

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

In the Matter of )  
 )  
Amendment of Part 36 of The ) CC Docket No. 80-286  
Commission's Rules and )  
Establishment of a Joint Board )

RECOMMENDED DECISION

Adopted: September 27, 1996

Released: September 27, 1996

By the Federal-State Joint Board

I. INTRODUCTION

1. The Federal-State Joint Board recommends that the Commission adopt a fixed-factor allocation method to replace the interim procedures currently applicable to incumbent local exchange carriers ("ILECs") for allocating the Other Billing and Collecting ("OB&C") expenses<sup>1</sup> portion of Account 32.6623, Customer services, between the state and interstate jurisdictions.<sup>2</sup> The Federal-State Joint Board further recommends that those expenses be allocated in equal measure to local service, intrastate toll service, and interstate toll service, so that two thirds of the expenses are assigned to the state jurisdiction and one third to the interstate jurisdiction. The Federal-State Joint Board declines at this time to recommend that the Commission prescribe an alternative allocation procedure to be triggered in the event that an interexchange carrier ("IXC")

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<sup>1</sup> Throughout this Recommended Decision, the phrase "OB&C expenses" refers to the Other Billing and Collecting Expenses described in 47 C.F.R. §36.380 (1994).

<sup>2</sup> 47 C.F.R. §§32.6623, 36.380 (1994).

takes back substantial billing and collecting functions from ILECs.<sup>3</sup> Instead, the Federal-State Joint Board recommends that the Commission entertain petitions for waiver on a case-by-case basis from ILECs that believe they will be unduly harmed by these rules.

## II. BACKGROUND

2. OB&C expenses are the expenses incurred by ILECs in preparing and rendering customer bills (other than carrier access charge bills), and in accounting for revenues generated by those bills. Because the Commission detariffed interstate billing and collecting services in 1986,<sup>4</sup> most of the OB&C expenses allocated to the interstate jurisdiction are not recoverable through interstate access charges. Instead, they are allocated to nonregulated activities, and recovered through untariffed charges for non-regulated services. The sole exception is the billing and collecting expense allocated to the federal end user common line charge,<sup>5</sup> also known as the Subscriber Line Charge, or SLC, which, pursuant to Section 69.407(a) of our rules, is recovered through the common line access rate element.<sup>6</sup>

3. Prior to 1987, the rules for jurisdictional separation of OB&C expenses required that ILECs attempt to determine the amount of time spent billing for interstate services and for intrastate services. In 1987, this Joint Board recommended, and the Commission adopted, an interstate apportionment formula that was based on the number of users billed by each ILEC for

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<sup>3</sup> The antecedents of this Recommended Decision are described more extensively in the Commission Order denying the petition for declaratory ruling of the National Exchange Carrier Association, Inc. (NECA) on the treatment of expenses associated with billing the subscriber line charge (SLC), and in the prior Commission Order adopting the interim allocation procedures. See National Exchange Carrier Association, Inc., 7 FCC Rcd 8554 (1992) (SLC Billing Expense Order), *petitions for recon. pending*, Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board, Order on Reconsideration and Supplemental Notice of Proposed Rulemaking, 3 FCC Rcd 5518 (1988) (Reconsideration Order). The federal end user common line charge, also known as the subscriber line charge or SLC, is a per-line charge that recovers a portion of the ILEC non-traffic sensitive loop costs apportioned to the interstate jurisdiction.

<sup>4</sup> See Detariffing of Billing and Collection Services, 102 FCC 2d 1150, recon. denied, 1 FCC Rcd 445 (1986).

<sup>5</sup> 47 C.F.R. §69.104 (1994).

<sup>6</sup> 47 C.F.R. §69.407(a) (1994).

specific interstate and intrastate services.<sup>7</sup> This formula established upper and lower bounds of thirty-three and five percent, respectively, for the expenses associated to be allocated to billing and collecting for interstate services, including the federal SLC, to be apportioned to the interstate jurisdiction. Before this rule change, the interstate allocations typically had been approximately 20 percent.

4. Although the Commission had expected that the new procedures would result in reduced interstate assignments, it became apparent that the new procedures would have the opposite effect, at least in some cases. In 1988 this unanticipated result, combined with the difficulty carriers had administering the new formula (as evidenced by waiver requests), led the Commission, on reconsideration, to reinstate on an interim basis a portion of the allocation rules that were in effect prior to 1987.<sup>8</sup> In the time since the rules were reinstated on an interim basis, substantial change has occurred within the telecommunications industry, including the introduction of new services, and, with the passage of the Telecommunications Act of 1996, the ability of the ILECs and IXC's to compete directly in each others' markets.<sup>9</sup>

#### A. Fixed Allocation Factor

5. On May 4, 1995 the Commission adopted a Notice of Proposed Rulemaking (Notice) in which it proposed to replace these interim rules with permanent rules for allocating OB&C expenses between the jurisdictions.<sup>10</sup> In the Notice, the Commission sought comment on permanent separations procedures for OB&C expenses that would reflect cost-causation principles, and not be unnecessarily burdensome to implement and administer. The Commission also expressed its belief that, because OB&C expenses are generally not attributable to any specific service, an allocation procedure based on usage of individual services would not allocate expenses

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<sup>7</sup> MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, 2 FCC Rcd 2078, 2083 (1987) (Joint Board Recommendation); Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board, 2 FCC Rcd 2639 (1987) (1987 Separations Order). See the SLC Billing Expense Order, cited supra at n.3, for a more extensive discussion of the rules in place prior to 1987, the rules adopted in 1987, and the interim rules currently in effect.

<sup>8</sup> Reconsideration Order, 3 FCC Rcd 5518. See SLC Billing Expense Order, 7 FCC Rcd 8554 for a more extensive discussion of these changes.

<sup>9</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See also 47 U.S.C. § 251; Implementation of Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, FCC 96-325 (rel. Aug. 8, 1996).

<sup>10</sup> Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Notice of Proposed Rulemaking, 10 FCC Rcd 7013 (1995) (Notice).

more accurately than would a fixed allocation factor.<sup>11</sup> Believing that a fixed allocation factor would be simpler to administer and audit, and would bring greater certainty, the Commission proposed four alternative fixed allocation methods.

6. The first fixed allocation methodology the Commission proposed would divide OB&C expenses equally among three service subcategories: interstate toll; intrastate toll; and local exchange service.<sup>12</sup> Under this procedure, one third of the OB&C expenses would be allocated to the interstate jurisdiction (i.e., the interstate toll subcategory) and two thirds would be allocated to the state jurisdiction (i.e., intrastate toll and local subcategories).

7. The second fixed allocation methodology the Commission proposed would divide OB&C expenses equally among three service subcategories: interstate toll; intrastate toll; and subscriber line.<sup>13</sup> The expenses allocated to the subscriber line subcategory would be divided between the state and interstate jurisdictions by applying the basic allocation factors used to separate non-traffic sensitive subscriber plant (i.e., 75 percent would be allocated to the state jurisdiction, and 25 percent would be allocated to the interstate jurisdiction).<sup>14</sup> Under this procedure, the total interstate allocation would consist of the interstate toll allocation (approximately 33.3 percent of the total OB&C expenses) plus one fourth of the subscriber line allocation (approximately 8.3 percent of total OB&C expenses). Thus, the total interstate allocation of OB&C expenses under this approach would be approximately 41.6 percent.

