

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

In the Matter of )  
 ) CC Docket No. 86-10  
 Provision of Access for 800 Service )

**MEMORANDUM OPINION AND ORDER ON RECONSIDERATION**

Adopted: December 4, 1995

Released: December 7, 1995

By the Commission

**I. INTRODUCTION**

1. In our 1993 800 Database Rate Structure Order (Order),<sup>1</sup> we adopted rate structure and pricing rules for 800 database access services provided by local exchange companies (LECs). Six parties filed petitions for reconsideration of the Order.<sup>2</sup> Because the petitions do not raise any new issues, we deny the petitions.

**II. BACKGROUND**

2. 800 service is an interexchange service in which subscribers agree in advance to pay for calls made to their 800 number from a specified area. LECs must handle originating 800 access differently from originating access for ordinary interexchange calls because the LECs must route 800 calls to the interexchange carrier (IXC) selected by the 800 service subscriber (the called party), rather than the IXC presubscribed to the originating line or chosen by the calling party. Under the previous "NXX" system for routing 800 calls, LECs identified the IXC that was supposed to receive the call by the three-digit "NXX" code immediately following the 800 prefix of the called number. This prevented 800 service subscribers from switching IXCs to take advantage of lower prices without also being forced to change their 800 numbers.

3. Under the 800 database system, the identities of the IXCs selected by the 800 service customers are stored in databases and LECs identify the appropriate IXC for each 800 call by querying one of those databases. This permits 800 service subscribers to switch IXCs without changing their 800 numbers and thus facilitates competition among IXCs for such subscribers. In addition to permitting 800 number portability, the database system can be used to provide

---

<sup>1</sup> Provision of Access for 800 Service, CC Docket No. 86-10, Second Report and Order, 8 FCC Rcd 907 (1993) (800 Database Rate Structure Order or Order).

<sup>2</sup> Petitioners and other commenters are listed in appendix A, together with the abbreviations we use to identify them.

various optional "vertical" features, including Plain Old Telephone Service (POTS) translation of 800 numbers<sup>3</sup> (which is generally necessary for the routing of 800 calls) and alternate POTS translation (which permits subscribers to vary the routing of 800 calls based on factors such as time of day, place of origination, etc.).

4. In a 1991 Order the Commission required the Bell Operating Companies (BOCs) and GTE to replace NXX 800 access service with 800 database service and rejected arguments that LECs be required to maintain limited NXX service.<sup>4</sup> In a 1993 Memorandum Opinion and Order we required all LECs to convert from NXX to 800 database service at the same time and rejected petitions for reconsideration of our refusal to require a limited NXX option.<sup>5</sup> We concluded that the benefits of a limited NXX option did not outweigh the public interest costs of the approach.<sup>6</sup>

5. On a separate track, the 1993 800 Database Rate Structure Order found that the most economically efficient means of recovering the costs of providing 800 database service was by requiring LECs to charge IXCs a basic 800 database charge for each 800 database query. We also concluded that a per query charge should be applied for every query that a LEC completed, even if the underlying 800 call was not actually completed. With regard to our price cap rules, we recognized that the vertical services represented "new" services, but that basic 800 database service did not fit squarely within the definitions of either a "new" or "restructured" service. After carefully weighing the alternatives, however, we found that the arguments favoring treatment of the basic 800 database service as a restructured service were stronger.<sup>7</sup> We also concluded, based on a record indicating "a set of highly unusual circumstances," that it was appropriate to permit LECs to treat certain specified 800 database costs as exogenous costs under price caps and therefore to raise their price cap indexes to adjust for those costs.<sup>8</sup> Finally, the

---

<sup>3</sup> The POTS translation service converts the 800 number into a designated 10-digit POTS number, which allows the network to route the call to its proper destination.

<sup>4</sup> Under this option, a limited number of unassigned NXX codes would be made available to IXCs so that they could accommodate users that preferred NXX access to database access. Provision of Access for 800 Service, Memorandum Opinion and Order on Reconsideration and Second Supplemental Notice of Proposed Rulemaking, CC Docket No. 86-10, 6 FCC Rcd 5421, 5425 n.35 (1991) (1991 Order).

<sup>5</sup> Provision of Access for 800 Service, Memorandum Opinion and Order on Further Reconsideration, CC Docket 86-10, 8 FCC Rcd 1038 (1993) (Memorandum Opinion and Order), which, in part, rejected petitions for reconsideration of 1991 Order, 6 FCC Rcd at 5425-26.

