. Northwestern Bell admits that market pricing is a difficult and imprecise science and we believe such pricing would be extremely subjective and lead to sharp disagreement among all the parties as to the appropriate level of such prices. Nonetheless, assuming a market adjustment could be determined, we are not convinced that such an adjustment should be recovered entirely in the traffic sensitive rates. At first blush it may appear of little significance whether any contribution to non-traffic sensitive costs is recovered through increased traffic sensitive charges or in a separate non-traffic sensitive charge. From the interexchange carrier's standpoint the total revenue impact may be the same. We are not certain, however, that there is not a revenue impact on the individual local exchange companies.

The traffic sensitive access charge revenues for calls originating or terminating from an independent local exchange are divided between the independent local exchange company and Northwestern Bell whenever Northwestern Bell facilities are used to complete the call which is the usual occurrance. The division of those revenues is based in large part upon the amount of equipment of the respective companies used in completing the call. It is our

understanding that in North Dakota Northwestern Bell has the predominant amount of traffic sensitive equipment. Accordingly, Northwestern Bell would receive the predominant amount of access charge revenue including any non-traffic sensitive contribution if the entire amount of access charges were recovered through the traffic sensitive rates.

The witnesses in this proceeding testified that the presence and cost of alternatives determines the ability of a company to make a market adjustment in the sale of its goods or services above incremental costs. The cost of the alternative goods or services in comparison to the incremental costs of the goods or services being sold determines the amount of the adjustment. The witnesses testified, in effect, that the present level and cost of alternatives to switched access provided by the local exchange companies allows such switched access to be market priced above its incremental costs.

We believe that a significant part of the value of switched access that allows it to be priced above its incremental costs is the access and use of the local loops to the customer's premises that it provides. The witnesses admitted that access to these non-traffic sensitive facilities has a value to the interexchange carrier as there are significant costs associated with the use of any alternative to these local loops.

If a contribution to non-traffic sensitive costs is extracted through access charges from the interexchange carriers, that contribution should be directed to the local exchange companies in relation to the non-traffic sensitive investment that is a substantial factor in allowing that contribution to be collected. If the

entire contribution is recovered through traffic sensitive charges, it will be divided among the carriers based upon the traffic sensitive investment of those carriers rather than the non-traffic sensitive investment to which at least part of the contribution should be directed. Thus, until we are convinced otherwise, we find that any contribution through carrier access charges for non-traffic sensitive costs should be recovered in a separate access charge rather than as a market adjustment to the traffic sensitive charges.

b. Billing and Collection -

Revenues received by the local exchange companies for billing and collection services provided to AT&T have been significant. Northwestern Bell indicated that about 13.6 percent of the revenue it received in 1984 under its intrastate interLATA access tariff was derived from billing and collection services. Testimony also showed that rates of return the local exchange companies are receiving on the provision of these services are high. AT&T requests that the Commission order Northwestern Bell to set its billing and collection rates at a level which will produce no more than Northwestern Bell's authorized rate of return. Unfortunately no specific cost information concerning billing and collection revenue was presented by any of the parties. Likewise, none of the parties presented information regarding the cost of alternative billing and collection services to determine an appropriate market based price for those services.

We find that billing and collection services provide a significant source of revenue to the local exchange companies. If those

services are priced at excessive levels, however, the revenue source is lost as the interexchange carrier will perform its own billing. AT&T has already indicated that it soon will be providing certain billing and collection services for at least its larger customers. The result is not only a lost source of revenue to the local exchange companies but also the likelihood of overall higher costs to the telephone consumer as two separate bills are rendered where one was issued before.

AT&T states that cost is a major factor but not the only factor influencing the decision to do its own billing. In any rate proceeding, AT&T should be prepared to show that the costs of providing its own billing do not exceed the expense of having such billing performed by the local exchange companies.

We believe the billing and collection tariffs represent a potential unwarranted loss of revenue and economic efficiency because of excessively high prices. To prevent these inefficiencies, we find that the existing billing and collection tariffs should be adjusted. Unfortunately, because of the lack of specific cost data in the record of this proceeding, it is impossible to direct an appropriate reduction directly related to the local exchange companies costs of providing the services or the cost of alternative services. Northwestern Bell states that its proposed adjustments in its billing and collection rates were designed to correspond to interstate rates for those services. Northwestern Bell contends those interstate rates were market priced.

Because of the ready availability of alternatives, we believe the pricing of billing and collection services should be market

based provided those prices at least equal the incremental costs of providing those services. In the absence of evidence indicating Northwestern Bell's proposed rates are not properly market based, we approve Northwestern Bell's proposed rates for billing and collection services.

The other local exchange companies are directed to file proposed adjustments to their intrastate interLATA access tariffs to accomplish reductions similar in magnitude to those proposed by Northwestern Bell effective January 1, 1986 or as soon thereafter as possible. A local exchange company may request an exception from this directive if it can provide adequate documentation that such new rates will not recover its cost of providing billing and collection services. Any revenue impact to the local exchange companies as a result of these billing and collecting adjustments shall be absorbed through the local exchange rate adjustment approved later in this order.

In calculating the amount of any revenue impact to be absorbed through a local exchange rate adjustment, only the revenue loss resulting from tariff adjustments based upon the level of billing and collection services provided in 1984 shall be considered. The local exchange companies are not allowed to absorb in the local exchange rate adjustment anticipated revenue erosion from possible reduced volumes of services purchased by AT&T. We agree with the Commission staff witness that the potential erosion of this revenue is indistinguishable from revenue erosion resulting from other sources. Such erosion must be balanced against potential new sources of revenue, increases in other revenue sources, or changes

in costs which are outside the scope of this proceeding. Furthermore, the extent of any revenue erosion from the reduced purchase of billing and collection services appears speculative at this time. The local exchange companies therefore may only absorb in the local exchange rate adjustment revenue losses based upon 1984 volumes.

Any interexchange carrier, of course, may examine the proposed tariff adjustments presented by the local exchange companies and request any changes from the Commission prior to the effective date of the tariffs. The local exchange companies shall provide the appropriate back-up material documenting the manner in which the amount of revenue to be absorbed in the local exchange rate adjustment as a result of the billing and collection tariff adjustments was determined.

c. Non-Traffic Sensitive Access Charges -

As noted earlier, a significant amount of the discussion in this proceeding concerned whether interexchange carriers should be required to provide a contribution for non-traffic sensitive costs and if so, the amount of that contribution and the manner it should be recovered. We have already found that the local exchange companies investment of local loops provides a value to an interexchange carrier and its customers. In the absence of the availability of those loops, the interexchange carrier would likely be required to construct access facilities between the customer location and the interexchange carrier's equipment. The difficulty arises in determining the appropriate level of contribution to such

non-traffic sensitive costs as well as the manner it should be recovered.

Clearly, the value to an interexchange carrier of access to the local loops of an local exchange company is dependent upon the level of toll traffic originating or terminating on those loops and the revenue derived from that traffic. Obviously, there is minimal value to interexchange carriers for access to a local loop that never originates or terminates a call. Because the value of the loop to the interexchange carrier is dependent upon the volume of interexchange toll tariff on the loop, pricing access to the loop based upon the number of minutes the loop is used for toll seems appropriate.

On the other hand, the value of access to a local loop is limited by the cost of alternative sources of access to the customer. The use of such alternative forms of access to users of large amounts of toll service, or bypass as it is commonly referred to, becomes a concern when it is not economically justified. Uneconomic bypass occurs when the local exchange companies switched access network is bypassed in favor of an alternative access facility that costs more to provide than the cost of the local exchange companies to provide access over the switched network. Pricing the non-traffic sensitive contribution on a straight minutes of use basis can result in large users of toll paying significantly more for access than the cost of an alternative access facility even though the local exchange companies costs of providing access to that particular user are well below the costs of the alternative facility. For this reason, pricing the non-traffic sensitive contribution on a minutes of use basis, as is currently

done, may not be appropriate.

The study committee, Northwestern Bell, AT&T, North Dakota Telephone Company and the Commission staff all recommended that the level of contribution to non-traffic sensitive costs paid by the interexchange carriers be reduced. Although there were differences as to the recommended level of the non-traffic sensitive contribution, most of the parties supported the study committee recommendation regarding the level of reduced non-traffic sensitive contribution for the two year period of 1986 and 1987.

The study committee recommended that each local access line be assessed a flat charge of $1.25 per month in 1986 and $2.50 per month in 1987. The revenue generated from these flat monthly charges would allow a reduction in non-traffic sensitive support for both interLATA and intraLATA toll from present levels. Originally, the study committee recommended the non-traffic sensitive reduction would be allocated between interLATA and intraLATA toll carriers based upon the relative amount of interLATA and intraLATA toll usage. This recommendation was later amended to allow a larger reduction of non-traffic sensitive support from interLATA toll during 1986. The study committee report further provided that the amount of non-traffic sensitive contribution after the reduction should not go below the level any local exchange company would receive if its non-traffic sensitive costs were allocated on the basis of a subscriber line usage factor. The study committee recommendation was supported by Northwestern Bell, the independent local exchange companies and AT&T.

The Commission staff recommended non-traffic sensitive support be established based upon a subscriber line usage factor with

periodic review to determine if further reductions are necessary to keep the switched network competitive. The staff recommended the loss of revenue experienced by the local exchange companies thru its proposed reduction in non-traffic sensitive support from toll be recovered thru increases in local exchange rates or thru a surcharge by the local exchange company on its customers for intrastate toll usage. To lessen the impact such a reduction of non-traffic sensitive support might have on local rates, the staff recommended establishment of a high cost fund to reimburse local exchange companies for 80 percent of its revenue requirement in excess of the revenue it would generate if its local exchange rates were set at the level of Northwestern Bell's.

North Dakota Telephone Company suggested that non-traffic sensitive support from toll should be reduced to a level based upon a subscriber line usage factor, but that such a reduction should be phased in over an eight year period.

While we find that the current level of non-traffic sensitive support from toll should be reduced, we do not believe it should be reduced at this time to the degree recommended by the parties. As stated previously our primary objective in the regulation of telephone service remains the maintenance of universal service. We further find that universal service has the potential to be impacted to some degree by the level of non-traffic sensitive support received by the local exchange companies from toll service. The degree of that impact is influenced by the level of non-traffic sensitive support that is maintained as well as the length of time any reduction in the present level of non-traffic sensitive support

is phased over.

Northwestern Bell witness Vondras presented the results of a Northwestern Bell study showing a potential level of bypass of its switched network used for intrastate interLATA toll traffic. The greatest potential for bypass is the traffic from an interexchange carrier's large toll customers. Because of the traffic volumes of these customers, a straight per minute access charage for non-traffic sensitive support can result in charges for non-traffic sensitive support in excess of alternative means of access. The interexchange carrier or the toll customer have the incentive to seek alternative forms of access either thru the purchase of a special access line from the local exchange company or construction of an access facility totally unrelated to the local exchange company's facilities.

Northwestern Bell's study also indicated that the threat of bypass is not entirely the result of access charges for non-traffic sensitive support. The study showed that even if non-traffic sensitive support was totally removed from interLATA access charges there was still an incentive to bypass for a substantial amount of the traffic.

Northwestern Bell's study did not address if the bypass potential could be reduced thru a restructuring of the manner in which non-traffic sensitive support is recovered either from the interexchange carrier or the toll user. It is only a relatively small number of toll customers that are potential candidates for bypass with the existing level of bypass alternatives. Northwestern Bell's study showed that less than 1 percent of its North

Dakota business customers currently have the economic incentive to bypass the switched toll network. These large volume customers, however, account for a significantly greater share of the interLATA access revenue received by Northwestern Bell. Thus, the loss of these customers from the switched network could result in a much greater revenue impact than their numbers would suggest.

The large user of toll service is a bypass threat largely because the non-traffic sensitive contribution is charged on a per minute basis with no recognition of the customer's usage volume. Because the carrier common line charge is assessed at the same level on each minute of use, the large user may pay more for non-traffic sensitive support than the cost of an alternative access system. The study committee proposal would lower the level of the carrier common line charge but still collect it on a constant level for each minute of toll use.

We believe this plan has two major drawbacks. First, non-traffic sensitive support is reduced not only from the large toll users that constitute a bypass threat, but it is also reduced, at the same per minute level, to smaller users of toll services who are not a threat to bypass. While we find some merit in the argument that toll rates should be reduced for all customers, we do not believe that non-traffic sensitive support from toll should be phased down as quickly as that proposed by most of the parties. We believe the negative impact of rapidly rising local exchange rates because of reduced non-traffic sensitive contribution at both the intrastate and interstate level would be far greater than any negative impact experienced as a result of toll rates that may be in excess of their

incremental costs. Accordingly, we do not believe it is either necessary or wise to lower the level of non-traffic sensitive support from those toll customers who are not bypass threats to the same degree that it is lowered for those customers who are paying non-traffic sensitive support in excess of their non-traffic sensitive costs and who have the economic incentive to leave the switched network.

Second, we find that phasing down the size of the carrier common line charge as proposed does not adequately remove the economic incentive of many of the large toll users to bypass the switched network when considered in relation to the non-traffic sensitive support it gives up. For example, Northwestern Bell estimated the number of large business customers having an economic incentive to bypass the switched network would be reduced from 51 to 44 as a result of the proposed first year reduction in non-traffic sensitive support. The second year's proposed reduction, however, would remove the economic incentive to bypass for only 1 additional customer. We doubt that toll revenue from this additional customer is comparable to the size of the non-traffic sensitive reduction proposed under the second year of the study committee's proposal.

We believe that if the non-traffic sensitive reduction is directed more toward the large use customers that have an economic incentive to bypass, we can discourage uneconomic bypass and maintain the integrity of the switched network without reducing the level of non-traffic sensitive support to local exchange rates as

rapidly as suggested by the study committee proposal. We believe one possible method to accomplish our objective is the assessment of non-traffic sensitive contribution to the interexchange carrier on a flat rate rather than a minutes of use basis. Assessment of non-traffic sensitive contribution on a flat rate basis would provide the interexchange carrier more flexibility in marketing toll both during off peak periods and to large volume users. Furthermore, because non-traffic sensitive costs do not vary with usage levels, it is appropriate that non-traffic sensitive support payments be calculated on a lump sum rather than a minutes of use basis. With a lump sum charge, the exchange carrier receives the exact amount of the non-traffic sensitive costs allocated to inter-exchange toll - no more, no less. To that extent, it would contribute to revenue stability for the exchange carriers.

Lump sum assessment of non-traffic sensitive costs to inter-exchange carriers was supported by AT&T, the Commission staff, and North Dakota Telephone Company. While the other local exchange companies did not oppose the concept of lump sum recovery of non-traffic sensitive costs, they stated further study was necessary not only as to the desirability of such a method of payment but also the manner in which such payments should be calculated and implemented.

We agree there may be difficulties in the calculation and implementation of lump sum payments and that further review is necessary to develop solutions to those difficulties. While the implementation of a lump sum payment methodology might be relatively simple as long as AT&T is the only certified carrier; it

could become considerably more complex if other interexchange carriers enter the North Dakota intrastate toll market. We are therefore directing that the parties present their position and proposals regarding the implementation of lump sum assessments for non-traffic sensitive support to the Commission before July 1, 1986 for consideration for implementation by January 1, 1987.

The carrier common line charge is not assessed on the closed end of WATS and 800 toll service under existing access charge tariffs. Northwestern Bell's proposed access tariff, however, provides for an assessment on both the originating and terminating portions of such calls. We believe Northwestern Bell's proposal is contrary to the objective to preventing bypass of large volume toll users. Many of the large users of toll services are WATS or 800 service customers. These customers are also the most likely candidates for bypass. A WATS or 800 service customer's greatest economic incentive to bypass the switched access network is at the closed end of such service as it is the closed end of switched access that can be replaced economically in most instances by a dedicated access facility. Furthermore, such customers are already paying NTS support for the closed end of their service by payment of a flat access fee for such service. Imposing the carrier common line charge in addition to the flat access fee on the closed end of WATS and 800 service invites those customers to bypass the switched network. Northwestern Bell's proposed tariff provisions to assess the carrier common line charge on the closed end of WATS and 800 service are rejected.

As stated previously we believe a smaller reduction in non-traffic sensitive support that is directed more toward the large use

customers having the greatest economic incentive to bypass is preferable to the proposal presented by the study committee. Earlier this year we approved such a plan for implementation for intraLATA toll service. The discount plan we adopted for intraLATA use has not been in effect long enough to make a comprehensive determination of its impact. Nonetheless, we believe this type of plan significantly reduces the economic incentive of large toll users to bypass the switched network. While implementation of this precise plan may be difficult or inappropriate for interLATA toll service because of the manner in which access charges are assessed, we do believe a toll plan can be fashioned for interLATA use which accomplishes the same objectives. With the implementation of intraLATA access charges in 1986 it may be necessary to adjust the intraLATA plan with the result that a similar plan could be fashioned for both interLATA and intraLATA toll services.

We are, therefore, directing that $ .15 per month per access line of the local exchange rate adjustment approved in this proceeding be used to reduce the level of non-traffic sensitive support assessed to interexchange carriers. The interexchange carriers, which at the present time includes only AT&T, shall submit for our review within 60 days proposals for flowing this reduction through to interLATA toll users. The other parties may submit comments on AT&T's proposals or submit proposals of their own. This portion of the local rate exchange adjustment shall become effective on January 1, 1986 or the effective date of the rate reduction proposal adopted by the Commission, whichever is later.

In addition to the non-traffic sensitive reduction we are ordering to be flowed thru to toll users, we believe the level of non-traffic sensitive contribution should be further reduced to prevent an increase in interLATA toll rates. There is currently pending before the Commission an application by AT&T to increase its intrastate toll rates to obtain a reasonable rate of return on its investment. AT&T requests that its intrastate rates be raised to recover an approximate $3.2 million revenue shortfall.

While we do not necessarily agree that AT&T's shortfall in achieving a reasonable return on its intrastate investment is of the magnitude suggested by AT&T, our initial review of the company's application does indicate that the company will not be able to obtain a reasonable rate of return on its intrastate investment unless either MTS rates are increased or access charges are decreased. The financial statments filed by AT&T in support of its rate application show that in 1984, access and billing and collection charges equated to nearly ninety percent (90%) of its toll revenues.

A general increase in MTS rates at this time would increase the economic incentive of large users to bypass the switched network. Furthermore, it could easily defeat the purpose of both the present intraLATA and proposed interLATA discount plans by sending inconsistent signals to toll customers as to the present and future direction of intrastate toll pricing. For these reasons we believe a general increase in interLATA toll rates should be avoided if possible. We are therefore directing that $ .75 per month per access line of the local exchange rate adjustment approved in this

order be used by the local exchange companies to reduce interLATA billing, collecting, and access charges to interexchange carriers. As directed previously, an amount equal to $ .15 per month per access line shall be used by AT&T to develop a toll reduction plan. The balance of the savings in access charges, or $ .60 per access line per month, may be retained by AT&T to improve its intrastate earnings level. While we recognize that based upon an initial analysis of AT&T's financial statements, this reduction in access, billing, and collecting charges may not in itself enable AT&T to achieve a reasonable rate of return; we believe these reductions, when coupled with increases in miscellaneous service rates AT&T may propose, will allow AT&T to obtain an adequate earnings level.

We have already directed the manner in which the local exchange companies shall adjust their billing and collection charges and that the revenues lost from these reductions may be absorbed through the local exchange rate adjustment. The balance of the revenue received from the interLATA portion of the local exchange rate adjustment shall be used by the local exchange companies to reduce the interLATA carrier common line charge. Each local exchange company shall use the following method to calculate the amount the carrier common line charge is reduced from the current level of 4.61 cents per carrier common line access minute:

Carrier common line charge reduction = $ .75

Times:	Local exchange company's 1984 average number of access lines
Times:	12
Plus:	Estimated revenue from special access rate adjustments

Minus:	Estimated revenue loss from billing and collection charge adjustments
Divided By:	Number of 1984 interLATA carrier common line access minutes billed by the local exchange company.

