

64 Rad. Reg. 2d (P & F) 1294 (F.C.C.), 3 F.C.C.R. 2631, 3 FCC Rcd. 2631 (F.C.C.), 1988 WL 488404 (F.C.C.)
FCC 88-151

In the Matter of
Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers

CC Docket No. 87-215

ORDER

Adopted: April 19, 1988; Released: April 27, 1988

****1 *2631** By the Commission: Commissioner Dennis concurring and issuing a statement.

I. INTRODUCTION

1. On June 10, 1987, we adopted a Notice of Proposed Rulemaking in this docket to consider whether providers of interstate enhanced services should be assessed interstate access charges.¹ We sought comment from interested parties on this issue, and asked for detailed data on the state of the enhanced services industry. The record in this proceeding indicates that, as a result of a number of complex and interrelated factors, the enhanced services industry is entering a unique period of rapid and substantial change. First, the Open Network Architecture (ONA) Plans required in our Computer III proceeding² were filed on February 1, 1988, but have not yet been implemented. Second, the District Court overseeing the Modification of Final Judgment (MFJ) in the Bell System divestiture case has recently modified the restriction in the decree that had previously prevented the Bell Operating Companies (BOCs) from offering any information services.³ These regulatory and judicial events make this an unusually volatile period for the enhanced service industry. We have decided not to eliminate the exemption from interstate access charges currently permitted enhanced service providers at this time. Under the circumstances, we also find that any discrimination that exists by reason of the exemption remains a reasonable one so long as the enhanced services industry remains in the current state of change and uncertainty.⁴ While we could simply keep this docket open until these changes have run their course, this approach could add to the substantial uncertainty already confronting the enhanced services industry. Accordingly, we will terminate this rulemaking proceeding. We will continue to observe the effects of these factors, and at some appropriate future date, we can revisit the issue. We would, of course, commence any such proceeding by issuing another Notice of Proposed Rulemaking.

II. BACKGROUND

2. In 1983 we adopted a comprehensive "access charge" plan for the recovery by local exchange carriers (LECs) of the costs associated with the origination and termination of interstate calls.⁵ The four primary goals of the access charge proceeding include the "elimination of unreasonable discrimination and undue preferences among rates for interstate services."⁶ Specifically, in pursuing this goal we have sought to distribute the costs of exchange access service fairly among all users of exchange access, regardless of their designation as carriers, non-carrier service providers, or private customers.⁷ At the time we adopted the original access charge plan, however, we concluded that the immediate application of that plan to certain providers of interstate services might unduly burden their operations and cause disruptions in providing service to the public. Therefore, we granted temporary exemptions from payment of access charges to certain classes of exchange access users, including enhanced service providers.⁸ We did not intend those exemptions to be permanent,⁹ and we have since eliminated several of them. For example, in CC Docket No. 86-1 we eliminated the access charge exemptions for resellers.¹⁰ In the Notice initiating this docket, we expressed concern that the charges currently paid by enhanced service providers may not contribute

sufficiently to the costs of the exchange access facilities they use in offering their services to the public. We observed that to the extent enhanced service providers are exempt from switched access charges, other users of exchange access are forced to bear a disproportionate share of the local exchange costs that access charges are designed to cover. We reiterated our view that rate shock, which provided the original basis for the special treatment of enhanced service providers, justified a temporary but not a permanent exemption, and we tentatively concluded that an access charge exemption was no longer appropriate.¹¹ We asked interested parties to comment on this tentative conclusion and to provide detailed data on the state of this industry.¹² We also invited comment on implementation issues arising from our proposal.¹³

III. COMMENTS AND REPLIES

****2** 3. We received comments from 129 parties, reply comments from 35 parties, and many informal comments and letters.¹⁴ In general, LECs, state public utility commissions, and some consumer groups support eliminating the exemption from interstate access charges for enhanced service providers. Enhanced service providers, telecommunications equipment manufacturers, and users of enhanced services generally oppose elimination of the exemption.