<sup>6</sup> Memorandum Opinion and Order, 8 FCC Rcd at 1042-43.

<sup>7</sup> Order, 8 FCC Rcd at 911 ¶ 26.

<sup>8</sup> Id. at ¶ 27.

Order created a new database service category within the price cap scheme with five-percent upper and lower bounds and a sub-index for vertical features with similar five-percent bounds.

### III. DISCUSSION

#### A. Charging for Basic 800 Database Service on a Per Query Basis

6. Petition/Comments. A number of transaction processors, e.g., firms making 800 calls to validate credit cards, contend that requiring LECs to recover the costs of basic 800 database service on a per query charge is unfair to those who make very short calls. They predict that per query pricing would raise their total costs significantly and thus more than offset any price reductions they might enjoy due to increased competition provided by 800 number portability. They assert that the cost of a query is too small to warrant unbundling it from per minute charges for 800 service.<sup>9</sup> Allnet and FFMC also ask that LECs not be permitted to use the per query charge to recover 800 service costs that are not incurred on a per query basis.

7. In response, LECs declare that a per query charge is a cost causative way to recover the costs of providing 800 database queries. Moreover, they explain that under the current system -- where per call costs are recovered on a per minute basis -- those receiving calls of above average length are actually subsidizing those receiving calls of below average length.<sup>10</sup> Pacific also observes that the Order limits the basic per query charge so that it only recovers the cost of queries, not any other costs associated with the call. Ameritech also responds that there are costs of the service control point (SCP), the service management system (SMS), and the associated links that are solely attributable to carrier identification, not call set up, and do not vary based on call duration. Therefore, Ameritech asserts that it is appropriate to recover these non-traffic sensitive (NTS) costs on a per query basis.<sup>11</sup>

8. MCI presents four reasons why IXCs should not be charged for queries when there is no resulting completed call. First, it argues that such queries are not made "on behalf" of an IXC, since no IXC benefits from the query. Second, it notes that ordinary call charges are not assessed when the called party is busy or there is no answer, and argues that query charges should be treated the same way. Third, MCI and others insist that such charges would create a major verification problem for IXCs since they could not track or audit uncompleted call queries. Fourth, MCI contends that charging for queries associated with uncompleted calls will not promote economic efficiency, because it ignores uncompleted queries. ARINC adds that charging for queries associated with uncompleted calls is unfair to airlines that may be

---

<sup>9</sup> Allnet Comments at 3; CompuServe Petition at 6-7; FFMC Reply at 4; ITAA Comments at 2; NDC Petition at 8-10.

<sup>10</sup> Ameritech Reply at 3; GTE Comments at 7-8; Pacific Comments at 2; United Reply at 2.

<sup>11</sup> Allnet Comments at 3; Ameritech Reply at 3; FFMC Petition at 5, Reply at 4; Pacific Comments at 1-2.

overwhelmed with 800 calls during promotions, fare wars, or bad weather. It asks that LECs develop a means for avoiding the making of queries during such calling surges.<sup>12</sup>

9. NYNEX responds that queries are made on behalf of an IXC, even when the IXC's call is not completed. It contends that a better analogy for 800 database queries is the charges for Line Identification Data Base (LIDB) queries, for which IXCs are charged regardless of whether a call is actually delivered to its network. In fact, Pacific observes that IXCs or hub providers may seek queries without any associated call. With respect to the inability of IXCs to verify the number of calls received, NYNEX notes that LECs accept IXC representations regarding a wide variety of billing matters and billing is largely automatic, so there is reasonable documentation for auditing. Ameritech also explains that since the time for call set up has declined from 2.5 seconds in 1993 to 1.1 seconds in 1995 it seems highly unlikely that many 800 calls will be abandoned during call setup. Rather, Ameritech predicts that call completion will generally fail only when the IXC has busy, insufficient, or no facilities in an area. GTE asserts that not charging IXCs for queries when calls are not completed would, therefore, eliminate an incentive for IXCs to design their networks to minimize such uncompleted calls.<sup>13</sup>

10. MCI answers that 800 database queries differ from LIDB queries in that the latter, but not the former, are valuable in and of themselves and can be audited. It adds that if the former were to become valuable, then the Commission could permit charges for them, separate and apart from the calls being routed. Meanwhile, it asks the Commission not to create a new source of billing disputes by permitting charges for queries associated with uncompleted calls. It responds to GTE's argument by stating that competitive pressures provide enough of an incentive for IXCs to engineer their networks efficiently. It also endorses ARINC's request that LECs develop better methods for refraining from making queries during periods when calls would be rejected by an IXC.<sup>14</sup>