The local exchange companies shall provide the appropriate back-up material documenting the manner in which the carrier common line charge reduction was calculated. Likewise, AT&T shall provide the appropriate back-up material documenting the amount of decreased carrier common line charge expense that will be used for a toll rate reduction plan. Each of the parties may examine back-up documentation presented by another party and propose adjustments for the Commission's consideration.

d. Equal Access and Network Reconfiguration -

Northwestern Bell states it will incur costs of $596,335 in 1986 and $200,000 in 1987 for equal access and network reconfiguration and proposes a separate access charge to recover those costs from interexchange carriers. Equal access and network reconfiguration costs will be incurred to meet the requirements of the modified final judgment. AT&T asserts that $26,000 of the expenses incurred in 1986 should not be assessed against the interexchange carriers but rather absorbed by Northwestern Bell. The $26,000 reflects a fifty percent (50%) disallowance of the ballot expense for customer selection of interexchange carriers. AT&T asserts the ballot has a promotional value to Northwestern Bell by promoting the intraLATA presence of Northwestern Bell and substantially assists in its marketing efforts.

We have examined the ballot form that Northwestern Bell states would be used for customer selection of interexchange carriers. We

find nothing on the ballot to be of a particular promotional nature to Northwestern Bell. While the ballot does provide an additional contact for Northwestern Bell with its customers, we believe the promotional value of this particular contact is minimal considering the present level of contact between Northwestern Bell and its customers. The real value of the billing process is to the interexchange carriers and they should bear its costs. We approve Northwestern Bell's access tariff proposals to recover the entire cost of equal access and network reconfiguration thru interexchange carrier access charges.

e. Special Access -

In its Complaint, AT&T alleges that interLATA special access rates that Northwestern Bell assesses AT&T are discriminatory because they are higher than the private line rates that Northwestern Bell assesses its end user customers. For its part, Northwestern Bell proposes to raise its interLATA special access rates based upon a market pricing principle and asserts that a strict comparison of private line and special access rates is inappropriate.

Northwestern Bell states it market priced the proposed special access tariffs using its incremental cost of providing the service as a floor and its interstate special access charges as a ceiling. AT&T doesn't dispute Northwestern Bell's assertions regarding its market basis for pricing special access or its incremental costs, but simply argues the rates are discriminatory if priced higher than Northwestern Bell's corresponding intraLATA private line rates. AT&T states that private lines from local exchange companies have

been used in other jurisdictions to avoid the facilities of inter-exchange carriers and any disparity in the price of special access and private line rates fosters this type of bypass. AT&T did not attempt to show whether Northwestern Bell's private line rates are priced too low or the special access lines are priced too high, but only that the rates are different.

A difference in the price of similar services does not in itself constitute discrimination. While private lines and special access lines are similar type services, they may be used for different purposes in the future. Northwestern Bell has attempted for some time to raise the price of its intrastate private line rates to have them better reflect the costs of providing the service. While we approved some of the requested increases in those rates, including an increase in Northwestern Bell's most recent rate proceeding, we have not always allowed increases to the extent requested by Northwestern Bell because many of the lines are used for special purposes which could not sustain large and rapid increases in the price of the service.

We also note that the primary purpose of special access is to bypass the switched access network. Pricing special access too low would increase its desirability as a mechanism for bypass of the switched network. Not only would such pricing result in a loss of revenue to the switched network, it could also encourage additional investment in special access facilities which might not be economical and which might become stranded investment if special access prices were later raised to meet its costs.

Finally, AT&T did not contend that private line services were

improperly being used in North Dakota to bypass its interexchange facilities.

AT&T has not met its burden of proving that any disparity in Northwestern Bell's private line and special access tariffs is discriminatory. Northwestern Bell's proposed special access rates are approved and that portion of AT&T's complaint against Northwestern Bell asserting discrimination is dismissed. The projected additional revenue Northwestern Bell or the other local exchange companies may receive from special access adjustments shall be used to reduce the present level of the carrier common line charge. AT&T may file proposed tariffs to recover any increased costs of special access from the customers using those services.

INTRALATA COMPENSATION

Intercompany compensation between Northwestern Bell and the independent local exchange companies for intraLATA toll traffic is based upon a settlement process we approved in Case No. 10,444. Our order adopted a settlement method similar to that used prior to divestiture of the Bell system except that commencing January 1, 1985, ten percent (10%) of the non-traffic sensitive costs (except for 'category 6' central office equipment and customer premise equipment) were to be removed from the compensation base. The cost savings of this ten percent (10%) non-traffic sensitive reduction was used to develop an intraLATA toll discount plan that offers increasing discounts to users of toll service based upon their monthly volume of toll usage.

As part of our order in Case No. 10,444, we directed the local exchange company study committee to examine the desirability of

using access charges for intraLATA intercompany toll compensation. As part of its report, the study committee recommended that an access charge plan using a designated carrier concept for intraLATA compensation be adopted at least for the initial two year period of 1986 and 1987. Northwestern Bell is to act as the designated carrier and will pay access charges to the other local exchange companies. The study committee report further recommended that intraLATA access charges assessed by the local exchange companies should mirror each local exchange company's intrastate interLATA access charges during 1986 and 1987.

We find considerable merit in the recommendations of the study committee. We believe access charges are an appropriate mechanism for intercompany compensation. While the use of the access adjustment rate, which we will discuss later, negates any significant revenue impact between access charges and settlements, we believe it is important that an intraLATA access charge mechanism be established now to determine its long term operating and revenue impact on the local exchange companies. We, therefore, adopt the study committee's recommendation and direct the implementation of intraLATA access charges equal to the local exchange companies interLATA access charges effective January 1, 1986, or as soon thereafter as they can be implemented.

The study committee recommended the ten percent (10%) reduction in the non-traffic sensitive compensation base be continued for intraLATA settlements. In addition, the committee recommended intraLATA non-traffic sensitive contributions be further reduced during 1986 and 1987 to correspond to the recommended intraLATA

allocation of the revenue derived from the committee's proposed end user charges during each of those years.

As we stated previously, we do not believe it is necessary to reduce the present level of non-traffic sensitive support to the degree, or at least as rapidly, as recommended by the study committee. The intraLATA toll discount plan has been in effect for approximately four months and no study has been made regarding the effect of that plan. The discount plan should be monitored over a longer period of time before we can determine if the plan should be modified. We find no need to adopt larger or different discounts or reductions before we have the opportunity to study and analyze the effects of the present plan.

While we do not find it presently necessary to implement additional intraLATA toll reductions or discounts, we note the ten percent (10%) non-traffic sensitive reduction level approved in our last order only provides sufficient revenue to fund the present discount plan for a seven month period each year. We believe the discount plan should be offered on a continued basis for the next two years to properly monitor its effect. Accordingly, we find the present level of intraLATA non-traffic sensitive contribution to the local exchange companies should be reduced to provide sufficient revenues to fund the discount plan on a continuing basis. The lost non-traffic sensitive contribution may be absorbed by the local exchange companies through the local exchange rate adjustment we are approving. We find the level of non-traffic sensitive contribution received by each local exchange company from intraLATA toll should be reduced by an amount equal to $ .15 per month per

access line. If the revenues from the non-traffic sensitive support reductions exceed the amount of revenue needed to fund the discount plan on a continuing basis, Northwestern Bell should present proposals for the Commission's consideration to modify the plan to flow these additional revenues through the plan.

The local exchange companies shall file an intraLATA carrier common line charge access rate equal to their interLATA carrier common line charge rate. Any over or under recovery of revenue to the local exchange companies as a result of mirroring the interLATA carrier common line charge will be recognized in the access adjustment rate.

With the adoption of intraLATA toll access charges, Northwestern Bell will act, at least in the interim as the designated toll carrier. The recognition of an intraLATA designated carrier and adoption of access charges signifies the dual role of Northwestern Bell as both a toll carrier and a local exchange company. In a sense it also signifies a change in the relationship between Northwestern Bell and the other local exchange companies from a type of partnership in the provision of intraLATA toll to more of a buyer-seller arrangement. This change in roles and relationships may become more pronounced if requests are received from other carriers to compete with Northwestern Bell in the provision of intraLATA toll.

We believe it will become necessary in the future for the Commission in regulating Northwestern Bell to more closely recognize its offering of toll and local exchange service as separate businesses. We fully expect the other local exchange companies, as well as any potential competitive provider of toll, will demand that

Northwestern Bell's local exchange service not receive a greater contribution from intraLATA toll than that received by the other local exchange companies and vice versa with regard to any contribution Northwestern Bell's toll service might receive from its local exchange business. Accordingly, we adopt the recommendation of the staff witness that Northwestern Bell begin separation of its intrastate books and records to reflect the investment and expenses of its intraLATA toll business separate from its business as a local exchange provider. Even if the Commission never approves a competitive provider of intraLATA toll service, we believe a separation of Northwestern Bell's intrastate investment and expense is necessary to properly and equitably set intraLATA access charges and toll rates in the future, particularly if those charges and rates are to have any relation to the costs of providing those services.

ACCESS ADJUSTMENT RATE

The study committee report proposed the adoption of an access adjustment rate. The access adjustment rate is designed to recover the difference between the independent local exchange company's intrastate toll revenue requirement and the revenue received by the independent local exchange company from access charges plus the amount of non-traffic sensitive support reduction approved by the Commission. While we find merit in the use of the access adjustment rate for intraLATA access charges, we are not adopting it as an interLATA access charge.

Because access charges have not been used on an intraLATA basis, we have no history as to the revenue impact each of the independent local exchange companies will experience as a result of

the transition from settlements to bill and keep access charges. In addition, because we have no intraLATA cost information available, we have set intraLATA access charges for the intial period equal to the approved level of interLATA access charges. We would expect, however, that interLATA and intraLATA access costs might vary particularily since we have approved different sized reductions in non-traffic sensitive contributions from intraLATA and interLATA toll. We, therefore, find that use of an access adjustment rate is an appropriate mechanism for the transition from intraLATA settlements to intraLATA access charges.

Prior to each calendar year each independent local exchange company shall calculate an intraLATA access adjustment rate for that calendar year as follows:

Estimated Intrastate Intralata Toll Revenue Requirement

Minus:	Estimated intralata traffic sensitive access charge revenue
Minus:	Estimated intralata non-traffic sensitive access charge revenue
Minus:	Estimated revenues from separate contracts for facilities included in state toll revenue requirements
Minus:	Estimated intralata non-traffic sensitive support reduction
Equals:	Estimated Access Adjustment

The estimated access adjustment will be divided by the projected intraLATA carrier common line access minutes to derive the access adjustment rate. Positive access adjustment rates will be paid by the designated carrier to the local exchange company based upon actual carrier common line access minutes each month. Negative access adjustment rates will be paid to the designated carrier by the local exchange company based on actual carrier common line access minutes each month.

In developing the intraLATA toll revenue requirement, the local exchange company should use an acceptable costing methodology provided the revenue requirement derived therefrom does not exceed those amounts which would be arrived at by the application of the methods prescribed in Parts 67 and 69 of the FCC rules. As FCC rules are revised to reflect the implementation of the FCC High Cost Fund, intraLATA toll revenue requirements shall be analyzed to prevent the double recovery of intrastate costs. In cases where intrastate settlement allocation percentages for common costs associated with traffic recording, identification, billing and collecting, and operation functions change for reasons other than changing traffic patterns, those percentages shall not exceed those which would have been applicable for the latest 12 month study period ending prior to April 1, 1985. The rate of return used to calculate the revenue requirement shall be eleven percent (11%) until changed by the Commission. The designated carrier shall have the right to review the data and procedures used to calculate the revenue requirement and the access adjustment rate.

At the conclusion of each year's business, actual data will be used in place of the estimated amounts in the calculation of the access adjustment rate by each local exchange company. A net true-up payment will be made by the designated carrier (or vice versa) for the difference between the estimated annual access adjustment rate and the actual access adjustment rate.

Those local exchange companies that currently settle with Northwestern Bell on an average schedule basis, may use as a surrogate for the estimated intrastate intraLATA toll revenue

requirement, the amount they received during 1984 for intraLATA compensation.

We are not adopting the study committee's proposal to implement an access adjustment rate for interLATA toll traffic. Unlike intraLATA traffic, we have experience with the use of access charges for interLATA compensation. While some of the local exchange companies may have suffered a revenue loss when bill and keep access charges were implemented, those carriers have presumably adjusted their local exchange rates to maintain their revenue requirement. Initiation of an access adjustment rate would in effect allow a double recovery of the shortfall. Furthermore, we view the access adjustment rate as only a transition mechanism from settlements to access charges; that transition has already been made at the interLATA level. Implementation of an access adjustment rate for interLATA traffic would be a step backward. Since we are limiting the local exchange rate adjustment to a level substantially less than that recommended by the study committee, any impact on local exchange rates by not implementing the interLATA access adjustment rate will be significantly less than if the study committee's recommendation were adopted in full.

LOCAL EXCHANGE RATE ADJUSTMENT

Each local exchange company subject to the ratemaking jurisdiction of the Commission may raise its local exchange rates by an amount not to exceed $ .90 per month per access line to recover the revenue lost through the reduction of intraLATA and interLATA non-traffic sensitive contribution and other rate adjustments approved

in this order. The authority to increase local exchange rates is limited, however, to the extent that a local exchange company may not increase its rates beyond the level necessary for it to achieve the rate of return authorized by the Commission in the company's most recent general rate proceeding. The local exchange carriers are put on notice that we will examine the rates of return earned by the companies and that we intend to investigate the rates of any company that increases its local exchange rates beyond a level necessary to maintain its authorized rate of return.

LIMITATION ON NON-TRAFFIC SENSITIVE SUPPORT REDUCTIONS

We have approved reductions in the level of non-traffic sensitive support from both intraLATA and interLATA toll traffic. The reductions have been based on an amount per subscriber access line. We further find that the amount of these reductions should be limited in that the level of non-traffic sensitive support an local exchange company receives from intraLATA and interLATA toll traffic shall not be less than the revenue the local exchange company would receive if the level of non-traffic sensitive contribution from intraLATA and interLATA traffic were calculated on a subscriber line usage factor, excluding category 6 central office equipment and customer premise equipment.

CONTINUATION OF STUDY COMMITTEE

The exchange carrier study committee spent numerous hours over the past two years studying a number of telephone issues including those that led to the study committee's recommendations in this proceeding. While we have not adopted all of the committee's recommendations, the committee's report has provided us invaluable

assistance in this proceeding. It provided a focus for not only the issues but also the solutions to the problems addressed. Probably most importantly, it narrowed the areas of disagreement among the parties.

While we cannot delegate our decision making responsibility to this or any other committee, we urge the study committee to continue its work of studying toll and access charge rate issues and presenting recommendations to us both for any revisions during the two year period of 1986 and 1987, as well as the years following.

From the foregoing Findings of Fact, the Commission makes the following:

CONCLUSIONS OF LAW

1. The local exchange companies and AT&T are telecommunications companies subject to the jurisdiction of this Commission except insofar as certain of the exchange companies have elected not to be subject to the Commission's rate jurisdiction pursuant to the laws of North Dakota. Such non-rate regulated local exchange companies are, however, subject to the Commission's jurisdiction over carrier interconnection compensation. The Commission has jurisdiction of this proceeding.

2. The access charge arrangements approved in the Findings of Fact provide a reasonable level of interconnection compensation for intrastate toll service.

3. To the extent the complaint of AT&T is not satisfied by the adjustments approved in this order, AT&T has failed to sustain its burden of proof on its complaint and that complaint should be dismissed.

From the foregoing Findings of Fact and Conclusions of Law, the Commission issues the following:

ORDER

1. The North Dakota local exchange companies and inter-exchange companies shall file access charge and toll rate proposals in accordance with our Findings of Fact.

2. The Complaint of AT&T is dismissed.

Dated at Bismarck, North Dakota, this 8th day of October, 1985.

PUBLIC SERVICE COMMISSION

(S E A L)

Leo M. Reinbold, President

Dale V. Sandstrom, Commissioner

Bruce Hagen, Commissioner

ATTEST:

Secretary

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

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AT&T Communications of the Midwest, Inc., Complainant, vs. Absaraka Coop. Tele. Co., et al, Respondents.	Case No. 10,694
	SUPPLEMENTAL ORDER
In the Matter of the Investigation of North Dakota Access Charges and Inter-company Compensation for the Provision of Intrastate Toll Service.	Case No. 10,699

Our Order of October 8, 1985, directed that $.15 per month per access line of the local exchange rate adjustment approved in that Order was to be used to reduce the level of non-traffic sensitive support assessed to interexchange carriers. The interexchange carriers were directed to submit for our review within 60 days proposals for flowing this reduction through to interlata toll users. This portion of the local exchange adjustment was to become effective on January 1, 1986, or the effective date of the rate reduction proposal adopted by the Commission, whichever was later.

AT&T Communications of the Midwest, Inc., which is presently the only certified interexchange carrier in North

Dakota, has submitted a rate reduction proposal in accordance with our order. The reduction proposal suggests various adjustments to the existing mileage rates for interlata calls.

While we are in general agreement with rate reduction concept proposed by AT&T, we are unable to give full review and approval of the proposal at this time. We are unable to adopt a final reduction plan or an effective date for such a plan until we have determined the overall revenue impact of both the access charge adjustments to be filed by the local exchange companies and the rate reduction plan filed by AT&T. The local exchange companies, however, need our approval at this time for implementation of the local rate adjustment so they can properly prepare their tariffs and billing systems for implementation of the adjustment on January 1, 1986.

We are, therefore, allowing the local exchange companies to implement their local exchange rate adjustments effective January 1, 1986. An interlata toll rate reduction plan will be considered for implementation after we have fully reviewed the revenue impacts of the rate reduction proposal filed by AT&T and access charge adjustments to be filed by the local exchange companies. Accordingly,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Order in these proceedings dated October 8, 1985, are amended and supplemented to authorize the local exchange companies to implement effective January 1, 1986, the local

exchange rate adjustments as if the interlata toll rate reduction plan had been approved.

Dated at Bismarck, North Dakota, this 9th day of December, 1985.

(S E A L

PUBLIC SERVICE COMMISSION:

Leo M. Reinbold, President

ATTEST:

Janet Elkin
Secretary

Dale V. Sandstrom, Commissioner

Bruce Hagen, Commissioner

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

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AT&T Communications of the Midwest, Inc., Complainant, -vs- Absaraka Coop. Tel. Co., et al, Respondents.	)	Case No. 10,694
	)	SECOND SUPPLEMENTAL ORDER
In the Matter of the Investigation of North Dakota Access Charges and Intercompany Compensation for the Provision of Intrastate Toll Service.	)	Case No. 10,699

In our Order of October 8, 1985, we directed the local exchange companies to reduce the level of access charges assessed to interLATA interexchange companies for non-traffic sensitive plant support. We directed the local exchange companies to reduce interLATA billing, collecting, and access charges to interexchange carriers by an amount equal to the projected annual revenue received from the local rate adjustment approved in our Order. We limited the amount of the reductions, however, by finding that the resulting level of non-traffic sensitive support a local exchange company receives from intraLATA and interLATA toll traffic shall not be less than the revenue the local exchange company would receive if

non-traffic sensitive support were calculated on a subscriber line usage factor, excluding category 6 central office equipment and customer premise equipment.

At the time of our Order, it was expected that the proposed reductions would not lower the level of non-traffic sensitive support below a level calculated on a subscriber line usage factor, except in possibly a few isolated instances. It now appears that the proposed reductions would lower the level of non-traffic sensitive support below a subscriber line usage level for nearly all of the local exchange companies. Accordingly, the calculation of the appropriate subscriber line usage factor becomes critical. In particular, a question has arisen regarding the appropriate manner of calculating non-traffic sensitive costs and a subscriber line usage factor for those companies that usually calculate costs on an "average cost" basis.

We believe that ideally costs and cost allocation factors should be determined based upon each company's actual costs and experience, rather than on "average costs". We recognize, however, that this objective may be unrealistic and impose a hardship on a number of the smaller companies in complying with the time frames of our Order. We further recognize that the benefits of using actual costs and usage characteristics are

reduced as the size of the company decreases. For these reasons we are allowing those local exchange companies that have fewer than 3,000 access lines, and that calculated costs on an "average" basis during 1983, to calculate non-traffic sensitive costs and subscriber line usage factors on an "average" basis. All other local exchange companies shall calculate non-traffic sensitive costs and a subscriber line usage factor using their actual costs and subscriber usage characteristics.