4. The BOCs, with the exception of NYNEX, generally support eliminating the exemption, either immediately or with a transition. The BOCs and other LECs that support the proposal generally conclude that its adoption would further the goals of the access charge proceeding,¹⁵ and that enhanced service providers use the local network in the same way as other entities that currently pay interstate access charges.¹⁶ Ameritech, Centel, and NTCA argue that the possibility of rate shock no longer justifies special treatment, since enhanced service providers have had notice that interstate access charges might be assessed.¹⁷ However, Centel, as well as other LECs, advocate a gradual transition to full interstate access charges for enhanced services.¹⁸ NYNEX, on the other hand, proposes deferring ***2632** resolution of the issue until after ONA implementation. NYNEX claims that enhanced service providers will no doubt have to reconfigure their networks in response to the BOCs' ONA offerings and thus it would be unwise to impose access charges on these users in advance of that time.¹⁹

5. The D.C. People's Counsel, the Michigan PSC, the Florida PSC, the New York Attorney General, and the National Consumers League support elimination of the exemption. These state and consumer entities argue that all users of the local exchange should pay a fair share of the costs of the local network, and that because of the exemption, other users of the local exchange now pay a disproportionate share of the costs.²⁰ The New York Attorney General and the National Consumers League say that the present exemption may result in users of voice services subsidizing users of data services.²¹

6. Enhanced service providers strongly oppose the proposal to eliminate their exemption from interstate access charges. CompuServe, Telenet, and Tymnet argue that the imposition of interstate access charges would increase rates for enhanced services, depress demand, and impede the growth of a mass market for enhanced services at a critical time in the development of enhanced services.²² ADAPSO, Dialcom, Teleconnect, GE, IIA, and Trintex argue that implementing the proposal would have adverse effects on the enhanced services industry, which they assert is still at an infant stage of development, and indirectly harm other industries dependent on the enhanced services industry.²³ A large number of enhanced service providers argue that assessing interstate access charges on enhanced service providers would make only a minor contribution toward reducing LEC interstate revenue requirements, and consequently would not result in any noticeable decrease in rates for voice services.²⁴ Finally, some enhanced service providers assert that they did not have sufficient notice that this Commission intended eventually to require them to pay interstate access charges.²⁵

****3** 7. Telecommunications equipment manufacturers filing comments also oppose elimination of the exemption. Apple, DEC, EIA, IBM, and Tandy argue that adoption of the proposal in the Notice would seriously injure enhanced service providers and their customers.²⁶ Groups representing both large and small users assert that we should consider the social and economic

benefits of broadly available enhanced services before we act in this area.²⁷ Users generally object to the proposal to eliminate the exemption, and argue that rates for enhanced services would increase.²⁸

8. A number of parties suggest, like NYNEX, that we postpone consideration of the enhanced services exemption from interstate access charges until after ONA has been implemented. For example, CompuServe argues that, even if we accept none of its other arguments for maintaining the exemption, we should nevertheless defer further consideration of our proposal pending full implementation of ONA by the LECs.²⁹ Similarly, the Alarm Industry while generally opposing the imposition of access charges on enhanced services, also argues that, at the very least, this action should not be taken now because of uncertainty regarding the effects of ONA implementation on this industry.³⁰ The Boston Computer Society recommends that we continue the exemption until the implementation of ONA and, at that time, begin a transition to full interstate access charges over a period of 24 months.³¹ Tymnet agrees with NYNEX that that enhanced service providers may well have to reconfigure their networks in order to use ONA services, and suggests that a change in the access charge rules might result in temporary reconfigurations that would be a waste of resources.³²

9. Enhanced service providers state generally that the industry is fragile because it is still relatively new, with rapid growth rates, many new entrants, and market segments that are just beginning to emerge from the experimental stage. Thus they conclude that the immediate imposition of interstate access charges could be quite disruptive.³³ NTIA, for example, argues strenuously against the immediate imposition of access charges on enhanced service providers on the ground that despite rapid growth, the market for information services is still in a very early stage of development, and that the public interest would be served by fostering further development of this market by continuing the current exemption.³⁴ Some enhanced service providers argue in their comments that the specific segments of the industry in which they participate are in the formative stages of development and growth.³⁵ A number of parties state that the emerging consumer-oriented services, while still small in scope,³⁶ are in a particularly dramatic phase of growth.³⁷

10. 3M Media Services objects to immediate imposition of interstate access charges on enhanced service providers on the grounds that access charges may decrease in the future.³⁸ 3M argues that a sudden application of access charges at their current levels would disrupt the industry, and that if access charges do decrease, this disruption will have been unnecessary, at least in part.

