



Federal Communications Commission
Washington, D.C. 20554

June 29, 2004

Bruce Kushnick
Chairman
TeleTruth
826 Broadway
Suite 900
New York, NY 10003

Dear Mr. Kushnick:

Thank you for your June 2, 2004, Data Quality Act comment requesting correction of information regarding FCC line charges. The FCC is dedicated to ensuring that all data it disseminates reflects a quality commensurate with the nature and timeliness of that information. For that reason the FCC offers a number of opportunities and methods, including those available under the Data Quality Act, by which interested parties can let us know of their concerns.

Because of the numerous opportunities all interested parties have to comment on rulemaking proceedings, such as those you collectively refer to as the CALLS proposals,¹ the FCC Information Quality Guidelines specifically state:

If affected persons are concerned about information disseminated in the context of a rulemaking proceeding, such concerns should be raised as comments in the rulemaking process. (FCC 02-277, #8)

Thus, your request to correct information regarding FCC line charges under the auspices of the Data Quality Act is denied because it does not conform to the process identified in the FCC's Information Quality Guidelines.

The proper venue for filing your comments would have been in the FCC's rulemaking processes for the CALLS proceedings.² If you need information about the opportunities

¹ CALLS Proceedings, CC Docket Nos. 96-262, 94-1, 99-249, and 96-45.

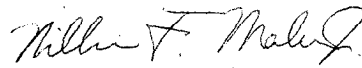
² See, Access Charge Reform, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) (CALLS Order), Order on Remand, 18 FCC Rcd 14976 (2003) (CALLS Remand Order); Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps, CC Docket Nos. 96-262 and 94-1, Order, 17 FCC Rcd

to comment through the agency's rulemaking processes you can visit the Internet web page found at <http://www.fcc.gov/rules.html>. Electronic filing of rulemaking comments is available through the Electronic Filing Comment System found at <http://www.fcc.gov/cgb/ecfs/>.

If you wish to appeal this decision under the terms of the Data Quality Act your applications for review must be submitted in writing to the Federal Communications Commission, Office of Managing Director/Data Quality Appeal, 445 12th Street SW, Washington, DC 20554. You can also submit an e-mail copy of the written appeal if you wish. This optional e-mail copy should be sent to DataQualityAppeal@fcc.gov.

The written appeal must include a copy of the original complaint and the response thereto, and an explanation of how the initial resolution of the complaint or the corrective action was contrary to the Commission's or OMB's information quality guidelines.

Sincerely,



William F. Maher, Jr.
Chief
Wireline Competition Bureau

Karen Wheeless

From: Karen Wheeless
Sent: Wednesday, June 02, 2004 8:51 AM
To: Bruce Kushnick
Subject: RE: Data Quality Comment

Thank you for sending on these attachments. This will be sufficient - no need for surface mailing. We'll now start the review and get back with you following our data quality procedures.

Karen Wheeless
Office of Managing Director

-----Original Message-----

From: Bruce Kushnick [mailto:bruce@newnetworks.com]
Sent: Wed 6/2/2004 6:05 AM
To: Karen Wheeless
Cc:
Subject: Re: Data Quality Comment

Karen,

thanks for your email.

I wanted to file the attached files electronically. However, there was no way to do an attachment on the form, so I put in a letter at the form as well as sent the files to the "dataqualityform@fcc.gov" --- they bounced.

I then sent the files via "fccinfo@fcc.gov fccinfo@fcc.gov" and asked what was the right email address to send everything to.

I don't know which email you (or info I put in form) you're responding to.

However -- Attached is our Complaint 'FCCLineChargedataqualityact.pdf' as well as an accompanying related complaint 'FCCLinechargeTIB.pdf' and I would like to have them filed electronically... or if you would send them to the right source.

I have not mailed a hard copy and if that's the only choice for filing, please let me know.

Thanks,

Bruce Kushnick, Telettruth.

----- Original Message -----

From: "Karen Wheeless" <Karen.Wheeless@fcc.gov>
To: <bruce@telettruth.org>
Sent: Tuesday, June 01, 2004 9:31 AM
Subject: RE: Data Quality Comment

> Mr. Kushnick:
>

6/29/2004

> Thank you for submitting your comment. I'm not clear from your email whether you have sent further information via surface mail? If so, did you mail it to dataqualityform@fcc.gov, 445 12th Street, SW, Washington, DC 20554?

>

> If you can let me know if this is the address to which you sent the materials, it will help in tracking it through the mailroom.

>

> Karen Wheelless
> Office of Managing Director
>

>

> -----Original Message-----
> From: Bruce Kushnick [mailto:dataqualityform@fcc.gov]
> Sent: Tue 6/1/2004 4:32 AM
> To: Karen Wheelless
> Cc:
> Subject: Data Quality Comment
>

>

>

>

> DATE SENT:
> Tue Jun 1 04:32:09 2004
>

> NAME:
> Bruce Kushnick
>

> INFORMATION PRODUCT TITLE:
> ALL FCC Line Charge related data and information products used to set the cap.
>

> INFORMATION PRODUCT DATE:
> XXXXXXX
>

> SPECIFIC COMMENT:
> Dear FCC,
> we have sent you a complaint pertaining to the information products surrounding the FCC Line Charge.
>

> SPECIFIC DATA QUALITY GUIDELINE VIOLATED:
> We have mailed it to dataqualityform@fcc.gov
>

> If you you not get it, please let us know
>

> ACTION FCC NEEDS TO TAKE:
> Yours truly,
>

> Bruce Kushnick
>

> PREFERRED METHOD OF RESPONSE:
>

>

> POSTAL ADDRESS:
>

>

> EMAIL ADDRESS:
> bruce@teletruth.org
>

>

>

6/29/2004

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6/29/2004



**Before the
Federal Communications Commission
Washington, DC 20554**

**Re: Request for Correction of Information:
Petition to Investigate and Remove the FCC Line Charge, Pursuant to the
Federal Data Quality Act**

Submitted by Teletruth:

Bruce Kushnick, Chairman, Teletruth
Executive Director, New Networks Institute
Tom Allibone, Director of Auditing, Teletruth
President LTC Consulting
826 Broadway, Suite 900
New York, NY 10003
2120777-5418
<http://www.teletruth.org>

June 1st, 2004



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Introduction:

**Re: Request for Correction of Information:
Petition to Investigate and Remove the FCC Line Charge, Pursuant to the
Federal Data Quality Act.**

Teletruth petitions the Federal Communications Commission (FCC) to prove the need for the FCC Line Charge (Federal Subscriber Line Charge, or "SLC" charge) imposed on every residential and business wireline telecommunications monthly phone bill (per line). Failing such proof, TeleTruth requests that the Commission suspend current itemized line charges, including any proposed and planned increases, until a full accounting to the public is made. This challenge is based on TeleTruth's analysis and conclusions that the basis for the imposition of such charges are seriously flawed, unduly selective, and based on biased statistical analysis.

As a consequence, FCC decisions regarding the approval and imposition of such charges are in violation of the Federal Data Quality Act. These series of orders, rulemakings, and other FCC actions related to this charge and access fees in general, will be referred to as the "CALLS" proposals.¹

NOTE: This is accompanied by a separate Truth-in-Billing Complaint.

As we will demonstrate, the data that has been used in the calculations for the FCC Line Charge, including the phone company supplied data, the models presented to justify the charge, and the FCC's unjustified inclination to accept such data uncritically from such interested parties in meetings not open to the public are by their very nature the definition of regulatory capture by industry interests. We therefore are left with no other option but to conclude that both the data and the decisions that have resulted from the use of such data are biased in the extreme. The public deserves a more open process and a regulatory body more respectful of their duties and responsibilities under the Data Quality Act. TeleTruth maintains that only through a more open and fair process can such charges be investigated and justified to consumers.