8. The third fixed allocation methodology the Commission proposed would divide OB&C expenses equally among four subcategories: interstate toll; intrastate toll; local exchange service; and other intrastate services, including custom local area signalling services ("CLASS").<sup>15</sup> Under this methodology, one fourth of the expenses would be allocated to the interstate jurisdiction (i.e., the interstate toll subcategory) and three fourths would be allocated to the state

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<sup>11</sup> The Commission noted that, for example, postage costs associated with customer service billings constitute a substantial portion of OB&C costs. Such costs, however, are not directly attributable to any individual service, because several pages containing many itemized service charges can be included in a customer's bill without increasing the postage charge. Notice at n.10.

<sup>12</sup> Notice at para. 9.

<sup>13</sup> Id. at para. 10.

<sup>14</sup> 47 C.F.R. §36.154(c) (1994).

<sup>15</sup> Notice at para. 11. These services include number-translation services such as call-forwarding and caller identification.

jurisdiction (i.e., the intrastate toll, local exchange service, and other intrastate service subcategories).

9. The fourth fixed allocation methodology the Commission proposed would divide OB&C expenses equally among four subcategories: interstate toll; intrastate toll; subscriber line; and other intrastate services, including CLASS.<sup>16</sup> Under this proposal, 31.25 percent of the total OB&C expenses would be allocated to the interstate jurisdiction (i.e., the interstate toll subcategory and one fourth of the subscriber line subcategory) and the remainder would be allocated to the state jurisdiction.

10. The Commission requested that parties address the extent to which the proposed procedures: (1) would reflect cost-causation principles; (2) would affect the division of costs between the jurisdictions; and (3) would be burdensome to implement and administer. Parties commenting on these fixed allocation approaches were asked to address their reasonableness, and the effect on the allocation of OB&C expenses if the IXCs substantially reduced their reliance on ILECs to perform billing and collecting services.

#### **B. Alternative Adjustment Mechanisms**

11. The Commission suggested in the Notice that the proposed fixed allocation methods might require an adjustment mechanism that would be triggered if IXCs substantially reduced their use of ILEC billing and collecting services.<sup>17</sup> Comment was invited on whether permanent OB&C allocation rules should include a contingency provision that would alter separations procedures if IXCs assumed billing and collecting functions, and if so, the form that the trigger provision should take.

12. The Notice suggested two possible adjustment triggers. The first would permit an adjustment, or recourse to an alternative procedure, when an ILEC loses 50 percent of its existing interstate toll billing and collecting operations. The second would use the ILEC's loss of its largest IXC customer to activate the alternative allocation procedure. Under either, the Commission could adjust the fixed allocator to take into account the decrease in the ILEC's interstate toll billing and collecting operations.

13. The Commission also invited parties to address the possibility that an ILEC could lose all of its existing toll billing and collecting business from IXC customers, and asked whether it should prescribe a set percentage of OB&C expenses to be allocated to interstate services if an

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<sup>16</sup> Id. at para 12.

<sup>17</sup> Id. at paras. 14 -17.

ILEC no longer performs any interstate toll billing for IXCs.<sup>18</sup> The Commission referred all these issues to the Docket 80-286 Federal-State Joint Board for a recommendation of a permanent solution.<sup>19</sup>

### III. SUMMARY OF THE COMMENTS

#### A. Large and Mid-Size ILECs

14. Many of the large and mid-size ILECs support retaining the current OB&C expense allocation rules.<sup>20</sup> These parties claim the current formula reflects reasonable cost allocation principles, and separates expenses fairly and equitably.<sup>21</sup> Some large ILECs maintain that the current rules, because they reflect usage, are more consistent with principles of cost-causation than the fixed-factors methods proposed in the Notice.<sup>22</sup> Some prefer a usage-based method, because it would automatically reflect changes in the mix of intra- and interstate usage.<sup>23</sup> Several commenters argue that a usage-based approach would eliminate the need for waivers or an alternative adjustment mechanism, and claim this is a virtue of the current interim rules.<sup>24</sup> US West foresees competition between ILECs and IXCs changing their billing and collecting relationship, because IXCs will not wish to bill through their competitors (and ILECs also may not want to bill for their competitors), and expresses concern that a fixed allocation method would not reflect this change in billing arrangements.<sup>25</sup>

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<sup>18</sup> Id. at para. 18.

<sup>19</sup> Id. at para. 19.

<sup>20</sup> Larger ILECs supporting the current cost allocation method include BellSouth Telecommunications, Inc. ("BellSouth"), Pacific Bell and Nevada Bell ("Pacific"), Southwestern Bell ("SWBT"), NYNEX Telephone Companies ("NYNEX"), US West Communications, Inc. ("US West"), Roseville Telephone Company ("Roseville"), Cincinnati Bell Telephone ("CBT"), United and Central Telephone ("United"), and GTE Service Corporation ("GTE").

<sup>21</sup> Roseville Comments at 2; CBT Comments at 2; United Comments at 2.

<sup>22</sup> See, e.g., NYNEX Comments at 3.

<sup>23</sup> See, e.g., Pacific Comments at 5; SWBT Comments at 7; SWBT Reply at 3; Roseville Comments at 1-2; NYNEX Comments at 6 (current rules provide "early warning" of jurisdictional cost shifts); US West Comments at 9.

<sup>24</sup> US West Comments at 9; NYNEX Comments at 5-6; GTE Comments at 3-4; United Comments at 3.

<sup>25</sup> US West Comments at 6. Accord, CBT Comments at 3.

15. Some ILECs claim that the current rules are not an undue burden or expense, or that they see no compelling reason for change.<sup>26</sup> BellSouth argues that the proposed methodologies would actually increase the costs it bears as a result of regulation.<sup>27</sup> Other parties agree that the implementation costs outweigh any of the supposed benefits,<sup>28</sup> and that the proposed alternative procedures would be an unnecessary burden, because the usage-based method is self-adjusting.<sup>29</sup>

16. Several large ILECs foresee an increase in the interstate allocation resulting from the adoption of a fixed cost allocator.<sup>30</sup> Some parties assert that such an increase would be inappropriate, arguing that the portion of OB&C expenses attributable to interstate billing is declining.<sup>31</sup> Pacific argues that the proposed methods leave no fair and practical avenue for recovery of increased interstate expenses. In particular, proposals that allocate some expense to the SLC would unfairly burden business customers, because the residential SLC has reached its capped maximum in most jurisdictions.<sup>32</sup> ILECs might drop IXC billing and collection altogether, with the unfortunate result of customers facing multiple bills.<sup>33</sup> Southwestern Bell predicts that ILECs would try to recover increased interstate allocation from the IXCs, which would lead the IXCs to take back their billing and collection business.<sup>34</sup>

17. A few large ILECs argue that the proposals in the Notice are inconsistent with other statements of Commission policy. Roseville states that the Commission has consistently favored cost allocations based on actual relative use, and that the Notice does not sufficiently

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<sup>26</sup> See, e.g., NYNEX Comments at 5; Roseville Comments at 2 and 4; CBT Comments at 2; BellSouth Comments at 2-3; US WEST Comments at 2-4; Pacific Comments at 4-5; NYNEX at 3; SWBT Comments at 10; SWBT Reply at 2.

<sup>27</sup> BellSouth Comments at 4.

<sup>28</sup> GTE Comments at 3-4.

<sup>29</sup> Id.; United Comments at 3.

