

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Prescribing the Authorized) CC Docket No. 98-166
Unitary Rate of Return for)
Interstate Services of Local)
Exchange Carriers)

For: NOTICE INITIATING A PRESCRIPTION PROCEEDING
AND NOTICE OF PROPOSED RULEMAKING

REPLY COMMENTS OF NEW NETWORKS INSTITUTE

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Access Charges Should Not be a Telecom Shell Game for Bell Overcharging.

NNI is recommending that the FCC and the States be required to perform a "Total Bill Analysis"

Introduction:

The FCC is currently examining issues surrounding "access fees", an arcane part of telecommunications charges that permits the local phone companies to assess fees on all long distance services. More importantly however, access charges are ultimately pass-through fees that the long distance companies pass on to all customers. MCI and others contend that Access fees in 1997 accounted for 40% of all long distance costs to customers.

There are also other access fees paid directly to the local phone company, known commonly as the FCC "Subscriber Line Charges". And while most customers believe that this fee is to pay for the running of the FCC, all of these charges, over \$20+ billion paid annually, are all ultimately paid by the customers — The American telephone users.

The FCC states that their current investigation is to make sure that these charges are "just and reasonable", and they are proposing new methods to judge this. The current method supposedly examines the profits of specific telephone related expenses, and is supposed to restrict the profits of the local phone companies from gauging the long distance companies, who in turn charge their customers.

There have been numerous critics of the FCC's ability to assess just and reasonable access charges and in the appendix we highlight three examples: MCI, Probe Research and Consumer Union.

In 1997, MCI stated that Access charges were nothing but a "Big rip-off", and that the local phone companies were making an excess of \$14 billion dollars annually --- about \$110 per household. MCI's believes that this annual excess is based on the fact that the actual costs to the Bells is nominal compared to the access fees collected.

Probe Research in 1995 published detailed research which showed that from 1984-1994 American customers were overcharged some \$60 billion dollars for access fees by the Baby Bells. Probe's analysis found that while access fees are only supposed to be part of total costs of the network, but in actuality, the amount collected was \$60 billion dollars over the entire network's actual costs.

More recently, Consumer Union stated that Access Charges were being overcharging at \$8 billion dollars annually.

New Networks Institute's position:

NNI believes that Access fees have never been either just or reasonable, and that multiple billions of dollars are being overcharged annually. While we applaud the FCC for taking on the challenge of figuring out this complex area, we believe that all of the past and proposed methods of analyzing this data are flawed. NNI proposes that the FCC must reconsider their approach to include a "Total Phonebill Analysis", as described herein, as well as investigate major areas of overcharging which include Access Fees.

Our argument is simple. The Bells are still monopolies and yet they have become some of the richest companies in America. This has happened because NO REGULATOR EXAMINES THE TOTAL REVENUES AND PROFITS OF THE BELLS FROM MONOPOLY SUBSCRIBERS and so a shell game is in force that has allowed the Bells to make overcharge customers. And the problem is complicated because there are both state and federal regulators, jurisdictions and laws that actually compound the problem.

Access Fees are only supposed to account for a portion of a customer's costs, specifically for the provision of long distance services. However, Access Fees and the profit from them are therefore being examined in absentia of the entire customer charges and it allows the shell game to go on in perpetuity. By doing a TOTAL BILL ANALYSIS, examining the entire telephone bill for revenues and profits, and then calculating Access Fees, the FCC will put an end to a decade old problem.

NNI has already addressed the problem of regulatory mess surrounding telephone charges in our filing CC Docket No. 98-170, "In the Matter of Truth-in-Billing and Billing Format.

. We also address the issue of Bell overcharging in CC DOCKET NO. 98-147, (Advanced Telecommunications Notice Of Proposed Rulemaking, FCC 98-188) and CC Docket 98-146, ("Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996") where we present information showing how the Bell's promises to deploy advanced networks were used to remove regulation that increased bell profits--- and allow some products to have no regulatory customer safeguards vis a via Bell profits. Considering that these networks were never deployed, then the issues surrounding overcharging must also be done in conjunction with state laws governing Bell Profits.

Finally, we have also requested the FCC to investigate potential improper write-offs the Bells took of their current copper networks, totaling \$21 billion dollars. This was done as comments in ASD 98-91 (United States Telephone Association Files Petition For Forbearance From Depreciation Regulation Of Price Cap Local Exchange Carriers) If in fact the Bells have written off the networks, then this information should also have direct impacts on the Access fees.

The rest of this document describes the issue surrounding access fees and our proposed Total Bill Analysis.

- 1) The Bells profits are not just or reasonable - The bells are some of the richest companies in America,
- 2) **Competition is not changing the landscape---- It's closer to a still life.**
- 3) **A Total Regulatory mess is being used to determine Access fees.**
- 4) A total bill analysis should examine all revenues and all profits ---- the regulate accordingly

1) The Bells Profits Are Not Just Or Reasonable - The Bells Are Some Of The Richest Companies In America,

Let's go into more detail The exhibit below highlights the earning of the Bells for 1996 and 1997 and compares it with the Business Week ScoreBoard for Utilities as well as Business. Notice that the Bells profit margins are 100% over the average US business

and the return on Equity is 150% over other utilities. And these statistics cover over losses and other of the other hundreds of businesses each Bell owns.