In short, the FCC's data and analysis fails the Federal Data Quality Act's basic tenets of quality, transparency, utility, reliability, objectivity, integrity, reproducibility, among other problems. As a consequence, current charges and future plans for increases in such charges are not justified.



The issues raised in this complaint also raise serious questions about the FCC's current "Intercarrier Compensation Forum" initiative and though it has been hobbled with the exiting of most of the members (as of this writing), it continues into the future and these points need to be addressed. This initiative of the Commission and the industry will also lead to an increase in the FCC Line Charge for millions of consumers and businesses, an increase that is being negotiated behind closed doors and in the absence of the public's participation. Again, regulators have been captured by industry interests that do not share the public's interest in having such charges and increases justified on the basis of competitive cost or discussed openly in a public forum. The FCC's decision will be presented to the public and to millions of affected consumers as a fait accompli.

Need we remind the FCC, articulated by the agency itself in 2001, that any SLC charge above \$6.50 represented a breach of obligations to ensure that such charges are kept affordable, a ceiling that was approved by the courts at the time the \$6.50 cap on such charges was established.

Since 2000, the FCC Line Charge has cost customers \$14.3 billion. (including additional taxes). The average household was charged an additional \$126.38 per line.

Economic studies reviewed by TeleTruth suggest, however, that the amount of revenue collected under the FCC Line Charge is substantially in excess of what the industry actually needed to recover its costs. Based on some of these studies, TeleTruth concluded that the monthly itemized line charges has collected as much as **\$34.4 billion** in excess fees for the local phone companies.²

This does not take into account the FCC Line Charges collected per line from corporations, schools and libraries, government agencies — This charge is on all residential or business with a wireline phone or data service.

TeleTruth's challenge to the industry's and FCC's efforts to raise subscriber line charges under the federal Data Quality Act should not come as a surprise. Even among some members of the FCC, there is recognition that its current activities in this area are suspect. As stated by FCC Commissioner Copps in 2002, there was no thorough analysis, the data presented by many of the phone companies was only summary data which lacked cost supports, and the models used to analyze the data were either flawed, wrong, missing or a combination thereof.³

*"Re: Cost Review Proceeding for Residential and Single-Line Business
Subscriber Line Charge (SLC) Caps*



I am troubled that consumers will face an increase in the line charge on their local bill **without the Commission undertaking a thorough analysis of forward-looking cost data.** In 2000, when the Commission adopted access charge reform for price cap carriers, the Commission pledged that it would initiate and complete before July 1, 2002 a cost review proceeding to ensure that consumers are not overpaying for telecommunications services. This has not been done. Carriers were required to provide, and the Commission stated that it would examine forward-looking cost data. **A significant number of carriers, however, submitted summary data without disclosing the inputs used, cost models that were not transparent,** or in some cases, models that have been rejected by the state commissions. **NASUCA, the association of state consumer advocates filed its data purporting to show that the cap should not increase, but it used a model that the Commission has cautioned may have limits in establishing costs. The Commission then failed to conduct its own independent analysis of the cost data.** By failing to undertake the thorough analysis of cost data that was promised in the access reform order, we are neglecting our obligation to consumers. (Emphasis added.)

Teletruth agrees with Commissioner Copps that the industry's and the Commission's failure to meet the requirements for a comprehensive and competent review of costs based on quality data, transparency, data reliability or objectivity taints the FCC's analysis and raises serious questions about the process the Commission has chosen to follow in reaching a decision on the appropriate level of subscriber line charges and related increases. Indeed, as Commissioner Copps has reminded his colleagues, the Commission had committed to a thorough examination of the costs even before any increases were approved above \$5.00. Such an examination never occurred because the Commission stated at the time that it was not increasing actual charges but rather the potential ceiling or cap on such charges. Needless to say, the phone companies followed up with actual increases that the FCC itself acknowledged at the time could well be far in excess of what many would consider a reasonable and fair return on such assets.



SUMMARY OF THE COMPLAINT

This complaint requests the FCC redo the entire data collection and analysis for the creation and implementation of the FCC Line Charge ceiling, as well as “rates”. We believe that the data presented are faulty beyond use, that the FCC’s own objective analysis is non-existent, and therefore incomplete and unreliable. Also, there has been no transparency to be able to reproduce the results and, in fact, the public has been entirely left out of the analysis and creation of said data and analysis.

NOTE: We have filed a separate petition as to the “Truth-in-Billing” issues.

Major Points:

- Since 2000, the FCC Line Charge has increased some 86%, from a cap of \$3.50 to \$6.50, adding approximately \$14.3 billion — \$126 to customer’s phone bills per line, counting taxes.
 - The “*Information Dissemination*” product are the analyses and all data that was used to determine the cap of the FCC Line Charge, also called FCC Subscriber Line Charge, and a host of other names.
 - Teletruth and our members are “*Affected Parties*”.
- 1) **The “Influential” data points provided by the phone companies for the raising of the FCC Line Charge cap were flawed in numerous ways, according to numerous sources.**

Copps wrote: “A significant number of carriers, however, submitted summary data without disclosing the inputs used, cost models that were not transparent.”

Other commentors during the proceedings also agreed with this conclusion.

Not reproducible. In examining the data independently, it is impossible for an analyst to reproduce any of the phone company submissions because there are not enough specific pieces of information to replicate these studies.

SBC wrote: “The numbers reflected in the attached documents are illustrative only. SBC is not providing the actual inputs for the cost models, which are proprietary and competitively sensitive.”



Wrong methodology being presented, therefore not quality data. The FCC requested something called “Forward-Looking Costs”, which are models of what an efficient network would cost to run, to set access fees. The California Commission stated that the model Verizon presented was previously rejected in the state and others.

Wrong methodology being presented, therefore not quality data. Phone company submissions also presented “embedded” cost models, which are models for costs based on the equipment in the networks. Unfortunately, the FCC did not request this type of model and it does not translate into what was requested or what was presented by others, such as NASUCA.

Conclusion: We can not request that the phone companies to redo their submissions to include the missing critical data, match the format and deliver the proper methodologies for analysis. However, since their entries were deficient, and the FCC used this data as one of it’s major inputs, it is clear that this would make the overall analyses “unreliable”, lacking objectivity or utility, and can not be reproducible and fails the Data Quality Act standards.

2) **The second “Influential” data point provided by NASUCA for lowering the FCC Line Charge was not accepted, and therefore was also considered flawed..**

NASUCA’s data showed that while the phone companies stated that 100% of their customers had costs above \$5.00, NASUCA found that only 24% had costs above this cap, and only 14% above the \$6.50 cap and concluded that the raises were not justified. Another way of expressing this information is to say that over 76% of residential subscribers would be overcharged above an increase to \$5.00, 86% above at or above \$6.50. However, because of the variances of universes of data that were examined, the FCC felt that NASUCA’s analysis does not include the residential and SLB lines of all price cap carriers.

Conclusion: The second major “Influential” data points were also considered to be flawed and therefore could not be relied to draw conclusions. Also, while NASUCA concluded that the costs should NOT be raised, the FCC, using the same data, concluded that it should be raised. Thus, this data lacked reliability and utility.



-
- 3) **If the two major data points have a 76% differential, neither data point is reliable enough to base multibillion dollar increases.**

If data point "A" is flawed and data point "B" is flawed, and the differential between the data points was 76% or more, then this data is unstable and could not produce an objective solution for multi-billion dollar rate increases.

- 4) **Lack of Accurate, Objective Independent Analysis by the FCC.**

The FCC did not conduct its own independent analysis.

Copps wrote:

"The Commission then **failed to conduct its own independent analysis** of the cost data. By failing to undertake the thorough analysis of cost data that was promised in the access reform order, we are neglecting our obligation to consumers." (Emphasis added.)

- 5) **"Substantial" is not a formula or model. It is a non-objective hunch and it is a failure to be reproducible, objective, reliable, quality analysis.**

The FCC's conclusion was to drive through the agreement to increase the FCC Line Charge cap, even though the creators of the data they would rely on, NASUCA, claimed that the charge should NOT be raised. The FCC states that there were a "substantial number" of customers who costs over \$5.00 and \$6.50.