<sup>30</sup> BellSouth Comments at 4; Pacific Comments at 3; SWBT Comments at 8-9, 11; US West at 8, NYNEX at 5. See also Roseville Comments at 4 (predicting arbitrary shifts between the jurisdictions).

<sup>31</sup> US West Comments at 3, 5-6; SWBT Reply at 2.

<sup>32</sup> Pacific Comments at 6.

<sup>33</sup> Id. at 4. Accord, PaPUC Reply at 3-4.

<sup>34</sup> SWBT Comments at 11.

explain how circumstances have changed since the current procedures, which incorporate this cost-causation principle, were adopted in 1987.<sup>35</sup> In a similar vein, NYNEX argues that "the Commission's rules contemplate separations "shortcuts" only where "practicable" and where "their application produces substantially the same results as would be obtained by the use of more detailed procedures;" which, according to NYNEX, the proposed rules do not.<sup>36</sup> US West asserts that there is an unexplained inconsistency between the methodologies the Commission proposes in the Notice, which would increase allocation of OB&C expenses to interstate, and the Commission's stated goal in adopting the current interim rules, which was "to reverse the unanticipated increases in interstate assignments."<sup>37</sup>

18. Various large ILECs also advise against selecting permanent OB&C rules at this time. SWBT advises the Commission to refrain from reforming OB&C before universal service issues are resolved, arguing that universal service policies could have considerable impact on OB&C expenses.<sup>38</sup> US West states that, because the concept of "telephone users" and the services they receive are changing, OB&C questions should be resolved in the context of a comprehensive jurisdictional separations review proceeding.<sup>39</sup> SWBT and Pacific claim that the methodologies proposed in the Notice do not sufficiently address the issue of the SLC.<sup>40</sup>

19. Two large ILECs, Bell Atlantic and Ameritech, support adoption of a fixed allocator. They agree that for OB&C expenses, as for all expenses not easily attributed to a specific service, fixed allocators are easier to administer, easier to audit, and more predictable than usage-based allocators.<sup>41</sup> Ameritech maintains that because a fixed allocator is simpler, it is also more cost effective than usage-based systems, which involve time consuming separations studies of dubious utility, and argues that its customers would ultimately benefit from a less

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<sup>35</sup> Roseville Comments at 3.

<sup>36</sup> NYNEX Comments at 4, citing 47 C.F.R. Section 36.1(e).

<sup>37</sup> US West at 3, n.5, citing National Exchange Carrier Association, Inc., Petition for Declaratory Ruling Pertaining to Interstate Common Line Allocation of Other Billing and Collecting Expense Under Parts 36 and 69 of the Commission's Rules, Memorandum Opinion and Order, 7 FCC Rcd 8554, 8557, para. 24 (1992). GVNW also develops this point in its Comments at 10.

<sup>38</sup> SWBT Reply at 4. Accord, USTA Reply at 2.

<sup>39</sup> US West Comments at 7.

<sup>40</sup> SWBT Comments at 4; See also Pacific Reply at 2-3 (SLC not addressed in Notice plan #3).

<sup>41</sup> Bell Atlantic Telephone Companies ("Bell Atlantic") Comments at 2; Ameritech Operating Companies ("Ameritech") Comments at 3.



expensive procedure.<sup>42</sup> Bell Atlantic adds that reform is needed to remedy an inadequacy of the present rules, which "do not specify a procedure for apportioning OB&C to the expense of billing the SLC."<sup>43</sup>

20. Bell Atlantic and Ameritech argue that a fixed-factor methodology for allocating OB&C expenses is just as accurate as a methodology based on measuring usage. Bell Atlantic confirms the Commission's tentative conclusion in the Notice that, because billing and collection expenses are fixed and not usage-sensitive, an allocator based on measuring usage is not more accurate than a fixed one.<sup>44</sup> Bell Atlantic also maintains that even if a fixed-factor methodology were marginally less accurate than a usage-based allocator, that defect would still have to be evaluated against other considerations, such as administrative burden and expense.<sup>45</sup> Bell Atlantic further notes that a fixed allocator has worked well with non-traffic sensitive costs.<sup>46</sup>

21. In regard to the Notice's proposal of an alternative allocation if an ILEC loses all or most of its IXC customers, Ameritech advises the Commission to express its willingness to entertain waiver requests. Ameritech suggests that the Commission establish a rule allowing for expedited action, either on the ILEC's motion or *sua sponte*, if an ILEC loses a certain volume (perhaps 50 percent) of its IXC billing and collection business. The Commission could also establish a presumption that, if an ILEC loses all of its IXC billing and collection business, the ILEC would continue to allocate a maximum of five percent to interstate services.<sup>47</sup>

22. Two Regional Bell Operating Companies ("RBOCs") responded to the invitation in the Notice to submit fixed allocation methodologies of their own.<sup>48</sup> Bell Atlantic proposes that the third and fourth options in the Notice be combined, so that expenses would be apportioned among five categories: (i) interstate toll; (ii) intrastate toll; (iii) local exchange service; (iv) other

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<sup>42</sup> Ameritech at Comments at 3-4; Ameritech Reply at 2 and 4. (Ameritech argues that, for the same reasons, the entire separations process should be replaced with a fixed allocator.)

<sup>43</sup> Bell Atlantic Comments at 1, quoting National Exchange Carrier Association, Inc., Memorandum Opinion and Order, 7 FCC Rcd 8554 at 8555 (1992).

<sup>44</sup> Bell Atlantic Comments at 1-2; Bell Atlantic Reply at 2.

<sup>45</sup> Ameritech Comments at 3.

<sup>46</sup> Bell Atlantic Comments at 2, Bell Atlantic Reply at 2-3.

<sup>47</sup> Ameritech Comments at 5.

<sup>48</sup> Notice at para. 13.

intrastate service; and (v) subscriber line charge. This would, Bell Atlantic claims, more appropriately attribute OB&C expenses to all the underlying subcategories.

23. While Pacific Bell would prefer to keep the interim rules, it offers as an alternative its own fixed allocation methodology. Pacific Bell contends that its proposal more closely reflect the ILECs' current activities, and would result in an interstate allocation closer to the present one than the Commission's proposals. Pacific would also distribute expenses among five categories: (i) ILEC toll; (ii) other carrier toll; (iii) other intrastate services (including CLASS); (iv) measured line service; and (v) basic services and the Subscriber Line Charge. The fifth category would be allocated equally between the state and interstate jurisdictions.<sup>49</sup> Pacific further proposes that the loss in the "other carrier toll" category of either 50 percent of business or of the largest customer would result in the elimination of that category, with expenses then being redistributed equally among the remaining four categories. According to Pacific, automatic redistribution avoids the burden of a procedure to adjust allocations if an ILEC loses OB&C customers.<sup>50</sup>

#### **B. Trade Associations and Consultants**

24. The industry trade associations and consultants that support retaining the interim rules advance many of the same arguments as the larger ILECs.<sup>51</sup> Several of these parties maintain that while the interim rules properly allocate OB&C expenses on a cost-causative basis, fixed allocators would be arbitrary and would not reflect principles of cost-causation.<sup>52</sup> Some of these commenters deny that the interim procedures are difficult to audit or burdensome to implement, or claim that it is the proposed fixed allocators that would be administratively burdensome.<sup>53</sup>

25. Like many of the larger ILECs that oppose the methodologies proposed in the Notice, some associations and consultants expressed concern that a fixed allocation solution would

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<sup>49</sup> Pacific Comments at 1 and 7.