11. Discussion. In the Order we rejected the argument that the cost of 800 database queries is too small to warrant unbundling a separate charge, finding rather that a per query charge would represent a cost-causative pricing structure. Moreover, commenters do not raise any additional points that were not expressly addressed in the Order, and we see no reason to reverse our decision. To the extent commenters believe that LECs are attempting to recover costs not directly related to 800 database from 800 database query charges, this matter should

---

<sup>12</sup> ARINC Comments at 5-7; Allnet Comments at 1; Comptel Comments at 1-2; MCI Petition at 2-4.

<sup>13</sup> Ameritech Reply at 2; GTE Comments at 11; NYNEX Comments at 3-4; Pacific Comments at 5.

<sup>14</sup> MCI Reply at 3-8.

be raised in conjunction with the tariff investigation of these rates.<sup>15</sup> Finally, while we understand the desire of IXC's to be able to verify all charges they are assessed, we believe that the automated LEC billing systems should permit reasonable auditing, particularly given that we have no reason to believe that uncompleted calls for which queries were completed and billed would represent more than a de minimis portion of their total 800 calls.

### B. Maintaining NXX Service

12. Petition/Comments. FFMC states that 800 database service will degrade access times, which is unfair to transaction processors, particularly since they have little need for portability. Thus, if the Commission maintains a per query rate structure, FFMC and CompuServe ask that NXX service be available at least in the interim -- until transaction services migrate to 950 -- if not on a permanent basis.<sup>16</sup> Many LECs oppose this request. GTE declares that the service degradation argument has been rejected, and that FFMC does not offer the specific evidence the Commission said it would require as a prerequisite to requiring continuation of NXX service. Ameritech contends that a request for continuing NXX service is procedurally defective, given that the issue was already addressed and rejected in a reconsideration order in this docket as well as being against the public interest due to the costs it would impose. United charges that this is simply another attempt to seek reconsideration of the original order mandating 800 database service, and Pacific and USTA both agree that continuing NXX would impose significant administrative and operating costs. GTE also notes that continuing NXX would produce an incentive for IXC's to avoid 800 database service.<sup>17</sup> Still, FFMC insists that the unreasonableness of the initial query charges set by the LECs necessitates the continued availability of NXX.<sup>18</sup>

13. Discussion. In late 1991, petitions for reconsideration were filed in this proceeding asking us to reconsider our 1991 Order and to require LECs to continue to offer NXX service.<sup>19</sup> In our 1993 Memorandum Opinion and Order in this proceeding, we responded to those petitions, concluding that we would not require LECs to continue to offer NXX access absent specific evidence that mandatory 800 data base access prevents smaller IXC's from offering 800

---

<sup>15</sup> See, 800 Data Base Access Tariffs and the 800 Service Management System Tariff, Order Designating Issues for Investigation, CC Docket No. 93-129, 8 FCC Rcd 5132 (1993) (800 Service Tariff Order).

<sup>16</sup> CompuServe Petition at 7-8; FFMC Petition at 8-12.

<sup>17</sup> Ameritech Comments at 2-3 (citing Memorandum Opinion and Order); GTE Comments at 8-10; Pacific Comments at 3; United Comments at 5; USTA Comments at 3.

<sup>18</sup> FFMC Reply at 8.

<sup>19</sup> Both Allnet and National Data filed petitions in November 1991 for reconsideration of the portion of our 1991 Order where we refused to require LECs to maintain NXX service. 1991 Order, 6 FCC Rcd at 5425-26.

services.<sup>20</sup> Challenges to the 1993 Memorandum Opinion and Order should have been raised in petitions for reconsideration of that order, not as part of this reconsideration, which deals only with 800 database rate structure issues. Furthermore, petitioners have not produced the additional specific evidence we said we would require to evaluate whether a limited NXX option should be made available, nor do they offer any new data or analysis that we have not already considered on this matter. Therefore, we deny petitioners' request that we require NXX access to be made available.