****4** 11. California also opposes immediate assessment of interstate access charges on enhanced service providers, and argues that we should await further judicial action on BOC provision of information services in *United States v. Western Electric Co.*³⁹ before considering whether to adopt the proposed rule changes. California contends that the extent of BOC participation in the information services sector remains unclear, and suggests that we defer consideration of our proposal until we are able to assess the relevance of this important factor.⁴⁰

12. Finally, Telenet recommends in its reply comments that this proceeding be terminated, asserting that the mere pendency of the proceeding has had an adverse impact on the enhanced services industry. Telenet argues that since this Commission proposed to eliminate the enhanced service exemption from interstate access charges, many users and providers of enhanced services have delayed plans for expansion of existing services, as well as plans for new offerings.⁴¹

IV. DISCUSSION

13. Although the telecommunications industry in general has been characterized by substantial change in recent years, the record in this proceeding indicates that the enhanced services industry is in a uniquely complex period of transition. This Commission is currently in the process of reviewing ONA plans that may have a substantial effect on the manner and the terms under which enhanced service providers will originate and terminate their interstate traffic. Moreover, the MFJ Court has recently ruled that the BOCs may provide certain types of information services, raising other important questions about how enhanced services

will be provided to the public. The interrelationship of these factors, which is still *2633 unfolding, and their potential effects on the provision of enhanced services to the public lead us to conclude that this is not an appropriate time to assess interstate access charges on providers of enhanced services.

14. The ONA requirements we adopted in the Computer III proceeding⁴² will enable the enhanced service operations of the BOCs and their competitors to interconnect to specific basic service elements (BSEs) and interfaces on an unbundled and “equal access” basis.⁴³ As required in the Phase I Order,⁴⁴ the BOCs and AT & T filed ONA plans in CC Docket No. 88–2 on February 1, 1988. We anticipate extensive public comment on these plans, which are lengthy and complex, to be followed by careful review by Commission staff. Moreover, after Commission approval of their ONA plans, the BOCs may take up to one year to implement their initial sets of BSEs. Thereafter, deployment of BSEs in BOC service areas will occur according to schedules in the BOCs' ONA plans to be approved by this Commission. As NYNEX and Tymnet note in their comments, ONA may well require enhanced service providers to reconfigure their networks in order to take full advantage of the unbundled BSEs. At the very least, as the Alarm Industry suggests, there is some uncertainty in the enhanced services industry as to the pricing and technical effects of the implementation of ONA. We concur with the assessment of such parties that it would be prudent to defer consideration of our proposal to remove the enhanced service access charge exemption until we are more certain of the effects of ONA in this context.

**5 15. Moreover, we agree with California that the actions of the MFJ Court regarding BOC provision of information services could substantially affect the enhanced services industry in ways that presently are unclear. The MFJ contains a restriction on BOC provision of “information services,” a category that appears to be substantially equivalent to this Commission's regulatory category of “enhanced services.”⁴⁵ In its decision following the first triennial review of the MFJ restrictions, the MFJ Court retained the decree restriction on BOC provision of services involving the generation of information content, but stated that it was prepared to exempt from the restriction BOC transmission of information generated by others.⁴⁶ In its March 7 Decision, the MFJ Court reaffirmed the prohibition on BOC “information content” services, but also said that the BOCs will be permitted to “engage in the transmission of information as part of a gateway to an information service,” and to provide “voice storage and retrieval services.”⁴⁷

16. While the March 7 Decision could have substantial effects on the enhanced service industry, the extent and nature of those effects are difficult to ascertain precisely at the present time. Because the BOCs already provide local exchange service to much of the country, BOC entry into the markets for the services permitted by the March 7 Decision will presumably require many other enhanced service providers to adjust their activities to meet the new competition that the BOCs provide. Moreover, to the extent that enhanced service providers use the gateway services that the March 7 Decision permits the BOCs to offer, such gateways may both promote the growth of the industry and affect significantly the manner in which enhanced service providers access their customers.

