

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION OF INTERLATA	)	ADMINISTRATIVE
CARRIER BILLED MINUES OF USE	)	CASE NO. 311
AS A ULAS ALLOCATOR	)	

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O R D E R

Introduction

Procedural Background

On April 30, 1987, the Commission released an Order that initiated this investigation.

AT&T Communications of the South Central States, Inc. ("AT&T"), the Attorney General of the Commonwealth of Kentucky, by and through his Utility and Rate Intervention Division ("Attorney General"), MCI Telecommunications Corporation ("MCI"), South Central Bell Telephone Company ("South Central Bell"), and US Sprint Communications Company ("Sprint") were active participants in this investigation. Other parties filed limited comments and responses to requests for information.<sup>1</sup>

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<sup>1</sup> These were Alltel Kentucky, Inc., Cincinnati Bell Telephone Company ("Cincinnati Bell"), Continental Telephone Company of Kentucky, and the Independent Telephone Group, which consists of Ballard Rural Telephone Cooperative Corporation, Inc., Duo County Telephone Cooperative Corporation, Inc., Foothills Rural Telephone Cooperative Corporation, Inc., Harold Telephone Company, Inc., Highland Telephone Cooperative, Inc., Leslie County Telephone Company, Inc., Lewisport Telephone Company, Inc., Logan Telephone Cooperative, Inc., Mountain Rural Telephone Cooperative Corporation, Inc., North Central Telephone Cooperative, Inc., Peoples Rural Telephone Cooperative Corporation, Inc., Salem Telephone Company, South Central Rural Telephone Cooperative Corporation, Inc., Thacker-Grigsby Telephone Company, Inc., and West Kentucky Rural Telephone Cooperative Corporation, Inc.

The Commission received prefiled testimony as follows:

1. On behalf of AT&T, testimony of L. G. Sather, Staff Manager, Marketing Plans Implementation, filed on August 17, 1987.
2. On behalf of the Attorney General, testimony of Carl G. K. Weaver, Consultant to the Attorney General, filed on August 17, 1987.
3. On behalf of MCI, testimony of Loren Burnett, Senior Manager, Telco Cost Management, filed on August 17, 1987, and supplemental testimony of Loren Burnett, filed on October 30, 1987.
4. On behalf of South Central Bell, testimony of Joan D. Mezzell, Operations Manager, Rates and Economics, filed on August 17, 1987.

Sprint did not prefile any testimony.

A public hearing was held on December 3, 1987 to permit the presentation of testimony and the cross-examination of witnesses. The resulting Transcript of Evidence was filed on December 21, 1987.

The Commission received post-hearing briefs as follows:

1. Brief of AT&T, filed on January 15, 1988.
2. Brief of the Attorney General, filed on January 15, 1988.
3. Brief of MCI, filed on January 18, 1988.
4. Brief of South Central Bell, filed on January 18, 1988.
5. Brief of Sprint, filed on January 14, 1988.

All information requested by the Commission and the parties of record has been filed.

On August 12, 1988, AT&T and MCI filed a joint motion requesting that the Commission accept a written Settlement Agreement between AT&T and MCI, and incorporate the terms of the agreement by reference in this Order.

The Settlement Agreement is contingent upon the Commission adopting a ULAS<sup>2</sup> allocator based on terminating switched access minutes of use. Other terms of the Settlement Agreement are as follows:

1. Within 30 days after the Commission has issued an Order in this proceeding, which has not been appealed by any party, MCI will withdraw its request for a ULAS audit and AT&T and MCI will ask the Commission to dismiss Administrative Case No. 316.<sup>3</sup>

2. Within 30 days after the Commission has issued an Order in this proceeding, which has not been appealed by any party, MCI will file stipulations of dismissal in the Franklin Circuit Court for MCI Telecommunications Corporation v. Public Service Commission, No. 87-CI-0351, and MCI Telecommunications Corporation v. Public Service Commission, et al., No. 87-CI-0634.

3. The effective date for implementation of the ULAS allocator based on terminating switched access minutes of use will be December 3, 1987.

4. The Commission will order South Central Bell, the ULAS administrator, to make necessary ULAS tariff changes.

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<sup>2</sup> Universal Local Access Service.

<sup>3</sup> An Audit of Universal Local Access Service Channel Reports.

Responses to the joint motion were filed by Allnet Communications Services, Inc. ("Allnet"), the Attorney General, South Central Bell, and Sprint. In addition, AT&T filed a reply to South Central Bell's response. None of the parties objected to the joint motion of AT&T and MCI.

On August 22, 1988, South Central Bell responded, stating that it did not object to the joint motion, but that any new ULAS allocator should be administered through an additive to the terminating switched access carrier common line charge. This issue is addressed elsewhere in this Order. Furthermore, South Central Bell contends that all interLATA<sup>4</sup> carriers must agree to an effective date of December 3, 1987, before the Commission can accept the motion.

On August 23, 1988, Sprint responded, stating that it supports the joint motion, but added that the discount for non-premium access should be continued. That issue is addressed elsewhere in this Order.

On August 29, 1988, the Attorney General responded that the joint motion "contains a reasonable compromise of the issues."<sup>5</sup>

On September 2, 1988, counsel for Allnet filed a letter, which the Commission will treat as a response. Allnet stated that it supports the joint motion.

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<sup>4</sup> Local Access and Transport Area.

<sup>5</sup> Response of the Attorney General, page 1.

On September 2, 1988, AT&T filed a reply to South Central Bell's response, primarily addressing the appropriate means to recover ULAS revenue requirement, which is addressed later in this Order.

### Discussion

#### Introduction

Several alternative ULAS allocators were proposed in this investigation, which were:

1. InterLATA carrier billed minutes of use.
2. InterLATA carrier billed conversation minutes of use, also referred to as total interLATA usage.
3. InterLATA carrier billed and unbilled minutes of use, also referred to as total intrastate usage.

These alternatives are conceptually similar in that each assumes minutes of use billed by interLATA carriers to end users as the basis for ULAS allocations.

4. Terminating switched access minutes of use.
5. Originating and terminating switched access minutes of use.

As above, these alternatives are conceptually similar in that both assume switched access minutes of use billed by local exchange carriers to interLATA carriers as the basis for ULAS allocations.