"We find that the most conservative estimate on the record in this proceeding demonstrates that there are a **substantial number of residential and single-line business price cap lines** – at least 27 million non-rural and 33 million total – with forward-looking costs above the current \$5.00 SLC cap, as well as a substantial number of lines – at least 14 million non-rural and 20 million total – with forward-looking costs above the ultimate \$6.50 SLC cap. We therefore find that it is appropriate to allow the SLC cap increases set out in the *CALLS Order* to take effect as scheduled. On the current record, these increases in the SLC cap are justified because we conclude that the current cap may prevent efficient cost recovery in a meaningful number of cases."



Total Lack of Data and Final Analysis. There is no new spreadsheet to examine, no series of calculations with forward-looking analysis. It is simply “substantial”. It is not even the majority of customers, which would be ethically more logical. For example, a new calculation might have found — *“the average cap should be \$5.55 because of this analysis.”*

Thus, the analysis is not reproducible, not accurate, not the basis for a \$14.3 billion dollar charge to customers.

6) Lack of Transparency Throughout the CALLS Proceedings.

The increases to the FCC Line Charge were based on closed door negotiations without the public being involved in agreement to raise the FCC Line Charge.

According to Former Furchtgott -Roth,

“...The public generally was not notified that the CALLS negotiations were taking place, nor were a number of parties that wished to be included in these negotiations permitted to participate. Not surprisingly, the final CALLS deal does not reflect the views of parties that were not included in the CALLS negotiations, such as the Ad Hoc Telecommunications Users Committee.”

“Not only were interested parties excluded from the CALLS negotiations, but also the substance and scope of the CALLS negotiations was not made public, and there is no public record describing whatever consensus was finally reached. And, inconsistent with the policy set forth in 5 U.S.C. § 566(c), the Bureau participated in these negotiations both substantively *and* as a facilitator.”

Lack of Transparency — There is no data and analysis of the creation of the parts of the deal that were to raise the FCC Line Charge cap.

7) Other Significant Data Were Ignored or Scuttled.

FCC scuttled the audits of Bell companies’ network equipment accounting books, which would have lowered the cost of the FCC Line Charge. In 1999, the FCC released a series of audits that showed that 15-25% of the network equipment was



missing or "Unverifiable". However, this equipment was used in the establishing of the costs of local phone service and the original FCC Line charge price at \$3.50.

The FCC neglected to examine the other charges on the phone bill or profits or other significant influential items. At the time of the increases to the FCC Line Charge, every indicator showed that the phone companies had become some of the most profitable companies in America from local phone service, with returns for 2001 212% higher than the Business Week Top 10. The FCC refused to examine this data properly or give it the proper weight in the analysis.

There is an additional tax burden to customers for the line charge increases. Unbeknown to most, the FCC Line Charge is taxed and surcharged exorbitant amounts. In New York, the charge has 27% taxes being applied, including a Universal Service Fund tax, Surcharges, (multiple), Federal, State and Local taxes. While it varies, in some other states we found that it was taxed almost 18%. Any increases add additional charges.

Data analysis of "Forward-Looking costs" showed Access Fees were excessive. An economic analysis in 1998 revealed that the costs to long distance companies were seriously inflated.

The FCC didn't examine business subscriber line charges or their profits. The FCC's examination and decision to raise the FCC Line Charge for residential customers was not "holistic" and did not examine the FCC Line Charge costs to businesses, schools, government agencies, etc.

Conclusion: Lack of Objectivity, Reliability, Quality Data. All of these other data points are significant and should have been included in the analysis of the FCC Line Charge.

8) Data Quality Act violation — The actual name "FCC Line Charge" was never used by the FCC.

The name of the Subscriber Line Charge (SLC) should be changed in all instances. As we demonstrate in our related "Truth-in-Billing" complaint, the "FCC Line Charge" or "FCC Subscriber Line Charge", which include the abbreviation "FCC", are the most commonly used terms on phone bills for this charge. The FCC has refused to make this point in almost all data throughout its web sites, press releases, or even in the orders we are contesting.



As we argue, how would the customer know that the "SLC" was on their phone bill as the FCC Line Charge? How are they to also know that it is revenue to the local phone company and doesn't go to fund the FCC or is some government tax, as is the common belief? More to the point of this complaint, how were customers to get involved in the complaining about the setting of this charge's cap, when there was no mention of the actual charge, as it appears on the majority of phone bills, in any FCC document?



Part 1: The Data Quality Act and Applying it to the FCC Line Charge's Increases.

The FY 2001 Consolidated Appropriations Act (Public Law 106-554) contained a new piece of legislation known as the Federal Data Quality Act. (Public Law 106-554 Section 515).

The Office of Management and Budget (OMB) was assigned the task of creating "Guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by federal agencies"⁴. These guidelines were then to be used by the various agencies, including the FCC,⁵ to create their own set of guidelines, which were released October 8, 2002.

As we will demonstrate, the FCC has failed in multiple ways to comply with this law, and we are requesting that it redo the entire FCC Line Charge analysis, not only the previous 4 years of increases, but also determining the actual cost of the service from 1984-through the present, as refunds may apply.

1.1 A Short Discussion of the Data Quality Act's Tenets

"...ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by federal agencies"⁶.

There are a series of definitions that we would like to detail before we proceed with our findings.

1.2 Teletruth and Its Members Are "Affected Persons" and We Seek a Correction in the Information and Analysis Supplied by The FCC.

The OMB guidelines state:

"...agencies are to establish administrative mechanisms allowing affected persons to seek and obtain, where appropriate, correction of information disseminated by the agency that does not comply with the OMB or agency guidelines."

While the FCC guidelines states:

"*Affected persons* are people who may benefit from or be harmed by the dissemination or use of a specific information dissemination product."



Teletruth and its members, not to mention every phone bill customer, are “affected persons” who have been harmed through the use of a specific information product. Teletruth and our members separately, have been active participants at the FCC pertaining to phone bill issues. Besides being a member of the FCC Consumer Advisory Committee, therein demonstrating our standing, New Networks Institute, (NNI) a Teletruth board member, has been filing complaints, petitions, comments, etc. since 1993. NNI in fact filed a complaint pertaining to the FCC Line Charge in July 2001, among other filings on phone bill issues.

1.3 Reproducible, Reliable Quality Data Are Missing.

“...the OMB guidelines call for an additional level of quality “in those situations involving influential scientific or statistical information.” The additional level of quality concerns a standard of care for scientific or statistical analytical results, a “capable of being substantially reproduced.”

The OMB continues:

“...the guidelines call for the agency to determine that “influential” analytical results be capable of being substantially reproducible by independent analysis. We intend this standard to say that, if appropriately qualified persons used the same or a similar methodology, they would be expected to achieve similar findings and results.”

As we will demonstrate, the FCC’s analysis is not reproducible, as stated by multiple commentors to the various related FCC Line Charge actions. This is because the data used were faulty, lacked back up documentation and used incorrect analyses. Commissioner Copps stated “A significant number of carriers, however, submitted summary data without disclosing the inputs used, cost models that were not transparent, or in some cases, models that have been rejected by the state commissions.”

1.4 Lack of Objective Data and Violations of Transparency.

It is clear that all the FCC wanted to do was to make sure that these defacto rate increases occurred, and to such an extent that they violated various laws.

Former Commissioner Harold Furchtgott-Roth made this crystal clear in his dissenting statement regarding the original decision to raise the FCC Line Charge caps.⁷ The



Commission created closed door meetings with selected parties, leaving out major players in these meetings. The decisions that were created were obviously biased toward those in the meetings.