<sup>50</sup> Id.

<sup>51</sup> John Staurulakis, Inc. ("JSI"), ICORE Inc. ("ICORE"), Organization for the Protection and Advancement of Small Telephone Companies ("OPASTCO"), National Exchange Carrier Association ("NECA"), and United States Telephone Association ("USTA").

<sup>52</sup> JSI Comments at 2-3; ICORE Comments at 2; OPASTCO Comments at 3-4; NECA Comments at 4; USTA Reply at 2.

<sup>53</sup> JSI Comments at 2; OPASTCO Comments at 2; USTA Reply at 2

inappropriately shift more cost recovery to the interstate jurisdiction.<sup>54</sup> JSI maintains that the use of fixed allocators falsely assumes all companies are providing comparable levels of interstate billing and collecting, when ultimately many ILECs will be billing only basic local services and the SLC.<sup>55</sup> USTA cautions that, because billing and collection services are not tariffed, if the fixed allocators shift expenses to the interstate jurisdiction, ILECs will not be able to recover the increased expenses unless they can successfully renegotiate contracts with their IXC customers.<sup>56</sup> USTA also states that none of the proposed methods should be adopted without considering the impact on Carrier Common Line ("CCL") rates and on Long Term Support.<sup>57</sup>

26. If the Commission adopts a fixed allocation methodology, JSI would support incorporation of an alternative procedure triggered by a loss of 50 percent of an ILEC's interstate billing and collection revenue. If that happened, JSI argues, the corresponding messages should be excluded from the OB&C allocation process.<sup>58</sup> JSI also "recommends that the Commission establish the current five percent allocation to billing the SLC as a floor." JSI states that even as the IXCs take back their billing and collection, the five percent minimum interstate allocation is reasonable, and that if an ILEC provides only state toll, local, and SLC billing, "JSI submits that the only allocation of OB&C expense to the interstate jurisdiction should be the percentage established for billing the SLC which may exceed the current five percent 'cap'."<sup>59</sup>

27. NECA joins in the arguments that fixed allocators are arbitrary and shift too much OB&C expense to the interstate jurisdiction, and directs particular criticism to the first and third methods proposed in the Notice, because they appear not to allocate any expenses to the subscriber line.<sup>60</sup> NECA also notes that, while the second and fourth methods do assign a portion of OB&C expense to the SLC, it appears this assignment would cause allocations of interstate OB&C expense to common line to exceed the 5 percent limit. NECA therefore requests clarification, if one of these methods is selected, of how the amounts in excess of the five percent

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<sup>54</sup> OPASTCO Comments at 2-3; NECA at 4; USTA Reply at 3. See also NTCA Comments at 8.

<sup>55</sup> JSI Comments at 2.

<sup>56</sup> USTA Reply at 3.

<sup>57</sup> Id. See also AT&T Comments at 4-5.

<sup>58</sup> JSI Comments at 4.

<sup>59</sup> Id.

<sup>60</sup> NECA Comments at 4.

cap are to be recovered.<sup>61</sup> In addition, NECA concurs in the argument that the trigger mechanisms proposed in the Notice would place significant burdens on both the Commission and the ILECs, and could be avoided by retention of a usage-based method, which would automatically reflect changes in IXCs' actual use of ILECs' billing and collection services.<sup>62</sup>

28. Cathey Hutton & Associates, Inc. ("CHA") agrees with the Commission that, because billing and collection is a jointly-provided service, there can be no single correct economic or accounting method, but rather the best method will be a common sense method with acceptable results.<sup>63</sup> CHA, however, would prefer a usage-based method, because, unlike a fixed allocator, it would automatically reflect any reduction in IXC use of ILEC billing and collection services, and there would be no need for waivers.<sup>64</sup> CHA also maintains that the proposed fixed allocation methods would shift expenses to the interstate jurisdiction, causing the ILECs to lose money on billing and collection, to discontinue provision of billing and collection services (causing more expenses to fall on the state ratepayer), or to raise billing and collection rates on the IXCs, with the likely result of IXC takeback.<sup>65</sup> CHA observes that many independent ILECs are already losing money on billing and collection, because they have signed contracts for less annual interstate revenue than is allocated to the interstate Part 69 billing and collection element. These ILECs provide billing and collection services at a loss in order to provide single source billing to their customers.<sup>66</sup>

29. CHA proposes a revenue-based plan it calls "Derived Benefit Allocation Method." Allocation to the state jurisdiction would be based on "bill and keep," which would include all local revenue and possibly some toll, depending on the state access plan. Revenue derived from provision of interstate billing and collection service would be included in the interstate allocation. CHA sees several benefits arising from its plan. First, CHA argues that it would be easy to implement and administer, because it requires existing accounting records only. Second, CHA asserts that no waiver would ever be required, because allocation to the interstate jurisdiction

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<sup>61</sup> *Id.* at 4-5; See also GVNW Comments at 2-4 and 7. (Methods 2 and 4 assign no expenses to the SLC; these expenses would be assigned to interstate, even if the LEC neither performs nor offers interstate B&C service. Assigning expenses to a service that is not provided is potentially confiscatory.)

<sup>62</sup> NECA Comments at 6.

<sup>63</sup> CHA Comments at 5.

<sup>64</sup> CHA Comments at 5 and 7. NTCA also makes this point in its Comments at 5 and 9.

<sup>65</sup> CHA Comments at 5-6.

<sup>66</sup> *Id.* at 4.

would correspond with IXC use of ILEC billing and collection services. Finally, CHA contends that, in contrast to the proposed fixed allocators, this plan would tend to decrease the interstate allocation, with the desirable result that the IXCs would continue to use ILEC billing and collection services.<sup>67</sup>

30. GVNW Inc., Management ("GVNW") asserts that the Commission is mistaken in not foreseeing any significant near term reduction in the share of IXC billing performed by the ILECs. GVNW argues it would be unrealistic to expect ILECs, more than 200 of which lost money on their interstate billing and collection service in 1993, to continue to offer the service at a loss. GVNW further reports that AT&T has notified independent ILECs of plans to perform its own recording and rating functions, and contends that the spread of equal access may also bring significant declines in ILEC billing for the IXCs, because while AT&T has usually used the ILEC's billing service, the alternative carriers usually do not.<sup>68</sup> GVNW asks regulators to bear in mind that small ILECs are as much at risk of losing billing and collection business from the RBOCs as from the IXCs, and contends that the four proposals in the Notice bear no resemblance to cost causation, because as much as 66 percent of OB&C expenses could be allocated based on services that a company may not even provide.<sup>69</sup>

31. GVNW proposes user-count allocation methodology. Stating that a user count would better reflect cost causation than the proposed fixed allocators do, GVNW argues the latter may assign expenses to services not provided, and therefore cannot meet a cost causation test.<sup>70</sup> GVNW acknowledges its plan would require minor changes to Part 69. Alternatively, GVNW urges that expenses be assigned based on billed revenue, or, as a third choice, be treated as other nonregulated services under Part 64.<sup>71</sup> If, however, the Commission does adopt a fixed allocator, GVNW asks the Commission to consider alternative proposals for small ILECs.<sup>72</sup> Regarding the alternative adjustment mechanisms proposed in the Notice, GVNW requests that a trigger not be

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<sup>67</sup> Id. at 7-8.

<sup>68</sup> GVNW Comments at 6-7.