### Description of the Alternatives

In the Order initiating this investigation,<sup>6</sup> the Commission suggested interLATA carrier billed minutes of use as an alternative ULAS allocator and, in a subsequent Order,<sup>7</sup> posed a number of questions to the parties to investigate the concept. Although no party explicitly endorsed the Commission's suggestion, both the Attorney General and South Central Bell proposed alternatives consistent with it. The Attorney General proposed to base ULAS allocations on total interLATA usage and South Central Bell proposed to use total intrastate usage. Both allocation plans include assumed minutes of use for non-measured private line services. The basic difference is that South Central Bell's plan includes unauthorized intraLATA traffic and the Attorney General's plan does not, at least as originally filed.

AT&T proposed to base ULAS allocations on terminating switched access minutes of use and MCI proposed to use both originating and terminating switched access minutes of use. Neither allocation plan includes assumed minutes of use for non-measured private line services. Both allocation plans include unauthorized intraLATA traffic.

### The ULAS Allocation Plan

As has been stated many times in various Orders, ULAS is designed to recover non-traffic sensitive revenue requirement that

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<sup>6</sup> Order in this case dated April 30, 1987.

<sup>7</sup> Order in this case dated June 20, 1987.

is not recovered through carrier common line charges. In effect, it is an alternative to end user charges employed in the interstate jurisdiction and some other state jurisdictions for the same purpose. The reasoning underlying the Commission's adoption of ULAS in lieu of end user charges is well documented<sup>8</sup> and need not be discussed in this Order. It is sufficient to state that ULAS is a cornerstone of intrastate access charges regulation. Neither the ULAS concept nor the economic theory on which it is based are at issue in this investigation. The primary issues in this investigation are whether and what alternative ULAS allocator should be adopted. All other issues are subordinate to these questions.

Since the Commission adopted ULAS,<sup>9</sup> various criticisms have been raised concerning the concept and the channel count approach to ULAS allocations. These criticisms have been addressed extensively in various Orders.<sup>10</sup> At the time the Commission adopted ULAS, the channel count approach was the only allocation plan recommended to the Commission that had withstood the scrutiny

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<sup>8</sup> For example, Case No. 8838, Phase I, An Investigation of Toll and Access Charge Pricing and Toll Settlement Agreements for Telephone Utilities to Be Effective January 1, 1984, Orders dated November 20, 1984 and February 15, 1985.

<sup>9</sup> The Commission adopted the ULAS concept in Case No. 8838, Phase I, Order dated November 20, 1984. Tariff implementation occurred in Case No. 8838, Phase II, Order dated May 1, 1985, effective June 1, 1985.

<sup>10</sup> For example, Case No. 8838, Phase I, Order dated February 15, 1985, and Case No. 8838, Phase II, Order dated April 30, 1987.



of investigation. Subsequently, MCI and others recommended a busy hour minutes of capacity approach to ULAS allocations. The Commission investigated and rejected the busy hour minutes of capacity approach.<sup>11</sup> In any event, the Commission has always indicated its willingness to consider alternatives to the channel count approach that are consistent with the stated objectives of equity, efficiency, and universal service. The Commission initiated this investigation to give generic consideration to a spectrum of alternatives recommended by those directly subject to ULAS allocations and other interested parties.

Based on the evidence of record and reasons discussed below, the Commission will adopt AT&T's recommendation that ULAS allocations be based on terminating switched access minutes of use,<sup>12</sup> effective as discussed elsewhere in this Order, subject to tariff development and implementation guidelines to be discussed at a formal conference and submitted to the Commission for approval. In conjunction with this decision, the Commission also will grant the joint motion of AT&T and MCI.

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<sup>11</sup> Case No. 8838, Phase III, Order dated January 22, 1987.

<sup>12</sup> This decision notwithstanding, in cases where switched access is used to originate traffic and special access is used to terminate traffic, originating switched access minutes of use will be substituted for terminating switched access minutes of use. This exception is consistent with carrier common line charge application. Also, at this time, this exception involves certain types of 800 service, but is not limited to 800 service in terms of future application to services that may use similar serving arrangements.

In its post-hearing brief, South Central Bell observes that "the Commission must determine the degree of policy shift, if any, it desires to make."<sup>13</sup> The Commission is aware that the decision to change the ULAS allocation plan can be viewed as a basic policy shift and cautions the parties that they should not engage in undue speculation as to the Commission's current intent or future direction. For example, the change could be anticipated by some parties as a signal that the Commission is no longer committed to the ULAS concept. This is not the case. The Commission is committed to ULAS as an alternative to end user charges and as a means through which interLATA carriers can contribute to non-traffic sensitive cost recovery. Also, the change could be seen by some parties as an indication that the Commission no longer views a capacity-based allocation plan as theoretically correct. This is not the case either. Indeed, the Commission does view a capacity-based approach to ULAS allocations as theoretically superior to a minutes of use approach and adoption of a minutes of use approach in this Order does not preclude the return to a capacity-based approach at some time in the future. The Commission agrees with the Attorney General's witness on the theoretical merits of a capacity-based approach to ULAS allocation:

I believe that the ULAS tariff is an idea ahead of its time. If the telecommunications industry was a mature industry with a high degree of stability, and

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<sup>13</sup> Brief of South Central Bell, page 7.

without emerging competition and rapid technological change, the ULAS channel count allocator would minimize economic distortions and provide a level playing field with regard to competition. Under these conditions, when one firm increases its efficient utilization of capacity, it would become more profitable.

In a mature competitive market, the channel count allocator would be a superior allocator to a minutes of use measure.<sup>14</sup>

The Commission will reconsider the matter of a capacity-based approach to ULAS allocations if any such allocation plan arises on the regulatory landscape that is easily administered. Also, the Commission will reconsider its decision in this Order if indications arise that the minutes of use approach adopted herein is contributing to interstate arbitrage or jurisdictional tariff shopping, or indications arise that it is contributing to either facility bypass or service bypass of the local switched network. Insofar as reasonable, interLATA carriers would be well advised to consider these concerns relative to their marketing efforts and network deployment.