### C. New Service versus Restructured Service

14. Petitions/Comments. SWBT argues that basic 800 database service should be treated as a new service under price caps. It states that the Commission has not "absolutely foreclosed the possibility of a limited 800 NXX option," and that the continued existence of a service depends on the plans of the carriers, not the FCC. It contends that if 800 NXX service was available to all subscribers, then 800 database service would simply represent an additional, new option, and thus a "new" service under price caps. Furthermore, SWBT, joined by United, observes that 800 database service provides new additional functional capabilities, particularly number portability. Finally, SWBT asserts that those who oppose the label of "new service" here are confusing the common usage of the term with the usage in a price cap context.<sup>21</sup>

15. IXC's and 800 service customers assert that it does not matter that NXX was withdrawn at the Commission's direction rather than at the carriers' choice for carrier intent is irrelevant. Second, they state that while it might be technically possible for LECs to maintain both NXX and 800 database service, NXX is not and probably never will be available, and thus basic 800 database service is now mandatory. Customers who used NXX and would have preferred to have it remain available -- so as to constrain the price of 800 database service -- now have no such choice. Even if a limited NXX option was allowed for a small set of carriers, they state that the majority of carriers would not have the option of taking NXX service, and thus NXX service would not constrain the price of basic 800 database service for them. MCI observes that SWBT adds nothing new to the record.<sup>22</sup>

16. Discussion. SWBT offers no new arguments on why basic 800 database service should be treated as a new service. It only repeats arguments we carefully considered and rejected in the Order. As we acknowledged in the Order, the characterization of basic 800 database service as either a new or restructured service was not a simple or easy one to make. After carefully weighing the alternatives, however, we found the arguments favoring treatment of 800 service as a restructured service to be stronger. Contrary to SWBT's assertion, we note

---

<sup>20</sup> 8 FCC Rcd at 1041-43.

<sup>21</sup> SWBT Petition at 4-5, Reply at 1-5; United Comments at 2-3.

<sup>22</sup> Ad Hoc Comments at 3-6; Allnet Comments at 3; MCI Comments at 3; NDC Comments at 3-6.

that NXX service is no longer available and thus 800 service subscribers have no choice but to purchase basic 800 database service. Absent any new evidence or analysis, we see no reason to alter our decision to treat basic 800 database service as a restructured service under price caps.

#### D. Exogenous Cost Treatment

17. Petitions/Comments. Ad Hoc, NDC, and other customers argue that the costs of basic 800 database service should not be treated as exogenous costs under price caps. They claim that current price cap levels were set to produce the funds to finance the historical 3 percent to 4.6 percent annual investments that LECs were making in upgrading their facilities, including government-mandated investments. They allege that if the Commission had not intended government-mandated investments to be financed out of ordinary LEC revenues, then it would have excluded such investments from the total historical investments it used to calculate historical productivity levels. They contend that had the cost of government-mandated investments not been included in total LEC investments, historical LEC productivity levels would have been much higher and this would have led the Commission to establish much higher price cap productivity factors and thus forced price cap LECs to cut their prices by much greater amounts. They argue that because the productivity factor did take into account government-mandated investments, and was therefore reduced, it effectively built in a return for LECs to finance the expenditures that government mandates were likely to require. Thus, they assert that the price cap rules specifically denied exogenous treatment for all but extraordinary deviations from normal government actions. Hence, they declare that exogenous treatment cannot be based on the fact that an investment was mandated by the government.

18. These opponents of exogenous cost treatment also maintain that basic 800 database service is simply a mechanism for providing equal access for 800 service. They maintain that LECs should be denied exogenous treatment for such equal access costs, because LECs would otherwise have the incentive to try to characterize as many costs as possible as exogenous, and, as here, they would have no incentive to minimize their costs rather than choosing the more expensive method for providing this service. These parties argue that no extraordinary circumstances exist to warrant exogenous cost treatment since none of the LECs have provided any evidence that expenditures for basic 800 database service would cause them to exceed the annual investment levels that are financed under current price cap price levels. According to these parties, exogenous treatment of these costs would permit LECs to recover the costs twice.<sup>23</sup>

19. Pacific states that petitioners are merely rearguing the productivity level issue that they lost in the price cap proceeding, and United contends that opponents of exogenous treatment are simply repeating their general opposition to the 800 database decision. Ameritech asserts

---

<sup>23</sup> Ad Hoc Petition at 2-6, Reply at 2-4; ARINC Comments at 3-4; Allnet Comments at 2; CompuServe at 4-5; FFMC at 5-6; ITAA Comments at 2-3; NDC Petition at 3-7, Reply at 4, 6-8 citing Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, 5 FCC Rcd 6786, 6808 (1990) (LEC Price Cap Order).