<sup>69</sup> Id. at 4 and 8. See also n.47, supra.

<sup>70</sup> The service user count would be made for each of the following: interstate end user common line; interstate toll; interstate special access; interstate private line; state end user common line; state toll; state special access; state private line; basic local; extended area service; directory advertizing; local ancillary services; CATV; cellular; PCS; and other non-regulated services. GVNW Comments at 11. See also PaPUC Reply at 4; NARUC Reply at 8; and NTCA Comments at 9.

<sup>71</sup> GVNW Comments at 10-12.

<sup>72</sup> Id. at 7-8.

ted to a decrease in the existing level of service, because ILECs not currently doing *any* toll billing will be unable to show any drop.<sup>73</sup>

32. In its comments, the National Telephone Cooperative Association ("NTCA") argues that the difficulty in finding a perfect cost-causation method should not lead regulators to conclude that the relative mix of billed services is irrelevant, or that a relative use surrogate does not exist or would not be appropriate to apply.<sup>74</sup> NTCA contends rather that usage-based methods need not be complicated, and would better serve the Commission's goals.<sup>75</sup> A fixed allocator, by contrast, would ignore differences among ILECs, or an ILEC's variations over time, and thus would produce anomalous results, it asserts.<sup>76</sup> The discussion in the Notice of possible alternative adjustment mechanisms demonstrates, according to NTCA, this flaw in the basic proposal.<sup>77</sup> NTCA concurs in the argument that a usage-based allocator like user counts is superior to a fixed allocator because it would automatically reflect changes such as IXC takeback, and thus negate the need for alternative mechanisms.<sup>78</sup> NTCA further suggests expanding the list of service types for which users would be counted to conform roughly with the services detailed in customers' bills.<sup>79</sup> NTCA also contends that detariffed billing and collection expenses should be allocated according to Part 64 rules, which it suggests are more flexible and more in keeping with the competitive, market-driven nature of these services than the Part 36 jurisdictional separations rules are.<sup>80</sup>

### C. Interexchange Carriers

33. MCI Telecommunications Corp. ("MCI") criticizes the proposed methods of allocation as arbitrary and lacking a relevant factual basis. MCI would prefer to have OB&C expenses follow ILEC revenues as a proxy for expenses , and claims this approach would be

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<sup>73</sup> Id. at 5.

<sup>74</sup> NTCA Comments at 3 and 5.

<sup>75</sup> Id. at 5.

<sup>76</sup> Id. at 3.

<sup>77</sup> Id. at 5.

<sup>78</sup> Id. at 8-9.

<sup>79</sup> Id. at 9.

<sup>80</sup> Id. at 10-11.

more consistent with the Commission's pro-competitive policies.<sup>81</sup> MCI asserts that although the Commission rejected a revenue allocation method in the Reconsideration Order,<sup>82</sup> growing competition in the industry, combined with the Commission's goal that the adopted method "should reflect cost-causation principles, and should not be unnecessarily burdensome to implement and administer," make revenue allocation still the best alternative.<sup>83</sup> MCI states that "[i]n an industry as fluid as today's telecommunications industry, separations rules, where appropriate, should allocate joint and common costs according to an indicator of why those costs are being incurred."<sup>84</sup> MCI states that it would be unreasonable for the Commission to deviate from its longstanding record of seeking factual bases for cost allocations where, as here, objective bases are available and easy to administer.<sup>85</sup>

34. MCI maintains that switched access and special access revenue, plus 25 percent of end user revenues, are attributable to interstate, and the rest is intrastate. MCI advocates calculating the sum of the interstate revenues and dividing them by total ILEC revenues, which defines a percentage that should be assigned to interstate for the purpose of allocating OB&C expenses.<sup>86</sup> This method would also eliminate the need for an arbitrary assignment of five percent of OB&C expenses to interstate, and would not require a fixed percentage allocation in case of IXC takeback. MCI adds that, if an abrupt change to this method would have a harsh effect on some ILECs, the Commission could grant waivers or phase the change in gradually.<sup>87</sup>

35. AT&T Corp. ("AT&T") comments that, even if the methodology the Commission selects increases interstate allocation of OB&C expenses, that outcome should have no impact on the interstate access charges assessed on IXCs and other access customers. Except for charges related to the SLC, those expenses represent detariffed services that should continue to be assigned to nonregulated accounts under Part 69. AT&T also asserts that only a minor portion of OB&C expenses relate to the SLC and are thus recoverable through CCL rates. According

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<sup>81</sup> MCI Comments at 3.

<sup>82</sup> Reconsideration Order, 3 FCC Rcd 5518.

<sup>83</sup> MCI Comments at 4.

<sup>84</sup> Id.

<sup>85</sup> Id. at 4-5.

<sup>86</sup> Id. at 5 and Appendix 1.

<sup>87</sup> MCI Comments at 6.

to AT&T, the Commission in the SLC Billing Expense Order<sup>88</sup> correctly concluded that a five percent allocation of OB&C to the common line element is generous and enables ILECs to recover fully the cost of billing the federal SLC. AT&T stresses that nothing in the Notice changes the well-reasoned finding of SLC Billing Expense Order in this area, and asks the Commission to make it clear that a new allocation method for OB&C expenses will not result in a CCL rate increase for interstate access customers.<sup>89</sup>

#### D. State Public Utility Commissioners

36. With minor qualifications, state public utility commissions and the National Association of Regulatory Utility Commissioners ("NARUC") support the proposals in the Notice, and agree that a fixed allocator makes sense.<sup>90</sup> These parties all prefer a fixed allocation method because OB&C expenses are not attributable to any specific service.<sup>91</sup> Therefore, they explain, a methodology that requires companies to identify every line on the bill as either intrastate or interstate is overly burdensome on the companies, virtually unauditible by regulators, and in the end assigns these expenses no more accurately than a fixed allocator would.<sup>92</sup> State regulators find that a fixed-factor approach is consistent with principles of cost-causation, and would allocate expenses reasonably among the companies that collect revenue.<sup>93</sup> They add that a fixed-factor methodology possesses the additional virtue of reducing administrative expenses associated with the jurisdictional separations process.<sup>94</sup>

37. WUTC and NYDPS support the second method in the Notice, which would divide OB&C expense among state toll, interstate toll, and the SLC.<sup>95</sup> WUTC contends that because the SLC is subject to jurisdictional separations, this is the only fixed-factor split that approaches an

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<sup>88</sup> SLC Billing Expense Order, 7 FCC Rcd 8554.

<sup>89</sup> AT&T Comments at 4-5.

<sup>90</sup> Washington Utilities and Transportation Commission ("WUTC"), New York Department of Public Service ("NYDPS"), Pennsylvania Public Utility Commission ("PaPUC") (with usage based alternative for small ILECs), and NARUC.

<sup>91</sup> WUTC Comments at 2; NYDPS Reply at 1; PaPUC Reply at 2; NARUC Reply at 6.

<sup>92</sup> WUTC Comments at 2; NYDPS Reply at 1; NARUC Reply at 6.

<sup>93</sup> WUTC Comments at 2; NYDPS Reply at 3.

<sup>94</sup> WUTC Comments at 2; NARUC Reply at 6; NYDPS Reply at 3.