The decision to adopt an alternative ULAS allocator is not based on any demonstration that the channel count approach is unlawful or unreasonable. Instead, it is based on the persistent criticism that the channel count approach is difficult to administer. Although, arguably, at least some of the

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<sup>14</sup> Prefiled testimony of Mr. Weaver, page 19. Of course, the Commission does not agree with any inference from Mr. Weaver's testimony that the ULAS tariff is anti-competitive. The Commission has addressed this issue at length elsewhere. For example, Case No. 8838, Phase II, Order dated April 30, 1987.

administrative problems that have occurred since the channel count approach was adopted were as much the result of a lack of cooperation with procedures and disagreement with Commission objectives as the complexity of the reporting and allocation process,<sup>15</sup> on balance, the Commission concurs with the parties that a minutes of use approach should be more easily administered. However, even a relatively simple minutes of use approach may prove difficult to administer if met with reluctance to comply with reporting and other requirements. Therefore, the Commission will advise the parties that it will consider more stringent enforcement provisions in the ULAS tariff if evidence emerges that the interLATA carrier(s) are not complying with tariff requirements on a timely basis.

AT&T and MCI recommend that the Commission adopt an alternative ULAS allocator based on the following criteria: (1) ease of administration, (2) ease of verification, (3) reliance on information generated by interLATA and/or local exchange carriers in the normal course of business, and (4) fulfillment of the purpose and intent of ULAS.<sup>16</sup>

As indicated above, the channel count approach is not easy to administer. Also, channel count reports are not easy to verify and are not generated in the normal course of business. However,

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<sup>15</sup> The Attorney General echoes this theme. Brief of the Attorney General, page 7.

<sup>16</sup> Transcript of Evidence, pages 8-10, 12-13, and 90-92, Brief of AT&T, page 4, and Brief of MCI, page 3.

the channel count approach is theoretically consistent with the purpose and intent of ULAS. In any case, on balance, the channel count approach is cumbersome and this disadvantage outweighs its theoretical merit, at least in the short term.

A minutes of use approach should be comparatively easy to administer and verify, and would rely on information that is generated in the normal course of business.<sup>17</sup> However, the minutes of use approaches recommended to the Commission are not equal relative to these standards. The conversation or billed minutes of use approaches would introduce administrative, definitional, verificational, and other problems that a switched

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<sup>17</sup> That a minutes of use approach is consistent with the purpose and intent of ULAS is less clear and certainly arguable. Furthermore, the parties have generally avoided the issue, except to make vague generalizations, preferring to stress other criteria, such as administrative ease. Although the Commission has criticized the use of usage sensitive means to recover non-traffic sensitive revenue requirement in the past, ULAS revenue requirement is "fixed" and ULAS revenues will not fluctuate with traffic volumes. Thus, a minutes of use approach that allocates ULAS revenue requirement based on aggregate minutes of use as opposed to a carrier common line charge additive assessed on a per minute of use basis may mitigate bypass incentives inherent in using usage sensitive means to recover non-traffic sensitive revenue requirement.

access minutes of use approach would not.<sup>18</sup> For this reason, the Commission opts to use a switched access minutes of use approach to ULAS allocations. That is, in AT&T's words:

. . . access minutes do not have the inherent definitional problems that billed minutes do. An access minute for one carrier is the same as an access minute for any other carrier. It is not necessary to develop rules to adjust access minutes to a common denominator as it would be for billed minutes.<sup>19</sup>

Both AT&T and MCI recommend switched access minutes of use as the basis for ULAS allocations. However, the recommendations differ in that AT&T proposes to use terminating switched access minutes only and MCI proposes to use both originating and terminating switched access minutes.<sup>20</sup> AT&T contends that its approach "should be viewed by the Commission as superior to that

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<sup>18</sup> The relative advantages and disadvantages of the approaches considered in this investigation are discussed in AT&T's Response to the Commission's Request for Information, filed October 23, 1987, items 3 and 18-21, the Attorney General's Response to the Commission's Request for Information, filed October 23, 1987, items 2 and 8-11, Cincinnati Bell's Response to the Commission's Order Designating Issues, filed July 14, 1987, item 11, MCI's Response to the Commission's Request for Information, filed October 16, 1987, items 4, 20, and 25-27, and South Central Bell's Response to the Commission's Request for Information, filed October 16, 1987, items 5-8. In addition, various comparisons are made throughout the Transcript of Evidence. Generally, the relative merits of the approaches considered in this investigation are summarized in Prefiled Testimony of Mr. Sather, page 4, Brief of AT&T, pages 11-14 and Brief of MCI, pages 6-7.

<sup>19</sup> Prefiled Testimony of Mr. Sather, page 5.

<sup>20</sup> Although it recommends the use of both originating and terminating switched access minutes, MCI does not "totally object to terminating access" minutes of use as a ULAS allocation mechanism. Transcript of Evidence, page 132.

of MCI because AT&T's proposal addresses the bypass issue while MCI's does not."<sup>21</sup> AT&T further observes that "the [telecommunications] industry has recognized that terminating access minutes are virtually incapable of being bypassed."<sup>22</sup> On the other hand, MCI contends that its approach is preferable because all switched access minutes would be counted, "regardless of whether the switched transport occurs at the originating or terminating end of the call."<sup>23</sup> MCI further argues that its "switched access minutes allocator does not promote bypass or otherwise create an incentive to the customer to engage in bypass."<sup>24</sup>

Among the other parties, the Attorney General does not endorse either the AT&T or the MCI alternative, instead observing that:

These proposals are similar and similarly objectional. Each creates a hidey-hole into which a company could direct substantial portions of its business, thereby reducing its payment obligation while raising the bills of its competitors.<sup>25</sup>

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<sup>21</sup> Brief of AT&T, page 15.

<sup>22</sup> Ibid., page 16.

<sup>23</sup> Brief of MCI, page 3.

<sup>24</sup> Ibid., page 5.

<sup>25</sup> Brief of the Attorney General, page 3. The "hidey-hole" to which the Attorney General refers is private line or channel services and the concern is migration of customers from switched to dedicated services.

In contrast, South Central Bell states that "terminating switched access is the best choice"<sup>26</sup> and Sprint states that "use of terminating access minutes best addresses the Commission's concerns about bypass."<sup>27</sup>

Thus, once having decided to use a switched access minutes of use approach, the weight of the evidence favors AT&T's recommendation.<sup>28</sup> Furthermore, the Commission concurs that the use of terminating switched access minutes of use is less likely to encourage bypass of the local switched network than would a

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<sup>26</sup> Brief of South Central Bell, page 7. Of course, South Central Bell's first choice is the total intrastate usage approach.

<sup>27</sup> Brief of Sprint, page 3.