Those local exchange companies authorized to use "averages" in the calculation of non-traffic sensitive costs and a subscriber line usage factor shall do so using the following formula:

$$\left[\frac{\text{(1984 IntraLATA Schedule A Settlements)X(.61)X (1984 total Intrastate Toll Minutes)}}{\text{1984 IntraLATA Toll Minutes}}\right] X$$

$$\left[\frac{\text{Weighted average intrastate subscriber line usage factor for all local exchange cost companies except Northwestern Bell}}{\text{Weighted average intrastate subscriber plant factor for all local exchange companies except Northwestern Bell}}\right] X$$

$$\left[\frac{\text{1984 InterLATA Toll Minutes}}{\text{1984 total Intrastate Toll Minutes.*}}\right]$$

=InterLata non-traffic sensitive costs based upon a subscriber line usage factor, excluding CPE

*Toll minutes are defined as the originating and terminating minutes from CMDS, form 809, line 32.

To determine the total interLATA subscriber line usage level of non-traffic sensitive costs, the "average" company will add the 1986 level of CPE costs to the number derived in the preceeding formula.

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law, and Order in these proceedings, dated October 8, 1985, are amended and supplemented to authorize the local exchange companies that have fewer than 3,000 access lines, and that calculated costs for settlement purposes on an "average" basis during 1983, to calculate non-traffic sensitive costs and a subscriber line usage factor on an "average" basis in accordance with the terms of this Order.

Dated at Bismarck, North Dakota, this 7th day of January, 1986.

(S E A L)

PUBLIC SERVICE COMMISSION

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Leo M. Reinbold, President

ATTEST:

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Secretary

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Dale V. Sandstrom, Commissioner

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Bruce Hagen, Commissioner

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PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

AT&T Communications of the Midwest, Inc., Complainant, -vs- Absaraka Coop. Tel. Co., et al, Respondents.	)	Case No. 10,694 THIRD SUPPLEMENTAL ORDER
In the Matter of the Investigation of North Dakota Access Charges and Intercompany Compensation for the Provision of Intrastate Toll Service.	)	Case No. 10,699

Our order of October 8, 1985, approved adjustments in the local rates charged by local exchange telephone companies. The revenue generated from these rate adjustments was to be used to reduce access charges assessed by the local exchange companies to carriers of toll calls. The local exchange companies were directed to lower their access charges to intraLATA interexchange carriers by an amount equal to the revenue generated from a local rate adjustment of $.15 per month per access line. Access charges to interLATA interexchange carriers were to be lowered by an amount equal to the revenue generated by a local rate adjustment of $.75 per month per access line.

Our order further directed that an amount equal to $.15 per month per access line be used by the interLATA interexchange carrier (AT&T is the only authorized interLATA interexchange

carrier) to implement a toll reduction plan. We authorized the balance of the reduction in access charges, or $.60 per month per access line, to be retained by AT&T to improve its intrastate earnings level. There was pending before the Commission an application by AT&T to increase its intrastate toll rates to recover a revenue shortfall in its intrastate operations. Our review of the company's application at that time indicated that AT&T would not be able to obtain a reasonable rate of return on its intrastate investment unless MTS rates were increased or access charges decreased. We stated our belief that a general increase in MTS rates would increase the economic incentive of large users to bypass the switched network and also defeat present and proposed discount plans by sending inconsistent signals to toll customers as to the present and future direction of intrastate toll prices. For those reasons, we stated a general increase in interLATA toll rates should be avoided if possible.

At the time of our order, we anticipated that proposed reductions in interLATA access charges would be approximately $2,704,338 on an annual basis. We expected that $540,868 would be used to fund the rate discount program while the balance, or $2,163,470, would be retained by AT&T to offset the company's rate application. Our order, however, placed a limitation on the amount each local exchange company was required to lower its access charges. The order provided that the access charge reductions were to be limited such that the level of non-traffic sensitive support a local exchange company receives from toll traffic should not be less than the revenue the local exchange

company would receive if non-traffic sensitive support contribution from toll traffic were calculated on a subscriber line useage factor, excluding category 6 central office equipment and customer premise equipment.

At the time of our initial order, it was expected that the proposed reductions would not lower the level of non-traffic sensitive support below a level calculated on a subscriber line usage factor except in a few isolated instances. As the local exchange companies began calculating the proposed reductions, however, it became apparent that those reductions would lower the level of non-traffic sensitive support below a subscriber line usage level for nearly all of the local exchange companies. With the determination of the access charge reductions for virtually all of the companies now complete, the reductions, with the subscriber line usage limitation are expected to total $1,777,315 on an annual basis rather than the originally projected amount of $2,704,338.

Since issuance of our initial order, we have also carefully examined the rate increase application of AT&T. The examination, conducted by our staff and consultants, shows that AT&T is experiencing an annual shortfall in its intrastate revenue requirement of $2,993,334. If AT&T were allowed to retain the entire benefit of the access charge changes from our initial order (including changes in billing, collection, and special access charges) an annual revenue shortfall of $700,479 would still be expected.

Clearly, the access charge reductions from our order are not sufficient to both provide revenue relief to AT&T and also

fund a interLATA toll discount plan unless we remove the limitation for the required level of non-traffic sensitive support. This we decline to do.

We also reaffirm our position that a general increase in toll rates would likely defeat the purpose of a toll discount plan and should be avoided if possible. A toll discount plan would serve little purpose if toll rates had to be increased to fund the plan.

We are therefore modifying our initial order in this proceeding to remove our directive that AT&T implement a rate discount plan to flow through to toll customers an amount equal to $.15 per month per access line of the reduced access charges.

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law, and Order in these proceedings, dated October 8, 1985, are amended and supplemented to remove the requirement that the interLATA interexchange carriers implement a rate reduction proposal to flow through reductions in access charges equal to $.15 per month per access line.

Dated this 1st day of April, 1986.

PUBLIC SERVICE COMMISSION

Leo M. Reinbold, President

Dale V. Sandstrom, Commissioner

ATTEST:

Janet Elkin, Secretary

Bruce Hagen, Commissioner

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

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AT&T Communications of the Midwest, Inc., Complainant	)	CASE NO. 10,694
vs.		
Absaraka Coop. Tele. Co., et al, Respondents	)	CASE NO. 10,699
In the Matter of the Investigation of North Dakota Access Charges and Inter-Company Compensation for the Provision of Intrastate Toll Service.	)	SUPPLEMENTAL FINDINGS

Our order of October 8, 1985, stated a belief that the assessment of non-traffic sensitive support payments to the interexchange carrier on a flat rate rather than a minutes of use basis could be one method of discouraging uneconomic bypass by large use customers. We stated that lump sum assessments would also provide the interexchange carrier more flexibility in marketing toll to large volume customers, especially for calls during off-peak periods. We determined it appropriate that non-traffic sensitive support be calculated on a lump sum rather than a minutes of use basis, but asked all parties to report any potential difficulties in the calculation and implementation of lump sum payments before July 1, 1986.

The North Dakota Industry Study Committee, after reviewing several plans for lump sum assessment, concluded such plans would not encourage use of the telephone network, would not

reduce the incentive to bypass the switched network, may even increase the incentive, and would not be self policing to eliminate potential billing disputes between the local exchange companies and the interexchange carriers. The committee suggested the current method of non-traffic sensitive assessment be retained.

AT&T Communications reported it unnecessary to implement lump-sum assessments since the Commission had already taken substantial measures in the access charge order toward preventing uneconomic bypass. Since the Commission directed substantial reductions in the level of non-traffic sensitive assessment and prevented the application of a non-traffic assessment on the closed end of WATS and 800 services, any additional gain in preventing bypass thru implementation of lump-sum assessments would be small.

The industry committee also implied potential problems with all methods used to allocate non-traffic sensitive cost between interexchange carriers and with any methods used by the local exchange companies to determine the appropriate level of non-traffic sensitive support that interexchange carriers should provide.

The responses of the industry committee and AT&T Communications have convinced us that lump-sum assessments for non-traffic sensitive contribution should not be implemented at this time.

We are, therefore, allowing the local exchange companies to continue to assess non-traffic sensitive costs on a usage sensitive basis through the approved carrier common line access charges.

Dated at Bismarck, North Dakota, this 7th day of August, 1986.

(S E A L)

PUBLIC SERVICE COMMISSION

Leo M. Reinbold, President

Dale V. Sandstrom, Commissioner

ATTEST:

Janet Elkin
Secretary

Bruce Hagen, Commissioner

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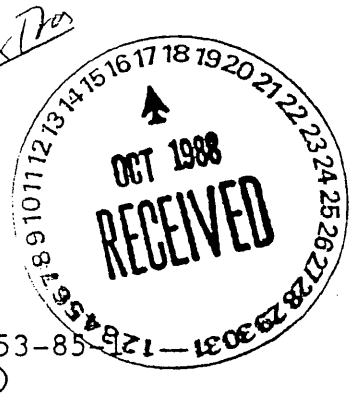

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

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In the Matter of the Complaint of AT&T Communications of the Midwest, Inc. Concerning Access Charges of the Local Exchange Companies in North Dakota.	DOCKET PU-453-85-1 (10,694)
In the Matter of the Investigation of North Dakota Access Charges and Intercompany Compensation for the Provision of Intrastate Toll Service.	DOCKET PU-439-85-1 (10,699)
	FOURTH SUPPLEMENTAL ORDER

Our order of October 8, 1985, directed new access charges that are assessed by the local exchange companies to carriers of toll calls. Our order also directed that a) by July 1, 1986, Northwestern Bell Telephone Company (NWB) file a fully distributed cost study for it's switched access services, b) that by January 1, 1987, NWB have new embedded cost based switched access service rates in effect and all other local exchange companies mirror those rates, and c) by May 1, 1987 the local exchange companies report to the Commission on the desirability of company specific cost based switched access service rates or if they should continue to mirror NWB rates.

NWB provided a fully distributed cost study for it's switched access services and also provided an incremental cost study. The studies revealed that some of the rates for individual switches services could be adjusted. Some of them

could be increased and others decreased. The Commission did not require that NWB adjust it's access charges at that time, and will not require adjustments at this time. However, NWB may apply to the Commission to change it's access rates whenever it wishes.

On April 21, 1987 the North Dakota Industry Study Committee responded that mandatory concurrence with another company's tariff is not justified and that requiring all company's to file cost based tariffs is equally not justified. The committee further stated that the decision to mirror NWB's tariff or file its own cost based tariff rates should rest entirely with the local exchange company.

The responses of the industry committee have convinced the Commission that there is no need for mandatory concurrence of NWB's switched access tariff. We would also like to make it clear that the Commission does not preclude a company from applying to the Commission to establish it's own cost based access rates.

The responses of the industry committee have also convinced the Commission that mandatory filing of cost based access charges should not be directed at this time.

CONCLUSIONS OF LAW

The local exchange companies and AT&T are telecommunications companies subject to the jurisdiction of

this Commission except insofar as certain of the exchange companies have elected not to be subject to the Commission's rate jurisdiction pursuant to the laws of North Dakota. Such non-rate regulated local exchange companies are, however, subject to the Commission's jurisdiction over carrier interconnection compensation. The Commission has jurisdiction of the proceeding.

Having reviewed the issues in this proceeding, the Commission issues the following:

ORDER

This case is terminated.

Bismarck, North Dakota, October 14, 1988.

(S E A L)

PUBLIC SERVICE COMMISSION

Dale V. Sandstrom, President

Bruce Hagen, Commissioner

ATTEST:

Janet A. Elkin
Secretary

Leo M. Reinbold, Commissioner

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Access Charges
Investigation

Case No. PU-439-89-487

NOTICE OF PROPOSED FOURTH SUPPLEMENTAL ORDER

November 21, 1989

On December 13, 1983, a North Dakota Public Service Commission (Commission) order in Case No. 10,444 directed that an ongoing study group, made up of Northwestern Bell Telephone Company and independent company representatives, be formed to develop long-term recommendations for intercompany compensation and charges for intrastate long distance service.

On October 8, 1985, the Commission adopted an order in Case No. 10,694 and Case No. 10,699 (order). These cases concerned the methods of intercompany compensation for the provision of intrastate long distance service.

The order required a continuation of interLATA long distance compensation through carrier access charges. The order directed the implementation of intraLATA access charges equal to the local exchange company's interLATA access charges. In addition, the Commission adopted a rate element for intraLATA access compensation called the access adjustment rate. The access adjustment rate was designed to recover the difference between the independent local exchange company's intrastate intraLATA long distance revenue requirement and the revenue received by the independent local exchange company from access charges. A net true up was also provided by the order to insure the local exchange company receives its actual revenue requirement. In developing its intraLATA long distance revenue requirement, the local exchange company was directed to use an acceptable costing methodology provided the revenue requirement derived therefrom not exceed those amounts which would be arrived at by the application of the methods prescribed in Parts 67 and 69 of the Federal Communications Commission (FCC) rules.

In Case Nos. 10,694 and 10,699, there were also three supplemental orders and one supplemental finding of fact. The first supplemental order concerned adjustments needed as a result of interLATA access rate reductions. The second supplemental order concerned calculation of non-traffic sensitive costs and a subscriber line usage factor on an "average" basis for certain companies. The third supplemental order concerned a flow through of access charge reductions. The supplemental findings of fact concerned lump sum assessments for non-traffic sensitive costs.

Since the date of the order and its supplements, the FCC has adopted a new system of accounts (47 CFR Part 32) for interstate access charge ratemaking and a corresponding new cost separations manual (47 CFR Part 36). The FCC continues to prescribe the use of Part 69 for allocating long distance costs to specific categories of services.

In its rules the Commission adopted by reference 47 CFR Part 32. This renders the use of the FCC's old Part 67 cost separations manual administratively cumbersome.

By letter dated September 15, 1989, the industry study group requested that the Commission adopt a modified form of the FCC's current cost separation rules for use in North Dakota.

To accomplish this, the Commission proposes to adopt a Fourth Supplemental Order in Case No. 10,694 and Case No. 10,699 to modify the existing Commission order relating to the acceptable costing methodology by which companies can derive their intraLATA toll revenue requirement for intraLATA access charges.

The Fourth Supplemental Order would adopt the use of the FCC's Part 36 cost manual retroactively to January 1, 1988. Part 36, Subpart F: Universal Service Factor, and Subpart G: Lifeline Connection Assistance Expense Allocation would not be adopted as they do not apply to North Dakota intrastate separations. In addition, the Fourth Supplemental Order would include the following modifications to the FCC's Part 36:

1. References to separations between interstate and state jurisdiction would be considered references to separations between exchange and intrastate long distance and/or between exchange and intrastate access.

3. Category 3 central office equipment will be allocated using the DEM factor (dial equipment minutes) multiplied by a weighting factor. Each company's individual DEM weighting factor will result in a January 1, 1988 allocation level equivalent to the combined allocation level that would have resulted from using the 47 CFR Part 67 methods for allocating Central Office Equipment categories 4, 5, 6, and 7 on December 31, 1987. The weighting factors determined by the industry are:

DEM Weighting Factors
for Allocating Category 3 COE

Company	Weighting Factor
BEK	1.853962
Consolidated	1.789920
Contel	1.817690
Dakota Central	1.868306
Dickey Rural	1.724258
Inter-Community	1.540553
Midstate	1.477800
Northwest Communications	1.576550

Polar	1.816500
Reservation	1.847177
Souris	1.540257
United	1.950225
West River	1.508710
Northwestern Bell	1.558900

4. Non-traffic sensitive costs will be allocated using rules already adopted by the Commission in case numbers 10,444 and 10,694 and 10,699.

The Commission will retain authority to reexamine the issue in the future.

Those interested are invited to comment on this proposed supplemental order in writing. Anyone desiring a hearing must file a written request identifying his interest in the proceeding and the reasons for requesting a hearing. Comments and requests for hearing must be received by December 29, 1989. If deemed appropriate, the Commission can determine the matter without a hearing.

The Commission believes statewide public notice can best be achieved by publishing the notice in North Dakota daily newspapers. Therefore, the Commission waives that portion of N.D. Admin. Code Section 69-02-04-01 requiring notice to be served on city and county officials across the state, and requiring publication in county newspapers.

For more information, contact the Public Service Commission offices, 12th Floor, State Capitol, Bismarck, North Dakota 58505-0480, or toll free at 1-800-932-2400.

PUBLIC SERVICE COMMISSION

Dale V. Sandstrom, President

Bruce Hagen, Commissioner

Attest:

Janet Elkin, Secretary

Leo M. Reinbold, Commissioner

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Access Charges
Investigation

Case No. PU-439-89-487
(Case Nos. 10,694 and 10,699)

FOURTH SUPPLEMENTAL ORDER

January 9, 1990

Preliminary Statement

On November 21, 1989, the Public Service Commission (Commission) issued a Notice of Proposed Fourth Supplemental Order. In the Notice the Commission proposed to modify its order in Case No. 10,694 and Case No. 10,699 by adopting a modified version of the Federal Communication Commission's (FCC) Part 36 cost separations manual. This modified manual would be the acceptable costing methodology by which companies can calculate their maximum intraLATA toll revenue requirement for intraLATA access charges.

The Commission gave interested parties opportunity to file objections or requests for hearing before the Commission in this matter on or before December 29, 1989. The Commission also gave notice that it could decide the matter without hearing. The deadline has passed and no objections or requests for hearing were received. AT&T Communications (AT&T) and West River Mutual Aid Telephone Corporation (West River) filed comments. After reviewing the comments submitted in this case, the Commission makes the following:

On December 13, 1983, a North Dakota Public Service Commission (Commission) order in Case No. 10,444 directed that an ongoing study group, made up of Northwestern Bell Telephone Company and independent company representatives, be formed to develop long-term recommendations for intercompany compensation and charges for intrastate long distance service.

On October 8, 1985, the Commission adopted an order in Case No. 10,694 and Case No. 10,699 (order). These cases concerned the methods of intercompany compensation for the provision of intrastate long distance service. In determining intrastate intraLATA long distance revenue requirements, the local exchange companies were directed to use an acceptable costing methodology provided the revenue requirement derived therefrom not exceed those amounts which would be arrived at by the application of the methods prescribed in Parts 67 and 69 of the FCC rules.

Since the date of the order, the FCC has adopted a new system of accounts (47 CFR Part 32) for interstate access charge ratemaking and a corresponding new cost separations manual (47 CFR Part 36). The FCC continues to prescribe the use of Part 69 for allocating long distance costs to specific categories of services.

By rulemaking, this Commission adopted by reference 47 CFR Part 32 making the use of the FCC's old Part 67 cost separations manual administratively cumbersome.

By letter dated September 15, 1989, the industry study group requested that the Commission adopt a modified form of the FCC's current cost separation rules for use in North Dakota.

In the Notice the Commission proposed to modify the existing order in Case No. 10,694 and Case No. 10,699 relating to the acceptable costing methodology by which companies can derive their intraLATA toll revenue requirement for intraLATA access charges. The Commission proposed to adopt the use of the FCC's Part 36 cost manual retroactively to January 1, 1988. Part 36, Subpart F: Universal Service Factor, and Subpart G: Lifeline Connection Assistance Expense Allocation would not be adopted as they do not apply to North Dakota intrastate separations. In addition, the Commission would include the following modifications to the FCC's Part 36:

a. References to separations between interstate and state jurisdiction would be considered references to separations between exchange and intrastate long distance and/or between exchange and intrastate access.

b. Category 3 central office equipment would be allocated using the DEM factor (dial equipment minutes) multiplied by a weighting factor. Each company's individual DEM weighting factor would result in a January 1, 1988 allocation level equivalent to the combined allocation level that would have resulted from using the 47 CFR Part 67 methods for allocating Central Office Equipment categories 4, 5, 6, and 7 on December 31, 1987. The weighting factors determined by the industry would be:

DEM Weighting Factors
for Allocating Category 3 COE

Company	Weighting Factor
BEK	1.853962
Consolidated	1.789920
Contel	1.817690
Dakota Central	1.868306
Dickey Rural	1.724258
Inter-Community	1.540553
Midstate	1.477800
Northwest Communications	1.576550
Polar	1.816500
Reservation	1.847177
Souris	1.540257
United	1.950225
West River	1.508710
Northwestern Bell	1.558900

c. Non-traffic sensitive costs would be allocated using rules already adopted by the Commission in case numbers 10,444 and 10,694 and 10,699.