EXHIBIT 43
Comparing RBOCs 1996 Profits to Other Businesses

	<u>ROE</u>	<u>Earnings</u> <u>Per Share</u>	<u>Profit</u> <u>Margin</u>
RBOC Total	28.14%	\$3.18	11.9%
All Industries	16.80%	\$2.44	5.9%
Utilities	11.40%	\$2.10	6.7%
All Industries	68%	30%	102%
Utilities	147%	51%	78%

In 1997, Business Week's Industry Ranking of the S&P 500, 3/30/98 Showed that The Bells were 172% higher in return on equity and 130% on return-on-capital from their Utility brethren.

Therefore, the FCC, as well as the American public should ask: If the Bells are monopolies how did this occur? And what part of this excess is access fees? Others will point out that this revenue is for the total Bell holding company, which has numerous businesses. However, NNI's examination found that 90+ of all Bell profits come from monopoly subscribers and that most of the other Bell businesses make far less or even lose money, and so the profits stated from the local customer are even

In fact, local telephone services are some of the most profitable business in America. Many other resources, including Bell Annual reports, or research from Consumer Union also corroborate these findings.

Therefore, the FCC's analysis must take into account these findings to create an accurate analysis for Access Fees.

2) Competition Is Not Changing The Landscape---- It's Closer To A Still Life.

The Bells are still monopolies and will be so for the foreseeable future for all access fees. According to numerous sources, including the ALTS, competition has garnered less than 1% of residential customers and there are few who are rewiring homes for phone use. Therefore, there will not be competition in the local market to lower prices, much less lower access fees.

3) **A Total Regulatory Mess Is Being Used To Determine Access Fees.**

The FCC is trying to assess whether access fees profits are fair and they currently use a complicated model. Unfortunately this model has a serious flaw --- It doesn't take into account the total profits of a customer's telephone charges, but tries to make a determination based on only a part of the total picture.

In our filing, for CC Docket No. 98-170, we clearly demonstrated the regulatory mess that is America's phonebills and charges. We stated"

"NNI believes that these problems are exacerbated by the simple fact: There is no one regulator examining the bill and multiple parties put charges on or the profits paid. This regulatory mess not only effects the customer's ability to can read the bill. It also clearly shows that the phonebill charges reveal serious gaps in regulatory coverage. One has only to look at a typical phonebill to know that regulatory coverage is piecemeal. For example, a typical telephone bill has some charges, such as the Subscriber Line Charge, that is controlled by the FCC, while some services, such as inside wiring, many have no regulator examining the charges to customers or their profits. Specifically:

- **Basic Service** is now only one of a few line items on the bill regulated anymore. It is controlled by the State PUCs.
- **Toll Call Revenues** are regulated by the state PUCs.
- **FCC Subscriber Line Charge**, on all business and residential bills, is an FCC controlled service.
- **FCC second line charge** - on all second lines of business and residential bills, is an FCC controlled service.

- **Calling Features**, included Call Waiting to Caller ID have varying rules per state but most services are no longer examined by any state regulator for profits.
- **Inside wiring** is deregulated and no longer examined for profits.
- **Long Distance Access Charges**, which are not considered charges to subscribers, and are examined by the FCC
- **State & Local Taxes and Surcharges**: Various government agencies, have added a wide variety of surcharges and these are almost all just more telco revenues. — including:
 - **E 911 -Enhanced/Emergency 911**
 - **Deaf Relay**
 - **Universal Service Charges**

"And with all of these various state and federal government agencies, the most surprising fact is that NO agency actually looks at all of the charges and therefore profits of the telephone bill. This jurisdictional morass allowed for a serious revenue and profits shell game to have taken place. Because each regulator only examines specific charges on the phone bill, the Bells have been able to state that they are "losing money" on "basic service" and even today, are requesting rate increases. How can this be when they are so profitable? "

4) **Fixing the Problem. A Total Bill Analysis**

It is a little known fact that almost all charges list above supply the Bells with their total revenues and profits. And this includes everything from the supposedly Public Interest E911 to universal service charges and Access fees. In fact, with an average of 21 line items and no general oversight, a simple shell game was allowed to occur, and we are asking the FCC do some simple: Examine all the charges on an average phonebill for revenues and profits and use Annual report information, to rectify the question ----- How much profits come directly from residential subscribers and how have the Bells become so profitable?

Then, the FCC should require that Access fees, which are paid for by residential and business subscribers to be equal to what a regulated monopoly should be making.