<sup>28</sup> It appears to the Commission that AT&T's recommendation is more favorable to MCI than the allocation plan it suggested. As a general rule, due to differences in Feature Group access arrangements, on average, MCI should have more originating switched access minutes of use than AT&T per call. This is due to differences in call "set up" time between Feature Groups A and B, and Feature Groups C and D. Terminating switched access minutes of use should be equivalent per call. Thus, MCI is in the odd position of advocating an alternative ULAS allocator that appears to disadvantage it vis-a-vis AT&T. See Transcript of Evidence, pages 130-133.



plan that also involves originating switched access minutes of use.<sup>29</sup>

Two forms of local exchange network bypass can be identified. First, service bypass, or the substitution of special access service for switched access service. In this instance, the switched portion of the local exchange network is bypassed. Second, facility bypass, or the substitution of some form of direct service for both special access service and switched access service. An example of a direct service arrangement is a private microwave connection between an end user and an interLATA carrier. In this instance, all portions of the local exchange network are bypassed.

The reasons that motivate a decision to bypass are complex. In general, it may include the particular communications needs of an end user or interLATA carrier. Also, it may include the cost of switched access service vis-a-vis special access service or the cost of access services generally vis-a-vis a direct service arrangement. Whatever the reasons, both the local exchange

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<sup>29</sup> The relative advantages and disadvantages of the approaches considered in this investigation vis-a-vis both facility and service bypass of the local exchange network are discussed in AT&T's Response to the Commission's Information Request, item 6, the Attorney General's Response to the Commission's Information Request, items 2 and 4, MCI's Response to the Commission's Information Request, item 7, South Central Bell's Response to the Commission's Information Request, item 1, South Central Bell's Response to the Attorney General's Request for Information, filed September 11, 1987, item 6 (revised), and Sprint's Response to the Commission's Request for Information, filed October 23, 1987, item 4.

carriers and the Commission must be sensitive to access services pricing in order to avoid creating economic distortions that make bypass alternatives attractive to end users and interLATA carriers.

Both originating and terminating access are susceptible to service bypass, presumably based on an economic choice between alternative serving arrangements. However, all things being equal, terminating access is less susceptible to service bypass, because end users generally prefer to terminate in the switched network in order to access other end users. Alternatively, end users that generate large volumes of traffic may find it economic to engage in facility bypass on an originating basis. However, here too, all things being equal, it is generally non-economic to engage in facility bypass on a terminating basis, as it is not possible to access other end users in an efficient way.

Clearly bypass is a serious concern to this Commission, as well as to the Federal Communications Commission and other state commissions. This concern is evidenced both by the adoption of terminating switched access minutes of use in this Order<sup>30</sup> and

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<sup>30</sup> The interLATA carriers did not identify any service offering that completely avoids terminating access charges. See AT&T's Response to the Commission's Request for Information, item 13, MCI's Response to the Commission's Request for Information, item 14, and Sprint's Response to the Commission's Request for Information, item 12. Some service offerings identified in these responses avoid terminating switched access charges through the use of special access arrangements. However, these exceptions can be accommodated in the ULAS allocation process through the substitution of originating switched access minutes of use and adoption of a surrogate measure of minutes of use.

access charges pricing decisions that have priced originating minutes below terminating minutes to reduce incentives to bypass.<sup>31</sup> Also, it is probable that carrier common line charges applicable to originating switched access minutes of use will be phased out in the near future, which should eliminate most incentive to bypass at that access point. The Commission does not wish to impose ULAS revenue requirement at an access point that is sensitive to bypass incentives and where carrier common line revenue requirement is being reduced at a more rapid rate than at the terminating access point.

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<sup>31</sup> Case No. 8838, Phase IV, Order dated December 9, 1987.

## Administrative Issues

### Introduction

Among the administrative issues that can be resolved in this Order are the treatment of private line services,<sup>32</sup> the

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<sup>32</sup> Private line, channel, or special access services are services that connect customer designated premises through dedicated serving arrangements. These services do not involve local exchange carrier end office switching.

In general, as used in this Order, the phrase "private line services" refers to interLATA carrier service offerings that use dedicated serving arrangements at both the originating and terminating access points.

A number of "call types" were identified in this investigation. (1) Some interLATA carrier service offerings use switched access at both the originating and terminating end. Examples are Message Telecommunications Service and Software Defined Network ("SDN") Schedule A. (2) Some interLATA carrier service offerings use dedicated Wide Area Telecommunications Service ("WATS") access at the originating end and switched access at the terminating end. Examples are AT&T WATS and Prism III. (3) Some interLATA carrier service offerings use special access at the originating end and switched access at the terminating end. Examples are Megacom, MCI WATS, SDN Schedule B, UltraWATS, Prism I, Prism II, V-Net off Network, and Foreign Exchange Service. (4) Some interLATA carrier service offerings use switched access at the originating end and dedicated WATS access at the terminating end. An example is AT&T 800 Service. (5) Some interLATA carrier service offerings use switched access at the originating end and special access at the terminating end. Examples are Megacom 800 and Ultra 800. (6) Some interLATA carrier service offerings use special access at both the originating and terminating end. Examples are channel services generally, SDN Schedule C, and V-Net on Network.

All parties agree that call types number 1-5 should be included in the ULAS allocation process. AT&T, MCI, and Sprint contend that call type number 6 should not be included. The Attorney General and South Central Bell contend that it should be included.

Schematic diagrams of these call types can be found in AT&T Sather Exhibit 1-A.

application of a discount to Feature Groups A<sup>33</sup> and B<sup>34</sup> access, the treatment of unauthorized intraLATA traffic, access minutes measurement, ULAS as a carrier common line rate additive, the treatment of WATS resellers, and reporting requirements. In addition, the matters of a formal conference and the effective date of this Order can be addressed.

Private Line Services

First, all interLATA carriers participating in this investigation oppose including private line services in the ULAS allocation process.<sup>35</sup> For example, AT&T's position is stated by its witness, Mr. Sather:

We look at the ULAS process as being a replacement for a portion of carrier common line charges. Carrier common line charges are associated with switched services. Private line or channel services are not switched services and we don't feel should reasonably be included in the process.<sup>36</sup>

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33 Feature Group A access provides line side access to local exchange carrier end office switches with an associated seven digit local telephone number for customer use in originating and terminating communications.

34 Feature Group B access provides trunk side access to local exchange carrier end office switches with an associated 950-0XXX or 950-1XXX access code for customer use in originating and terminating communications.