The Commission would retain authority to reexamine the issue of separations in the future.

West River responded to the Commission's Notice on November 29, 1989. The company provided data showing that its DEM weighting factor should be 2.03763 rather than 1.50871. AT&T Communications responded to the Commission's Notice on December 29, 1989. AT&T comments that no DEM weighting factor should be specified for Northwestern Bell since a) Northwestern Bell does not use separated cost methodologies for the costing and pricing of access charges, b) Northwestern Bell access charges are now subject to the essential telecommunications price factor set forth in Senate Bill 2320, c) weighting factors are totally arbitrary, and d) that at the interstate level the weighting factors are used to provide subsidies to benefit small local exchange companies and are not intended for large companies such as Northwestern Bell.

The Commission's proposal in this case does not require Northwestern Bell to use the separated cost methodology for the pricing of access charges. The Commission's proposal does set the Commission methodology used to determine the maximum rate a company may charge for intraLATA access. This order does not require that intraLATA access rates be set at the maximum level.

While Northwestern Bell access charges are subject to the price factor set forth in Senate Bill 2320, Northwestern Bell may at any time opt not to be subject to Senate Bill 2320. The weighting factors established at the interstate level may be totally arbitrary as AT&T alleges, but this order does not propose the same arbitrary FCC weighting factors. The Commissions proposal modifies the changes in the interstate separations manual represented by the weighting factor in a way that results in no increases of access charges to long distance companies such as AT&T. This means that no subsidies are created by the methodology proposed by the Commission relative to weighting factors for either Northwestern Bell or the other local exchange companies.

Based on the foregoing statement, the Commission makes the following:

Order

1. In developing the intraLATA toll revenue requirement, the local exchange company should use an acceptable costing methodology provided the revenue requirement derived therefrom does not exceed those amounts which would be arrived at by the application of the methods prescribed in Parts 36 and 69 of the FCC rules, modified as described in the Preliminary Statement of this order.

2. The DEM weighting factor for West River Telephone Company is 2.03763.

PUBLIC SERVICE COMMISSION

Dale V. Sandstrom, President

Bruce Hagen, Commissioner

Attest:

Janet Elkin, Secretary

Leo M. Reinbold, Commissioner

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Access Charges
Investigation

Case No. PU-439-90-176
(Case Nos. 10,694 and 10,699)

FIFTH SUPPLEMENTAL ORDER

July 19, 1990

Preliminary Statement

On May 22, 1990, the Public Service Commission issued a Notice of Proposed Fifth Supplemental Order. In the Notice the Commission proposed to modify its order in Case No. 10,694 and Case No. 10,699 by modifying the Dial Equipment Minutes weighting factors adopted in Case No. PU-439-89-487. The weighting factors are part of the cost allocation manual used by North Dakota local exchange companies to determine intrastate revenue requirements. This modified manual would be the acceptable costing methodology by which companies calculate their maximum intraLATA toll revenue requirement for intraLATA access charges.

On December 13, 1983, a North Dakota Public Service Commission order in Case No. 10,444 directed that an ongoing study group, made up of Northwestern Bell Telephone Company and independent company representatives, be formed to develop long-term recommendations for intercompany compensation and charges for intrastate long distance service.

On October 8, 1985, the Commission adopted an order in Case No. 10,694 and Case No. 10,699. These cases concerned the methods of intercompany compensation for the provision of intrastate long distance service.

The order required a continuation of interLATA long distance compensation through carrier access charges. The order directed the implementation of intraLATA access charges equal to the local exchange company's interLATA access charges. In addition, the Commission adopted a rate element for intraLATA access compensation called the access adjustment rate. The access adjustment rate was designed to recover the difference between the independent local exchange company's intrastate intraLATA long distance revenue requirement and the revenue received by the independent local exchange company from access charges. A net true up was also provided by the order to insure the local exchange company receives its actual revenue requirement. In developing its intraLATA long distance revenue requirement, the local exchange company was directed to use an acceptable costing methodology provided the revenue requirement derived therefrom not exceed those amounts which would be arrived at by the application of the methods prescribed in Parts 67 and 69 of the Federal Communications Commission rules.

In Case Nos. 10,694 and 10,699, there are also four supplemental orders and one supplemental finding of fact. The first supplemental order concerned adjustments needed as a result of interLATA access rate reductions. The second supplemental order concerned calculation of non-traffic sensitive costs and a subscriber line usage factor on an "average" basis for certain companies. The third supplemental order concerned a flow through of access charge reductions. The fourth supplemental order concerned the adoption of the Federal Communications Commission's Part 36 cost separations manual, with certain modifications, for use in North Dakota. It set forth the Dial Equipment Minutes weighting factor to be used by each company for allocating Category 3 central office equipment. The supplemental findings of fact concerned lump sum assessments for non-traffic sensitive costs.

By letter dated April 2, 1990, the industry study group informed the Commission that many of the Dial Equipment Minutes weighting factors listed in the Fourth Supplemental Order were incorrect. The industry study group requested that the Commission issue another supplemental order correcting the weighting factors. In its letter, the group suggested an alternative to listing specific weighting factors in the order. The suggestion was to eliminate all references to numbers entirely. The cost companies would freeze the Dial Equipment Minutes weighting factor as of December 31, 1987 based on the method specified in the Fourth Supplemental Order for determining the Dial Equipment Minutes weighting factor.

In its May 22, 1990 notice, the Commission proposed to include the weighting factor numbers in the Fifth Supplemental Order since those numbers are based on calculations using historical data for December 31, 1987. The Commission stated there should be no reason for these numbers to change again.

The notice proposed that the Fifth Supplemental Order would include the following language to modify page 2, paragraph b. of the Fourth Supplemental Order:

b. Category 3 central office equipment will be allocated using the Dial Equipment Minutes factor multiplied by a weighting factor. Each company's allocator will result in a January 1, 1988, category 3 central office equipment allocation equivalent to the combined allocation level that would have resulted from using the 47 CFR Part 67 methods for allocating Central Office Equipment categories 4, 5, 6, and 7 on December 31, 1987. The weighting factor will remain frozen at the December 31, 1987, level for future intrastate cost separations. The weighting factors are:

Dial Equipment Minutes Weighting Factors
for Allocating Category 3 COE

Company	Intrastate/IntraLATA Frozen Dial Equipment Minutes Weighting Factor
BEK	1.874186
Consolidated	1.761582

Contel	1.887990
Dakota Central	1.868306
Dickey Rural	1.746873
Inter-Community	1.545822
Midstate	1.483800
Northwest Communications	1.545166
Polar	1.868100
Reservation	1.774393
Souris	1.515728
United	1.942028
West River	2.158639
Northwestern Bell	1.558900

The Commission gave interested parties opportunity to file objections or requests for hearing before the Commission in this matter on or before June 25, 1990. The Commission also gave notice that it could decide the matter without hearing. The deadline has passed and no objections or requests for hearing were received.

Based on the foregoing statement, the Commission makes the following:

Order

1. Page 2, paragraph b. of the Fourth Supplemental Order is modified as described in the Preliminary Statement of this order.

PUBLIC SERVICE COMMISSION

Dale V. Sandstrom, President

Bruce Hagen, Commissioner

Attest:

Janet Elkin, Secretary

(Absent)

Leo M. Reinbold, Commissioner

pjf/sdh

ATTACHMENT 2

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Rochester on May 19, 2004

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
Leonard A. Weiss
Neal N. Galvin

CASE 03-C-1285 - Complaint of Frontier Telephone of Rochester, Inc. Against Vonage Holdings Corporation Concerning Provision of Local Exchange and InterExchange Telephone Service in New York State in Violation of the Public Service Law.

ORDER ESTABLISHING BALANCED REGULATORY FRAMEWORK FOR VONAGE HOLDINGS CORPORATION

(Issued and Effective May 21, 2004)

BY THE COMMISSION:

INTRODUCTION AND SUMMARY

In September 2003, Frontier Telephone of Rochester, Inc. (Frontier) filed a complaint alleging that Vonage Holdings Corporation (Vonage) is a telephone corporation under New York State Public Service Law (the PSL or Public Service Law), but has not obtained the Certificate of Public Convenience and Necessity (CPCN) required by PSL §99(1) and is violating various statutes, rules and Commission policies. Frontier asks that we order Vonage to cease offering local exchange and intrastate long distance services in New York until it has obtained a CPCN and complied with all relevant state regulatory requirements. Frontier also asks that Vonage be required to route all "911" calls over dedicated "911" networks and participate fully in "enhanced 911" (E911) services where they are available.

Vonage claims that it is not a telephone corporation as defined by the Public Service Law and that, as its service is an "information service" under federal law, state regulation is pre-empted. On October 9, 2003, noting that it "raises generic concerns that could affect a number of entities," we issued a notice requesting comments on the Frontier complaint.

Based on our review of the complaint and comments received, we find that in offering and providing its Digital Voice[SM] service in New York, Vonage is a "telephone corporation" as defined in the PSL and is, therefore, subject to basic statutory requirements. We also find that such state regulation is not pre-empted by current federal laws or rules, and that additional process is appropriate before establishing a balanced regulatory framework consistent with the competitive landscape in which Vonage's offering is provided.

Although the Commission has the authority to regulate telephone services, such as those provided by Vonage, we also have an interest in ensuring that such regulation does not needlessly impose costs that interfere with the rapid, widespread deployment of new technologies. We seek to maximize the benefits of new technologies, while minimizing the risks to the public interest, by imposing as little regulation as is necessary to ensure that our core public interest concerns, including most prominently public safety and network reliability, are addressed. In the past, we have achieved this balance by relaxing regulatory requirements, to the extent allowed by law, on entities lacking size or market power. For example, we have provided extensive pricing flexibility for competitive services and imposed minimal service quality and financial reporting requirements on small and non-dominant carriers, similar to Vonage. We will continue to use this approach in dealing with today's evolving technologies and markets.

Vonage is a relatively small competitive provider of local exchange and interexchange services that should be subject to, at most, the same limited regulatory regime to which comparable circuit switched competitive carriers are currently subject in New York. Vonage will be directed to obtain a CPCN (§99) and file a tariff (§92)[1] as

[1] A model tariff is available on the Department's web site.

required under the Public Service Law, within 45 days of this Order. It may also seek waiver of any Commission regulations it deems inappropriate.[2]

In making our decision, we determined that it is in the public interest to move cautiously in terms of defining a regulatory environment for Vonage's service. To that end, we are deferring any regulatory requirements for a reasonable period to permit Vonage to apply for a CPCN and file rate schedules. During this 45-day period, Vonage is also permitted to seek permanent and/or temporary waivers of any regulations it deems to be inappropriate in its circumstance, or with which it is not readily able to comply. Further, we will not enforce our rules and regulations with regard to Vonage's service pending our evaluation of Vonage's potential waiver requests.

The company is also encouraged to work with Staff to develop alternative means, where appropriate, of achieving necessary public safety and consumer protections. That process will allow development of a sufficient factual basis for us to ensure that our core public policy interests are satisfied without unnecessarily interfering with the development of new services and technology deployments.

DESCRIPTION OF THE SERVICE

Voice Over Internet Protocol

Voice over Internet Protocol (VoIP) is a technology developed to enable voice communication over networks, including the public Internet, that utilize the Internet Protocol (IP). VoIP converts voice conversations into digital packets that are transmitted over IP networks. It can be used in many configurations to provide telephone services. For example, VoIP has for several years been deployed in the network backbone and in private corporate networks allowing those network operators to achieve cost savings by converging voice and data traffic on one platform. Cable companies are using VoIP to roll out stand-alone telephone services over their existing fiber-coax cable

[2] The Commission is authorized to grant waivers of its rules and regulations pursuant to 16 NYCRR §3.3(c).

networks.[3] Other companies, such as Vonage, use VoIP to provide voice communications over a customer's existing high-speed Internet access service, providing the customer a normal telephone number and the ability to call any phone in the world. Still others, such as Pulver and Skype, provide VoIP-based software to enable voice communications between member users on the Internet. Traditional telephone companies, such as AT&T, are also using VoIP technology to carry calls between switches on their long-haul networks. Even traditional local carriers, such as Verizon, can use VoIP technology for their interoffice traffic.

Vonage's Digital Voice[SM]

The Vonage Digital Voice[SM] service enables its subscribers to complete telephone calls to other Digital Voice[SM] subscribers over the public Internet and to users of any public telephone networks in the world. To place a call, a Vonage customer typically uses a normal telephone and dials a standard telephone number. The number and voice are "digitized" into IP packets by a Multimedia Terminal Adapter (MTA) and transmitted using VoIP and the customer's broadband Internet connection to a Vonage gateway server. If the call is to another Vonage customer, the call is completed to the called party over the Internet. If the call is to a non-Vonage customer, the Vonage server converts the packetized information into a Time Division Multiplexed (TDM) signal to enable completion to the called party via connections through one or more common carriers (incumbent and competitive local exchange carriers and/or interexchange carriers). When a non-Vonage customer calls a Vonage subscriber, the call is also dialed normally and then traverses the originating carrier's network and perhaps other carriers' networks (all typically using TDM) until it is passed to Vonage, which packetizes the signal and transmits it to the called Vonage customer. Given Vonage's current limited subscriber base, a vast majority of the calls are connected over other carriers' networks.[4]

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[3] For example, Time Warner ResCom of New York, LLC began offering its Digital Phone service in parts of the state under a tariff effective April 1, 2004.

[4] Vonage has about 150,000 customers in the United States and estimates it will have 250,000 customers by the end of 2004. The company estimates it has approximately 10,500 customers with New York billing addresses. (Vonage Comments at p.5)

FRONTIER'S COMPLAINT AGAINST VONAGE

In September 2003, Frontier Telephone of Rochester, Inc. (Frontier) filed a complaint against Vonage[5] alleging that Vonage is providing intrastate telephone services in New York without the CPCN required by PSL §99(1) and is violating various statutes, rules and Commission policies by failing to comply with virtually any other regulatory requirements. Frontier further alleges that Vonage provides unsafe and inadequate emergency calling (911) in violation of PSL §97. Frontier asks the Commission to: (a) order Vonage to cease providing local exchange and intrastate long distance services within the State of New York until it obtains a CPCN and complies with the appropriate statutes, regulations and orders of the Commission for telephone corporations; and (b) direct Vonage to route all 911 calls over the dedicated 911 network without requiring a special 911 subscription and participate fully in "enhanced 911" (E911) services where they are available.

Frontier asserts that "Vonage is a 'telephone corporation' owning, operating or managing a 'telephone line' as defined in §2(17) and §2(18) of the Public Service Law because Vonage operates apparatus and property within the state to conduct the business of affording telephonic communication for hire."[6] In support of its claims, Frontier first cites Vonage's web site representations:

> Use Vonage like you use any telephone
>
> With Vonage, you pick up the phone, hear the dial tone and dial the telephone number of your choice. There are no extra numbers to dial and no special routines to follow. It's that simple. You don't have to be an engineer to use our service.
>
> You can be up and running within minutes of receiving your Vonage package. We send you everything you need to get Vonage phone service,

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[5] Frontier's complaint against Vonage mirrors a similar complaint by the Minnesota Public Utilities Commission (MPUC) against Vonage in that state. A District Court decision in Minnesota which held that the MPUC was preempted by federal law (Vonage Holdings Corp. v. Minnesota Public Utilities Comm'n., 290 F. Supp. 2nd 993 (D. Minn. 2003)) is on appeal before the Eighth Circuit Court of Appeals (Docket No. 04-1434).

[6] Frontier Complaint at 2.

> right down to the extra cable wire. Best of all, there's no technician, no wiring in the walls, and no technical experience needed! Setup usually takes less than 5 minutes.

Frontier then describes the routing of calls to and from a Vonage subscriber as generally discussed above. This, it avers, demonstrates that Vonage "directly owns, operates and manages telephone equipment," specifically the MTA at the subscriber's location and the Vonage gateway server or router. Further, the complaint asserts that "by reselling and integrating the switching and transmission functions of its associated carrier or carriers" to establish connectivity with non-Vonage customers, Vonage manages a "telephone line." Finally, Frontier argues that by porting numbers from other local carriers through its associated CLEC, "Vonage holds itself out to be a complete replacement for a subscriber's telephone service." Frontier notes that, except for mobile radio and cellular services (which Vonage does not claim to use), the PSL does not exempt telephone corporations from Commission authority on the basis of the technologies they use to provide service.

As it believes Vonage is a "telephone corporation" under the PSL, Frontier asserts that Vonage should be required to comply with a number of laws, rules, and orders, including but not limited to:

- the requirement to pay its share of Commission expenses (§18a);
- the requirement to file tariffs for local and intrastate long distance (§92(1));
- the requirement to obtain Commission approval to issue securities (§101 and 16 NYCRR Part 37);
- requirements to provide 911 emergency calling; [7]
- NYSPSC complaint procedures (16 NYCRR Part 12);

[7] Frontier references §97(2) in this regard suggesting the Vonage 911 Service is unsafe and inadequate. In sum, Frontier asks the Commission to confirm that Vonage is a telegraph corporation or telephone corporation and also to find that Vonage 911 service is inadequate pursuant to PSL §97(2).

- rules covering provision, suspension and termination of service (16 NYCRR Part 609);
- the obligation to file NYPSC annual reports as a CLEC (16 NYCRR Part 641);
- the requirement to offer per-line or all-call Caller ID blocking;[8]
- The requirement to enter into traffic exchange agreements; [9]
- Sales tax and 911 surcharges (Tax Law §1105/County Law §305).

COMMENTS

Seventeen parties filed comments and/or replies in response to our request for comment on the Frontier complaint.[10] Vonage and others recommending dismissal of Frontier's complaint focus less on the specific provisions of the Public Service Law than on the proper characterization of the Vonage service under federal law. They also assert that the interstate nature of the service leads to the conclusion that state regulation of this service is, or should be, preempted. These parties conclude that Vonage is not a telephone corporation, does not provide telecommunications service, and thus, is not subject to the various laws, regulations and Commission Orders cited by Frontier. Parties supporting the Frontier complaint generally confirm its claim that Vonage's service is a telephone service under state law and/or a telecommunications service under federal law. Further, a number of parties note that the Federal Communications Commission (FCC) is

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[8] Case 91-C-0428, Proceeding on Motion of the Commission to Investigate New York Telephone Company's Proposal to Institute Caller ID Service, Opinion 92-5 (issued April 9, 1992).

[9] Case 00-C-0789, Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Interconnection Arrangements Between Telephone Companies (Orders issued December 22, 2000, September 7, 2001 and August 16, 2002).

[10] Vonage, Frontier, Time Warner, MCI, AT&T, Level 3, Voice on the Net Coalition, Net2Phone, Point One, Global NAPS, Cablevision Systems Corporation, the Cable Television & Telecommunications Association of New York, Inc., NYSTA, CWA, Sprint, Verizon, and the New York State Attorney General.

in the midst of a similar proceeding and that states (including New York) should not act in advance of the FCC's determination.

Vonage

Vonage argues that the Commission may not impose common carrier regulation on its Digital Voice[SM] because it is not a telecommunications service, but an information service, state regulation of which is preempted. Vonage asserts its service is an information service because it provides a net protocol conversion (from digital IP packets to digital TDM signals or vice versa) and because its subscribers must use "special" customer premises equipment (CPE) to convert acoustic sounds to IP packets (in this case a computer or MTA). Alternatively, Vonage describes its service as an Internet application, regulation of which it argues is forbidden by federal law and policy.

