

THE ACCESS CHARGE DECISION: The States' Turn

Remarks of:

Commissioner Patricia M. Worthy
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Law and Business, Inc.
Marriott Twin Bridges Hotel
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The concept of access charges is the culmination of more than a decade of court decisions and FCC rulemakings concerning the conditions and provisions of local exchange interconnection by new interexchange carriers. Following the FCC's Specialized Common Carrier decision in 1971 ^{1/} which established an overall policy favoring entry in the interstate private line market, MCI complained in 1973 that the Bell Operating Companies were refusing to provide it with the same local exchange interconnection as provided to AT&T long lines. In 1974, the FCC asserted sole jurisdiction over interstate private line carriers and then ordered AT&T to interconnect with MCI for all private lines services. In 1975 MCI filed a tariff with the FCC for a new "shared private line" services called "Execunet". The FCC rejected the MCI tariff finding that the proposed service was functionally equivalent to AT&T's ordinary long distance telephone service and that MCI was constrained to offer only private line service. After several appeals and remands in April, 1978 the D.C. Circuit reversed the FCC's decision and ordered that AT&T furnish local exchange interconnection for MCI's Execunet Service. ^{2/} This decision, establishing AT&T's legal obligation to interconnect to its local exchange facilities to specialized carriers (such as MCI), had far reaching, economic implications that ultimately has

^{1/} Federal Communications Commission In the Matter of Establishment of Policies and Procedures for Consideration of Applications to Provide Specialized Common Carrier Services in the Domestic Public Point to Point Microwave Radio Service, 29 FCC 2d 870 (1971), Docket 18920.

^{2/} MCI Telecommunications Corporation v. Federal Communications Commission F 2d _ (D.C. Cir., April 14, 1978)

resulted in our meeting here today.^{3/} In that the direct consequence of the April decision raised the issue of the "price" of local exchange interconnection. This issue was particularly significant since AT&T's interstate rates for MTS and WATS recovered, in addition to the direct costs of long distance transmission, a portion of the costs of "jointly used" local exchange plant assigned to the interstate jurisdiction by the separation process. Under the provisions of the Separations Manual ^{4/}"jointly-used" local exchange plant refers to the "non-traffic sensitive" costs of telephone facilities that connect telephone subscribers to the local exchange and permit the originating and termination of a variety of telecommunications services. These costs consist of customer premises equipment, the station connection consisting of inside wiring, the connecting block and drop wire; the subscriber lines outside plant; and the non-traffic sensitive portion of local dial switching equipment. By contrast, the interstate rates for AT&T's interstate private line services recovered only the costs of long haul private line transmission and the cost of local exchange plant directly attributable to providing private line service. That is, the jurisdictional separations process assigned only the direct costs of private line service to the interstate jurisdiction but none of the costs of

^{3/} To find a more complete history of MCI's efforts to gain full interconnection rights See Gerald W. Brock, *The Telecommunications Industry: The Dynamics of Market Structure*. (Cambridge, Massachusetts: Harvard University Press, 1981). Chapter 8.

^{4/} NARUC - FCC Cooperative Committee on Communications, *Separations Manual: Standard Procedures for Separating Telephone Property Costs, Revenues, Expenses, Taxes and Reserves*, (Washington, D.C., National Association of Regulatory Utility Commissioners, 1971)

jointly-owned local exchange plant. Therefore, the "appropriate" pricing of local exchange access for interconnecting the specialized common carriers following the executnet court opinion was quickly raised. To state it another way, we were faced with the issue of whether or not the traditional methods of pricing and cost recovery in the domestic telephone industry was actually valid.

In May 1978, immediately following the final executnet decision. AT&T filed a new tariff with the FCC that established prices, terms and conditions for providing local exchanges access by the BOCs for originating and terminating the switched, long distance transmission service of the specialized common carriers. This new tariff, Exchange Network Facilities for Interstate Access or ENFIA, proposed that the OCCs pay rates for local exchange access that replicated in most respects the implicit access charges that AT&T long lines paid through jurisdictional separations and the division of revenue process. For MCI, this repricing would have represented an increase of three-and-one-half times the average price that MCI was already paying for local exchange interconnection. Why did the AT&T tariff provision result in this mammoth increase to MCI's rates? Because, as a result of the usage-sensitive allocator (SPF) incorporated in the Ozark Plan the allocation of NTS local exchange plant to the interstate jurisdiction had grown substantially. Moreo during the 1970's with the rapid growth in market demand for interstate MTS the allocation of NTS local exchange plant to the interstate jurisdiction grew even more.