35 AT&T's Response to the Commission's Request for Information, item 2(a), MCI's Response to the Commission's Request for Information, item 3(a), Brief of Sprint, pages 2-3, and Transcript of Evidence, pages 40-41, 60, and 132-133.

36 Transcript of Evidence, page 40. With certain exceptions, private line services have been included in the ULAS allocation process since its origin.

Similarly, MCI alleges that three problems are associated with including private line services in the ULAS allocation process. First, it would require the use of a surrogate measure of usage and, according to MCI:

By determining what the surrogate should be, the Commission will make a decision which will favor one interexchange carrier over another interexchange carrier based upon the minutes of use level that is chosen for the surrogate.<sup>37</sup>

In addition, on this point, MCI contends that the use of a surrogate measure of usage will "create a problem of verifiability."<sup>38</sup> That is, MCI explains:

Whereas it is easy to verify the number of switched access minutes as billed by the local exchange company to the interexchange company, it is much more difficult to verify the actual minutes being billed for special access products.<sup>39</sup>

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37 Supplemental Prefiled Testimony of Mr. Burnett, page 2. In the extreme case, MCI admits that a decision to adopt zero minutes of use as a surrogate measure of private line usage might favor one interLATA carrier over another interLATA carrier. Transcript of Evidence, page 119. In any event, the Commission does not agree that the selection of a surrogate measure of usage that is generic to all interLATA carriers and all private line services will result in unreasonable discrimination.

38 Ibid.

39 Ibid. Clarification of Mr. Burnett's statement is in order. Switched access minutes of use are easy to verify because they are measured and because uniform definitions apply to their measurement. However, with the possible exception of foreign exchange service, private line services are not measured and are not billed on a usage sensitive basis, which is precisely the reason that a surrogate measure of usage is necessary. Such a surrogate generically applied should not be difficult to verify.

Second, including private line services in the ULAS allocation process would deviate from the intent that ULAS recover a portion of non-traffic sensitive revenue requirement. MCI states:

Since the originating end of special access products does not add to the non-traffic sensitive cost of the switched network, it is not appropriate for the originating end of special access to contribute to those non-traffic sensitive costs.<sup>40</sup>

Third, including private line services in the ULAS allocation process "will cause an additional charge on some special access products that does not exist on other special access products."<sup>41</sup> MCI goes on to contend that AT&T's ULAS allocation plan "excludes the large volume of private line traffic presently carried by AT&T,"<sup>42</sup> but "would include MCI's special access Prism I and Prism II products."<sup>43</sup> The result is "an additional access charge being

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<sup>40</sup> Ibid., page 3. Also, Sprint echoes this point. Brief of Sprint, page 7. While the originating end of private line services may not add to non-traffic sensitive cost, the terminating end can if connected to a Private Branch Exchange or other customer premises equipment capable of "leaking" traffic into the local switched network, which is sufficient reason to include voice grade and voice grade equivalent private line services in the ULAS allocation process.

<sup>41</sup> Ibid. This result does not occur under the ULAS allocation plan adopted in this Order, except as some special access services may be exempted as incapable of leaking traffic into the local switched network.

<sup>42</sup> Ibid. AT&T's private line traffic is included in the ULAS allocation plan adopted in this Order, on the same basis as MCI's private line traffic.

<sup>43</sup> Ibid. Prism I and Prism II are included in the ULAS allocation plan adopted in this Order, as are like services provided by AT&T.

applied on MCI's special access products that are not applied on AT&T's private line products."<sup>44</sup>

On the other side, both the Attorney General and South Central Bell favor including private line services in the ULAS allocation process. For example, the Attorney General contends that if private line services are not included, an incentive to migrate customers from switched to private line services would be created. Such customer migration:

. . . could result in stranded plant investment to the local exchange carrier's, the return on which would have to be recovered from its remaining, typically residential and small commercial customers.<sup>45</sup>

South Central Bell adds another dimension to the Attorney General's position:

If a selling carrier is able to migrate customers away from switched access and those switched access minutes were part of ULAS measurement, the selling carrier has simultaneously lowered its own ULAS bill while raising other carriers' ULAS bills.<sup>46</sup>

Thus, interLATA carriers would have incentive to migrate customers from switched to private line services, which might create stranded plant investment. In addition, South Central Bell more generally addresses the point that private line services constitute a significant segment of the intrastate

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<sup>44</sup> Ibid. This result does not occur under the ULAS allocation plan adopted in this Order.

<sup>45</sup> Brief of the Attorney General, page 3, footnote omitted.

<sup>46</sup> Brief of South Central Bell, page 4.



telecommunications market and argues that this market segment should not be ignored in the ULAS allocation process.<sup>47</sup>

In the opinion of the Commission, private line services should be included in the ULAS allocation process, as is the current practice, with certain exemptions. Including private line services in the ULAS allocation process should minimize any incentive to migrate customers from switched to private line services. At the same time, it should minimize any stranded plant investment that might be created as a result of such customer migration. Finally, it recognizes that private line services can contribute to non-traffic sensitive cost to the extent that they terminate in customer premises equipment capable of leaking traffic into the local switched network.

The Commission will defer technical matters concerning which private line services should be included and which private line services should be exempted from the ULAS allocation process to a formal conference. However, the Commission suggests that the current tariff appears to be reasonable and should be the starting point for discussions among the parties.<sup>48</sup> It includes voice and voice grade equivalent private line services.<sup>49</sup> Also, it permits

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<sup>47</sup> Ibid., generally.

<sup>48</sup> South Central Bell, Universal Local Access Service Tariff, PSC Ky. Tariff 2J.

<sup>49</sup> Ibid., Section J2, General Regulations, page 2, definition of channel termination, and Section J4, Rates and Charges, page 1.

certain exemptions.<sup>50</sup> At a minimum, the Commission contemplates that voice and voice grade equivalent private line services will be included in the ULAS allocation process.<sup>51</sup> Furthermore, any additional exemptions must be thoroughly supported.<sup>52</sup>

Including private line services in the ULAS allocation process will require the adoption of a surrogate measure of usage. The current ULAS tariff specifies that in cases where an interLATA carrier does not use minutes to bill for intrastate services, "a special study showing jurisdictional minutes of use shall be required."<sup>53</sup> Special studies to determine private line services usage patterns are an option. So too are assumed minutes of use in access service tariffs<sup>54</sup> that apply to Feature Groups A and B

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<sup>50</sup> Ibid., Section J4, Rates and Charges, page 1. Exemptions include channels dedicated to providing interstate services, television and audio services, telex and other sub-voice grade services, network backup protection, and network maintenance and testing.