Turning to the state law, Vonage argues that it is not a telephone corporation under the PSL because it does not "own, operate or manage" a telephone line. It argues that it does not own or provide the wires and equipment by which the subscriber connects to the Internet and subsequently from the Internet to the Vonage service; those are provided by unaffiliated third parties. Nor does Vonage own, operate or manage the telephone lines of other common carriers from whom Vonage purchases services to provide its customers telephone numbers and connections to customers of other carriers. The company also asserts that it does not resell those services acquired from other carriers. It does own and operate a media gateway server in a data center in New York City to perform IP-TDM conversions, but argues that this should be treated not as telephone equipment, but as Internet Service Provider equipment.

Finally, Vonage argues that even if we determine it is a telephone corporation, state regulation is preempted because the interstate and intrastate aspects of its service cannot be segregated. This is so, the company maintains, because it is technically impossible to accurately determine whether a given call is interstate or intrastate in nature.

Other Parties

Generally, parties supporting Vonage contend that the service in question is not, or should not be, subject to state regulation. Some, such as the Voice on the Net

(VON) Coalition and Net2Phone, argue that as a matter of policy new Internet-based services should remain relatively free of any regulation, particularly state regulation. Others, including Level 3, argue that the Vonage service is an "information service," not a "telecommunications service," and is, therefore, subject only to the federal jurisdiction.

At the other end of the spectrum, parties including CWA, NYSTA, and the New York State Attorney General argue that, as the functional equivalent of normal telephone service, Vonage's service is clearly telephone service, potentially subject to the full panoply of the Commission's regulations. Verizon contends that although the Vonage service is a telecommunications service, it is predominantly interstate and, therefore, not subject to this Commission's authority. Others, while not directly addressing the legal status of the service, counsel delay until the FCC acts (e.g., MCI) or taking a light-handed approach that recognizes the nascent nature of this new service offering (e.g., Cablevision and Time Warner).

DISCUSSION

The threshold question is whether Vonage is a "telephone corporation" as defined by the Public Service Law. If it is not, the matter ends there; it would not be subject to state telephone regulation. If it is a telephone corporation, we must then examine whether Commission jurisdiction has been preempted. If it has not, we must then consider the appropriate regulatory framework to be applied in New York.

Vonage is a Telephone Corporation Under State Law

Vonage claims that it is not a telephone corporation under New York law because it alleges that it does not own, operate or manage the facilities it uses to provide telephone service. Rather, it claims that all the facilities used are provided by third parties, and the equipment it does own and uses to interconnect call to other carriers' networks does not constitute a "telephone line" under PSL §2(18).

Under the Public Service Law a "telephone corporation" is defined as "every corporation...owning, operating or managing any telephone line or part of telephone line used in the conduct of the business of affording telephonic communication for hire." (PSL §2(17)). The Public Service Law defines "telephone line" as including

"receivers, transmitters, instruments, machines, appliances and all devices,...apparatus, property and routes used, operated or owned by any telephone corporation to facilitate the business of affording telephonic communication...." (PSL §2(18)).

The company is in the business of affording "telephonic communication for hire." Vonage's service allows subscribers to make and receive voice communications with any other telephone subscribers in the world, and its service is marketed as a substitute for "home phone service." Vonage owns and manages equipment (a media gateway server)[11] that is used to connect Vonage's customers to the customers of other telephone corporations via their public networks, as necessary. This equipment constitutes a "telephone line" under the PSL and is used to facilitate the provisioning by Vonage of telephonic communication to customers. Accordingly, Vonage is a "telephone corporation" under our jurisdiction.

Vonage interconnects with, and purchases services and the use of network facilities from other telephone corporations to enable its customers to place calls to, and receive calls from, telephone customers throughout the world. In so doing, Vonage is reselling[12] to its own customers capabilities it acquires from the other, third party, telephone corporations. We have previously determined that entities reselling telephone services are telephone corporations subject to our jurisdiction.[13]

New York's Regulation of Vonage's Service is Not Preempted

Vonage and others claim that state regulation of its service is preempted because: (1) Vonage offers information service under federal law; (2) state regulation of

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[11] A media gateway server is a special router that connects an IP network to a traditional telephone network.

[12] "[A] *reseller of telephone services* is a telephone corporation as defined in the Public Service Law, which shall subscribe to communications services and facilities from a telephone corporation, and which shall re-offer communications services to the public for profit." (16 NYCRR §647.1)

[13] Case 27946, Proceeding on Motion of the Commission Concerning the Removal of Telephone Company Tariff Regulations Which Prohibit or Restrict the Resale and Shared Use of Telephone Services, Order Directing the Filing of Tariff Revisions and Requesting Comments (issued May 25, 1982), Attachment 1.

information services and the Internet is inconsistent with federal law; and (3) the interstate and intrastate aspects of its service cannot be segregated; or (4) its service is an Internet application and Congress declared that the Internet should be free of regulation.

First, Vonage service is not an information service under federal law, despite claims to the contrary. The Telecommunications Act of 1996 [14] (the 1996 Act) defines "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing without change in the form or content of the information as sent and received."[15] The 1996 Act further defines "telecommunications service" as "offering of telecommunications for a fee directly to the public ... regardless of the facilities used."[16]

In contrast, "information service" is defined in the 1996 Act as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service." [17]

The FCC view of the differences between telecommunications services and information services was discussed in its April 10, 1998, Report to Congress on Universal Service.[18] The critical distinction drawn by the FCC in classifying a service as

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[14] Pub. L. No. 104-104, 110 Stat. 56 (1996); encoded at 47 U.S.C. §§ 151 et seq.

[15] 47 U.S.C. §153 (43).

[16] Id., §153 (44).

[17] Id., §153(20).

[18] In the Matter of Federal-State Joint Board on Universal Service, 13 FCC Rcd 11501, CC Docket No. 96-45, FCC No. 98-67 (April 10, 1998) (FCC USF Report or Stevens Report).

either information or telecommunications was whether the provider performed some function that modifies the information, or merely transmits it.[19]

A Vonage customer's voice is transmitted between or among points specified by the customer, without any change in the form or content of the conversation. Nothing is changed, added or subtracted to the conversation in any way. Moreover, its provision of analog-to-IP (and vice-versa) conversion equipment in order to utilize the Internet as a transmission medium ultimately changes neither the form nor content of the caller's information. Consequently, Vonage's service is a "telecommunications service" which can be regulated by the states.

Likewise, Vonage's service is not an information service. It does not offer its customers a capability to manipulate or interact with stored data. Vonage's service merely transmits its users' voices between and among endpoints chosen by the caller. With regard to its argument that it is an information service because it provides a net protocol conversion, the FCC has ruled that when there are protocol conversions at both ends of the call ("no net" protocol conversion), the service is a telecommunications service.[20] Vonage's service involves this type of "no net" protocol conversion. Its adapter and/or software convert its customers' speech into the Internet protocol (IP) data

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[19] Id., at ¶39. The FCC's functional approach to statutory classification as either a telecommunications or information service is consistent with Congress' direction that a service's classification should not depend on the type of facilities used. (See definition in Act, §153 (44), supra). "Its classification depends rather on the nature of the service being offered to customers. Stated another way, if the user can receive nothing more than pure transmission, the service is a telecommunications service." Conversely, "[i]f the user can receive enhanced functionality, such as manipulation of information and interaction with stored data, the service is an information service" (¶ 59). In 2002, we used the FCC criteria to determine if a New York company was an information service provider or a telephone corporation (Case 01-C-1119, Complaint of Frontier Telephone of Rochester Against US DataNet Corporation Concerning Alleged Refusal to Pay Intrastate Carrier Access Charges, Order issued May 31, 2002).

[20] In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, 11 FCC Rcd 21905, 21956, CC Docket No. 96-149, FCC 96-489, First Report and Order and Further Notice of Proposed Rulemaking, at ¶ 106 (December 24, 1996).

format. Vonage's network subsequently converts IP packets back to TDM in order to facilitate calls between its customers and other carriers' telephone subscribers.

Second, neither Congress nor the FCC has preempted state law. Section 601 of the 1996 Act states that the 1996 Act "shall not be construed to modify, impair or supersede Federal, State or local law unless expressly so provided."[21] While Voice on the Net Coalition argues that §230(b)[22] of the Act preempts state regulation of IP telephony, this argument incorrectly states the intent of §230. Section 230 is entitled "Protection for private blocking and screening of offensive material," and is intended to address the content of speech transmitted over the Internet rather than traditional common carrier regulation.

Moreover, the FCC has not acted to preempt state law. While not binding, the FCC's report to Congress tentatively concluded that "phone-to-phone" IP telephony appears to be a telecommunications service.[23] It makes no definitive statements, however, as to the statutory classification of other types of IP telephony.[24] Instead, the FCC deferred classification of specific IP telephony services to further proceedings.[25] More recently, in a Notice of Proposed Rulemaking, the FCC initiated a global proceeding to investigate in detail the classification and appropriate regulation of the various forms of IP-enabled services, including Vonage-type services.[26] Thus, Vonage's argument that state regulation conflicts with FCC findings is, at best, premature.

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[21] The 1996 Act, §601(c)(1); encoded at 47 U.S.C. §152 note, supra.

[22] "It is the policy of the United States—(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;"

[23] FCC USF Report, supra, at ¶ 90.

[24] Id., at ¶¶ 3, 83.

[25] Id., at ¶ 91.

[26] In the Matter of IP-Enabled Services, WC Docket No. 04-36, FCC No. 04-28 (March 10, 2004) (Notice of Proposed Rulemaking).

Even if the FCC were to classify Vonage's service as an information service, the Commission would not be preempted from regulating its intrastate aspects. The Communications Act §152 (b) expressly preserves state jurisdiction over intrastate information services.[27]

Third, Vonage claims that the impossibility doctrine and the FCC's mixed use rule preempt state regulation of VoIP services such as those provided by Vonage. The impossibility doctrine holds that state jurisdiction over intrastate communications is preserved unless it is impossible to separate the interstate and intrastate aspects of a service, and state regulation would negate the FCC's lawful exercise of its authority over interstate communications.[28] The FCC has the burden of showing that its rules preempt only state rules that actually interfere with its goals.[29] It has made no such declaration.

Moreover, Vonage's claim that it is technically impossible to separate intrastate and interstate regulation of its services is incorrect. The company's "Unlimited Local Plan"[30] allows customers unlimited local and regional calling and up to 500 minutes of long distance calls. By implementing this plan, the company has shown that it can distinguish local calls from long distance calls. Consequently, it is not impossible to separate intrastate and interstate calls.

The FCC's mixed use rule also does not apply to Vonage. The FCC established the mixed use rule as a way to establish the appropriate jurisdiction over special access lines where it was impractical to determine the jurisdictional status of the

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[27] California v. FCC, 905 F.2d 1217, 1240 (9th Cir. 1990). See also, In the Matter of Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service, WC Docket No. 03-45, FCC No. 04-27, n.72 (February 19, 2004) (Memorandum Opinion and Order) (Pulver),where the FCC stated that its regulation does not extend to "purely *intrastate*" information services.

[28] Louisiana Public Service Comm'n v. FCC, 476 U.S. 355, 375, n 4 (1986).

[29] California v FCC, supra., at 1243.

[30] Vonage web site at www.vonage.com.

traffic.[31] It was not used by the FCC for any purpose other than allocating special access jurisdiction[32] and, therefore, is inapposite to Vonage's service.

Finally, the claim that our jurisdiction is preempted because Congress declared that the Internet should be free of regulation misreads the Act. As we stated above, §230 is aimed at the content of speech on the Internet and does not affect states' application of traditional common carrier regulation.

APPROPRIATE REGULATORY FRAMEWORK

The state's interest in maintaining capable, robust, and efficient telecommunications networks is self-evident. Those networks enable communications that are vital in the provision of essential public services – e.g., public safety, security and health care. Telecommunications are essential in averting and responding to man-made and natural disasters. State and local emergency response organizations depend on reliable telecommunications to marshal resources and direct recovery efforts. Individuals rely on public communications networks for their own safety and peace of mind in emergency situations. The Commission also has a responsibility to ensure that the public has ubiquitous access to effective and efficient 911/E911 emergency calling capabilities that meet the needs of emergency response organizations. The events of September 11,

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[31] See In the Matter of MTS and WATS Market Structure Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, 4 FCC Rcd 5660 (July 20, 1989) (Decision and Order). The FCC found that the costs for these mixed use lines should be assigned to the state jurisdictions because the lines carried predominantly intrastate traffic, with only small amounts of interstate traffic. Rather than shifting the costs to the federal jurisdiction because of some interstate traffic, or allocating the costs by some burdensome verification requirements, the FCC adopted a rule that if the lines carried only *de minimis* (less than 10%) interstate traffic, their costs should be allocated to the state jurisdictions.

[32] Although Vonage cites GTE Tel. Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No.1148, 13 FCC Rcd. 22466, CC Docket No. 98-79, FCC 98-292 (1998), this FCC decision also concerns special access lines. "GTE's ADSL service is a special access service, thus warranting federal regulation under the "ten percent" rule." (GTE Decision at ¶ 25).

2001 and the widespread blackout of August 2003 emphatically attest to the state's vital interest in maintaining reliable telecommunications networks.

Telecommunications are the lifeblood of this state's economy. Trillions of dollars of economic transactions that depend on telecommunications occur each day in New York. Those transactions are vital not only to New York's general economic health, but also to the financial integrity of state and local governments whose revenues are derived as a result of that economic activity. The state has a clear interest in maintaining uninterrupted telecommunications capabilities to preserve and advance the state's economic health.

To remain available and reliable, the state's existing telecommunications network providers must remain financially sustainable. While the state does not guarantee the financial success of any provider in a competitive telecommunications market, neither should it perpetuate unfair regulatory advantages for some providers over others. Such inconsistent regulatory treatment could allow competitive success not on the basis of superior product or efficiency, but as a result of regulatory arbitrage. As such unfairly won success could threaten the financial sustainability of providers serving customers with limited competitive choices, the state has an interest in ensuring that all providers of like services are subject to appropriate regulatory requirements.

A number of parties express a reasonable concern that state regulation of services such as Vonage's may interfere with deployment of useful new services and applications. Although the Commission has the authority to regulate telephone services, we also have an interest in ensuring that such regulation does not needlessly interfere with the rapid, widespread deployment of new technologies. Any regulation imposes costs that may diminish the promise of new technologies. At the same time, our core public interest concerns, including most prominently public safety (e.g., 911 emergency services) and network reliability must be addressed. To be most effective, regulation should target core public policy concerns, while minimally impinging on the free flow of markets and development of technologies.

Where regulation is appropriate, it should maximize the benefits of new technologies, while minimizing the risks to the public interest. In the past, we have

achieved this balance by relaxing regulatory requirements, to the extent allowed by law, on entities lacking size or market power. For example, we have provided extensive pricing flexibility for competitive services and have imposed minimal service quality and financial reporting requirements on small and non-dominant carriers, such as Vonage. We will continue this approach in dealing with today's evolving technologies and markets. We also note that the Department is reviewing all regulatory requirements currently applicable to providers of telecommunications in New York to ensure that those requirements remain appropriate as technologies and markets evolve.

As Vonage is a relatively small competitive provider of local exchange and interexchange services, it should be subject to, at most, the same limited regulatory regime to which comparable circuit switched competitive carriers are currently subject in New York. However, because we recognize the potential impact of this emerging technology on facilities-based competition, we will move cautiously, so as not to hinder its development. Consequently, the company may seek permanent or temporary waivers of any of those requirements it deems to be inappropriate in its circumstance or with which it is not readily able to comply.

In order to allow Vonage sufficient time to make the required statutory filings and assess which rules and regulations it deems inappropriate for its provision of adequate service, we will stay the application of the statutory requirements for a reasonable period to permit Vonage to comply. Vonage will be directed to make the CPCN and tariff filings within 45 days of this Order, and to also request within that period waivers as appropriate for rules and regulations. This process will be subject to the Secretary's oversight. Further, during the pendency of the evaluation of Vonage's potential waiver requests, we will not enforce our rules and regulations with regard to Vonage's compliance. The company also is encouraged to work with Staff to develop alternative means, where appropriate, of achieving necessary public safety and consumer protections. That process will allow development of a sufficient factual basis for us to ensure that our core public policy goals are met without unnecessarily interfering with the development of new services and technology deployments.

The Commission orders:

1. Vonage must comply with the Public Service Law obligations of telephone corporations and within 45 days of this Order, Vonage Holdings Corporation shall file an application for a Certificate of Public Convenience and Necessity and file a tariff.

2. To the extent Vonage chooses to seek waiver of specific rules and regulations, as discussed in this Order, it shall file such requests within 45 days of this Order.

3. This proceeding is continued.

By the Commission,

(SIGNED) JACLYN A. BRILLING
Secretary

ATTACHMENT 3

[Service Date June 11, 2004]

BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON EXCHANGE CARRIER ASSOCIATION, ET AL.	)	DOCKET NO. UT-031472
Complainants,	)	ORDER NO. 08
v.	)	
LOCALDIAL CORPORATION,	)	FINAL ORDER GRANTING MOTIONS FOR SUMMARY DETERMINATION
Respondent.	)	

Synopsis: The Commission, ruling on two motions for summary determination, concludes that: 1) LocalDial is conducting business subject to the Commission's regulatory authority: 2) Complainants' (plaintiffs') tariffs apply to the VoIP intrastate telephone calls made by LocalDial's customers using Complainants' facilities; and 3) LocalDial should be regulated in the same manner and to the same extent as other interexchange companies that provide functionally identical telecommunications service (i.e., intrastate long distance calling) in Washington.

SUMMARY

1 **PROCEEDINGS:** On September 4, 2003, the United States District Court, Western District of Washington at Tacoma, Judge Ronald B. Leighton presiding, entered its Stay Order and Order of Referral to WUTC [Washington Utilities and Transportation Commission], in Case No. C03-5012, a civil complaint proceeding styled *Washington Exchange Carrier Association, et al., Plaintiffs, v. LocalDial Corporation, an Oregon Corporation, Defendant.* The District Court's Order referred three questions to the Commission:

1) Whether LocalDial is conducting business subject to the Commission's regulatory authority;

2) Whether plaintiffs' tariffs apply to the VoIP intrastate telephone calls made by LocalDial's customers using plaintiffs' facilities; and

3) Whether and to what extent carriers using VoIP technology should be regulated, if the Commission has the statutory and regulatory authority to do so.

In its Order No. 01: Prehearing Conference Order, the Commission reframed these questions, considering its statutory authority and obligations, as follows:

1) Is LocalDial's service that is challenged by WECA telecommunications service offered to the public in Washington for compensation within the meaning of chapter 80 RCW?

2) Is LocalDial's service that is challenged by WECA a form of intrastate long distance telecommunications service that subjects LocalDial to the obligation to pay access charges payable to originating and terminating local exchange carriers under those carriers' tariffs?

The Federal District Court's third question, to the extent relevant to LocalDial's service in Washington, is subsumed within the second of these questions. The Commission considers here the parties' arguments concerning the legal limits of its discretion to determine as a matter of policy whether and to what extent LocalDial's services *should* be regulated.

2 **PARTIES:** Richard A. Finnigan, attorney, Olympia, Washington, represents the Washington Exchange Carrier Association (WECA) and its members who are plaintiffs in the Federal District Court action (*i.e.*, Complainants in this proceeding). Arthur Butler and Lisa Rackner, Ater Wynne Hewitt Dodson & Skeritt, Seattle, Washington and Portland, Oregon, respectively, represent LocalDial Corporation (LocalDial). Brooks E. Harlow, Miller Nash LLP, Seattle, Washington, represents the Broadband Communications Association of

Washington. Mary B. Tribby and Letty S.D. Friesen, AT&T Law Department, Denver, Colorado, represent AT&T Communication of the Pacific Northwest (AT&T). Robert Cromwell, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Section of the Office of Washington Attorney General. Jonathan Thompson, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff ("Commission Staff" or "Staff").[1]

3 **DISPOSITIVE MOTIONS:** Complainants filed their Motion for Summary Determination on February 27, 2004. The Commission set April 9, 2004, as the date for responses. On April 5, 2004, Commission Staff filed its Motion for Summary Determination. LocalDial filed its Response to WECA's Motion on April 9, 2004, and to Staff's Motion on May 3, 2004.