"The Process Through Which this Order Was Adopted Was Fundamentally Defective. This order is a product of a proposal that was originally submitted last summer by the Coalition for Affordable Local and Long Distance Service ("CALLS"). The Commission sought comment on this proposal last fall.⁸ In ordinary circumstances, the Commission would simply have rendered a decision on the CALLS proposal based on comments submitted by interested parties. The course the Commission took here, however, was very different. In the early part of this year, apparently prompted by objections to the original CALLS proposal raised by groups purporting to represent consumer interests, the Commission, acting chiefly through the Common Carrier Bureau, held a series of meetings with a select group of some – but by no means all – of the parties with interests in this proceeding. The substance of what was discussed at these meetings was not publicly disclosed. And a number of parties with interests in the outcome of this proceeding, including the Ad Hoc Telecommunications Users Committee, Time Warner Telecom, and the Association for Local Telecommunications Services, were not allowed to participate.

"The Commission evidently refereed the negotiations at these meetings, and a 'modified' CALLS proposal was reached near the end of February. Although this order announces that this "modified proposal" was put forth by members of the Coalition, see Order ¶ 1, it is undeniable that the proposal was a product of the negotiations that took place between the Commission and those parties that were allowed to participate in the negotiations – that is, members of the Coalition and some groups that purport to represent the interests of residential and small-business consumers. The Coalition's 'modified proposal' simply memorialized aspects of the agreement that was reached between these parties and the Commission in the course of the meetings held in January and February of this year."



1.5 Lack of Objectivity, Omission of Important Data and the Addition of Bias.

This lack of **transparency** in the creation of the data also shows a concerted effort by the FCC to bias the results in favor of a small group of participants.

As we will show, the FCC totally ignored various other data points, specifically audits that were done by the FCC of the local Bell companies and GTE that revealed that \$19 billion dollars of network equipment used in the creation of the FCC Line Charge's fees were missing or unverifiable. And this represented only ¼ of the audits to be done. — These were known as the "Continuing Property Records", "CPR".

Former Commissioner Harold Furchtgott-Roth continued:

"Even more dismaying, however, is what the "modified proposal" does not disclose. At some point in the course of the CALLS negotiations, proceedings that were unrelated to the issue of access charge reform became part of the negotiations. Incumbent local exchange carrier members of the Coalition apparently contended that they could not commit to certain modifications of the CALLS proposal unless they had confidence that two separate matters – a depreciation waiver item⁶⁰⁴ and the pending special access proceeding, which concerns the circumstances in which carriers may purchase combinations of unbundled loops and transport network elements⁶⁰⁵ – would be resolved favorably to them. As a consequence, part of the final agreement reached by the participants to the CALLS negotiations concerned these two separate matters. With respect to this depreciation item, the Bureau agreed to recommend to the Commission that it approve the waiver that is the subject of this Notice and terminate the CPR audits."

"...Nothing in this order, however, tells the public of this connection between this order and these other dockets. In my view, the process by which the original CALLS proposal was modified is fundamentally inconsistent with principles of neutrality and transparency that must govern agency decisionmaking. By participating in the CALLS negotiations, the Commission plainly reached a view as to how the CALLS proceeding should be resolved, and its review of the comments it subsequently received regarding the "modified proposal" could not have been uninfluenced by the role it had played earlier. In addition, it was entirely improper for the Commission to have permitted the unrelated



matters of depreciation and special access become part of the negotiations.”

Furchtgott-Roth continued to make it clear that this was an exclusionary decision. We dwell on this point because the current Intercarrier Compensation Forum has also been a closed door event, without the proper notification, participation or any other public input.

“...The public generally was not notified that the CALLS negotiations were taking place, nor were a number of parties that wished to be included in these negotiations permitted to participate. Not surprisingly, the final CALLS deal does not reflect the views of parties that were not included in the CALLS negotiations, such as the Ad Hoc Telecommunications Users Committee.”

“Not only were interested parties excluded from the CALLS negotiations, but also the substance and scope of the CALLS negotiations was not made public, and there is no public record describing whatever consensus was finally reached. And, inconsistent with the policy set forth in 5 U.S.C. § 566(c), the Bureau participated in these negotiations both substantively *and* as a facilitator.”

“I cannot escape the conclusion that the process by which this Notice has been promulgated falls short of certain fundamental principles that govern the behavior of administrative agencies.”

1.6 The FCC DQA Guidelines for a “Complaint” and What are “Data”.

According to the FCC a “Complaint”:

“3. *Complaint* refers to a written communication to the Commission that includes enough information so that the Commission can readily determine the specific information dissemination product the complaining party believes needs correcting, how the complaining party is affected by the information dissemination product sought to be corrected, the sections of these guidelines or the OMB Guidelines the complaining party believes have not been followed, what resolution the complaining party would like, and how to get in contact with the comment writer.”



Data are defined as:

"4. *Data* are the basic or underlying elements of information. All information dissemination products covered by these guidelines are based upon data. Additionally, covered information dissemination products may contain analysis of the data and conclusions drawn from this analysis."

1.7 Other Important Data Quality Tenets

Another important definition is "influential".

"6. *Influential*, when used in the phrase "influential scientific, financial, or statistical information," means that the Commission can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions."

Raising the FCC Line Charge 86% without cost supports, as well as all related taxes and surcharges, obviously had a important impact on customers' pocket books. — We estimate it has cost customers approximately \$125 per line over the last 4 years.

The OMB Guidelines also discusses "quality", "utility", "objectivity" and "integrity".

"In the guidelines, OMB defines "quality" as the encompassing term, of which "utility," "objectivity," and "integrity" are the constituents. "Utility" refers to the usefulness of the information to the intended users. "Objectivity" focuses on whether the disseminated information is being presented in an accurate, clear, complete, and unbiased manner, and as a matter of substance, is accurate, reliable, and unbiased. "Integrity" refers to security—the protection of information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification."

As we will show, the increases to the FCC Line Charge were created with a lack objectivity, utility and therefore lack quality.



1.8 A Contradiction Between the FCC Guidelines and OMB Guidelines.

We believe the FCC guidelines are in error because they seem to preclude any filing that finds fault with the FCC to not be legally “enforceable”.

“4. This document provides guidance to Commission staff and informs the public of the Commission’s policies and procedures. These guidelines are not rules or regulations. They are not legally enforceable and do not create any legal rights or impose any legally binding requirements or obligations on the Commission or the public. Nothing in these guidelines affects any otherwise available judicial review of Commission action. Factors such as imminent threats to public health or homeland security, or statutory or court-ordered deadlines may cause these guidelines to be temporarily waived.”

There is nothing in the Data Quality Act or the OMB guidelines that refers to the FCC's ability to ignore the law and decide what it feels is or is not “enforceable”.



Part II: Short Background of the FCC Line Charge

The FCC Line Charge has been a unfortunate attachment to customers phone bills since 1984, when a new charge was added to the phone bill to supposedly make implicit charges that were part of long distance costs, explicit. "Access Fees", of which there are numerous types, were fees that were supposedly built into long distance rates and paid for by the long distance companies, which is then passed through to the customer. In order to remove some of these fees from long distance, a new charge, the FCC Line Charge was added to phone bills.

In June of 2000, using the argument that long distance access fees were still to high and costs from long distance rates needed to be shifted to local phone bills, the FCC agreed to raised this charge's cap (the highest price a phone company could charge) from \$3.50 to \$5.00. In 2001-2002, the FCC held a proceeding that added no serious cost support but increased the ceiling on this charge to \$6.50 for residential customers. Of course, no mention was included that this would also inflict additional taxation.