<sup>95</sup> WUTC Comments at 1-2; NYDPS Reply at 2-3.



equal distribution between the jurisdictions.<sup>96</sup> NYDPS agrees with the Commission that there is no reason to expect that IXCs will soon substantially reduce their use of ILEC billing and collection services. NYDPS states further that, if ILECs eventually bill for future interstate services, a separate category should be developed for these services, and notes that, under the Telecommunications Act of 1996, ILECs will likely bill for their own interstate operations.<sup>97</sup>

38. PaPUC, however, expresses concern over the likely shift of OB&C expenses to the interstate jurisdiction and argues that the probable result will be that ILECs will either lose money on billing and collection, or lose the contracts altogether. PaPUC particularly urges the Commission to consider how this might affect small ILECs, which often provide billing and collection services at a loss in order to spare their customers multiple bills.<sup>98</sup> PaPUC suggests that non-price cap companies should have the option of either using whatever fixed allocator is adopted, or user counts, or relative use among service categories. PaPUC argues that it would be counterproductive and detrimental to the public interest to preclude small ILECs from providing billing and collection services to IXCs, and convenient single source billing to end users.<sup>99</sup>

39. NARUC and PaPUC also assert that the list of services should be expanded to conform roughly with the services detailed on subscribers' bills.<sup>100</sup> NARUC and PaPUC propose a fixed-factor methodology that would allocate OB&C expenses in equal part among: (i) interstate toll; (ii) other interstate; (iii) intrastate toll; (iv) SLC; and (v) other intrastate. This would result in a 45 percent allocation to the interstate jurisdiction.<sup>101</sup> In regard to an alternative adjustment mechanism, these parties support a waiver process, rather than a specific trigger, because a waiver process would be more flexible and would recognize individual facts and circumstances.<sup>102</sup>

#### IV. DISCUSSION

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<sup>96</sup> WUTC Comments at 2.

<sup>97</sup> NYDPS Reply at 2.

<sup>98</sup> PaPUC Reply at 3-4.

<sup>99</sup> *Id.* at 4.

<sup>100</sup> PaPUC Reply at 4; NARUC Reply at 8. Accord NTCA Comments at 9.

<sup>101</sup> PaPUC Reply at 4; NARUC Reply at 8.

<sup>102</sup> PaPUC Reply at 5; NARUC Reply at 9.

40. After reviewing these comments and reply comments, and weighing the issues commenters raise, we recommend that the Commission adopt a fixed allocation methodology that would divide OB&C expenses equally among three subcategories: interstate toll; intrastate toll; and local exchange service.<sup>103</sup> Under this procedure, two thirds of the OB&C expenses would be allocated to the state jurisdiction, and one third would be allocated to the interstate jurisdiction. We do not recommend that the Commission adopt at this time an automatic adjustment trigger for cases in which an ILEC loses its largest IXC customer or a given percentage of its existing toll billing and collecting operations. Only in cases in which an ILEC provides no interstate billing and collection for other carriers do we recommend an automatic reduction of the interstate assignment to five percent to cover the cost of billing the SLC. In all other cases, we recommend that the Commission receive petitions for waiver on a case-by-case basis.

41. We disagree with parties claiming that, compared to allocation factors based on user counts or revenue, a fixed-factor approach is a more arbitrary basis for allocating OB&C expenses.<sup>104</sup> Nearly all these expenses are joint or common with respect to the individual services appearing on customers bills, and there is no cost-causative method of allocating these joint and common expenses.<sup>105</sup> As with non-traffic sensitive loop plant, development of an allocation

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<sup>103</sup> In other words, we recommend the Commission adopt the first fixed allocation methodology suggested in the Notice, at para. 9.

<sup>104</sup> Parties arguing that fixed factors are a more arbitrary, less cost-causative method of allocating OB&C expenses include, among others, NYNEX Comments at 3, JSI Comments at 2-3, ICORE Comments at 2; OPASTCO Comments at 3-4; GVNW Comments at 4 and 8; MCI Comments at 3; and USTA Reply at 2. See paragraphs 14, 24, 31, and 34, supra.

<sup>105</sup> A carrier's ability to attribute costs to individual services in a cost-causative manner largely depends on the nature of the costs, i.e., on whether the costs are incremental, joint, or common. If a cost-causative relationship exists between a cost and a particular service, we consider that cost "incremental" with respect to the service. Incremental cost (usually expressed per unit of output) is the additional cost a firm will incur as a result of producing an additional increment of a service. Such cost may include the cost of a dedicated facility or operation used by only the service in question. It may also include the cost of a shared facility or operation used by that service together with other services. The costs of some shared facilities and operations, however, are not incremental with respect to the individual services they support. We refer to such non-incremental costs as joint or common. We use the term "joint" when two or more services are produced in fixed proportion by the same facility (i.e., when one service is produced, a second service is generated by the same production process at no additional cost). We use the term "common" when the relative proportions of those services can vary. Such costs may be joint or common to all services provided by the firm or only to a subset of those services. If a cost is joint or common with respect to a subset of services, the cost is incremental with respect to the subset (because a firm can avoid the cost by eliminating the entire subset) but is not incremental with respect to the individual services in the subset.

method based on actual usage measurement probably would be neither possible nor reasonable.<sup>106</sup> Because these joint and common expenses are not susceptible to a cost-causative method of allocation, our recommendation of a fixed-factor plan for assigning OB&C expenses should be grounded in such considerations as fairness, convenience, and predictability.

42. Thus we agree with CHA's statement that, because billing and collection is a jointly provided service, there can be no single correct economic or accounting method, but rather the best method will be a common sense method with acceptable results. We differ, however, from CHA, NTCA and others who argue that, although not grounded on principles of cost causation, an allocation procedure based on relative-use measurements should be applied nevertheless for reasons of convenience.<sup>107</sup> These and other parties contend that such a procedure would be more convenient than a fixed-factor method because it would be self-adjusting, automatically reflecting billing changes such as IXC takeback, and would thus allow the Commission to dispense with a trigger or waiver procedure.<sup>108</sup> Instead, we find persuasive the argument advanced by Ameritech, Bell Atlantic, and all the participating state public utility commissions, that fixed allocators are easier to administer, easier to audit, and more certain and predictable in their effect than allocators based on usage measurements.<sup>109</sup>

43. Other parties contend that the administrative burden of implementing the new methodology outweighs any benefit it might bring.<sup>110</sup> In our view these parties greatly exaggerate the burden on the industry of shifting to a fixed allocator. Indeed, the burden of the transition pales when compared to the industry-wide benefits of administrative ease, certainty, and auditability afforded by the use of a fixed allocator. We also find a simple fixed allocator should

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<sup>106</sup> For a discussion of allocating the costs of NTS loop plant, see Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, Decision and Order, 96 FCC 2d 781, para. 17 (1984) ([W]ith respect to NTS plant, development of a true 'cost-based pricing method would be difficult if not impossible. . . . [t]he Joint Board reached essentially the same conclusion when it noted in the Second Recommended Decision and Order at para. 52 that a 'purely cost based allocation of this plant between the jurisdictions would be extremely difficult to develop since the cost of the plant does not vary with usage.'" See also Allocation of Costs Associated with Local Exchange Carrier provision of Video Programming Services, Notice of Proposed Rulemaking, FCC 96-214, CC Docket No. 96-112 (rel. May 10, 1996).

<sup>107</sup> CHA Comments at 5; NTCA Comments at 3 and 5.

<sup>108</sup> See, e.g., US West Comments at 9; NYNEX Comments at 5-6; GTE Comments at 3-4; United Comments at 3; CHA Comments at 5 and 7; NTCA Comments at 5 and 9.