4 The two motions, in addition to drawing responses from LocalDial, precipitated a series of filings by parties and one "interested person" who wishes to participate as *amicus curiae*. In all, we now have before us 19 separate documents that address the pending issues, many with attachments.

5 **COMMISSION DECISIONS:** The Commission determines that there are no genuine issues of material fact in dispute and that Complainants and Staff are entitled to judgment as a matter of law. LocalDial is a telecommunications company doing business in Washington and is subject to our jurisdiction. LocalDial is an interexchange carrier and subject to Complainants' tariffs to the same extent as other interexchange carriers that provide intrastate long distance service in Washington for Complainants' local exchange service customers. LocalDial must register with the Commission as required by RCW 80.36.350 and

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[1] In formal proceedings, such as this case, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an "*ex parte* wall" separating the Commissioners, the presiding ALJ, and the Commissioners' policy and accounting advisors from all parties, including Staff. *RCW 34.05.455.*

must cease and desist from providing jurisdictional services until it complies fully with all legal requirements for telecommunications companies that do business in Washington.

MEMORANDUM

I. Background and Procedural History

6 On September 15, 2003, the Commission received a "Stay Order and Order of Referral to WUTC" entered on September 4, 2003, by the United States District Court, Western District of Washington at Tacoma, in Case No. CV03-5012 RBL, styled *Washington Exchange Carrier Association, et al.* v. *LocalDial Corporation*. The plaintiffs in the Federal District Court action allege that LocalDial's business activities in Washington State require it to pay them access charges for originating and terminating intrastate long distance telephone calls that use plaintiffs' equipment and/or facilities. Because the issue referred to the Commission contested issues in pending litigation, it was set for consideration as an adjudication styled under the names of the litigants in the District Court.

7 This proceeding attracted widespread interest in the industry because, as framed by the District Court, and portrayed in the trade and popular press, it potentially queued up for decision wide-ranging policy issues concerning so-called voice over Internet protocol (VoIP) service. VoIP is an emerging regulatory issue with myriad dimensions on both the state and federal levels.

8 On the other hand, this proceeding is fundamentally a dispute between private companies concerning a single service provided by LocalDial in Washington.

9 The Commission invited the participants at its prehearing conference to address what should be the scope of this proceeding. The participants all argued that the Commission should not use this proceeding as a broad-based, generic-type

proceeding to resolve the many aspects and nuances of the emerging regulatory debate over VoIP service. Instead, the participants urged the Commission to limit its inquiry and determination in this proceeding to the specific service offered by LocalDial in Washington of which WECA complains in the underlying Federal District Court case.

10 The Commission's general powers and duties are set forth in RCW 80.01.040. Under that statute, the Commission is required to:

> Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities; including, but not limited to . . . telecommunications companies.

11 According to RCW 80.04.010:

> "Telecommunications company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, operating or managing any facilities used to provide telecommunications for hire, sale, or resale to the general public within this state.

and

> "Telecommunications" is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

12 RCW 80.04.015 provides in relevant part:

> Whether or not any person or corporation is conducting business subject to regulation under this title, or has performed or is performing any act requiring registration or approval of the commission without securing such registration or approval, shall be a question of fact to be determined by the commission . . .
>
> After investigation, the commission is authorized and directed to issue the necessary order or orders declaring the activities to be subject to, or not subject to, the provisions of this title. In the event the activities are found to be subject to the provisions of this title, the commission shall issue such orders as may be necessary to require all parties involved in the activities to comply with this title, and with respect to services found to be reasonably available from alternative sources, to issue orders to cease and desist from providing jurisdictional services pending full compliance.

13 Considering the District Court's referral in the context of these governing statutes and the parties' arguments, we determined that this proceeding should be limited in scope to the particular service offering by LocalDial that WECA asserts is "telecommunications" making LocalDial a "telecommunications company" subject to the Commission's jurisdiction. We consider in this proceeding only the service placed at issue by WECA's complaint—intrastate interexchange calling, a/k/a intrastate long-distance calling—regardless of whether LocalDial offers other services that may be subject to our jurisdiction. We do not consider the broader legal and policy issues that may come before us in future proceedings concerning the array of services that may be within the umbrella of so-called VoIP technology. Thus, we will fulfill the District Court's need in the context of the case it has stayed by our determination of underlying issues concerning our jurisdiction and what the exercise of our jurisdiction, if any, requires vis-à-vis the particular service offering at issue.

14 In other words, we will answer the following questions:

1. Is LocalDial's service that is challenged by WECA telecommunications service offered to the public in Washington for compensation within the meaning of chapter 80 RCW?

2. Is LocalDial's service that is challenged by WECA a form of intrastate long distance telecommunications service that subjects LocalDial to the obligation to pay access charges payable to originating and terminating local exchange carriers under those carriers' tariffs?

15 The parties anticipated that the issues in this proceeding could be resolved on stipulated facts and cross-motions for summary determination. However, on January 2, 2004, LocalDial informed the Commission that, despite diligent efforts, LocalDial and WECA had not been able to compose a comprehensive set of stipulated facts. The Commission revised the process in this Docket to provide an opportunity for evidentiary hearing proceedings based on prefiled testimonies and exhibits.

16 The Commission, however, did not foreclose the parties from filing motions for summary determination. Complainants filed their Motion for Summary Determination on February 27, 2004, the same day they filed their direct evidence. LocalDial requested an extension of time to file its response. The Commission granted LocalDial's motion and set April 9, 2004, as the date for responses. On April 5, 2004, Commission Staff filed its Motion for Summary Determination. LocalDial filed its Response to WECA's Motion on April 9, 2004, and to Staff's Motion on May 3, 2004.

17 Intervenor BCAW filed an Answer to Complainants' Motion. Verizon, an "interested person" as discussed in our Order No. 04, filed responses to both Complainants' Motion and Staff's Motion.

18 Complainants' filed a Reply to BCAW's Answer.

19 LocalDial filed motions to strike Verizon's responses. Verizon responded.

20 Complainants', LocalDial, Staff, and BCAW all filed arguments concerning the implications of the Federal Communications Commission's Order FCC 04-97 concerning the nature and regulatory status of a VoIP service offered by AT&T.

21 In total, the Commission now has before it 19 separate documents that address the issues in one fashion or another.[2] We consider the various arguments raised and determine the issues in this Order.

II. Governing Law.

22 In addition to the statutes previously cited, we consider our rule governing summary determination. WAC 480-07-380(2) provides:

> A party may move for summary determination of one or more issues if the pleadings filed in the proceeding, together with any properly admissible evidentiary support (*e.g.*, affidavits, fact stipulations, matters of which official notice may be taken), show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In considering a motion made under this subsection, the commission will consider the standards applicable to a motion made under CR 56 of the Washington superior court's civil rules.

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[2] Appendix A to this Order is an index to the filings.

Fundamentally, then, we must make two determinations. We must review the pleadings and supporting evidence to ascertain whether there is a dispute as to any question of fact material to our determination of the issues that cannot be resolved without resorting to further process, such as an evidentiary hearing, to develop additional evidence. If we can make all findings of fact necessary to a decision on the basis of the pleadings and supporting evidence, we consider that evidence in the light most favorable to the nonmoving party and determine whether the moving party is entitled to judgment as a matter of law.

23 Considering the definitions of "telecommunications" and "telecommunications company" enunciated in RCW 80.04.010, the facts material to our determination of the issues in this proceeding are those that inform us about LocalDial's business, including the nature of LocalDial's intrastate long distance calling service in Washington and the technology by which it is provided. Those facts, discussed below, are not in dispute; they are unequivocally established by uncontroverted evidence submitted in support of the two pending motions for summary determination. Indeed, the evidence LocalDial offers to support its responses affirmatively supports the movants' rendition of all facts that are material to our determination of whether movants are entitled to judgment as a matter of law.

III. Discussion and Decisions

A. Undisputed Facts

24 The facts material to our determination of the legal questions before us in this case are those that tell us what intrastate service(s) LocalDial offers to customers in Washington and how it goes about providing such service(s). We find those facts well established by the affidavits, deposition transcripts, and other documents that are attached as exhibits to the parties' various filings. We summarize these facts below.

25 LocalDial, an Oregon corporation, offers to residential telephone customers in Washington, including Complainants' customers, a service it variously describes on its Internet web site as "unlimited long distance calling for a low flat rate," supplemental phone service for domestic long distance calling," and "technology to slash the costs of local toll-calling."[3] To initiate service, LocalDial customers pick up the phone in their homes, receive dial tone from their Local Exchange Carrier (LEC) (*e.g.*, one of the WECA member companies who are Complainants here), and dial a local access number to connect with LocalDial's facilities in Seattle or Portland. As Mr. Williamson testifies:

> LocalDial leases T1 PRI (Primary Rate ISDN) facilities from a competitive local exchange company (CLEC). The CLEC has a switch in Seattle from which it provides local exchange access services in a number of Qwest wire centers throughout the state. Through this arrangement, LocalDial is able to provide its customers in many parts of Washington with a telephone number in their local calling area that connects them to LocalDial's leased T1 trunk facility via CLEC's switch. The T1 trunks connect to LocalDial's Integrated Access Devices (IAD), Gateways, and routers . . .
>
> Calls to and from Spokane and Western Washington as far south as Centralia/Chehalis use the LocalDial Seattle facility at the Westin Building, and calls to and from Western Washington south of Centralia/Chehalis to the Oregon border use a LocalDial facility in Portland. The leased T1 PRI's are bundled in DS3's (28 DS1s or T1s). The IADs de-multiplex each DS3 into the separate T1 PRIs, which then connect to the Gateways. The gateway verifies the caller's number against a database of known subscribers to LocalDial's service and then prompts the customer to dial the long distance telephone number that they want to reach. If the called

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[3] WECA Motion, Exhibit 4, at 1 (LocalDial Internet pages). *See also*, Staff Motion, Exhibit ___ (RW-1T) at 11 (Williamson Direct).

> number is in an area served by the LocalDial network in Washington, the gateway converts the call to IP format and routes the call packets to the router and a particular IP address. The call packets are then routed to the IP address dedicated to the appropriate port associated with the terminating trunk via an internal LAN. The gateway converts the IP packet format back to TDM [time division multiplexing] and sends the call to the T1 PRI associated with the correct terminating area. For a call from Seattle to Spokane or from Olympia to Bellingham, this whole process of converting the call from TDM to IP and back to TDM again occurs in the room at the Westin Building. The T1 PRI terminates in the CLEC office which, after receipt of the called telephone number, routes the call over local interconnection trunks to the terminating ILEC central office, or intermediate local tandem, as a local call. Calls that terminate at the Portland facility are sent from the router in Seattle over the Internet to an IP address in Portland. Some interstate calls and calls that cannot be terminated on the intrastate LocalDial/Competitive Local Exchange Carrier (CLEC) network are sent to Long Distance resellers (approximately four) for termination (access charges are paid on these calls). Interstate calls that can be completed over the extended LocalDial network are routed over the Internet to the appropriate LocalDial gateways.[4]

Mr. Williamson's cogent, if somewhat technical, description is verified by the deposition testimonies of Mr. Crawford, LocalDial's President and Chief Operating Officer, and Mr. Carden, LocalDial's Chief Executive Officer.[5]

26 Reduced to more simple terms, a LocalDial customer makes a telephone call over the public switched telephone network (PSTN) to a computer facility ("gateway") that LocalDial owns and operates in Seattle or Portland. LocalDial's equipment briefly converts the voice call into digital packets and uses internet protocol to route it internally (*i.e.*, within LocalDial's gateway equipment),

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[4] Exhibit ___ (RW-1T) at 12-14 (Williamson Direct).

[5] WECA Motion at 4-5 (citing to Deposition Exhibit 1 at 42:8-44:14 (Crawford Deposition); Deposition Exhibit 2 at 34:12-38:5, 39:1-7, 39:23-40:8, 40:14-21, and 43:10-17 (Carden Deposition)).

converts it back into voice and sends it to its destination over the public switched telephone network. This describes one form of what is known in the industry as "phone-to-phone IP telephony" or "phone-to-phone VoIP (voice over internet protocol)."

27 In approximately October 2003, LocalDial modified its network in one particular. Specifically, the company began using the public Internet to transport calls between its Seattle and Portland gateways, rather than continuing to rely on leased lines. As we discuss later in this Order, this fact does not change LocalDial's service in a way material to our determination of either the federal or state law issues that are before us in this proceeding.

28 In summary, LocalDial offers to customers in Washington service it variously describes as "unlimited long distance calling for a low flat rate," "supplemental phone service for domestic long distance calling," and "technology to slash the costs of local toll-calling." The service LocalDial offers exclusively to residential customers is one that involves the transmission of information, exclusively in the form of sound (*i.e.*, voice communication), via by wire, radio, optical cable, electromagnetic, or other similar means. LocalDial owns, operates, and manages facilities used to provide telecommunications for sale to the general public in Washington. These undisputed facts establish all that is necessary for us to determine whether LocalDial is a telecommunications company subject to the Commission's jurisdiction and regulatory authority.

B. LocalDial's Argument That There Are Material Facts In Dispute

29 We find above that there are no material facts in dispute, but we briefly address LocalDial's assertions to the contrary. LocalDial argues: "At a minimum there are issues of fact as to whether LocalDial offers information services or telecommunications services." The question LocalDial describes is one that arises under federal law. It is a legal question, not a fact question. The facts

necessary to its determination are in our record and are not disputed.[6] We return to this question, and resolve it, in section III.D. of this Order.

30 In addition to its misguided argument that there are genuine issues of material fact in dispute, LocalDial argues that the parties' failure to agree to a set of stipulated facts precludes Commission action on the pending motions for summary determination. This argument is grounded in the Commission's first prehearing order (*i.e.*, Order No. 01), which, having described the issues, states in part: "We expect to address these questions on cross-motions for summary determination grounded in stipulated facts concerning the precise nature of the service LocalDial offers." The Commission's expectation, however, was based entirely on the parties' representations at the first prehearing conference that they believed they could develop and submit a set of stipulated facts. Yet, LocalDial characterizes the Commission's statement as one establishing a "precondition for summary determination."[7]

31 We reject this argument. After the parties informed the Commission that they had not been able to achieve a set of stipulated facts, the Commission convened a second prehearing conference. Relying on the parties' representations that the facts might best be developed through evidentiary hearing proceedings, the Commission established a schedule for that process. However, Complainant's counsel stated that "by moving down this track . . . we didn't want to foreclose the possibility of bringing a motion for summary disposition if its within the Commission's rules."[8] The presiding officer responded that "at any point in time that a party feels that there is sufficient development that they can assert in good faith that there are no material facts in dispute, then it is appropriate to do

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[6] Even LocalDial argues that we have all of the underlying facts necessary to determine this legal question in its favor. LocalDial's Response to Complainants' Motion for Summary Disposition at 12-15.

[7] *Id.* at 5.

[8] TR. 83:19-23.

that."[9] It is perfectly clear from this colloquy that the Commission did not establish the requirement of stipulated facts as a precondition to summary determination of the issues in this proceeding.

32 The only fact-related "precondition" to summary determination under controlling law is a determination that there are no genuine issues of material fact in dispute. Such a determination can be grounded in a set of stipulated facts, but that is only one option. As discussed in more detail above, such a determination also can be grounded in the pleadings, considered together with any properly admissible evidentiary support. And, as also discussed above, we are well and thoroughly informed by undisputed facts concerning the intrastate service LocalDial offers to customers in Washington both in terms of what service the company offers and how it goes about providing that service. Under these circumstances, the parties' failure to prepare and submit a fact stipulation is simply beside the point.

C. Preliminary Matters

33 Before turning to the more substantive issues, we consider and resolve two preliminary matters raised by the parties.

1. LocalDial's Motions To Strike Verizon's Responses to Complainants' and Staff's Respective Motions for Summary Determination

34 LocalDial acknowledges that the Commission, in its prehearing orders, allowed for the filing of *amicus* briefs by interested persons. Yet, LocalDial argues that this was only allowed if the issues were to be resolved on stipulated facts. Just as the parties' failure to file a stipulation of the facts is not a barrier to the Commission's determination of the issues on motions for summary determination, that failure is not a barrier to interested persons filing *amicus*

[9] TR. 84:1-5.

briefs. As Verizon discusses in its answers to LocalDial's motions to strike Verizon's responses, it is clear from the transcript of the first prehearing conference that the presiding officer contemplated that one or more interested persons might wish to file an *amicus* brief at the summary determination stage.[10] Neither LocalDial, nor any other participant, raised any objection to the suggestion that interested persons could file *amicus* briefs at the summary determination stage of this proceeding.

35 LocalDial argues that the Commission's procedural rule governing motions for summary determination, WAC 480-07-380, precludes Verizon from filing an *amicus* brief because the rule establishes the timing requirements for answers to be filed by "a party." The rule does not foreclose the possibility of *amicus* filings. Such filings are regularly received in our proceedings and may even be encouraged to promote the Commission's understanding of various perspectives on issues that may be held by a range of interested persons. Again, the presiding officer expressed the Commission's openness to the receipt of such filings in this proceeding at the summary determination stage.

36 LocalDial also argues that Verizon, by its responses, would "expand the nature of the issues before the Commission."[11] This is simply not true. As we discuss in more detail below, it is appropriate that we determine the question of federal preemption and that we consider any guidance arguably relevant FCC rulings may provide on the issues before us. This is the principal subject matter of Verizon's *amicus* briefs. The parties also offer argument on these questions. Verizon's arguments do not broaden the scope of our proceeding at all.

37 Finally, the Commission recognizes that this proceeding is one of widespread interest in the industry and that it represents a first step, of sorts, into what

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[10] TR. 40:19-24; 64:6-11; 65:16-18.

[11] LocalDial's Motion To Strike Verizon Northwest Inc.'s Response to Complainants' Motion for Summary Disposition at 4.

promises to be a subject matter of considerable importance. The Commission values the perspectives of various industry participants. We find nothing in LocalDial's arguments that persuades us that we should deny Verizon the opportunity to express its perspectives on the issues before us in this proceeding. Accordingly, we deny LocalDial's Motion To Strike Verizon's Response to Complainants' Motion for Summary Disposition, filed on April 15, 2004, and LocalDial's Motion To Strike Verizon Northwest Inc.'s Response to Staff's Motion for Summary Disposition, filed on May 14, 2004.

2. BCAW's Argument Concerning Scope

38 BCAW takes no position on WECA's Motion for Summary Determination, except to the extent BCAW contends WECA's Motion "seeks to broaden the issues in this docket."[12] BCAW quotes our first prehearing order, in which we stated: "We will consider in this proceeding ***only the service placed at issue by WECA's complaint***, regardless of whether LocalDial offers other services that may or may not be subject to our jurisdiction."[13] The complaint to which this language refers is the underlying complaint in Federal District Court that brought this case before us by referral from that Court.

39 BCAW argues that it appears LocalDial was not offering a service that used the public Internet for transport at the time it filed its complaint in the Federal Court. At the time of the underlying complaint, all calls placed using the LocalDial service were converted to "internet protocol," or "IP," but were transported in IP only for a short distance over dedicated facilities owned and operated by LocalDial. The facts before us show that sometime in October 2003, after the complaint was filed and the matter referred to the Commission, LocalDial began to transport certain Washington-originated calls between Seattle and Portland,

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[12] Answer of BCAW to WECA Motion for Summary Determination at 1.
[13] *Id.* at 2 (emphasis added by BCAW) (citing to Order No. 01, Prehearing Conference Order at ¶ 14).

Oregon using the public Internet. Some of the calls initiated in Washington and routed to Portland are terminated in southwestern Washington, and thus are intrastate.