2.1 The Costs of FCC Line Charge

Starting at \$1.00 in 1985, by July 2003 the price of the service increased up to \$6.50 a month for residential customer's first line. **Note: There are variations by state as to the exact cost of this charge per line.**

New York, FCC Line Charge for Specific Years, 1980-1999

	1980	1985	1986	1987	1990	1999
Line Charge	\$0	\$1.00	\$2.00	\$2.60	\$3.50	\$3.50

Source: FCC, New Networks Institute, 1996

New York FCC Line Charge for Specific Years, 1999-2003

	2000	2001	July 2001	July 2002	July 2003
Line Charge	\$3.50	\$4.35	\$5.00	\$6.00	\$6.50



2.2 Costs Continue to Drop, Profits Increased Sharply.

Ironically, throughout these two decades, the cost of offering service has continued to drop. In fact, over the last 20 years, the Bell companies have cut employees-per-line some 65%, while there has been a 50% drop in new construction. In fact, as of 1991, the original phone networks that were given to the Bell companies had all but been written-off, and since that time, the Bell companies have continued to write-off more than they have replaced.

More to the point, data presented in 2000 and 2001 were clear that the Bells' overall profits were being ignored from this analysis. These companies had become some of the most profitable companies in America from local phone service. Raising the FCC Line Charge only made these companies more profitable.

In June 2001, New Networks Institute released a report on Bell profits, based primarily on the Business Week Corporate Scoreboard, and other primary sources, including Bell Annual Reports. <http://www.newnetworks.com/Bellprofits2001.htm>. The finding showed that the Bell companies in 2000 (Qwest was not included in the Business Week round-up) had profit margins 170% above the Top 9 companies, 256% compared to the "All Industry", and 212% compared to the "Utilities".

Bell Company and Business Week 500 Revenues and Profits, 2000

*Source: Business Week, 2/26/01 Exhibit: NNI 2001
(in the millions)*

	% of Profits	Bell Comparison
Total Top 9	6%	170%
All Industries	4%	256%
Utilities	5%	212%
Bell Average	16%	

The Top 9: GM, GE, Ford, EXXON, Wal-Mart, Citicorp, IBM, AT&T, and Enron.

In short, these companies were some of the most profitable in America, and almost all of these profits were derived from the local phone subscriber.



2.3 Other Important Data Points

A number of other data points, which we will discuss, clearly indicate an excessive FCC Line Charge was in place when priced at \$3.50.

First, a study presented in 1997-1998, based on what is known as HAI 5.0a model, found that the "forward looking" cost models showed that the actual costs of "access fees" were inflated some 550% above the efficient costs.

Secondly, according to NASUCA, only 24% of residential and SLC lines had costs above \$5.00, while only 14% had costs above \$6.50. Another way of saying this is that 76% would be paying too much if the price went over \$5, and 86% would be paying too much if the price went over \$6.50. Ironically, the phone companies (Verizon, SBC and BellSouth) collectively told the FCC that 100% had costs above \$5.00 and 61% had costs above \$6.50.

To add insult to customer injury, an audit of the Bell companies' equipment, released in 1999, showed that some \$19 billion dollars of missing equipment had been added to phone rates, and this was only 1/4 of the potential audits that should have been done. This finding meant that the FCC Line Charge price, which was set using 1991 data, was not accurate, since this equipment was the basis of setting and continuing the \$3.50 rates. According to former FCC Commissioner Furchtgott Roth, these audits were eliminated as a favor to the phone companies for going along with the planned increases.

2.4 Multiple Truth-in-Billing Problems, Another Data Quality Act Problem.

Besides the obvious information presented about the data quality, another related issue are the "Truth-in-Billing" violations that the name creates. The guidelines include basic principles about the information to be supplied to the customers. Here is a brief description of the rules. (Also on the web at: <http://ftp.fcc.gov/cgb/policy/truthinbill.html>)

"The Commission has adopted Truth-in-Billing rules to improve consumers' understanding of their telephone bills. Among other things, section 64.2401 of the rules requires that a telephone company's bill must:

- (1) be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered;
- (2) identify the service provider associated with each charge;



- (3) clearly and conspicuously identify any change in service provider;
- (4) contain full and non-misleading descriptions of charges;

“The Commission also determined that all telecommunication providers (other than CMRS) should use standard labels on bills when referring to line item charges relating to federal regulatory action, such as universal service fees, subscriber line charges, and local number portability charges.”

The FCC Line Charge has so many problems that Teletruth has also filed a “Truth-in-Billing” petition, since this misnamed fee does not go to fund the FCC, which is the common belief based on the name. Phone bills across America hide the fact that this disguised direct revenues to the local phone companies is neither a government tax or a surcharge, is not “ordered” or “mandated”, is not part of local phone service, but is required to be paid for as part of local phone service. Also, when the phone companies advertise their packaged bundled deals, they neglect to inform the customer that the FCC Line Charge is not part of the advertised price.

Because of this ether-like definition, this charge is also quintuple-taxed in many jurisdictions, being applied a Universal Service Fund, (even though the charge is on local phone bills and not 'interstate' per se), as well as “Surcharges”, (that’s plural) Federal, state and local taxes. In New York City, the FCC Line Charge is taxed 27%. When the FCC Line Charge is increased, taxes are also increased.

We consider these Truth-in-Billing issues related to this petition because all information provided to customers has allowed this entire process of increases using faulty data. — Who could question increases when they had no idea what the charge was really used for?

2.5 “SLC” as a Data Quality Violation Because it Lacks Common Sense or is Customer-Understandable.

One other point that is also paramount to this discussion — The FCC continually refers to the charge as the “SLC” (“Subscriber Line Charge”), which is, in fact, incorrect based on common usage on phone bills. Our TIB complaint found that most common usage has the abbreviation “FCC” attached to the charge. Verizon calls it a “FCC Line Charge” in New York, and an “FCC Subscriber Line Charge” in New Jersey. BellSouth calls it an “FCC Charge for Network Access”, while SBC Texas calls it a “FCC Approved Customer Line Charge”. Therefore, every mention of this charge by the FCC is tainted



and misses the common meaning. More importantly, most customers believe that since the charge is called the "FCC Line Charge" it goes to fund the FCC.

Also, because of the name, we noticed that the entire process at the FCC for the CALLS second order had only a handful of commentors, even though it affected the price of every customer's residential or small business phone bill. Obviously, if no one knows that the FCC Line Charge is being discussed and is referred to by some obscure name, then no one would show an interest. We compare this to the 50,000 customers who responded in the Triennial Review, or the million customers who chimed in on the media consolidation issues.



Part III: The Violations of the Federal Quality Act that Need to be Addressed.

The increase from \$3.50 to \$6.50 used no separate FCC analysis and the information supplied by the parties was either a) summary data of no consequence and never audited and b) the data supplied by NASUCA and others directly contradicted the phone company supplied data to a degree that made the analysis biased, contradictory and statistically flawed.

Thus, the component parts were considered faulty or incomplete, and the differences between the two major studies too divergent to make any accurate assessment with billions of dollars in the balance.

3.1 No Data is Reliable When the Two Sources Have a Discrepancy of 76% or Even 47%.

The FCC's decision to base any decision on two data points that were, at best, shaky within their own analysis, much less having a divergence of almost 50%-75% or more is ludicrous. A student taking basic statistics and handing in such a paper would get a failing grade.

According to the FCC, there were two major contributors of data – the phone companies and NASUCA, the National Association of State Utility Consumer Advocates. As presented in an attachment of the CALLS 2002 order⁹ — according to NASUCA, only 24% of residential and SLC lines had costs above \$5.00, while only 14% had costs above \$6.50. Another way of saying this is that 76% would be paying too much if the price went over \$5, and 86% would be paying too much if the price went over \$6.50.

Ironically, the phone companies (Verizon, SBC and BellSouth) collectively told the FCC that 100% had costs above \$5.00 and 61% had costs above \$6.50.

**FCC Line Calculations, 2001-2002
NASUCA, Phone Companies**

	Phone Co	NASUCA	Difference
Over \$5.00	100%	24%	76%
Over \$6.50	61%	14%	47%

Caveats of course abound. There are a few items that need clarification.