17. We believe that given the combined effects of the impending ONA implementation and the entry of the BOCs into certain aspects of information service, the imposition of access charges at this time is not appropriate and could cause such disruption in this industry segment that provision of enhanced services to the public might be impaired.⁴⁸

18. Few of the parties who advocate eliminating the enhanced service exemption from interstate access charges urge immediate implementation. Bell Atlantic, Centel, Pacific Telesis, US West, the Florida PSC, and the National Consumers League all suggest that a transition would be appropriate.⁴⁹ Many of the arguments that support a transition also support deferral of consideration of our proposal to assess interstate access charges on enhanced service providers.⁵⁰ We have elected to terminate this proceeding at this time, rather than simply leave the docket open and defer taking action, because we believe the latter course would result in undue confusion and little increased public benefit. We are also not inclined to allow the record developed in this docket to grow stale.⁵¹

**6 19. A number of parties challenge our tentative conclusion in the Notice concerning the discriminatory aspects of the access charge exemption for enhanced service providers on the ground that their use of the local network differs from that of

entities that are currently subject to those charges. We need not, however, resolve that issue in this order. We conclude for the reasons discussed above that, to the extent the exemption for enhanced service providers may be discriminatory, it remains, for the present, not an unreasonable discrimination within the meaning of Section 202(a) of the Communications Act of 1934.⁵²

20. Accordingly, as we have concluded that this is not an appropriate time to assess interstate access charges on the enhanced services industry,⁵³ we will terminate this rulemaking proceeding.

V. ORDERING CLAUSE

21. Pursuant to Sections 1, 4(i), 4(j), and 201–205 of the Communications Act of 1934, as amended, [47 U.S.C. §§ 151, 154\(i\), 154\(j\)](#), and [201–205](#), this DOCKET IS HEREBY TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III

Acting Secretary

APPENDIX A

CC DOCKET 87–215

PARTIES FILING COMMENTS

- **7** 1. Ad Hoc Telecommunications Users Committee (Ad Hoc)
2. ADAPSO
3. Alarm Industry FCC Advisory Committee (Alarm Industry)
4. American Airlines
5. American Association of Community and Junior Colleges (AACJC)
6. American Bar Association (ABA)
7. American Council on Education
- *2634** 8. American Library Association
9. American Newspaper Publishers Association (ANPA)
10. American Petroleum Institute
11. American President Companies, Ltd.
12. Ameritech Operating Companies (Ameritech)
13. Apple Computer, Inc. (Apple)
14. Aeronautical Radio, Inc., and the Air Transport Association of America (ARINC)
15. Associated Credit Bureaus, Inc.

16. Associated Service Users
17. Association of Research Libraries
18. Automatic Data Processing, Inc.
19. Bayer, Barry D.
20. Bell Atlantic
21. BellSouth
22. Bernstein, Marc and Tamara
23. Boeing Computer Services Company
24. Boston Computer Society
25. Brown, Donald A.
26. Buc, Richard A.
27. Buda, Daniel Stephen
28. California Bankers Clearing House Association, Mastercard International Incorporated, New York Clearing House Association, and VISA USA, Inc. (California Bankers)
29. People of the State of California and Public Utilities Commission of the State of California (California)
30. Capital Cities/ABC, Inc. and National Broadcasting Company, Inc. (Capital Cities)
31. Centel Corporation
32. Chilton Corporation
33. Church of Jesus Christ of Latter-Day Saints
34. Cincinatti Bell Telephone (Cincinatti Bell)
35. Cohen, Robert M.
36. Committee of Corporate Telecommunications Users (CCTU)
37. Commodity Systems, Inc.
38. Communications Workers of America
39. CompuServe
40. Computer Language Research, Inc.
41. Computer Sciences Corporation
42. Davis, Becky A.
43. Office of the People's Counsel of the District of Columbia (D.C. People's Counsel)