40 BCAW argues that we should not make any determination in this proceeding concerning these intrastate long-distance calls in which the public Internet is used because this is not the "service" that LocalDial offered at the time of the complaint. BCAW states that "the Commission should take care to distinguish between **VoIP**, which is at issue in this case, and **VoInternet**, which is not."[14]

41 In describing the calls for which BCAW argues WECA's complaint seeks compensation, BCAW says these "were merely VoIP, not VoInternet."[15] This implies that VoIP is a subset of VoInternet or that the two are wholly separate technologies, but that appears to be contrary to accepted definitions in the industry. Newton's Telecom Dictionary, 19th edition (2003), defines VoIP as "The technology used to transmit voice conversations over a data network using the Internet Protocol. Such data network may be the Internet or a corporate Intranet." Thus, VoInternet, as BCAW uses the term, is encompassed within VoIP. BCAW acknowledges this point in its Comments, filed May 3, 2004, on the *AT&T Order*.[16]

42 WECA argues that the distinction BCAW urges is not relevant to this proceeding. WECA contends it is essential that the Commission evaluate the technology LocalDial uses to provide the services to which WECA's complaint pertains so as to avoid "incomplete and piecemeal review."[17] According to WECA, if the Commission accepts BCAW's position, each permutation of the use of IP technology within a phone-to-phone VoIP service would require a separate,

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[14] VoInternet appears to be a term of relatively recent vintage. The term did not find its way into Newton's Telecom Dictionary, 19th edition (2003).
[15] BCAW Answer at 3.
[16] Discussed, *infra*, in section III.D.
[17] WECA's Reply to BCAW's Answer at 2.

lengthy proceeding that could exhaust the resources of parties such as the WECA members.[18]

43 One apt description of LocalDial's service that was put at issue by WECA's complaint is "intrastate long distance, phone-to-phone telephony with internet protocol in the middle." Our ultimate determination of the issues before us, as discussed in detail in the next two sections of this Order, does not turn on whether the internet-in-the-middle portion of the call is on a private local area network (*i.e.*, corporate intranet) using internet protocol or on the public Internet, again using internet protocol.

44 While we remain committed to deciding this case narrowly, the distinction BCAW urges us to make for purposes of decision is a distinction without a difference. Parsimony in our decision here would invite additional litigation concerning closely similar, even identical, issues and cause parties to expend significant resources over a protracted period of time. LocalDial could make small change after small change to its internet-in-the-middle network architecture without changing the fundamental nature of its VoIP offering—phone-to-phone VoIP in this instance—that is the focus of the issues before us. We will not open the door to this possibility. We will determine the issues based on the facts at hand, as fully developed in this proceeding. We address the basic service LocalDial offers and of which WECA complains, both when that service involves IP-in-the-middle on a private intranet and when it involves use of the public Internet to transport calls between LocalDial's Seattle and Portland gateway facilities.

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[18] We note in this connection that WECA filed its complaint in the Federal District Court in December 2002. The matter was referred to us in September 2003 and we today return it to the District Court in June 2004, where further proceedings will be required. WECA expresses its concern that if we adopt BCAW's approach, WECA will be required to initiate yet additional proceedings to address at least a part of LocalDial's service in Washington, as provided after October 2003.

D. Preemption (Is LocalDial's service "telecommunications service" or "information service" as a matter of federal law?)

45 Complainants' argue that the question whether the Commission is preempted by federal law from deciding the issues referred by the District Court is not before us because it was not expressly referred to us by the Court. LocalDial, on the other hand, argues that we are prohibited from addressing the substantive issues referred by the District Court because the FCC has preempted the states from deciding such issues. We are further informed on the issues by argument from Staff and Verizon. WECA, LocalDial, Staff, and BCAW also offered supplemental arguments considering the FCC's recent decision in a factually similar case involving AT&T's VoIP service at the interstate level.

46 Preemption is a threshold question that must be resolved in this proceeding because it implicates our jurisdiction—our power to decide. If federal law preempts us, what we might otherwise decide under state law is a question we cannot legally reach. Accordingly, we address the merits of the preemption arguments here. We determine, as a matter of law, that we are not preempted.

47 LocalDial's argument that we are preempted depends on its assertion that the company is offering "information services" or "enhanced services" under federal law, not "telecommunications services" as defined by the Telecommunications Act of 1996 and FCC rules. LocalDial's argument flows from that assertion and urges the point that if the assertion is true we are preempted because the FCC has exclusive jurisdiction over information services.

48 LocalDial contends it is an Enhanced Services Provider ("ESP") because the company changes the form and content of the communications initiated by the company's customers. By contrast, "telecommunications carriers switch and transport the form and content of the sender's information ***without change,***"

according to LocalDial.[19] LocalDial argues that it uses telecommunications services it obtains from others to provide information services.

49 LocalDial relies in part on the definition of "enhanced service" in the FCC's rules at 47 CFR § 64.702(a):

> For the purposes of this subpart, the term enhanced service shall refer to services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. Enhanced services are not regulated under title II of the Act.

The genesis of this definition dates to 1980 when, in the so-called *Computer II* decision, the FCC distinguished "enhanced service" from "basic service." In 1980, of course, few recognized even the possibility of VoIP, much less that it would become the subject of an important national, perhaps global, regulatory policy discussion. VoIP still was not a technology with much visibility at the time the Telecommunications Act of 1996 (Telco Act) became law. Congress, however, recognized a distinction between telecommunications service (*i.e.*, basic service) and information service (*i.e.*, enhanced service) along the lines of the FCC's rule. The Telco Act defines "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information sent and received."[20] "Information service" is defined in the Telco Act as:

> The offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available

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[19] LocalDial Response to Complainants' Motion for Summary Disposition at 2.
[20] 47 U.S.C. § 153(43).

> information via telecommunications, and includes electronic publishing, *but does not include any use of any such capability for the management, control, or operation of a telecommunications network or the management of a telecommunications service.*[21]

50 LocalDial argues that it meets the definition of enhanced service under all three clauses in 47 CFR § 64.702(a). Although stated in highly technical terms by LocalDial's witness, Mr. William Page Montgomery, the essence of LocalDial's argument is that it employs within its network electronic technology and mathematical algorithms that make voice communication intelligible and indistinguishable from the users' perspectives from what is quaintly referred to in the industry as "plain old telephone service."[22] LocalDial argues that these internal network changes in protocol remove its service from the realm of telecommunications and bring it within the FCC's definition of information service.

51 As Staff argues, however, all modern telecommunications networks employ the sorts of technology and mathematical algorithms LocalDial uses inside its network—in some cases identical technology and mathematical algorithms, in some cases different. Mr. Williamson testifies:

> LocalDial attempts to build a case that its long distance IP-in-the-middle service is an "Information Service" rather than a "Telecommunications Service" based on *how* the International Telecommunications Union (ITU) G.723 technology performs signal compression and suppression functions, detects and corrects errors, or performs protocol functions. They state that because it "actually involves complex, mathematical, real-time computations that act on the pitch and other characteristics of the human voice"[23] the LocalDial IP-in-the-middle long distance service somehow differs

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[21] 47 U.S.C. § 153(20) (emphasis added).

[22] LocalDial. at 12-14.

[23] Montgomery Direct Testimony, p. 36

> from similar functions that are commonly provided in the Public Switched Telephone Network (PSTN) . . .

52 The information transmitted by the LocalDial service is simply the called and calling parties' digitized voice. Mr. Williamson testifies that virtually all PSTN services digitize, mathematically create filters (such as echo cancellation via ITU G.711), and use complex real-time computing processes in both transmission and switching equipment that effect the perception of the speaker's individual voice. The business of telecommunications is to provide intelligible voice communication to both parties. Yet LocalDial claims that because the G.723.1 technology makes the human voice signal intelligible to the listener, it somehow provides "additional, different, or restructured information." As Mr. Williamson testifies, if somehow the provision of intelligible voice through the use of computer processing was considered an "information service," then virtually all PSTN voice services would have to be reclassified as "information services."[24]

53 We look not only to 47 U.S.C. § 153(43), 47 U.S.C. § 153(20), and 47 CFR § 64.702(a), but to the *Steven's Report*, and the *AT&T Order* as we analyze whether LocalDial's service is telecommunications or information service as a matter of federal law.[25] In the *Steven's Report* the FCC stated, consistent with the determinations it had previously made on several occasions,[26] that "[t]he

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[24] Supplemental Declaration of Robert Williamson at 2-3.

[25] In 1998, the FCC prepared and presented to Congress the so-called *Steven's Report*, which addressed how evolving technology, including most significantly the Internet, might affect universal telephone service. *In the Matter of Federal-State Joint Board on Universal Service* cc Docket No. 9645, 13 FCC RD 11501, release Number 98-67 released April 10, 1998. The *Steven's Report*, among other things, discusses the classification of VoIP services as either "telecommunications" or "information." While, as LocalDial contends, the *Steven's Report* lacks the force of law, it nevertheless provides useful guidance to the FCC's view of the applicable law. The significance and currency of the *Steven's Report* is underscored by the FCC's recent discussion and decision in *Petition for a Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, WC Docket No. 02-361, Order FCC 04-97 (April 21, 2004)(*"AT&T Order"*).

[26] Memorandum Opinion and Order, *Petitions for Waver of Section 64.702 of the Commission's Rules and Regulations to Provide Certain Types of Protocol Conversion Within Their Basic Network*, ENF-94-15, FCC 84-561 (rel. Nov. 28, 1984) (conversions that take place solely within a network that result

protocol processing that takes place incident to phone-to-phone IP Telephony does not affect the service's classification, under the Commission's current approach, because it results in no protocol conversion to the end user."[27] The FCC defined phone-to-phone IP Telephony as a service that: 1) holds itself out as providing voice telephony service; 2) does not require the customer to use CPE [customer premises equipment] different from that necessary to place an ordinary touch-tone call over the public switched telephone network; 3) allows the customer to call telephone numbers assigned in accordance with the North American Numbering Plan; and 4) transmits customer information without net change in form or content.[28]

54 More recently, in the *AT&T Order*, the FCC held that AT&T's interstate long distance service that is phone-to-phone with Internet in the middle is telecommunications service, not information service. The FCC stated:

> We emphasize that our decision is limited to the type of service described by AT&T in this proceeding, i.e., an interexchange service that: (1) uses ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originates and terminates on the switched public network (PSTN); and (3) undergoes no net protocol conversion and provides no enhanced functionality to the end user due to the provider's use of IP technology. *Our analysis in this order applies to services that meet these three criteria . . .*[29]

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in no net conversion between users are treated as basic (i.e., telecommunications) services); Memorandum Opinion and Order on Reconsideration, *Amendment to Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, 3 FCC Rcd 1150, ¶¶ 4, 53-57 (1988); Memorandum Opinion and Order, *Southwestern Bell Telephone Company Petition for Waiver of Section 64.702 of the Commission Rules and Regulations to Provide and Market Asynchronous Protocol Conversion on an Unseparated Basis*, 5 FCC Rcd 161, ¶ 13 (1990).

[27] *Steven's Report* at ¶ 52.

[28] *Id. at* ¶ 88.

[29] *AT&T Order*, ¶ 1 [emphasis added].

55 In light of the *AT&T Order*, LocalDial's argument that "the FCC has never adopted [the] four-part shorthand description of 'phone-to-phone' IP Telephony [included in the *Steven's Report*] in any context, much less as a test to determine whether a VoIP service is an information service," is no longer true. Moreover, the *AT&T Order* belies LocalDial's argument that the *Steven's Report's* "description of 'phone-to-phone' IP Telephony is incorrect in material ways." As the *AT&T Order* makes clear, in the FCC's interpretation of its own rules and governing statutes, the *Steven's Report* captures quite accurately the agency's current rules and is central to the agency's decision concerning the classification of VoIP services as either "telecommunications" or "information."

56 The facts before us are closely similar in all material respects to those before the FCC in the AT&T matter.[30] LocalDial's customers use ordinary customer premises equipment—the same equipment they use to make other telephone calls—with no enhanced functionality. LocalDial's customers' calls originate and terminate on the public switched telephone network. Protocol conversions take place within LocalDial's network, as in many other companies' networks, but, insofar as LocalDial's service is concerned, there is no *net* protocol conversion from an end-user perspective. LocalDial customers' calls begin as voice on the PSTN and end as voice on the PSTN.

57 LocalDial does not contest that its service meets the first two criteria under the *Steven's Report* and in the *AT&T Order*. LocalDial's arguments concerning protocol conversion and enhanced functionality ignore the requirement for *net* protocol change from the customer perspective. We conclude that LocalDial's

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[30] LocalDial's argument in its Response Brief Regarding the FCC's *AT&T VoIP Order* that its service is "distinctly different" from AT&T's focuses entirely on distinctions that do not distinguish the two services in any way material to our decision. We do not consider the FCC's Order to be precedent that compels our decision here. The *AT&T Order*, however, confirms our understanding of the criteria by which a service should be determined to be telecommunications or information under federal law.

service meets the definition of telecommunications under federal law.[31] LocalDial does not provide information service or enhanced service.

58 The FCC has not preempted the states from regulating intrastate telecommunications services. We have the jurisdiction to decide, and are not preempted from deciding, whether LocalDial's service is subject to our regulatory authority under chapter 80 RCW.

59 Our conclusions under state law, discussed immediately below, while clearly not determined by the FCC's *AT&T Order* under federal law, are entirely consistent with that order. The *AT&T Order* clarifies the FCC's rules concerning the classification of phone-to-phone IP telephony as telecommunications service under federal law. Thus, LocalDial's argument that we should refrain from deciding this case pending FCC issuance of "one or more rulings either clarifying the application of existing federal rules," has been overtaken by events. LocalDial goes further with this line of argument to suggest that we await the outcome of the FCC's Notice of Proposed Rulemaking (NPRM) on IP-enabled services, which was initiated in March of this year. It is unclear whether the outcome of the NPRM will have any bearing on the issues pending here. Moreover, the timing of the NPRM is uncertain, but likely will consume much of this year and may extend into 2005. Considering that this matter is before us by referral from the Federal District Court, it would be inappropriate for us to not respond in a timely manner.

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[31] We do not mean to imply that the *AT&T Order* is fully dispositive of the issues before us. The AT&T matter can be distinguished on several points (e.g., it concerns interstate exchange service and it relies on Feature Group D 1+ dialing), but these distinctions are not relevant to the central question the *AT&T Order* answers (*i.e.*, what characteristics of phone-to-phone VoIP make it "telecommunications" under federal law?). The *AT&T Order* is entirely consistent with the FCC's prior treatment of this question. And, while AT&T's service is not identical in every respect to LocalDial's service, it is the same in every respect that matters under the FCC's analyses of its rules and governing statutes in the *AT&T Order*, in previous orders, and in the *Steven's Report*.

E. State Law Issues

1. Is LocalDial's service that is challenged by WECA telecommunications service offered to the public in Washington for compensation within the meaning of chapter 80 RCW?

60 LocalDial's argument that the Commission does not have authority to regulate LocalDial under state law turns entirely on its argument that it is an information service provider under federal law, not a telecommunications service provider. LocalDial argues that we should interpret RCW 80.04.010 "consistently with federal law." We have already determined that LocalDial's service is not an information service or enhanced service as those terms are used in the federal statutes and FCC rules. Accordingly, the fundamental predicate upon which LocalDial's argument rests is incorrect.

61 WECA and Staff argue that LocalDial is a "telecommunications company" under RCW 80.04.010. As Staff points out, the Washington statutory definition of telecommunications is broad and, like the federal definition, does not distinguish among transmission technologies. While the legislature has exempted certain services that otherwise would fall within the definition, such as cellular service and cable television, there currently is no exemption that would cover LocalDial's service.

62 Focusing on the terms of RCW 80.04.010, WECA states correctly that there is no question concerning LocalDial's status as a corporation doing business in Washington. Its business is the sale to the general public of telecommunications as discussed in this Order, and as evidenced by the company's own advertising. As Staff argues, LocalDial owns and operates the gateways, servers, and other equipment that are part of the network it uses to provide telecommunications service. In short, it is an inescapable conclusion under the undisputed facts before us that LocalDial offers telecommunications service for sale to the general

public in Washington and is a telecommunications company subject to our jurisdiction under chapter 80 RCW.

2. Is LocalDial's service that is challenged by WECA a form of intrastate long distance telecommunications service that subjects LocalDial to the obligation to pay access charges payable to originating and terminating local exchange carriers under those carriers' tariffs?

63 LocalDial argues that even if subject to Commission jurisdiction as a matter of law, the Commission should not regulate LocalDial's service for policy reasons. The simple response to this argument is that, as WECA argues, we do not have the statutory authority to forebear from regulating LocalDial. LocalDial, in terms of the service under consideration here, is no different from other interexchange carriers that do business in Washington. To the extent Complainants' tariffs require interexchange carriers to pay access charges for interexchange calls made by or to Complainants' customers, those tariffs must be enforced as to LocalDial.

64 The access charge regime in Washington is mandated by RCW 80.36.160. It is implemented by the companies' tariffs. Complainants' tariffs, once approved by the Commission, have the force and effect of law.[32] They must be applied uniformly to all interexchange carriers to avoid giving undue preference under RCW 80.28.090 or allowing for the application of discriminatory rate practices under RCW 80.28.100. LocalDial's phone-to-phone IP telephony service is 'telecommunications service,' and is functionally identical to the inter-local-calling area service that is provided by other interexchange carriers that pay access charges. LocalDial obtains the same access to the Complainants' networks as obtained by other interexchange carriers. LocalDial, therefore, imposes the same burdens on the local exchange carriers as do other interexchange carriers. LocalDial should bear its fair share of the associated costs, as reflected in the local exchange carriers' tariffs.

65 LocalDial's argument that it is not a customer of the WECA member local exchange companies and therefore not subject to their tariffs is unavailing. The point is, under our determinations here, LocalDial is required to the same extent as any other interexchange carrier to become such a customer if it wishes to continue doing business as described in this Order.

66 Thus, in answer to the District Court's second and third questions we conclude: 1) plaintiffs' tariffs apply to the VoIP intrastate telephone calls made by LocalDial's customers using plaintiffs' facilities; and 2) LocalDial should be regulated in the same fashion and to the same extent as any other interexchange carrier.

3. Should LocalDial be required to register as a telecommunications company and should LocalDial be ordered to cease and desist from providing jurisdictional services pending full compliance with the requirements of Title 80 RCW?

67 Staff, with reference to our authority under RCW 80.04.015 to determine whether "any person or corporation is conducting business subject to regulation under this title, or has performed or is performing any act requiring registration or approval of the commission without securing such registration or approval," argues that we should require in this Order that LocalDial register with the Commission, as required by RCW 80.36.350. In addition, given that interexchange telecommunications services are reasonably available from other sources, Staff argues that it would be appropriate to order LocalDial to cease and desist from providing intrastate telecommunications service in Washington until it registers with the Commission.

68 In light of our conclusion that LocalDial is conducting business subject to our regulatory authority, it clearly is necessary for LocalDial to meet the registration

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[32] *General Tel Co. of Northwest, Inc. v. Bothell*, 105 Wn.2d 579, 585, 716 P.2d 879 (1986).

requirement under RCW 80.36.350 and to otherwise conform to the other requirements imposed on telecommunications companies under Title 80 RCW and under the Commission's rules. Although Staff's argument implies a degree of discretionary authority, the language of RCW 80.04.015 is mandatory. Accordingly, given our findings and conclusions here, we also must order LocalDial "to cease and desist from providing jurisdictional services pending full compliance."

FINDINGS OF FACT

69 Having discussed above all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that include findings pertaining to the ultimate decisions of the Commission are incorporated by this reference.

70 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including electric companies.

71 (2) LocalDial is an Oregon corporation. LocalDial owns, operates, and manages facilities used to provide telecommunications for sale to the general public in Washington. LocalDial is engaged in the business of furnishing telecommunications services within Washington State as a public service company.

72 (3) LocalDial is conducting business subject to the Commission's regulatory authority. LocalDial is performing acts requiring registration or approval of the Commission, but LocalDial has neither registered with the

Commission nor otherwise sought regulatory approval to conduct business subject to the Commission's regulatory authority.

CONCLUSIONS OF LAW

73 Having discussed above in detail all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

74 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings. *Title 80 RCW.*

75 (2) LocalDial's service that is challenged by WECA is telecommunications service offered to the public in Washington for compensation and LocalDial is a telecommunications company within the meaning of Title 80 RCW.