<sup>51</sup> These are the private line services that are most likely to terminate in customer premises equipment capable of leaking traffic into the local switched network. Furthermore, the Commission does not contemplate any non-leakage certification process that would lead to either a category of service or isolated case by case exemption of voice and voice grade equivalent private line service(s).

<sup>52</sup> The list of exemptions discussed above is limited and the Commission does not contemplate extending any exemption status to non-voice grade data, telemetry, or other categories of private line services that are reasonable candidates for termination in customer premises equipment capable of leaking traffic into the local switched network.

<sup>53</sup> ULAS Tariff, Section J3, Rate Regulations, page 2.

<sup>54</sup> For example, South Central Bell, Access Services Tariff, PSC Ky. Tariff 2E, Section E6, Switched Access Service, page 51.

access in central offices that are not equipped with measurement capability.<sup>55</sup> In addition, there may be other alternatives. Therefore, the Commission will not order a surrogate measure of usage at this time. Instead, the Commission will defer the issue to a formal conference and rule on a recommendation at a later date.

#### ULAS Discount

The current ULAS tariff provides a 55 percent discount on non-premium access -- i.e., Feature Groups A and B access.<sup>56</sup> In this investigation, AT&T "opposes any discounting of access."<sup>57</sup> The Attorney General favors retention of the discount, stating that "elimination of the discount would prove disruptive."<sup>58</sup> MCI "strongly recommends that the 55 percent discount for non-premium

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55 AT&T was the only interLATA carrier to express an opinion in this area and this option appears to be consistent with AT&T's position. See AT&T's Response to the Commission's Request for Information, item 17. Also, South Central Bell appears to support this option. See prefiled testimony of Ms. Mezzell, pages 4-5. Exercise of this option would eliminate the need for special studies and disputes that might arise as to study methodology. Therefore, the Commission suggests that the parties pursue an assumed minutes of use approach in formal conference discussion.

56 ULAS Tariff, Section J3, Rate Regulations, page 1 and Section J4, Rates and Charges, page 1-2.

57 AT&T Sather Exhibit 1, page 9. Also, see AT&T's Response to the Commission's Request for Information, item 7.

58 Prefiled Testimony of Mr. Weaver, page 4.

usage be retained."<sup>59</sup> South Central Bell did not take a firm position on the issue and Sprint argues that:

The use of terminating access as an allocator does not mean that the deficiencies of Feature Group A and Feature Group B originating access have disappeared or that the other common carriers use of that originating access has changed. Terminating access is being used to divide up responsibility for ULAS payments among the interexchange carriers. There is still a need to reflect in those payments the fact that carriers other than AT&T continue to have inferior access to the facilities covered by ULAS.<sup>60</sup>

In its original consideration of the discount issue, the Commission denied application of a discount to non-premium access on the premise that equal access conversion would eliminate the need for a discount before ULAS revenue requirements became a significant cost component for interLATA carriers.<sup>61</sup> However, equal access conversion did not occur as anticipated and, subsequently, the Commission ordered the application of a discount.<sup>62</sup> Conditions have not materially changed since adoption of the discount. Therefore, in the opinion of the Commission, the discount should be retained, applicable based on non-premium

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<sup>59</sup> MCI Response to the Commission's Request for Information, item 8. Also, see Transcript of Evidence, page 101.

<sup>60</sup> Brief of Sprint, page 8, emphasis in original. Also, see Sprint's Response to the Commission's Request for Information, item 6.

<sup>61</sup> Case No. 8838, Phase I, Order dated February 15, 1984, pages 8-9.

<sup>62</sup> Ibid., Phase II, Order dated January 22, 1987.

minutes of use in end offices<sup>63</sup> where Feature Group D<sup>64</sup> is not available.

As in other areas, the Commission will defer technical matters related to implementation of the non-premium access discount to a formal conference. However, the Commission suggests that the most appropriate method is to apply a 55 percent discount to interLATA terminating switched access minutes of use,<sup>65</sup> in proportion to the amount of interLATA non-premium originating switched access minutes of use in end offices where Feature Group D is not available.<sup>66</sup>

As Sprint notes, adoption of terminating switched access minutes of use as an allocator does not eliminate inferior Feature Groups A and B access at the originating end of service.<sup>67</sup> The record is clear that originating Feature Groups A and B access are

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<sup>63</sup> For ULAS purposes, access tandems do not constitute end offices.

<sup>64</sup> Feature Group D access provides trunk side access to local exchange carrier end office switches with an associated 10XXX access code for customer use in originating and terminating communications.

<sup>65</sup> That is, specifically, unauthorized intraLATA terminating switched access minutes of use are not eligible for a discount.

<sup>66</sup> That is, for example, if an interLATA carrier's interLATA non-premium originating switched access minutes of use in end offices where Feature Group D is not available is 50 percent of total originating switched access minutes of use, then 50 percent of its interLATA terminating switched access minutes of use would qualify for a 55 percent discount.

<sup>67</sup> Brief of Sprint, page 8.

inferior to Feature Groups C<sup>68</sup> and D access. As a result, interLATA carriers have important incentives to subscribe to originating Feature Group D access where it is available. Also, the record is clear that there is no substantial difference in quality of service between Feature Group arrangements at the terminating access point. Consequently, interLATA carriers have fewer incentives to subscribe to terminating Feature Group D access where it is available.

The Commission wishes to encourage the use of Feature Group D access, both originating and terminating. Since Feature Group D is a premium access option and quality of service differences between Feature Group arrangements is not significant at the terminating access point, unconstrained application of a 55 percent discount to terminating switched access minutes of use could stimulate the substitution of Feature Groups A and B access for Feature Group D access. Such an application would also ignore the primary reason for a discount, which is that originating Feature Groups A and B access are inferior to Feature Groups C and D access. Therefore, the ULAS discount should be implemented in a way that recognizes the inferior nature of Feature Groups A and B access and does not encourage Feature Group substitution.