44. Department of the Army
45. Dialcom, Inc. (Dialcom)
46. Digital Equipment Corporation (DEC)
47. Dow Chemical Company
48. Dow Jones & Company, Inc.
49. Dun & Bradstreet Corporation (Dun & Bradstreet)
50. Report by Economics and Technology, Inc. at the request of ARINC, DEC, GE, IIA, Quantum, Trintex, Xerox, CCTU (ETI)
51. Electronic Funds Transfer Association (EFTA)
52. Electronic Industries Association [Consumer Electronics Group] (EIA)
53. Electronic Mail Association
54. Enhanced Service Providers Association
55. Equifax Inc. (Equifax)
56. Farenthold, R. Blake
57. Fit to Print, Graphic and Information Services
58. Florida Public Service Commission (Florida PSC)
59. General Electric Communications and Services (GE)
60. Goldberg, Alfred
61. General Services Administration (GSA)
62. GTE Telephone Companies
63. Hallstrom, Dr. Curtis
64. Harris, Deborah
65. Hawkins, Alice
66. Hayes Microcomputer Products, Inc. (Hayes)
67. Huffman, Robert E.
68. Instructional Telecommunications Consortium of the AACJC
- **8** 69. Information Industry Association (IIA)
70. Interactive Technologies, Inc.
71. International Business Machines Corporation (IBM)

72. IBM PC Special Interest Group on The Source
73. International Communications Association (ICA)
74. ITT World Communications, Inc.
75. Krauss, Jeffrey
76. Logical Software, Inc.
77. Maine Legislative Council
78. Massengale, Dr. Martin A.
79. McGraw–Hill, Inc.
80. Mead Data Central
81. Mellon Bank
82. Merit Computer Network
83. Michigan Public Service Commission Staff (Michigan PSC)
84. Moore, Michael L.
85. Muhlerin, William S.
86. National Association of Realtors
87. National Association of State Directors of Special Education, Inc.
88. National Association of State Universities and Land Grant Colleges
89. National Cotton Council of America
90. National Data Corporation
91. National Retail Merchants Association
92. National Telephone Cooperative Association (NTCA)
93. New York Public Library
94. Northeastern University
95. National Telecommunications and Information Administration (NTIA)
96. NYNEX Telephone Companies (NYNEX)
97. OCLC
98. Oklahoma Health Sciences Library Association
99. Pacific Bell and Nevada Bell (Pacific)

- 100. PARS Service Partnership
- 101. Phone Programs, Inc.
- 102. Public Interest Computer Association (PICA)
- 103. Public Service Enterprise Group
- 104. Quantum Computer Services Inc. (Quantum)
- 105. Rochester Telephone Corporation (Rochester)
- *2635 106. Security Pacific Corporation
- 107. South Dakota State Library
- 108. Source Telecomputing Corporation (The Source)
- 109. Southern Connecticut State University
- 110. Southwestern Bell Telephone Company (Southwestern Bell)
- 111. Special Libraries Association
- 112. Stone, Gerald
- 113. Tandy Corporation (Tandy)
- 114. Tele-Communications Association
- 115. Teleconnect Company (Teleconnect)
- 116. Telenet Communications Corporation (Telenet)
- 117. Teltec Saving Communications Co. and Clark Telecommunications Inc. (Teltec)
- 118. Trans-Union Credit Information Co.
- 119. Trintex
- 120. Tymnet-McDonnell Douglas Network Systems Company (Tymnet)
- 121. UNISON Telecommunications Service
- 122. U.S. Small Business Administration
- 123. United States Telephone Association (USTA)
- 124. Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company (US West)
- 125. Videotex Industry Association
- 126. Warwick, John C.
- 127. Western Union Telegraph Company

128. Xerox Corporation (Xerox)

129. ?? Media Services Inc.