76 (3) LocalDial's service is a form of intrastate interexchange (*i.e.*, long distance) telecommunications service that subjects LocalDial to the obligation to pay access charges payable to originating and terminating local exchange carriers, including Complainants, to extent required of interexchange carriers by those carriers' tariffs. In other words, plaintiffs' (*i.e,* Complainants in this proceeding) tariffs apply to the VoIP intrastate telephone calls made by LocalDial's customers using plaintiffs' facilities.

77 (4) The Commission has the statutory and regulatory authority, and obligation, to regulate LocalDial to the extent of its intrastate long distance telecommunications service in Washington. The Commission lacks the statutory authority to forebear from regulating LocalDial in the same

manner and to the same extent as it regulates other interexchange carriers offering services in Washington. *See e.g., RCW 80.28.090* and *RCW 80.28.100.*

78 (5) LocalDial is conducting business subject to the Commission's regulatory authority. LocalDial should be required to register with the Commission as required under RCW 80.36.350 and to otherwise conform with the requirements for telecommunications companies operating in Washington under Title 80 RCW and chapters 480.80, 480.120, and 480.121 WAC, and such other of the Commission's regulations as may apply.

79 (6) LocalDial should be required to cease and desist from providing intrastate telecommunications service in Washington unless and until it registers with the Commission and otherwise conforms to all requirements of law. *RCW 80.04.015.*

80 (7) The Commission should retain jurisdiction to effectuate the terms of this Order. *Title 80 RCW.*

ORDER

THE COMMISSION ORDERS THAT:

81 (1) Complainants' Motion for Summary Determination and Staff's Motion for Summary Determination are GRANTED, as discussed in the body of this Order.

82 (2) LocalDial's Motion to Strike Verizon's Response to Complainants' Motion for Summary Determination and LocalDial's Motion to Strike Verizon's Response to Staff's Motion for Summary Determination are DENIED.

83 (3) LocalDial is required, within 10 days following the date of this Order, to register with the Commission as required under RCW 80.36.350 and to otherwise conform with the requirements for telecommunications companies operating in Washington under Title 80 RCW and chapters 480.80, 480.120, and 480.121 WAC, and such other of the Commission's regulations as may apply.

84 (4) On the eleventh day following the date of this Order, at 12:01 a.m., LocalDial is required to cease and desist from providing intrastate telecommunications service in Washington unless and until it thereafter registers with the Commission and otherwise conforms to all requirements of law.

85 (5) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective this 11th day of June 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.

APPENDIX A
Parties' Filings Related to Motions for Summary Determination

- **WECA Motion for Summary Determination**

  - Complainants' Motion for Summary Determination (2/26/04)
  - LocalDial's Response to Complainants' Motion for Summary Determination (4/9/04)
  - Answer of Broadband Communications Association of Washington to WECA Motion for Summary Determination (4/9/04)
  - Verizon's Response to WECA's Motion for Summary Determination (4/9/04)
  - LocalDial's Motion To Strike Verizon's Response to Complainant's Motion for Summary Disposition (4/15/04)
  - Verizon's Response to LocalDial Motion To Strike (4/26/04)
  - WECA's Response in Opposition to LocalDial's Motion to Strike Verizon's Response to Complainants' Motion for Summary Disposition (4/26/04)
  - Complainants' Reply to Answer of BCAW to WECA Motion for Summary Determination (4/26/04)

- **Staff Motion for Summary Determination**

  - Staff's [Corrected] Motion for Summary Determination and Memorandum in Support (4/5/04)
  - LocalDial's Response to Staff's Motion for Summary Disposition (5/3/04)
  - Verizon's Response to Staff's Motion for Summary Disposition (5/3/04)
  - LocalDial's Motion To Strike Verizon Northwest Inc.'s Response to Staff's Motion for Summary Disposition (5/14/04)
  - Verizon Response to LocalDial's Motion To Strike Verizon Northwest Inc.'s Response to Staff's Motion for Summary Disposition (5/27/04)

- **Comments Re FCC's AT&T Order**

  - Initial Argument of Commission Staff Concerning Order FCC 04-97 (5/3/04)
  - Complainants' Brief Regarding AT&T's Petition for Declaratory Ruling [Order FCC 04-97] (5/3/04)
  - BCAW Comments on Impact of FCC's AT&T Order on Case (5/3/04)
  - Response Arguments of Commission Staff Concerning Order FCC 04-97 (5/14/04)
  - Complainants' Reply to LocalDial's Response to Commission Staff's Motion for Summary Determination and Memorandum in Support and to Comments of BCAW and Commission Staff (5/14/04)
  - LocalDial's Response Brief Regarding the FCC's *AT&T VoIP Order* (5/14/04)

ATTACHMENT 4

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ating standards and is a constituent body of the United Nations, engaging also in international development and education concerning telecommunications. ITU. Its most successful work is done in the establishment (but not enforcement of) standards and the allocation of radio frequencies worldwide — including satellites, etc. For a much bigger explanation, see ITU and ITU-T.

International Telecommunications Union-Radiocommunication Sector ITU-R Formerly the International Radio Consultative Committee (CCIR). The technical study branch of the International Telecommunication Union responsible for the study of technical and operating questions relating specifically to radio communications. See also ITU-T.

International Telegraph Alphabet #1 ITA 1. World-standard CCITT version of the manual telegrapher's code. Colloquial name: International Morse Code.

International Telegraph Alphabet #2 ITA 2. World-standard CCITT version of the 5-unit (also called 7.5 unit) teleprinter code used for Telex, international telegrams and most general telegraphy by wire lines; Colloquial name: Baudot code.

International Telegraph Alphabet #3 ITA 3. World-standard CCITT version of a 6-unit extended set of ITA 2 to include characters needed for automatic typesetting directly from telegraph circuits. Colloquial names: Teletypesetter code, press code, extended Baudot code, and others.

International Telegraph Alphabet #4 ITA 4. World-standard CCITT version of a 7-unit code in which only the combinations using 4 marking bits are valid; receiving any character with more or less than 4 marking bits is its error checking feature. Colloquial names: 7-unit ARQ Code, Moore ARQ Code, Moore Code, RCA Code, and others.

International Telegraph Alphabet #5 ITA 5. World-standard CCITT version of a 7-unit teleprinter code with an 8th parity bit also used for asynchronous data terminals such as minicomputers or PCs. Colloquial name: ASCII code.

International Telephone Address A four-part code specifying a unique address for any telephone company in the world.

International Toll Free Service See IFTS.

International Wireless Telecommunications Association See IWTA.

Internet It is very hard to define the Internet in a way that is either meaningful or easy to grasp. To say the Internet is the world's largest computer network is to trivialize it. But it is. To say it is the most complex network in the world is also to trivialize it. But it is. To say that it's everybody's computer network is to trivialize it. But it is. It is undoubtedly the most important happening in the computing and communications industries since the invention of the transistor. The Internet is both a transport network — moving every form of data around the world — and a network of computers which alow you to access, retrieve, process and store all manner of information.

The Internet has its roots as a cooperative research effort of the United States Federal Government known as the Advanced Research Project Agency NETwork (ARPAnet), which was established in 1969 by the Defense Department. ARPAnet tied universities and research and development organizations to their military customers, and provided connectivity to a small number of supercomputer centers to support timesharing applications. Much of the funding was provided by NSFNET (National Science Foundation NETwork). More recently, the Internet has been commercialized, extending its use to anyone with a PC, a modem, a telephone line and an access provider — a special company known as an Internet Service Provider or Internet Access Provider, who allows their customers to reach the Internet via dial-up or dedicated line. The Internet has become a major new publishing, research and commerce medium. I believe that its invention is as important to the dissemination of knowledge, to peoples' life styles and to the way we'll be conducting business in coming years as the invention of the Gutenberg Press was in 1453.

At its heart, the Internet is many large computer networks joined together over high-speed backbone data links ranging from 56 Kbps (now rare) to T-1, T-3, OC-1 and OC-3. The Internet, in short, is a network of computer networks. The Internet now reaches worldwide. Depending on the whim of the local government (which typically controls the local phone company and thus access to the Internet for its citizenry) you can pretty well get onto the Internet and roam it unchecked. The governments of Singapore, the People's Republic of China, Burma and few others limit their peoples' access.

The topology of the Internet and its subnetworks changes daily, as do its providers and its content. The bottom line is that the makeup of the Internet — i.e. how it works — is not all that important. It is the applications and information available on it that are important — the most significant of which are e-mail (electronic mail) and the World Wide Web. Commercial networks from AT&T, MCI, SPRINT, Worldcom and many others now carry the bulk of the traffic. As NSFNET no longer funds the Internet, it has been commercialized, with money changing hands in complex ways between users, companies with Web sites, Internet Access Providers, long distance providers, government, universities and others. The Internet remains supported by some level of public funding, although it is less direct that in the past. Increasingly, businesses are joining their computers to the Internet. According to Network Wizards (www.nw.com), as of year end 1996 the Internet linked over 60,000 networks, 9.5 million computers and 35 million users in 150 countries. The commercialization of the Net has led to exponential growth in both the number of connected hosts and the overall volume of traffic, creating bottlenecks. As a result, a large number of research universities have begun the development of Internet II, also known as Internet2, which effectively is a separate Internet for colleges, universities and government organizations. In other words, the organizations which founded the original Internet are getting off it in favor of building their own Internet.

The Internet's networking technology is very smart. Every time someone hooks a new computer to the Internet, the Internet adopts that hookup as its own and begins to route Internet traffic over that hookup and through that new computer. Thus as more computers are hooked to the Internet, its network (and its value) grows exponentially. The Internet is basically a packet switched network based on a family of protocols called TCP/IP, which stands for Transmission Control Protocol/Internet Protocol (TCP/IP), a family of networking protocols providing communication across interconnected networks, between computers with diverse hardware architectures and between various computer operating systems. Most PCs, including Windows-based machines and Macintoshes, will happily communicate using TCP/IP.

How TCP Works: TCP is a reliable, connection-oriented protocol. Connection-oriented implies that TCP first establishes a connection between the two computer systems that intend to exchange data (e.g. your PC and the host computer you're trying to reach, which may be thousands of miles away). Since most networks are built on shared media (for example, several systems sharing the same cabling), it is necessary to break chunks of data into manageable pieces so that no two communicating computers monopolize the network. These pieces are called packets. When an application sends a message to TCP for transmission, TCP breaks the message into packets, sized appropriately for the network, and sends them over the network. Because a single message is often broken into many packets, TCP marks these packets with sequence numbers before sending them. The sequence numbers allow the receiving system to properly reassemble the packets into the original original order, i.e. the original message. TCP checks for errors. And finally, TCP uses port IDs to specify which application running on the system is sending or receiving the data. The port ID, checksum, and sequence number are inserted into the TCP packet in a special section called the header. The header is at the beginning of the packet containing this and other "control" information for TCP.

How IP Works: IP is the messenger protocol of TCP/IP. The IP protocol, much simpler than TCP, basically addresses and sends packets. IP relies on three pieces of information, which you provide, to receive and deliver packets successfully: IP address, subnet mask, and default gateway. The IP address identifies your system on the TCP/IP network. IP addresses are 32-bit addresses that are globally unique on a network. There's much more on TCP/IP in my definition on TCP/IP and on Internet Addresses in that definition.

Here's how the Internet is used: As a computer network joining two (or more) computers together in a session, it is basically transparent to what it carries. It doesn't care if it carries electronic mail, research material, shopping requests, video, images, voice phone calls, requests for information, faxes ... or anything that can be digitized, placed in a packet of information and sent. A packet-switched network like the Internet injects short delays into its communications as it disassembles and assembles the packets of information it sends. And while these short delays are not a problem for non-real time communications, like email, they present a problem for "real-time" information such as voice and video. The Internet can inject a delay of as much as half a second between speaking and being heard at the other end. This makes conversation difficult. Internet telephony, as it's called when it runs on the Internet, is getting better, however, as the Internet improves and voice coding and compression techniques improve. I've enjoyed some relatively decent conversations to distant places.

Probably the most famous quote about the Internet is one from John Doerr, one of Silicon Valley's most famous venture capitalists. He said, "The Internet is the greatest legal creation of wealth in the history of the planet." Later, after the dot com bust he came to regret his words. By hyping wealth rather than invention, he has confessed, he had distracted the

industry from pursuing revolutionary technologies.

Now for a little history on the Internet. In the early 1990s the Internet was run by and for the United States government. There was no public use of the Internet. There were no commercial applications. In fact it wasn't even clear to the Federal Government what the Internet actually was. So an organization called the Federal Networking Council (FNC), which actually managed networking for the Federal Government, on October 24, 1995, unanimously passed a resolution defining the term Internet. This definition was developed in consultation with the leadership of the Internet and Intellectual Property Rights (IPR) Communities. RESOLUTION:

"The Federal Networking Council (FNC) agrees that the following language reflects our definition of the term "Internet". "Internet" refers to the global information system that —

(i) is logically linked together by a globally unique address space based on the Internet Protocol (IP) or its subsequent extensions/follow-ons;

(ii) is able to support communications using the Transmission Control Protocol/Internet Protocol (TCP/IP) suite or its subsequent extensions/follow-ons, and/or other IP-compatible protocols; and

(iii) provides, uses or makes accessible, either publicly or privately, high level services layered on the communications and related infrastructure described herein."

MCI Mail was the first commercial application attached to the Internet. Once it got one, all the other email services wanted on...and the rest is history. See various Internet definitions following. See also Domain, Domain Naming System, gTLD, ICANN, Internet2, Internet Appliance, Internet Protocol, Internet Telephony, Intranet, IP Telephony, Surf, TCP/IP and Web Browser.

Internet Access The method by which users connect to the Internet, usually through the service of an Internet Service Provider (ISP).

Internet Access Provider See IAP.

Internet Address When you travel the Internet or its World Wide Web area, you need an address to get to where you want to go — just like you need an address on a letter you mail or a phone number you wish to reach. All Internet addresses are expressed in dotted decimal notation of four fields of eight bits. In binary code, each bit has two possible values, 0 or 1. Therefore, each 8-bit field yield two to the eighth power, or 256 possible combinations. Since one of the possible combinations is 000, which means nothing, it is not used, thereby leaving 255 possible numbers in each field. IP addresses are written as XXX.XXX.XXX.XXX, where X is any number between 0 and 9, and where each 3-digit field has a value between 001 (i.e., 1) and 256. Internet addresses currently are based on the IPv4 (Internet Protocol version 4 protocol), which uses a 32-bit code in the 20-octet IP header to identify host addresses. A 32-bit address field yields 2 to the 32nd power possible addresses

— that's 4,294,967,296 addresses. that seems like a lot of addresses, but it's not enough in the context of the commercialized Internet. Note that IPv6 has been standardized by the IETF (Internet Engineering Task Force), but has yet to be widely implemented, as equipment upgrades generally are required. Among the advantages of IPv6 is an address field expanded to 128 bits. A 128-bit address field yields 2 to the 128 power addresses — that's 340,282,366,920,939,463,463,374,607,431,768,211,456 distinct addresses. That's enough for approximately 32 addresses for every square inch of dry land on the Earth's surface, which should be enough for a while. No one wants to remember all those numbers when they go checking out their favorite site. So they came up with a neat idea of naming sites and having a bunch of computers do the translation, very similar to what happens with 800 toll-free numbers in North America. As a result Web URLs (Uniform Resource Locators) and e-mail addresses (such as www.harrynewton.com and harry@harrynewton.com) are textual addresses that are translated into correlating IP addresses through DNSs (Domain Name Servers, i.e. dedicated translation computers), which maintain tables of both domain names and IP addresses. For example, if you wish to reach www.Javanet.com, you can type www.Javanet.com in your browser or you can simply type 209.94.128.8. But www.Javanet.com is easier to remember. Internet addresses are organized into hierarchical "classes," as follows:

Class A Addresses: Begin with a "0" bit. Of a possible 128 Class A networks, only 51 networks exist. Examples include General Electric Company, IBM Corporation, AT&T, Hewlett-Packard Company, Ford Motor Company, and the Defense Information Systems Agency. They all are huge organizations, and require the highest possible categorization.

Class B Addresses: Begin with a "10" bit sequence. Of a possible 65,536 Class B networks, only about 12,000 exist.

Class C Addresses: Begin with a "110" binary bit sequence. Most applicants are assigned Class C addresses in blocks of 255 IP addresses. As of January 1998, about 800,000 Class C addresses were assigned.

Class D Addresses: Begin with a "1110" bit sequence. They are intended for multicast purposes.

Class E Addresses: Begin with a "1111" bit sequence. They are reserved for future use.

Now, the term "Internet Address" can be a bit misleading. As we have seen, it actually refers to an "IP Address," unless it's a URL, of course. Even if it's a URL, it's translated into an IP address. IP addresses often are used in the LAN (Local Area Network), as well as in the Internet and other public packet data networks. In such a case, one IP address often is used internal to the LAN domain, and another in the Internet domain, in order to mask the internal IP subnet address from the outside world. Masking the internal IP address essentially "masks," or hides, the true IP address of your workstation from the outside world. You may do this for one simple reason — you don't want the outside world to be able to get to your PC. The internal IP address might be either IPv4 or IPv6, while the Internet "outside world" address currently is always IPv4. In either event, the IP addresses are translated, one to the other, through a process of NAT (Network Address Translation), which is accomplished in an access router. On the outbound side, your true IP address is translated into an Internet IP address associated with the router. Responses to your transmissions are addressed to the router, which then translates them back into your true IP address for successful delivery. This translation and masking process secures and protects your identity. See NAT for a full explanation of this process. See also Subnet Mask.

Internet Appliance A sub-$500 machine specially designed for Internet browsing and first proposed in the late Fall of 1995 by Larry Ellison, head of database software company Oracle. Part of its appeal to people outside Microsoft and Intel is that the Internet Appliance would not have to be based on standard PC technology. It need have an Intel chip and need not run Windows. This device is also called an Internet Terminal, a Network Computer or an IPC, an Interpersonal computer. The original description of the Internet Appliance was that it would come with 4mb of RAM, 4mb of flash memory, processor, monitor, keyboard and mouse — all for under $500.

Internet Architecture Board The Internet Architecture Board (IAB) is a technical advisory group of the Internet Society. Its responsibilities include:

IESG Selection: The IAB appoints a new IETF chair and all other IESG candidates, from a list provided by the IETF nominating committee.

Architectural Oversight: The IAB provides oversight of the architecture for the protocols and procedures used by the Internet.

Standards Process Oversight and Appeal: The IAB provides oversight of the process used to create Internet Standards. The IAB serves as an appeal board for complaints of improper execution of the standards process.

RFC Series and IANA: The IAB is responsible for editorial management and publication of the Request for Comments (RFC) document series, and for administration of the various Internet assigned numbers.

External Liaison: The IAB acts as representative of the interests of the Internet Society in liaison relationships with other organizations concerned with standards and other technical and organizational issues relevant to the world-wide Internet.

Advice to ISOC: The IAB acts as a source of advice and guidance to the Board of Trustees and Officers of the Internet Society concerning technical, architectural, procedural, and (where appropriate) policy matters pertaining to the Internet and its enabling technologies.

Internet Assigned Numbers Authority IANA. This group is responsible for the assignment of unique Internet parameters (e.g., TCP port numbers, and ARP hardware types), and managing domain names. It also was responsible for administration and assignment of IP (Internet Protocol) numbers within the geographic areas of North America, South America, the Caribbean and sub-Saharan Africa; on December 22, 1997, that responsibility was shifted to ARIN (American Registry for Internet Numbers). www.arin.net. The IANA has well-established working relationships with the US Government, the Internet Society (ISOC), and the InterNIC. ISOC provides coordination of IANA activities with the Internet Engineering Task Force (IETF) through the participation of IANA in the Internet Architecture Board (IAB). IANA responsibility was assigned by DARPA (Defense Advanced Research Project Agency) to the Information Sciences Institute (ISI) of the University of Southern California. ISI has discretionary authority to delegate portions of its functions to an Internet Registry (IR), previously performed by SRI International and currently performed by Network Solutions Inc. (NSI), a subsidiary of SAIC. Beginning March 1998, that function is shared with the Council of Registrars (CORE). CORE contracted (November 1997) with Emergent Corporation to build and operate the new Internet Name