<sup>109</sup> Bell Atlantic Comments at 2; Ameritech Comments at 3; WUTC Comments at 2; NYDPS Reply at 1; PaPUC Reply at 2; NARUC Reply at 6.

<sup>110</sup> BellSouth Comments at 4; GTE Comments at 3-4.

be cheaper for ILECs to implement than procedures requiring time-consuming separations studies, so end users may ultimately benefit from the change through lower charges.<sup>111</sup>

44. NYNEX asserts that "the Commission's rules contemplate separations 'shortcuts' only where 'practicable' and where 'their application produces substantially the same results as would be obtained by the use of more detailed procedures.'"<sup>112</sup> NYNEX's point, however, does not apply in the case of joint and common expenses such as those associated with OB&C. Because there are no "more detailed procedures" that would produce precise separations results for these costs, fixed-factor methodology should not be regarded as an accounting shortcut. Instead, from an economic or cost-causative perspective, we view fixed-factor methodology as an equally valid alternative approach with the significant advantage of simplicity and ease of administration.

45. In our 1987 recommendation we said that "[w]e believe that assignment of these [OB&C] costs should reflect the three basic services for which the ILECs render bills: local, state toll and interstate toll."<sup>113</sup> That remains our view and our recommendation. Neither the three other alternatives proposed in the Notice nor the fixed-factor proposals made by Bell Atlantic, Pacific Bell, or NARUC and the PaPUC, surpass the simplicity or clarity of the three-way division we recommended in 1987, or otherwise offer benefits that induce us to depart from that position.<sup>114</sup> In particular, we reject plans that call for allocating an equal portion of OB&C expenses to the SLC. We see no justification for departing at this time from the established industry benchmark of five percent. The maximum annual revenue from the federal SLC is \$42.00 per residential customer,<sup>115</sup> on average ILECs bill approximately \$600 per year per

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<sup>111</sup> Ameritech at Comments at 3-4; Ameritech Reply at 2 and 4. (Ameritech argues that, for the same reasons, the entire separations process should be replaced with a fixed allocator.)

<sup>112</sup> NYNEX Comments at 4, citing 47 C.F.R. section 36.1(e).

<sup>113</sup> Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, Recommended Decision and Order, 2 FCC Rcd 2078, 2083 (1987) (Recommended Decision).

<sup>114</sup> See Pacific Bell Comments at 1 and 7; Bell Atlantic Comments at 2-3; NARUC Reply at 9; and PaPUC Reply at 5.

<sup>115</sup> Recommended Decision 3 FCC Rcd at 2083, para 45. See also, National Exchange Carrier Association, Inc., Petition for Declaratory Ruling Pertaining to Interstate Common Line Allocation of Other Billing and Expense under Parts 36 and 69 of the Commission's Rules, Memorandum Opinion and Order, 7 FCC Rcd 8554, 8558, paras 27-28, 34.

residential line.<sup>116</sup> Allocating a third, or a quarter, or even a fifth of OB&C expenses to the SLC would thus consume a substantial percentage of the total SLC revenue. This seems to us an unreasonable result.<sup>117</sup> We anticipate that the five percent assignment will be used only by those ILECs that do not perform billing functions for the IXCs.<sup>118</sup> We therefore reject the second and fourth plans in the Notice, the plan submitted by Bell Atlantic, and the plan submitted by NARUC and the PaPUC.

46. Neither of the remaining two plans we considered, one submitted by Pacific Bell, and the third plan in the Notice, offer advantages over the fixed factor that we recommend. Pacific Bell's plan would distribute expenses among no fewer than five categories: (i) ILEC toll; (ii) other carrier toll; (iii) other state services (including CLASS); (iv) measured line service; and (v) basic services and the Subscriber Line Charge, with this last category to be allocated equally between the state and interstate jurisdictions.<sup>119</sup> Pacific suggests that loss in the "other carrier toll" category of either 50 percent of business or of the largest customer would result in the elimination of that category, with the associated expenses to be redistributed equally among the remaining four categories. Pacific Bell argues that its plan would result in allocation to the interstate jurisdiction closer to the present one. The present allocation system, however, is not grounded on principles of cost causation, so choosing fixed factors only to mimic its results seems to us without merit, unless the result is also fair and consistent. Pacific Bell also argues that its plan's automatic redistribution feature would avoid the burden of a procedure to adjust allocations if an ILEC lost its billing and collection customers.<sup>120</sup> As we have said, parties exaggerate the burden to a company of filing a petition for waiver, and the burden to the Commission of reviewing it.

47. The third plan offered for our consideration in the Notice proposed to divide OB&C expenses equally among four subcategories: interstate toll; intrastate toll; local exchange service; and other intrastate services, including CLASS. No argument appeared in the Notice,

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<sup>116</sup> The average residential total bill (including local, toll, touchtone, call waiting, and taxes) is \$50.69. Staff analysis of FCC Universal Service Fund Data Request, Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Order, 9 FCC Rcd 7962 (1994).

<sup>117</sup> NTCA argues that in considering the OB&C costs of revenue accounting, SLC billing is no more "minor" than local exchange billing, or any other service billed. NTCA Comments at 7.

<sup>118</sup> Recommended Decision 3 FCC Rcd at 2083, para 45. AT&T characterizes the 5 percent allocation as "generous" and says it enables ILECs to recover fully the cost of billing the SLC. AT&T Comments at 4-5.

<sup>119</sup> Pacific Comments at 1 and 7.

<sup>120</sup> Id.

the comments, or the reply comments to support using these particular factors, and there is no obvious benefit to be derived from the addition of a fourth category. We therefore recommend that the Commission not adopt this plan.

48. We acknowledge that dividing the allocation of OB&C expenses equally among interstate toll, intrastate toll, and local service will in at least some cases increase the allocation to the interstate jurisdiction. Numerous commenters from the ILEC industry view this increased allocation to interstate as a major drawback to this plan. We disagree, and we explain our reasoning below.

49. First, many ILECs and their associations contend that an increase in the interstate allocation is inappropriate because they believe that the portion of OB&C expenses related to interstate is on the decline.<sup>121</sup> GVNW reports that AT&T has notified independent ILECs of plans to perform its own billing and collection functions, and that the spread of equal access may bring less ILEC billing for IXCs, because, while AT&T has usually used the ILEC's billing service, the other IXCs usually have not.<sup>122</sup> In addition, US West foresees direct competition between ILECs and IXCs leading to a disinclination on the part of both to commingle their bills.<sup>123</sup> We conclude, however, that the circumstances of individual ILECs are likely to vary significantly, and that it is premature to speculate on the effect of local competition on the billing activities of ILECs. Under our recommended procedures, ILECs that do little IXC billing and collection should allocate five percent of OB&C expenses to the interstate jurisdiction to cover the cost of billing the federal SLC.

50. The second argument parties advance in opposition to an increased allocation to the interstate jurisdiction is that such allocation would cause IXCs to stop using the ILECs as billing and collection agents altogether, leaving the ILECs to pay the entire cost of billing and collection, and to present their customers with the unwelcome prospect of multiple bills. This result seems to us unlikely. IXCs must bill their customers in some manner. Faced with the choice between bearing one-third of the ILECs' OB&C expenses, or bearing the entire expense themselves, we believe that efficient IXCs generally will continue to prefer to pay only a fraction of the total cost.