PARTIES FILING REPLY COMMENTS

1. Ad Hoc

2. ADAPSO

3. ANPA

4. ARINC

5. California Bankers

6. Church of Jesus Christ of Latter–Day Saints

7. Cincinatti Bell

8. CompuServe

9. CCTU

10. DEC

11. Dun & Bradstreet

12. EFTA

13. Equifax

14. Erickson, Larry

15. ETI

16. GE

17. Hayes

****9** 18. Howard University School of Law

19. IIA

20. Motorola, Inc.

21. National Consumers League (NCL)

22. NTIA

23. New York Attorney General

24. Pacific

25. Quantum

26. Radio Telecom and Technology, Inc.
27. Rollins, Inc.
28. Society of Broadcast Engineers (SBE)
29. Southwestern Bell
30. Telenet
31. Trintex
32. Tymnet
33. United Methodist Church [General Council on Finance and Administration]
34. USTA
35. Xerox

CONCURRING STATEMENT OF COMMISSIONER PATRICIA DIAZ DENNIS CC DOCKET NO. 87–215

I fully support the Commission's decision to terminate the instant rulemaking. The Commission established access charges to “allow[] the burgeoning telecommunications industry to develop in a way that best serves the needs of the country....” [MTS and WATS Market Structure](#), 97 FCC 2d 682, 686 (1983) (First Reconsideration). At the time it exempted enhanced service providers from carrier access charges, the Commission stated:

We are entering an information age which can spawn new businesses and industries, enable traditional industries to modernize their operations and fare better in national and world markets, create vast numbers of new jobs, increase productivity, and dramatically improve the quality of life for the average American through numerous and diverse applications of telecommunications technology in the home and office.

Id. 686–87.

What we said then applies even more today. The greater efficiency and competitive vigor a vibrant enhanced services market can contribute to the public interest is furthered by terminating this proceeding.

FCC

Footnotes

- 1 Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, Notice of Proposed Rulemaking, 2 FCC Rcd 4305 (1987) (hereinafter Notice).
- 2 Amendment of [Section 64.702 of the Commission's Rules and Regulations \(Third Computer Inquiry\)](#), Report and Order, 104 FCC 2d 958 (1986) (hereinafter Phase I Order); modified on reconsideration, 2 FCC Rcd 3035 (1987), modified on further reconsideration, FCC 88–9 (released February 18, 1988); see also Report and Order, 2 FCC Rcd 3072 (hereinafter Phase II Order), modified on reconsideration, FCC 88–10 (released February 18, 1988).
- 3 United States of America v. Western Electric Company, Inc., No. 82–0192, slip op. (D.D.C. March 7, 1988) (hereinafter March 7 Decision).
- 4 See infra paras. 13–17.
- 5 MTS and WATS Market Structure, Memorandum Opinion and Order, 97 FCC 2d 682 (1983) (hereinafter First Reconsideration).
- 6 See, e.g., id. at para. 3.
- 7 Id. at para. 77.

8 Under our present rules, enhanced service providers are treated as end users for purposes of applying access charges. See [47 C.F.R. § 69.2\(m\)](#); Northwestern Bell Telephone Company Petition for a Declaratory Ruling, Memorandum Opinion and Order, [2 FCC Rcd 5986, 5988 at para. 20 \(1987\)](#), appeal docketed, No. 87–1745 (D.C.Cir. Dec. 4, 1987). Therefore, enhanced service providers generally pay local business rates and interstate subscriber line charges for their switched access connections to local exchange company central offices. Enhanced service providers also pay special access surcharges for private lines under the conditions set out in our rules. See [47 C.F.R. § 69.5\(a\) and \(c\)](#).

9 First Reconsideration, *supra* note 5, at para. 83.

10 WATS–Related and Other Amendments of Part 69 of the Commission's Rules, Report and Order, CC Docket No. 86–1, [FCC 86–115 \(released March 21, 1986\)](#) (eliminating the exemptions for WATS resellers and MTS resellers); Second Report and Order, CC Docket No. 86–1, [FCC 86–377 \(released August 26, 1986\)](#) (eliminating the exemption for private line resellers that offer non-MTS/WATS services).

11 Notice, *supra* note 1, at para. 8.

12 *Id.* at para. 10.

13 *Id.* at para. 11.