The FCC was therefore forced to investigate the disparate methods of compensation that local exchange carriers received for originating or terminating various interstate transmission service. In 1980, the FCC developed a tentative access charge plan. (This plan neither anticipated divestiture of the BOC's nor required divestiture for its implementation). The FCC observed that:

"The compensation which local exchange operators received... does not appear to reflect actual differences in the costs of originating and terminating various services. These disparities may produce discrimination among competing interexchange carriers." ^{5/}

In devising a plan which developed an "interstate revenue requirement" for each category of access service the FCC, accepting jurisdictional separations as a necessary constraint, stated:

The present statute does not empower us to establish access service compensation arrangements for all interexchange service. Any arrangement we prescribe necessarily must be confined to interstate and foreign communications. That prescribed arrangements could be used as a model for intrastate interchanges access service compensation arrangements if the states chose to follow it. ^{6/}

^{5/} Federal Communications Commission In the Matter of MTS and WATS Market Structure, Second Supplemental Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 224 (1980) CC Docket 78-72

^{6/} Id. at p.

The access charge plan adopted by the FCC in its Third Report and Order (henceforth "Access Order") in CC Docket 78-72 in December 1982, remained similar to the tentative plan in several respects and introduced the concept of an "interstate end user access charge." FCC Access Charge Decision:

In its December order the FCC identified four major public policy goals that the access charge plan should achieve, 1) the continued assurance of universal service 2) the elimination of "unjust discrimination" or "unlawful preferential rates" 3) the encouragement of "network efficiency" and 4) the prevention of "uneconomic bypass." ^{7/}

As explained earlier by Mr. Adams, the Access Order provided for recovering both the NTS and TS costs of local exchange plant which allocated to the interstate jurisdictions. Non-traffic sensitive costs in general will be recovered by the local exchange from the subscriber through flat rates. The flat end user charge is frequently called a customer access line charge (CALC) Traffic sensitive costs will be recovered from interexchange carriers, such as ATTCOM, GTE sprint or MCI. During the transition period in the FCC plan, NTS revenues not collected from the end user will be recovered from the interexchange carriers on a usage sensitive basis. This charge is often called the common carrier line charge or the common line usage charge (CLUC); it will not reflect CPE or inside wiring costs. The transition period for shifting NTS revenue

^{7/} Op. Cit. at paragraph 122.

requirements from carrier to end users is scheduled to be six years. At the end of the transition period, all NTS costs will have shifted to the end user with the exception of some combined amounts allocated to a Universal Service Fund. Under the plan, common line usage charges to AT&T and the OCCs will be different, reflecting a premium charge to AT&T that will be phased out over three years. A universal service fund (USF) will also be included in the carrier common line charges and is intended to generate funds to provide relief to local exchange companies with high non-traffic sensitive revenue requirements. Common line usage charge revenues will be pooled and distributed by the National Exchange Carriers Association (NECA). At the end of the transition, the principal component of the common line usage charge will be the USF element. Traffic sensitive costs elements will remain as the basic component of the charges made by the local exchange company to the interexchange service providers. The TS components are priced on a usage-sensitive basis and are divided into two major categories of "End Office" and "Transport" charges. The End Office category is designed to recover the interstate allocation of TS local exchanges costs which reflect the usage of end office local dial switching equipment by interexchange carriers for originating or terminating long distance interstate telephone calls. The Transport category is intended to recover the interstate allocation of the costs of both dedicated and common transmission facilities used to transport interexchange traffic between the facilities of an interexchange carrier and the end office of the local exchange carrier where the traffic originates or terminates.

Given the economic goals of the FCC as to "unjust discrimination" and "network efficiency" the Access Order appears to be drawn toward cost based pricing but fails to embrace it. Given the political goals of the FCC as to "universal service", its decision to recover all non-traffic sensitive costs from the subscriber, or end user, regardless of whether or not they originate a long distance call is self-defeating.

How have the state commissions responded to their jurisdictions responsibility to determine how both NTS and TS costs of local exchange plant which are allocated to the intrastate jurisdiction should be recovered?