3.2 The Reliability of Each Data Point Was Unaudited and Unreliable and Different Methodologies Were Supplied.

According to Commissioner Capps:

“Carriers were required to provide, and the Commission stated that it would examine, forward-looking cost data. A significant number of carriers, however, submitted summary data without disclosing the inputs used, cost models that were not transparent, or in some cases, models that have been rejected by the state commissions”.

“NASUCA, the association of state consumer advocates filed its data purporting to show that the cap should not increase, but it used a model that the Commission has cautioned may have limits in establishing costs.”

Regardless of the outcome, it is clear that both data points were unreliable at best, that the methodologies used were in question, and that the phone companies never presented any data besides “summary” data without disclosing inputs. Worse, the phone companies had submitted models that in some cases had been rejected by the state commissions.

3.3 The Data Used From The Phone Companies is Not “Transparent” or “Reproducible”.

According to numerous sources, the data submitted by the phone companies (ILECs) lack sufficient documentation to reproduce or justify any of the increases.

According to NASUCA, in summarizing various commentors:

“The comments submitted by the Ad Hoc Telecommunications Users Committee (“Ad Hoc”), the California Public Utilities Commission (“CPUC”), the Florida Public Service Commission (“FPSC”), and WorldCom demonstrate agreement that the ILEC’s cost submissions categorically fail to justify the scheduled increase to residential and single line business SLC caps above \$5.00.

“Each of these parties makes note of the fact that the ILEC cost submissions lack sufficient documentation to allow the FCC or interested parties to fully inspect the ILECs’ cost studies.¹ For example, Ad Hoc



notes that the cost studies lack the detail necessary for the FCC to complete a thorough cost review. It states that the "incomplete nature of the price cap ILECs' cost data renders it moot".² WorldCom argues that the FCC should give no weight to the ILECs' cost submissions because the ILECs have failed to provide their cost models or inputs for parties to review.³ Similarly, the CPUC argues that the ILECs cost submissions are unacceptable because they have provided parties nothing more than black boxes whose outputs are wholly dependent upon unknown inputs".⁴

NASUCA's filings continue for pages about the problems with the data. For example, NASUCA points to problems the Florida Public Service Commission (FPSC) encountered with the BellSouth data.

"4 The Rate Comparison Provided By The FPSC Highlights The Inaccuracy Of The ILECs Cost Estimates In its comments the FPSC demonstrated that BellSouth's cost submission overstates the cost of providing access to the telecommunications network based on a comparison with UNE rates in Florida.¹⁵ NASUCA concurs with the conclusions drawn by the FPSC. The comparison it provides shows the inaccuracy of ILEC cost estimates in one study area and supports the comparison provided in NASUCA's initial comments indicating that the ILECs have systematically overestimated the cost of access relative concluded that the cost providing the loop and port is significantly less than the estimates provided by the ILECs in this proceeding. to the rates established by the State Commissions in their TELRIC proceedings. NASUCA showed in its initial comments that without exception the ILECs have submitted cost estimates in this proceeding that exceed the TELRIC rates established by the State Utility Commissions".¹⁶

3.4 The Phone Company Data Did Not Use the Required Models that the FCC Had Established as Being the Basis for Their Analysis.

NASUCA discussed and quotes the FCC's own requests for "forward-looking" cost studies, and not "embedded cost" methodologies:

"The FCC has also made it clear that changes in the SLC should be based on forward-looking cost studies to be provided by the ILECs, and not embedded cost methodology."



(NASUCA quoting the FCC)

“To implement our backstop to market-based access charge reform, we require each incumbent price cap LEC to file a cost study no later than February 8, 2001, demonstrating the cost of providing those interstate access services that remain subject to price cap regulation because they do not face substantial competition. The Commission will require submission of such studies before that date if competition is not developing sufficiently for our market-based approach to work. **Studies should identify and quantify forward-looking costs, short-run and long-run, that are incremental to providing each such service, and also costs that are common as between various services.**”³⁶
(Emphasis added).

NASUCA continues, explaining that the cost studies submitted did NOT satisfy the basic requirements outlined by the FCC.

“The FCC said that the economic cost studies filed in this proceeding were effectively a continuation of what they said they would do in 1997.³⁷ That is, in markets where there was insufficient competition, they would use the estimated economic cost of service to protect consumer interests. If the Commission sets rates on the embedded revenue requirement, they are not providing the “backstop.” Rather the Commission would be driving prices away from the economic cost of service, and requiring captive monopoly customers to provide an increased implicit subsidy.

“Clearly, the studies submitted by the ILECS under this proceeding have not satisfied this basic requirement outlined by the FCC with regard to the cost studies it would receive from the ILECs by February 8, 2001. Although the deadline for these studies was extended, the ILECs have still not submitted studies that provide forward-looking cost estimates. Therefore, as shown in our initial cost submission, the SLC should remain at \$5.00 in order to ensure that implicit subsidies are not increased.”

Thus, how can anyone expect an analysis to increase the rates could be cost justified, when both the data and the methodologies deployed were seriously faulty and not reliable, or transparent.



3.5 The Data Submissions by the Phone Companies Failed a Standard of a “Cost Study With All Underlying Data” As Set in a Related “Universal Service” Order.

The California Public Service Commission wrote extensively on the inadequacy of the phone company supplied data, including the missing cost models. However, the Commission also wrote that the FCC was violating its own principles of good data as set forth in the Universal Service Order.

The California Commission wrote:

“The LEC Cost Submissions Are Wholly Inadequate To Justify Any Increase In The SLCs Without access to actual cost inputs or cost models used by the LECs, there is no reasonable basis upon which to determine whether any increase in the SLCs is merited. In its Universal Service Order¹⁰ the Commission understood the import of ready access to model data, formulae and software when it selected the most appropriate cost model to calculate the forward-looking costs to serve rural, insular, and high-cost areas. The Commission required that:

“[t]he cost study and all underlying data, formulae, computations, and software associated with the study must be available to all interested parties for review and comment. All underlying data should be verifiable, engineering assumptions reasonable, and outputs plausible.”

“That same requirement is equally applicable here. Nevertheless, in its filing, Verizon did not provide any input data whatever, and provided an extremely terse explanation of how its model functions. SBC, in its filing, stated that its cost model was populated with *examples*. SBC's documentation was also sparse.”

But it gets even more absurd because even the scarce cost models were also turned down by the California Commission years before.

“In addition to the above, Verizon's cost model is seriously flawed. In this proceeding, Verizon submitted forward-looking cost estimates using the ICM model in GTE states, including California, and the LCAM or LCM model in Bell Atlantic territories. The California Public Utilities



Commission, however, expressly rejected. GTE California's ICM model in a 1998 proceeding to determine forward-looking costs in California. California has not been alone in its rejection of GTE's ICM model. Despite this history, Verizon does not address whether the ICM model submitted here has been modified to address its deficiencies.

Moreover, based on the documentation provided in Attachment D, it is readily apparent that Verizon's ICM model and inputs suffer from several fundamental shortcomings, as discussed below."

In short, like NASUCA, the California Commission found the data presented by the Bell companies seriously flawed and failing on transparency, objectivity, reliability, and quality. However, this was used as one of the fundamental indicators by the FCC that these companies needed to gain these financial increases.

3.6 Even the Phone Companies Admit Their Own Data Is NOT Useful or Complete.

SBC's cost submissions called their documents "illustrative only" and SBC was "not providing the actual inputs".

"The Attachment is an overview of SBC's forward-looking cost study, including the methodology use to determine cost inputs and the computer models that were used to derive forward-looking loop and port costs... The numbers reflected in the attached documents are **illustrative only**. **SBC is not providing the actual inputs for the cost models**, which are proprietary and competitively sensitive."¹¹ (Emphasis added)

Verizon states that while it presents forward-looking costs, they should not be used to change the scheduled increases. Access fees are based on cost, etc. In fact. "the Court endorsed the Commission's rejection of arguments that the Commission should have used forward-looking costs to restructure access charges."