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<sup>68</sup> Feature Group C access provides trunk side access to local exchange carrier end office switches for customer use in originating and terminating communications. Feature Group C access is available in end offices that are not equipped to provide Feature Group D access and converts to Feature Group D access when it becomes available in an end office. Feature Group C access is available to AT&T only.

### Unauthorized IntraLATA Traffic

The interLATA carriers<sup>69</sup> generally agree with South Central Bell<sup>70</sup> that unauthorized intraLATA traffic should be included in the ULAS allocation process. For example, as Sprint states, "logically, there is no reason for intraLATA traffic to be subject to lesser costs than interLATA traffic."<sup>71</sup> Furthermore, the Attorney General, who in prefiled testimony opposed including unauthorized intraLATA traffic,<sup>72</sup> clarified his position during the hearing to agree that intraLATA and interLATA traffic should be treated alike.<sup>73</sup> Therefore, in the opinion of the Commission, unauthorized intraLATA traffic should be included in the ULAS allocation process, as is the current practice.<sup>74</sup>

### Access Minutes Measurement

The adoption of terminating switched access minutes of use as the ULAS allocator requires clear understanding as to access minutes measurement. On this issue, the Commission will defer the

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<sup>69</sup> Prefiled testimony of Mr. Sather, Exhibit 1, page 9, and Transcript of Evidence, pages 115, 143, and 151.

<sup>70</sup> Prefiled Testimony of Ms. Mezzell, page 8 and passim. Cincinnati Bell goes further and contends that "unauthorized intraLATA traffic should be stopped and punitive action taken against the offender." Cincinnati Bell's Response to the Commission's Order Designating Issues, page 5.

<sup>71</sup> Brief of Sprint, page 9.

<sup>72</sup> Prefiled Testimony of Mr. Weaver, pages 18-19.

<sup>73</sup> Transcript of Evidence, page 252.

<sup>74</sup> ULAS Tariff, Section J3, Rate Regulations, page 1 and Section J4, Rates and Charges, page 2.

matter of technical definitions to a formal conference. However, the Commission suggests that highly specific and uniform descriptions exist in access service tariffs.<sup>75</sup> As appropriate, these descriptions should be incorporated into the ULAS tariff or made a part of implementation guidelines. The Commission views this as essential in order to avoid any future confusion or disputes among the parties on access minutes measurements.<sup>76</sup>

ULAS As A Carrier Common Line Rate Additive

At the hearing and in its post hearing brief, South Central Bell proposed that the best method to administer a ULAS allocation plan based on terminating switched access minutes of use "is through an addition to the terminating carrier common line charge, while using an appropriate mechanism to assure no overrecovery."<sup>77</sup> In general, the interLATA carriers oppose South Central Bell's suggestion and the Attorney General did not take a position on the issue.

The Commission will not adopt South Central Bell's suggestion. First, ULAS revenue requirement is fixed and an addition to the terminating carrier common line charge would cause

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<sup>75</sup> For example, South Central Bell, Access Services Tariff, Section E6, Switched Access Service, pages 50-53.

<sup>76</sup> This includes local exchange carriers, who may be required to make changes in existing tariffs for the sake of uniformity and who will be required to maintain access minutes measurement uniformity in the future.

<sup>77</sup> Brief of South Central Bell, page 6. Also, see Transcript of Evidence, page 195.



ULAS revenues to fluctuate with traffic volumes. Second, allocation of ULAS revenue requirement based on aggregate terminating switched access minutes of use should minimize any incentive to bypass, as compared to a terminating carrier common line charge addition. Third, a terminating carrier common line addition would not be consistent with administrative procedures authorized or contemplated in this Order - e.g., the discount application. Fourth, South Central Bell's suggestion would require occasional and probably contentious true-up proceedings.

#### WATS Resellers

The Commission will defer the matter of whether WATS resellers should be included in the ULAS allocation process to another investigation or possible rehearing in this case. Although there is a consensus among the parties to this investigation that WATS resellers should be subject to the ULAS tariff,<sup>78</sup> only a few WATS resellers were provided with notice of this investigation and none participated. Thus, the direct interests of WATS resellers were not represented.

#### Reporting Requirements

AT&T has indicated that under its proposal to use terminating switched access minutes of use as the ULAS allocator, it would be unnecessary for the interLATA carriers to continue providing ULAS reports because terminating switched access minutes of use are

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<sup>78</sup> Transcript of Evidence, pages 26, 70, 128-129, 158, 186, and 236.

already gathered by the local exchange carriers.<sup>79</sup> MCI similarly indicated that under its proposal, the interLATA carriers would not need to provide ULAS reports because the local exchange carriers have all the information in their billing systems.<sup>80</sup> However, MCI, unlike AT&T, proposes that a discount should continue to be applied to non-premium access. The Commission has already stated its intent to continue the non-premium discount. However, it is still of the opinion that it would be inappropriate to apply this discount to unauthorized intraLATA traffic. This being the case, it will be necessary for non-premium access minutes of use to be separated into interLATA and intraLATA components. At the present time, non-premium access minutes of use are separated into interstate and intrastate components by Percentage of Interstate Usage Reports ("PIU") filed by the interLATA carriers. MCI indicated that these reports currently do not distinguish between intraLATA and interLATA traffic, although the capability exists within its reporting systems to do so.<sup>81</sup>

South Central Bell also agreed that, basically, the local exchange carriers had all the information necessary to assess ULAS payments under the terminating switched access minutes of use allocator. However, it indicated as well that it is dependent

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<sup>79</sup> Ibid., page 65.

<sup>80</sup> Ibid., pages 124 and 125.

<sup>81</sup> Ibid., page 120.

upon the interLATA carriers for determining jurisdictional usage.<sup>82</sup>

The Commission is of the opinion that each interLATA carrier should file its own ULAS reports. As can be seen from Appendix A, the data that will be required is complex. Although the local exchange carriers could provide some of the data, it will be necessary for the interLATA carriers to provide information such as that required to determine interLATA usage. Since the interLATA carriers must provide this information, it should be simpler from an administrative standpoint for them to provide all of the information.

The Commission is also of the opinion that ULAS billing and allocation periods should remain on a quarterly basis. This should be administratively simpler than a monthly billing period and may also reduce the effects of traffic volatility and changes in market share. It is again emphasized that the selection of a usage based allocator should not be considered as evidence that the Commission is of the opinion that market share is an appropriate allocator. The selection of terminating switched access minutes as the ULAS allocator is primarily based on administrative simplicity. The Commission is still of the opinion that capacity is a more appropriate allocator.