14 See Appendix A, attached hereto, for a list of formal comments received. In the balance of this Order, we will use the abbreviations for commenters that appear in that Appendix. CCTU and the National Association of Realtors filed late comments and the Society of Broadcast Engineers filed late reply comments. Each of these parties submitted a Motion to Accept Late Filed Comments, and no party opposed those motions. Since we find that no party would be prejudiced by our granting these motions, we grant them and accept these late filed comments and replies. We treat as informal comments those comments and replies that were filed late and were not accompanied by a proper motion.

15 See, e.g., BellSouth Comments at 4.

16 See, e.g., Ameritech Comments at 3; BellSouth Comments at 5; US West Comments at 3; Centel Comments at 1; Cincinatti Bell Comments at 1–2; NTCA Comments at 1; Rochester Comments at 3; Teltec Comments at 4.

17 Ameritech Comments at 4–5; Centel Comments at 2; NTCA Comments at 4–5.

18 See Centel Comments at 2; Bell Atlantic Comments at 3; Pacific Comments at 11.

19 NYNEX Comments at 3.

20 See Michigan PSC Comments at 2; DC People's Counsel Comments at 2; NCL Reply Comments at 2; New York Attorney General Reply Comments at 4.

21 New York Attorney General Reply Comments at 4; NCL Reply Comments at 2.

22 CompuServe Comments at 15–24; Telenet Comments at 8–12; Tymnet Comments at 10–21.

23 ADAPSO Comments at 24–36; Dialcom Comments at 20–23; Teleconnect Comments at 9; GE Comments at 17–20; IIA Comments at 30–31; Trintex Comments at 4.

24 See, e.g., CompuServe Comments at 27; Telenet Comments at 16; Tymnet Comments at 10–21; ADAPSO Comments at 22; GE Comments at 22–23; IIA Comments at 23.

25 See, e.g., Chilton Comments at 7; Equifax Comments at 4–6.

26 Apple Comments at 19; DEC Comments at 4–5; EIA Comments at 6–8; IBM Comments at 8–11; Tandy Comments at 4–5.

27 See, e.g., Ad Hoc Comments at 58; Church of Jesus Christ of Latter–Day Saints Comments at 14–15; Associated Service Users Comments at 4–5.

28 See, e.g., ARINC Comments at 8; Capital Cities Comments at 1; ICA Comments at 4–5; Association of Research Libraries Comments at 1; Boston Computer Society Comments at 4–6.

29 See also Teleconnect Comments at 25–27; Computer Sciences Corporation Comments at 1; PICA Comments at 10; Telenet Comments at 45; Dialcom Comments at 10; Electronic Mail Association Comments at 15.

30 Alarm Industry Comments at 5–6.

31 BCS Comments at 8.

32 Tymnet Reply Comments at 41.

33 See, e.g., ABA Comments at 9; EFTA Comments at 5–6; McGraw–Hill Comments at 7.

34 NTIA Comments at 11–13. Logical Software, McGraw–Hill, CCTU, and Associated Service Users agree that the information services industry is not yet mature, or even approaching maturity. Logical Software Comments at 2; McGraw–Hill Comments at 2; CCTU Comments at 36; Associated Service Users Comments at 5. Telenet estimates that enhanced service providers accounted for 3.2 to 4.2 billion dial minutes of use in 1987, and therefore would contribute at most only two percent additional minutes to the CCL pool, resulting in a potential reduction in long distances rates of no more than one half of one percent. Telenet Comments at 17–19.

35 For example, the Electronic Funds Transfer Association says that electronic funds transfer, and particularly point-of-sale debit card services, are nascent. EFTA Comments passim. The Videotex Industry Association argues that, even if this Commission's proposal to assess interstate access charges on enhanced service providers is equitable, we should not take any such action until the videotex industry has become more developed and mature. VIA Comments at 14. VIA estimates that the consumer videotex market generated 500 million minutes of use in 1987. VIA Comments at 2.

36 The Economics and Technology, Inc. report submitted by ARINC et al. estimates that the total number of subscribers for low end services (\$4–12 per hour) is between 750,000 and 1,000,000—only about 1% of the total number of households in the U.S., and only about 4–5% of households with personal computers. Selwyn and Kravtin, *An Economic Analysis of the Impact of Interstate Switched Access Charge Treatment on Information Service Providers* (report prepared at the request of ARINC, DEC, GE, IIA, Quantum, Trintex, Xerox, and CCTU) at 14–15.