"In Attachment D, Verizon also provides estimates of forward-looking costs of providing voice grade retail residential service as requested in the Public Notice. The per-line costs in these studies are higher in some cases than the Price Cap CMT per-line and lower in others. However, in neither case should they be used to change the scheduled increases in



the SLC caps. As noted above, the price cap system is not based on cost, and when access charges were based on cost, it was actual incurred cost, not a lesser measure of forward-looking cost. Although the Court of Appeals reversed and remanded the CALLS Order regarding the Commission's justification of the X-Factor and the \$650 million universal service fund, **the Court endorsed the Commission's rejection of arguments that the Commission should have used forward-looking costs to restructure access charges**, noting that the 1996 Act does not compel the FCC to conduct forward-looking cost-studies because the cost-study requirements of § 251(c)(1) and 252(d)(1) (Emphasis added)

Verizon's data was also simply "summary data", without serious support information.¹² Footnote 4 of the Verizon cost submission states that this is only "Tariff entity level" data.

"4 Verizon is providing cost information only at a study area **or a tariff entity level**, because Verizon has not deaveraged its SLCs and does not intend to do so on July 1, 2002. For example, the cost information for the Verizon north study areas (New York, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont) is provided on a regional basis because these states have region-wide SLCs. Under the CALLS rules, carriers are permitted, but not required, to deaverage SLCs. **See Access Charge Reform**, 15 FCC Rcd 12962, ¶ 73 (2000) (*CALLS Order*); **see also** 47 C.F.R. Section 61.45(b)(ii)" (Emphasis added)

These submissions clearly state that embedded costs, accounting costs, etc. are more important to this analysis than the data the FCC requested "forward-looking" data.

3.7 The FCC Response Was a Self-fulfilling Biased Act – Lack of Objectivity.

The seat-of-the-pants decision to raise this charge was a self fulfilling prophesy. The FCC wanted to show that its premise to raise the charge was warranted and so it did so. To demonstrate the skew, while NASUCA's opinion was to NOT raise rates, because it found that the majority would not benefit and it would cost customers more, the FCC turned around the argument and claimed that NASUCA shows a 'substantial number' had costs above \$5.00 or \$6.50.

"38. NASUCA's cost study, although conservative, still amply demonstrates that a substantial number of residential and single-line



business lines have forward-looking costs above the current \$5.00 SLC cap, and above the fully phased-in \$6.50 SLC cap.”

However, in direct contradiction, NASUCA argued that the proceedings were a “rate-making”, because the price of the SLC would be going up, and that data was needed on how this would affect customers. The FCC decided to ignore that part of the argument, claiming that this proceeding to raise the FCC Line charge was just to “verify” the increases, but that it really didn’t have a clue about setting rates, and that the NASUCA model was not acceptable for examining that task.

“ 46. As discussed at length above, the purpose of this proceeding is to verify that increases in the SLC cap are warranted, and we do not intend to reexamine how rates are set under the price cap regime at this time.¹³ Moreover, while the Commission has endorsed forward-looking costs for certain purposes, including the instant review of the SLC cap, the Commission has not yet adopted a forward-looking cost standard for setting end-user retail rates.¹⁴ In addition, the Commission repeatedly has cautioned parties against using the Synthesis Model to set rates.¹⁵ Because NASUCA’s argument ignores these issues, we find no basis to consider it.”

Taking into account the previous statements quoted from former Commissioner Furchtgott-Roth, it clear that the FCC was out to justify its own actions, which were to grant the phone companies these financial increases without proper data support or even participation of the public — a lack of objectivity is clear.

3.8 Other Studies Indicate That the FCC Line Charge Should Have Been Greatly Reduced.

3.9 Actual Costs of the FCC Line Charge and Access Fees?¹⁶

According to Dr. Robert Garnet, a Fellow in Economics at John Hopkins University, who worked for AT&T during the review of access fee costs:

“In late 1998, economists hired by AT&T put together an economic model of the charges Verizon and other incumbent local telephone companies imposed on long distance companies to carry their calls to customers over the local telephone networks they owned. At that time (using the FCC approved forward-looking cost HAI model, version 5.0a), the economists



estimated that the cost of providing such local connection services was \$.008 per minute (8/10 of one cent). The Bell companies were charging on average \$.0525 cents per minute (including \$.0034 per minute for a universal service subsidy). In other words, the local telephone company was collecting about \$.04 per minute in excess charges to long distance users that were not cost justified.

To summarize, the actual costs should be less than a penny, yet AT&T was being charged five and a quarter cents. Hidden in this charge was also a USF charge of 3/10 of a cent per minute. Thus the actual costs were only 15% of what was really being charged.

Another way of looking at it is by viewing the amount charged. The amount is 556% above the actual costs. This includes the addition of a hidden Universal Service Fund Charge.

Access Fees, Costs Vs Actual Charges, 1998
(Source: AT&T)

Actual cost	\$0.0080	
Amount charged	\$0.0525	556%
USF included	\$0.0034	6.48%
Without USF	\$0.0491	
Above cost with USF	\$0.0411	
Above cost	15.2%	

The increases from 2000 through 2003 which raised the FCC rate from \$3.50 to \$6.50 were shifted-over based on the inflated phone rates and are still there today.

It should be remembered that AT&T didn't pay these access fees as they were call passed through to customers who had this extra burden.

3.10 But It Does Get Worse: Taxes and Surcharges Applied.

As we have pointed out in other research, the FCC Line Charge, because of its ambiguous nature, has quintuple taxes applied in many states. In New York City, the taxes and surcharges are 27%, adding an additional \$1.75 to the increased charge of \$6.50. Because Universal Service, Surcharges, Federal State and Local taxes are applied in many other states, the average tax is an additional 18%.



3.11 Recalculation of the FCC Line Charge Based on the HAI 5.0a Model.

If the original \$3.50 had been built into these excessive fees, as well as the tax increases, the costs would be significantly less to customers.

- a) The total charge today in NYC is \$6.50, and that taxes are \$1.75, making the total \$8.25 a month. (It should be noted that "Dialtone" is \$8.61 a month in New York.)
- b) If this analysis is valid, then the actual costs of the FCC Line Charge should be \$.99 and the taxes \$.27 for a total of \$1.26.
- c) Savings - The monthly savings are about \$7 a month, \$84 a year.

FCC Line Charge Today and If Based on Costs

	Current	% of tax	Redone
FCC Line	\$ 6.50		\$ 0.988
USF	\$ 0.57	8.70%	\$ 0.086
Surcharges	\$ 0.46	7.00%	\$ 0.069
Federal	\$ 0.20	3.00%	\$ 0.030
State & Local	\$ 0.54	8.25%	\$ 0.082
Tax Total		26.95%	
Taxes	\$ 1.75	27%	\$ 0.267
Total	\$ 8.25		\$ 1.255
NYC Monthly Saving			\$ 6.997
Annual Saving			\$ 83.96

We are not suggesting that the HAI 5.0a model has been adequately vetted, or is even accurate, considering that the inputs to the model can of course be debated. Our point, is that other models that were considered valid by many others existed that brought the original costs into question. Therefore, the FCC should have included these models when it considered the starting point of \$3.50.

3.12 Other Missing Data Points

There are multiple other data points that the FCC ignored, albeit scuttled, during the process of the increases to the FCC Line Charge.



The hard part for most to understand is that the FCC's raising of the FCC Line Charge is a "cap", a ceiling that the phone company can charge up to. The FCC analysis for this cap is supposed to be based on what is called "forward-looking" model of costs, not the actual costs of the networks.

However, the Bell companies submitted data and only believe in "embedded" cost models, which are the costs used to set phone rates, are valid. Originally, a "rate" was based on the profits of the company's services. However, even under price-caps, where the rate is frozen or adjusted, but not directly based on embedded costs, the original starting points for ALL price caps and thus all "rates" were the actual costs of the networks.