We believe that NNI and MCI and Consumer Union and Probe Research's data will be vindicated --- that Massive overcharging has been allowed to accrue using Access fees as part of a regulatory shell game and that the FCC should take the appropriate actions to lower access fees

Respectfully submitted,

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From "The Unauthorized Bio of the Baby Bells and Info-scandal"

MCI's Overcharging Claims

"ACCESS CHARGES: \$14 BILLION MONOPOLY RIP-OFF"

Probably the most vocal company to take on the Bells has been MCI. In February 1997, MCI released an attack on the current Access Charges, which are fees paid to the local phone company, representing \$23 billion dollars in 1996. MCI's claim is that the Bell's, and the other local phone companies have overcharged the long distance carriers, and therefore customers, by \$14 billion dollars annually, costing each customer \$110 a year. And that's just from Access fees, not the rest of the telephone bill. Here's some details from MCI's press release. (482)

"MCI has asked the FCC to slash these (access fees) billions in overcharges and return the money to customers where it belongs.

"Why are access charges so excessive?

- "According to the Federal Communications Commission, access charges account for more than 40 cents out of every dollar a consumer pays for a long distance call.
- "The real cost for the local phone company to connect the call is about 5 cents out of the dollar.
- "Long distance companies and their customers are forced to pay these monopoly overcharges as part of every long distance call.
- "As a result, MCI estimates that an average customer is overpaying for access by about \$110 a year.
- "\$14 Billion Excess: After Universal Service Subsidies, the access charge subsidy serves no legitimate purpose whatsoever. This money is simply lining the pockets of the local monopoly telephone companies at the expense of their captive customers.

"Where does the excess go? Last year, long distance customers paid some \$22 billion to local telephone monopolies in access charges. The actual cost of connecting those customers' calls was about \$3 billion. An

additional \$5 billion went to support so-called "universal service," a government-mandated effort to keep residential telephone rates affordable. The rest is excess."

EXHIBIT 89

MCI Estimate of 1996 RBOC Access Fee Overcharges

(in the billions)

Ameritech	\$1.0
Bell Atlantic	\$1.3
BellSouth	\$1.9
NYNEX	\$1.8
Pacific Bell	\$0.9
SBC	\$1.4
U S WEST	\$1.5
All RBOCs	\$9.7
<u>GTE & other local telcos</u>	<u>\$3.6</u>
TOTAL	\$13.7

Source: MCI, 1996

Probe Research's Overcharging Claims

Probe Research, a respected market research and consulting firm, has found massive overcharging by the Regional Bells, or as they put it, "Give-aways to the Bells." According to "The End of the Local Monopoly" and "Taking Over the Telephone Companies," two Probe reports, Probe estimates a \$50 billion giveaway from 1969 to 1991. The largesse includes an FCC ruling allowing approximately \$13 billion of accelerated depreciation, as well as much as \$17 billion of savings based in incentive (alternate) regulation by the states and the FCC. These findings also fit with the Consumer Federation model, for much of the alternate regulation savings appear as telephone company profitability.

Probe also examined Access Fees separately in 1995 and concluded that the Bells have overcharged \$60 billion in access fees from 1984 through 1994. Based on their extensive statistical series of data about the local exchange companies, known as "The Telephone Book", Probe found that Access Fee revenues, which was supposed to pay for

only a portion of the local telephone network, paid more than the entire network cost.
(483) Probe states:

"Since divestiture on January 1, 1984 through the end of 1994, the seven regional bell operating companies (RBOCs) have collected \$218.7 billion in network access charges from long distance carriers. These charges are intended to cover the cost of only a portion of the local plant, specifically a portion of the cost of the local loop and a portion of the switching and transmission gear needed to carry traffic over the long distances companies' points of presence in each LATA.

"The total gross plant investment on the books of the seven RBOCs' at year end 1994 was \$213.9 billion, less than \$218.7 billion in network access charges collected since 1984. Since divestiture through 1994, the seven RBOC's collectively spent \$157.8 billion in new construction, which is \$60.0 billion less than the access charges collected in the same period. Furthermore, the "old" plant still carried in the balance sheets, i.e., total plant less the new construction, is only \$56.1 billion. These numbers refer to local telephone operations of the seven RBOCs, and not their cellular or equipment business or other ventures."

EXHIBIT 90

Probe's Access Charges Revenues and Their Roll in Financing Plant Construction, 1984-1994

(in the billions)

Total RBOC Revenues	\$729.4
Access Charges	\$218/7
Gross Plant investment	\$213.9
Net Plant Investment	\$154.1
Plant Construction	\$157.8
Old Plant	\$ 56.0
Excess Access Charges	\$ 60.9

Source: The Telephone Book Series, Probe Research, 1995

"Thus the nation's long distance carriers have already paid for a complete local network in the seven RBOC regions including switches, copper and fiber plant, loop carrier systems, transmission systems pay phones, T1 and DS3 carrier systems operations, support systems, buildings, telephone poles, conduit space, trucks and so on. Before the RBOC's began equipment write downs, access charges were more than double net income of the seven RBOCs: 1994 access charges are almost four times the net income of the seven RBOCs."