Florida Public Service Commission Access Charge Decision:

The Florida Public Service Commission, in its December 9, 1983 order ^{8/} explained its goals as setting access charges that would adequately compensate the local exchange carrier for the use of their local facilities and to provide incentives for competition, while maintaining universal telephone service. The Commission rejected the concept of a flat end user charge (a mirroring of the FCC plan) to recover NTS local exchange costs and implemented instead, a comprehensive, innovative, rate structure. The PSC stated:

"We reject the notion that all subscribers should be charged for access to toll carriers whether they use toll or not and whether they have access to competitive carriers or only to a single ubiquitous carrier. We believe the cost of the subscriber loop should be paid for by all users of these

^{8/} Florida Public Service Commission, In re Interstate Telephone access charges for toll use of local exchange service, Docket No. 820537-TP, Order No. 12765 issued December 9, 1983.

facilities including the IXC's. The notion that an IXC should pay nothing for the subscriber loop because its use does not impose additional costs on the LEC is ill founded and contrary to common business practice, which is to charge customers for use of fixed costs facilities in the price for goods and service." ^{9/}

To achieve its goal the PSC set access charges so that the local exchange carrier could achieve a revenue level for intrastate toll operations equal to the level expected in 1984 under a business as usual scenario (less the effects of divestiture, interexchange leasing and intraterritory toll settlement for the projected 1984 period). This was further decreased by an amount equal to the revenues from billing and collecting, directory assistance, switched services and private line type services.^{10/} After these reductions, the remaining amount was determined to be the revenue goal upon which residual access charges were to based. These computations resulted in a flat rate charge per busy hour minute of capacity of \$5.88. The Florida Commission was therefore able to recover the necessary NTS and TS intrastate local exchange costs without imposing a flat end user charge and without increasing local rates.

^{9/} Id at p. 13.

^{10/} These include a minutes of use charge (mou) at the Exchange Carrier Association interstate rate of \$7.38 for hour originating and terminating calling toll directory assistance service at uniform rates of \$.4963 per call; billing and collecting service at uniform rates of \$.10 per message and \$.60 per inquiry; and special access services WATS, FX private line type service and digital data service) to be charged to and users as is presently done.

New York State Public Service Commission Access Charge Decision:

The New York Commission instituted its access charge proceeding in January of 1983.^{11/} Its goals were to gradually remove the NTS contribution from rates for intraexchange usage but without compounding the affects of the FCC decision. The Commission decided to freeze the intrastate NTS contribution from toll services at the 1984 level. That unlike the FCC strategy, the intrastate NTS contribution would not be shifted at all to the end users in 1984 and that an appropriate rate structure would consist of a carrier access charge comprised of 1) traffic-sensitive access fee elements and 2) the Carrier Common Line Element, which would recover the 1984 NTS contribution for toll service. Traffic-sensitive elements would be determined on the basis of New York State intrastate costs using the separations manual and the method outlined by the FCC (thereby paralleling as opposed to mirroring the calculations performed by the Exchange Carrier Association on an intrastate basis, but using New York State costs rather than nationwide costs). With respect to the Carrier Common Line Element, the intra-LATA carrier line charges equal to the implicit intra-LATA contribution per minute. The intra-LATA common line charge would be set at the state-wide average of NTS contributions per minute of use; the difference between application of the state-wide average contribution per minute and the estimated intra-LATA contribution per minute to all intra-LATA minutes of use results in an undercovery of the frozen NTS contribution. The New York Commission

^{11/} New York Public Service Commission, Opinion and Order Prescribing Rules for Intrastate Carrier Access Charges Opinion No. 83-25 issued December 6, 1983

determined that this deficiency would be recovered through a premium charge on AT&T Communication for intra-LATA access.

The Commission also determined that any long term strategy with regard to NTS cost recovery would require further study. Moreover, the Commission felt that until more could be gleaned from their ongoing by-pass proceedings they should delay from providing any guidance concerning a long-term plan for NTS cost recovery. ^{12/}

Public Service Commission of Wisconsin Access Charge Decision:

The goals, as embraced by the Wisconsin Commission concerning the implementation of access charges was to promote ease of administration, reflect economic principles, avoid arbitrage (rate shopping) by interexchange carriers and avoid the potential of bypass of exchange facilities. ^{13/} In order to achieve these goals the Wisconsin Commission adopted a rate structure that mirrored the structure and rate level of the interstate tariffs (pursuant to FCC rules) with some limited exceptions including:

1. The absence of an end user charge for recovery of NTS local exchange costs, and
2. Dedicated access lines for WATS service are available under a WATS tariff in Wisconsin and therefore is not included in

^{12/} Id., p. 19

^{13/} Public Service Commission of Wisconsin, Investigation of Wisconsin Telephone Company's Proposed Intrastate Access Charges Order 6720-TR-38 issued December 13, 1983

the access charge tariff.

The Commission stated:

"[it] recognizes the general merit of a system of intrastate access charges that mirrors the interstate filings...mirroring provides several advantages...and avoids difficulties in the administration and application of rates." 14/