51. The third argument made against an increased allocation to the interstate jurisdiction is that, because ILECs provide billing and collection services to IXCs under fixed

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<sup>121</sup> See, e.g., US West Comments at 3, 5-6; SWBT Reply at 2;

<sup>122</sup> GVNW Comments at 6-7.

<sup>123</sup> US West Comments at 6.

contractual arrangements, ILECs will not be able to recover the increased allocation of OB&C expenses to interstate unless they can successfully renegotiate contracts with their IXC customers. We observe, however, that the ILECs are free to renegotiate their contracts with IXCs, and will eventually be able to do so. While the transfer from a lower interstate allocation to a one-third interstate allocation may cause a temporary decline in the profitability of some ILECs' billing operations, we do not foresee that any losses ILECs may endure as a consequence of their bad bargains will be severe. If, however, cases occur where the effect of these rules on an ILEC would be unduly harsh, we recommend that ILECs file a petition for waiver with the Commission, through which the particular circumstances of each case can be weighed individually.

52. Because we think the likelihood of ILECs being unable to recover a large amount of their billing and collection expenses, or of their losing the IXCs' billing and collection business altogether, has been greatly exaggerated, we recommend that the Commission not adopt the PaPUC's suggestion that non-price cap companies be allowed to choose among a fixed-factor, a user-count, or a relative-use methodology in allocating their OB&C expenses.<sup>124</sup> We again note that any ILEC that provides no billing or collection for an IXC need allocate only five percent to the interstate jurisdiction. If a pattern of waiver requests develops that seems to indicate, contrary to our expectation, that we need to revise the separations rules governing allocation of OB&C expenses for non-price cap ILECs, the Commission could refer that issue, and the record accumulated through the waiver process, to us for consideration.

53. Finally, some parties perceive an increase to the interstate jurisdiction to be at odds with the Commission's stated goal of "revers[ing] the unanticipated increases in interstate assignments" when it adopted the current interim rules.<sup>125</sup> In our view, the Commission, on reconsideration, reasonably rejected a cumbersome and confusing cost allocation methodology that, by producing increases where decreases had been expected, proved unpredictable as well. The fixed-factor system, which should be convenient and inexpensive to administer, easy to audit, and predictable in its results, cures those defects. The Commission also said it believed that reduced billing and collection for IXCs by ILECs should be reflected in reduced interstate assignments.<sup>126</sup> As we have explained, such circumstances will not be widespread, and, if they arise, can be handled best on an individual basis, taking into account a billing ILEC's unique

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<sup>124</sup> PaPUC Reply at 3-4.

<sup>125</sup> Reconsideration Order, 3 FCC Rcd at 5523, paras. 27-28. The Commission said the record indicated that implementation of the new procedures would lead to results contrary to Joint Board and Commission expectations, that the formula had proven difficult to administer, and that the formula might no longer be accurate.

<sup>126</sup> Id.

circumstances without sacrificing the administrative ease of a fixed-factor methodology for general application.

54. We disagree with parties that advise against establishing permanent OB&C expense allocation rules at this time. Any advantage of waiting to resolve these issues in a comprehensive jurisdictional separations review proceeding, as US West advises, or until new universal service rules are in place, as SWBT suggests, seems to us far outweighed by the benefits of replacing the interim rules with the fixed-factor methodology we recommend.<sup>127</sup> The new fixed-factor methodology is preferable to the interim rules for the reasons given above, and therefore the sooner it is implemented the better. Moreover, interim rules are by their nature unsatisfactory, because they do not give affected parties a steady basis on which to conduct their affairs and negotiate agreements. Finally, we note that, if the Commission waited to reform any of its rules until all other rules that might affect the new regime were reformed, the agency would be unable to adopt or amend its regulations quickly, to the detriment of the industry and end users alike. NTCA suggests that detariffed billing and collection expenses should be allocated according to Part 64 cost allocation rules, which NTCA believes to be better suited conceptually for this purpose.<sup>128</sup> We take no position on NTCA's suggestion at this time, except to note that it lies outside the scope of the Notice, and that the record does not provide broad support for such a change.<sup>129</sup>

55. Few commenting parties argue for an automatic adjustment mechanism to a fixed-factor allocation system.<sup>130</sup> Ameritech suggests, and we recommend, that the Commission establish a presumption that, if an ILEC loses all its IXC billing and collection business, it may continue to allocate a maximum of five percent to interstate services to cover the cost of billing the federal SLC.<sup>131</sup> NARUC and the PaPUC support a waiver process rather than a specific trigger, because a waiver process would be flexible and sensitive to individual circumstances.<sup>132</sup>

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<sup>127</sup> US West Comments at 7; SWBT Reply at 4; Accord USTA Reply at 2.

<sup>128</sup> NTCA Comments at 10-11.

<sup>129</sup> GVNW says treating OB&C as a nonregulated activity under Part 64 would be its third choice, after user count or revenue based plans.

<sup>130</sup> Those parties addressing the issue of an automatic adjustment mechanism usually cited the need for one as an avoidable evil, or as evidence of a flaw in the fixed-factor allocation proposal. See paras. 14, 23, and 32 supra.

<sup>131</sup> Ameritech Comments at 5.

<sup>132</sup> NARUC Reply at 9 and PaPUC Reply at 5.



We agree with NARUC and the PaPUC, and perceive a further advantage to waivers, in that they will allow the Commission to identify any emerging pattern of cases for which the new methodology appears not to work as we expect. Such cases would indicate a need to refine or revise the OB&C expense allocation rules. We therefore recommend that the Commission not adopt a specific automatic adjustment mechanism at this time.

#### **V. RECOMMENDATION CLAUSES**

56. For all the reasons discussed in this Recommended Decision, this Federal State Joint Board recommends, pursuant to Section 410(c) of the Communications Act of 1934, as

amended, 47 U.S.C. § 410(c), that the Federal Communications Commission amend Part 36, Subpart D of the Commission's Rules, 47 C.F.R. § 36, Subpart D.

**FEDERAL COMMUNICATIONS COMMISSION**

**William F. Caton**  
Acting Secretary

**Appendix****Parties Filing Comments**

Ameritech Operating Companies ("Ameritech")  
AT&T Corp. ("AT&T")  
Bell Atlantic Telephone Companies ("Bell Atlantic")  
BellSouth Telecommunications, Inc. ("BellSouth")  
Cathy, Hutton & Associates, Inc. ("CHA")  
Cincinnati Bell Telephone ("CBT")  
GVNW Inc./Management ("GVNW")  
GTE Service Corporation ("GTE")  
ICORE Inc. ("ICORE")  
John Staurulakis, Inc. ("JSI")  
MCI Telecommunications Corp. ("MCI")  
National Exchange Carrier Association ("NECA")  
National Telephone Cooperative Association ("NTCA")  
NYNEX Telephone Companies ("NYNEX")  
Organization for the Protection and Advancement of Small Telephone Companies ("OPASTCO")  
Pacific Bell and Nevada Bell ("Pacific")  
Roseville Telephone Company ("Roseville")  
Southwestern Bell ("SWBT")  
United and Central Telephone ("United")  
US West Communications, Inc. ("US West")  
Washington Utilities and Transportation Commission ("WUTC")

**Parties Filing Reply Comments**

Pennsylvania Public Utility Commission ("PaPUC")  
National Association of Regulatory Utility Commissioners ("NARUC")  
New York Department of Public Service ("NYDPS")  
United States Telephone Association ("USTA")