Although the ULAS billing period will be on a quarterly basis, access billing and customer billing do not occur on this

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<sup>82</sup> Ibid., page 190.

basis. Therefore, billing periods that overlap quarters will need to be allocated to the appropriate quarter. In the absence of call detail which specifically identifies the date of a call, it appears that the only reasonable way to allocate such a bill would be based on the relative proportions which occur in each quarter. In some circumstances, sufficient call detail may be available to accurately identify the quarter in which the usage occurred. However, this identification may be administratively burdensome and a more reasonable allocation may be to treat it in the same manner as a bill that lacked such detail. Therefore, the Commission will defer its decision on this issue pending the outcome of a formal conference.

#### Formal Conference

Subsequent to release of this Order the Commission will schedule a formal conference at which the parties and Commission staff will discuss tariff requirements and implementation guidelines necessary to accomplish the decisions reached in this Order. The Commission has deferred several items to the formal conference, which are (1) identification of private line services that should be included in the ULAS allocation process and private line services that should be exempted from the ULAS allocation process, (2) selection of a surrogate measure of use for private line services, (3) procedures necessary to implement the ULAS discount, (4) definitions relating to access minutes measurement, and (5) development of reporting procedures and formats. As appropriate, the parties may add other items at a later date.

In order to facilitate discussion at the formal conference, the Commission will direct South Central Bell to file draft tariff provisions and implementation guidelines that reflect the decisions and technical suggestions contained in this Order, within 45 days from the date of this Order. Insofar as it is necessary, South Central Bell may consult with Commission Staff to obtain informal clarifications or interpretations it may need to satisfy this directive.

The Commission contemplates that the formal conference will result in ULAS tariff revisions and implementation guidelines that are agreeable to all parties, consistent with the decisions contained in this Order. In any event, the Commission will direct its Staff to file a report on the formal conference. The report should specifically include the rationale for any deviations from the technical suggestions contained in this Order, all areas of disagreement among the parties that require resolution by the Commission, and recommended decisions as necessary.

Effective Date

MCI has raised the issue of an appropriate effective date for the implementation of the decisions contained in this Order. In its brief, MCI contends that the appropriate effective date should be the date on which the Commission issued the Order establishing this proceeding, April 30, 1987.<sup>83</sup> AT&T, on the other hand,

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<sup>83</sup> Brief of MCI, pages 7-15.

contends the decision should be implemented only on a going forward basis.<sup>84</sup>

However, as part of the August 12, 1988 joint motion and the accompanying Settlement Agreement, AT&T and MCI agreed to an effective date of December 3, 1987, for the change in the ULAS allocator. No party has objected to this effective date. Therefore, the Commission finds that this party-initiated proposal is reasonable and should be adopted.

A resolution of the issues to be discussed during the formal conference is necessary before the ULAS allocation procedures authorized in this Order can actually be implemented. However, subsequent to the formal conference and approval of necessary tariff revisions, the ULAS administrator will implement allocation procedures based on terminating switched access minutes of use as of December 3, 1987.

#### Findings and Orders

The Commission, having considered the evidence of record and being advised, is of the opinion and finds that:

1. Intrastate terminating switched access minutes of use should be adopted to allocate ULAS revenue requirement, effective December 3, 1987.
2. The joint motion of AT&T and MCI should be granted.

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<sup>84</sup> Brief of AT&T, pages 18-19.

3. Intrastate private line services should be included in the ULAS allocation process, except as certain reasonable exemptions may be allowed.

4. A surrogate measure of usage for intrastate private line services should be authorized.

5. The ULAS discount should be retained, applicable to intrastate interLATA terminating switched access minutes of use.

6. Unauthorized intrastate intraLATA traffic should be included in the ULAS allocation process.

7. Intrastate access minutes measurement standards should be made a part of the ULAS tariff or implementation guidelines.

8. ULAS should not be administered as a carrier common line rate additive.

9. WATS resellers should not be included in the ULAS allocation process.

10. InterLATA carriers should file intrastate usage and other reports necessary to the ULAS allocation process with the ULAS administrator and the Commission.

11. A formal conference should be scheduled to discuss ULAS tariff requirements and implementation guidelines.

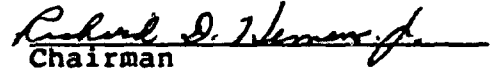
12. South Central Bell should file draft tariff revisions and implementation guidelines that reflect the decisions and technical suggestions contained in this Order, within 45 days from the date of this Order.

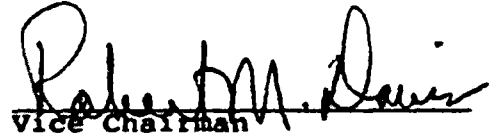
13. The Commission's Staff should file a report on the formal conference.

Accordingly, each of the above findings is HEREBY ORDERED.

Done at Frankfort, Kentucky, this 29th day of September, 1988.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

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Executive Director



APPENDIX A

APPENDIX TO AN ORDER OF THE PUBLIC SERVICE  
COMMISSION IN ADMIN. CASE NO. 311 DATED  
September 29, 1988

Each carrier's terminating access minutes will be calculated as follows:

M1 = terminating intrastate premium switched access minutes  
M2 = terminating total KY nonpremium switched access minutes  
M3 = originating intrastate premium switched access minutes  
M4 = originating total KY nonpremium switched access minutes  
M5 = intrastate interLATA customer billed minutes  
M6 = intrastate intraLATA customer billed minutes  
M7 = surrogate minutes for private line usage  
L = number of nonexempt private lines  
P = percent interstate usage (PIU), fractional form

A =  $\frac{M4(1-P)}{M3 + M4(1-P)}$  = ratio of originating intrastate nonpremium switched access minutes to total intrastate switched access minutes

B =  $\frac{M5}{M5 + M6}$  = ratio of interLATA customer billed minutes to total intrastate customer billed minutes

C =  $(1-P)M2 + M1$  = terminating intrastate switched access minutes

ABC = interLATA terminating minutes eligible for discount

$(1-A)BC$  = interLATA terminating minutes not eligible for discount

$(1-B)C$  = intraLATA terminating minutes

LM7 = total intrastate private line minutes

T =  $.45ABC + (1-A)BC + (1-B)C + LM7$   
=  $(1-.55AB)C + LM7$