that the Commission gave special treatment to equal access costs by establishing a separate rate element and an accelerated amortization period, and that absent comparable special treatment here, e.g., the treatment of those costs LEC incurred specifically to meet Commission directives as exogenous, LECs would not be able to recover them. Ameritech challenges Allnet's assertion that LECs chose the most expensive technology by noting that Allnet offers no proof. Pacific also states that basic 800 database costs were not included in the price cap baseline, while equal access costs were. GTE responds that "normal historical trends" for their network investments are irrelevant, and argues that the analogy between basic 800 database and equal access costs is not on point since equal access costs involved costs already incurred, not costs in progress. USTA also urges that when the Commission is determining whether to treat a cost as exogenous, it should focus on whether the cost was incurred due to a Commission requirement.<sup>24</sup>

20. Discussion. Our decision to treat certain LEC costs of basic 800 database service as exogenous was made in the context of what we characterized as "a set of highly unusual circumstances" stemming from our finding that 800 database service should be mandated because it is in the public interest. In the Order, we also carefully delineated which costs qualified for exogenous treatment and which ones did not. LEC compliance with those directions is currently being examined in a tariff investigation of the tariffs implementing basic 800 data base service.<sup>25</sup> Petitioners do not raise any issues concerning this matter that were not raised and addressed in our Order, and so we see no reason to reverse that decision now.

#### E. Other Issues

21. Petitions/Comments. SWBT alleges that the Commission overreacted by creating a new database service category with five-percent upper and lower bounds and a sub-index for vertical features with similar five-percent bounds, given other safeguards and that customers already have an opportunity to file complaints about unreasonable prices. MCI and NDC respond that past LEC behavior demonstrate that these safeguards are necessary. CompuServe and FFMC complain that many LECs included non-recurring charges in their tariffs, that SWBT sets no charge for two vertical services, and that the high rates for queries permits LECs to charge below cost for vertical services.<sup>26</sup>

22. Discussion. In the Order, after reviewing the record, we concluded that a new database service category with five-percent upper and lower bounds and a sub-index with similar bounds for vertical services were appropriate constraints, given the circumstances. Based on the record before us, we reject SWBT's contention that we overreacted and see no reason to modify

---

<sup>24</sup> Ameritech Reply at 3-4; GTE Comments at 4, 6-7; Pacific Comments at 3-5; United Comments at 4, Reply at 3; USTA Comments at 2.

<sup>25</sup> See 800 Service Tariff Order.

<sup>26</sup> CompuServe Petition at 5-6; FFMC Petition at 7; MCI Comments at 4; NDC Comments at 7-8; SWBT Petition at 7-8.

our decision on that issue here. We note, however, that we recently sought comment on whether we should alter our price cap rules on lower bounds generally and may take further action based on the record in that proceeding.<sup>27</sup> The question of the whether price levels for non-recurring charges and vertical services are reasonable is one for consideration in the tariff review process.

### III. Ordering Clause

23. Accordingly, IT IS ORDERED that pursuant to Sections 1, 4(i) and (j), 201-205, 303(r), and 405 of the Communications Act, 47 U.S.C. §§ 151, 154(i) and (j), 201-205, 303(r), and 405, the petitions for reconsideration of the 800 Database Rate Structure Order ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary

---

<sup>27</sup> Price Cap Performance Review for Local Exchange Carriers, Treatment of Operator Services Under Price Cap Regulation, and Revisions to Price Cap Rules for AT&T, Third Further Notice of Proposed Rulemaking in CC Docket No. 94-1, Further Notice of Proposed Rulemaking in CC Docket No. 93-124, and Second Further Notice of Proposed Rulemaking in CC Docket No. 93-197, FCC 95-393 (released Sept. 20, 1995).

Petitions for Reconsideration

Ad Hoc Telecommunications Users Committee (Ad Hoc)  
CompuServe  
First Financial Management Corp. (FMMC)  
MCI Telecommunications (MCI)  
National Data Corp. (NDC)  
Southwestern Bell Telephone (SWBT)

Comments/Oppositions

Ad Hoc  
Aeronautical Radio, Inc. (ARINC)  
Allnet Communication Services (Allnet)  
Ameritech  
Competitive Telecommunications Association (CompTel)  
GTE Service Corp. (GTE)  
Information Technology Association of America (ITAA)  
MCI  
NDC  
NYNEX  
Pacific Bell & Nevada Bell (Pacific)  
United and Central Telephone companies (United)

Replies

Ameritech  
Ad Hoc  
FFMC  
MCI  
NDC  
SWBT  
United