37 See, e.g., Telenet Comments at 33, n. 25; CompuServe Comments at 16; Tymnet Comments at 6. Telenet asserts that consumer-oriented services have experienced a 76.2% annual growth rate during the 1982–1987 period.

38 3M Comments at 1. In the Notice we stated that with additional increases in subscriber line charges scheduled for December 1988 and April 1989, the CCL charge for both originating and terminating traffic should decrease further. Notice, *supra* note 1, at para. 9.

39 In the decision following the first triennial review of the MFJ restrictions, the MFJ Court said that it would issue a further decision describing the services the BOCs would be able to provide as exceptions to the information services restriction of the MFJ. See [United States of America v. Western Electric Company, Inc.](#), 673 F.Supp. 525 (D.D.C.1987) (hereinafter September 10 Decision). The MFJ Court issued its information services decision on March 7, 1988. March 7 Decision, *supra* note 3.

40 California Comments at 2.

41 Telenet Reply Comments at 21.

42 Computer III, *supra* note 2.

43 Phase I Order, *supra* note 2, 104 FCC 2d at 1019, para. 113.

44 *Id.*

45 See [United States v. American Telephone and Telegraph](#), 552 F.Supp. 131, 179, 189–190 (D.D.C.1982), *aff'd sub nom. United States v. Maryland*, 460 U.S. 1001 (1983).

46 September 10 Decision, *supra* note 39, at 597.

47 March 7 Decision, *supra* note 3, slip op. at 65–66.

48 For example, to the extent that parties' concerns about rate shock are related to the present levels of access charges, we note that such charges will be decreasing as a result of a number of factors, including the further implementation of subscriber line charges. See [MTS and WATS Market Structure and Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, Report and Order](#), 2 FCC Rcd 2953 (1987). Some parties contend that it would be preferable not to assess charges on enhanced service providers that are higher now than they will be in the near future. Any later review of the question of access charges for enhanced service providers would likely be based on charges at lower and more stable levels, which should provide a more certain basis for assessing their impact on the industry.

49 Bell Atlantic Comments at 3; Centel Comments at 2; Pacific Comments at 11; US West Comments at 2; NCL Comments at 5; Florida PSC Comments at 4.

50 See, e.g., NCL Comments at 5 (three year phase-in would permit nonprofit groups and educational institutions time to factor rate changes into their budgets); Bell Atlantic Comments at 3 (phase-in would reduce rate shock); Pacific Comments at 13–14 (transition would accommodate the development of the access charge structure and the promotion of a consumer mass market for enhanced service providers).

51 Some enhanced service providers contend in their comments that they had insufficient notice that interstate access charges would at some point be assessed on their interstate services. For the reasons discussed in the Notice we do not agree. See Notice, *supra* note 1, at para. 8. Furthermore, it is through the adoption of a Notice of Proposed Rulemaking that a regulatory agency, like this Commission, provides notice to interested parties about proposed changes in its rules. Notice in this case was sufficient in all respects. Nevertheless, to the extent that any party to this proceeding failed to realize that this Commission did not, in its access charge proceeding, intend to provide a permanent exemption to enhanced service providers, these entities now have actual notice of that fact.

52 47 U.S.C. § 202(a). See also [National Association of Regulatory Utility Commissioners v. FCC](#), 737 F.2d 1095, 1136–37 (D.C.Cir.1984).

53 Thus, the current treatment of enhanced service providers for access charge purposes will continue. At present, enhanced service providers are treated as end users and thus may use local business lines for access for which they pay local business rates and subscriber line charges. To the extent that they purchase special access lines, they also pay the special access surcharge under the same conditions as those applicable to end users. See *supra* note 8.

64 Rad. Reg. 2d (P & F) 1294 (F.C.C.), 3 F.C.C.R. 2631, 3 FCC Rcd. 2631 (F.C.C.), 1988 WL 488404 (F.C.C.)

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