As we have filed in multiple dockets, the Bells' profits have been outrageous, and so, had the Bell companies wanted to use the embedded costs, then 2 factors would have been uncovered --- a) the massive profits; the return/profits that the Bells currently enjoy, as well as b) the costs associated with the networks, which would include the Continuing Property Records, "CPR" of the equipment in use, which the FCC scuttled. Let's examine these two items in more detail.

3.13 Bell Profits Were Out of Control in 2000-2001.

According to NASUCA, giving very profitable more money was not the proper thing to do, unless you first examined the profits and the rates – and the profits at the time were excessive by any standard of a utility or company controlling essential, monopoly networks.

"The ILECs rate-of-return greatly exceeds the authorized rate-of-return, 11.25%. It would be unjust to raise the residential SLC on the grounds that the ILECs should be compensated for their embedded costs, without simultaneously considering if the current rates are already excessive.²² For example, why should the SLC of Michigan Bell be raised when its realized rate of return is 34.29% and the interstate economic cost is approximately \$3.45? Or why should Florida Bell be permitted to raise its SLC when its realized return is 24.61%, and the interstate economic cost of access is approximately \$4.73? Or consider the case of North Dakota. Its authorized rate-of-return is 11.25% and its return on investment is 33.55%. Why would it be just and reasonable to raise the SLC in North Dakota in light of the firm's current earnings and the support that is available from the CALLS USF?"



As we previously pointed out, New Networks Institute's studies of profits for 2000-2002 shows the same patterns of profitability from local phone service. In our own 2001 Complaint we highlighted the phone companies' had no need for increases, since they were too profitable, based on the rate of returns. (We noted also that our conclusion about profits was also based on our finding that the state Alternate Regulation plans that were created from 1993-2000 gave the Bells' excessive profits in exchange for network upgrades that were never deployed.)

Therefore, if the FCC decided to accept the Bell companies "embedded" costs models, it also should have examined profits before applying these increases.

3.14 The Scuttling of the FCC Audits Was a Total Data-Quality Scam.

On March 12, 1999 the FCC released a set of seven long awaited audits of the Bell companies and GTE (then a separate entity). The FCC's press release focused on the fact the Bells may have "overstated" parts of their network costs by \$5 billion dollars. However, a closer reading of the report finds there was an additional \$13.6 billion in "Unverifiable Assets" and other problems. (Unverifiable Assets are items that did not match the information that had been filed with the FCC, or had nonsense categories, such as "unallocated asset", with no other information except the amount.)

To put these statistics and terms in perspective, the FCC found all the Regional Bell Operating Companies (RBOCs) had massive problems with their records that were supposed to be available, based on FCC rules. In the case of BellSouth, 29% of the information required was missing or couldn't be found or had serious errors.

"252,700 of 859,800 records under review, or 29 percent of the reviewed records, contained serious errors."

And what is a serious error? The FCC wrote of Bell Atlantic's audit, that 24% of items either couldn't be matched with the FCC records, or the equipment simply wasn't there:

"Specifically, in our audit of a random sample of 1,152 line-items from Bell Atlantic's (CPR for Hard-wired) Equipment, we found that 24.1 percent of the records that we sampled contained substantial deficiencies and did not comply with the Commission's rules. Of these deficient records, 12.5 percent described equipment that could not be found by the auditors or by company representatives ("not found" equipment). The remaining 11.6 percent could not be verified with certainty because the equipment shown to the auditors



could not be matched to the record in some important respect such as location or description."

After the CALLS proposal the FCC dropped the audits completely and handed them over to the states. Since that time, only one state has replicated some of the findings. In 2001, the New York Public Service Commission released a report showing \$633 million in missing equipment in just one state and this was only ¼ of the potential audits to be completed.

What is troubling is that this missing equipment has been endemic throughout the Bells' history. A interview with a former Bell staffer revealed that this problem is not new but that the original mistakes in the continuing property records extends through the 1980's. During the divestiture of AT&T, and the transference to the local Bell companies of records, the records were being updated from a manual process to a computerized one. In New Jersey at least, almost 35% of the equipment on the books was missing. This "Vaporware", missing equipment, was used to set rates then and it was used to set the FCC Line Charge rate as well.

Teletruth's main page which contains numerous documents on this topic, can be found at: <http://www.teletruth.org/auditupdate.html>

The FCC had an obligation to use that data, especially if they were going to accept the "embedded" cost models provided by the phone companies as the records to determine if the FCC Line Charge should be increased.

3.15 Summary Point — Billions of Dollars on Unverifiable Data.

The entire proceedings relied on data points that were not reliable, not accurate or complete and could not be reproduced. The FCC did not do its own analysis but relied on an incomplete record, and even the "conservative" estimate created by NASUCA, the FCC interpreted the data and used the word "substantial number" in their final analysis, with no actual complete calculations.

The FCC wrote:

"We find that the most conservative estimate on the record in this proceeding demonstrates that there are a substantial number of residential and single-line business price cap lines – at least 27 million non-rural and 33 million total – with forward-looking costs above the



current \$5.00 SLC cap, as well as a substantial number of lines – at least 14 million non-rural and 20 million total – with forward-looking costs above the ultimate \$6.50 SLC cap. We therefore find that it is appropriate to allow the SLC cap increases set out in the *CALLS Order* to take effect as scheduled. On the current record, these increases in the SLC cap are justified because we conclude that the current cap may prevent efficient cost recovery in a meaningful number of cases.

As analysts, there is no data that Teletruth can rely on to show that the overcharging of almost 91 million customers ---87% of the population, was overcharged by increases. (According to NASUCA, 105 million lines were involved and only 14 million had costs over \$6.50).

And just how screwy the calculation is can be attributed to this next footnote where the FCC tries to justify the numbers. Notice the words “this may ‘underestimate’”, simply more guess work and not actual data points for multiple billion dollar increases.

“*** There are approximately 10 million total rural price cap carrier lines, and approximately 164 million total non-rural price cap carrier lines. Roughly 64 percent of the non-rural price cap lines, 105 million, are residential and single-line business lines. Therefore, we estimate that approximately 64 percent of the rural price cap carrier lines, or 6,400,000, are residential and single-line business lines. We note that this may underestimate the number of rural residential and single-line business price cap lines, because the proportion of multi-line business lines is likely to be smaller in rural than in non-rural areas”.¹⁷

Should the increases have been less than \$6 dollars? Should the FCC have questioned the starting point because of the audits that found missing equipment?

Since the only Bell supplied data is summary data and not even in the proper analytical framework (supplying embedded costs vs Forward looking), there is no ability to cross reference an apples to apples data comparison, or examine the detailed reasoning of the phone companies, who insist that 100% should have had increases of while NASUCA claims less than 24% for over \$5.00.



Part IV Overcharging Calculations.

To be frank, we believe that there's has been a massive injustice to the public interest and the price of the FCC Line Charge should never have been allowed to increase. The first exhibit is the amount of money the average customer has spent in excess, had the FCC Line Charge not been increased. Counting taxes, by the end of 2004, the average household paid an additional \$126.38 per line, counting tax.

FCC Line Potential Overcharges, 2000-2004

	2000	2001	2002	2003	2004	Total
Overcharge	\$0.00	\$16.64	\$28.32	\$38.94	\$42.48	\$126.38

If you multiply that by the 113 million lines identified in the phone company filings, then the total overcharging is approximately \$14.3 billion.¹⁸

4.1 Overcharging Using the HAI 5.0a Model.

This next model gives the overcharging for the same years, but uses the HAI 5.0a model we previously quoted. In this case, customers spent an additional \$303.52. (In New York City, where the FCC Line Charge is taxed 27%, those customers would be paying an additional \$332.06.) Multiplied by our number of lines factor, the total overcharging comes to \$34.4 billion dollars.

FCC Line Potential Overcharges, 2000-2004

Using the HAI5.0a Model

	2000	2001	2002	2003	2004	
Overcharge	\$35.43	\$52.07	\$63.75	\$74.37	\$77.91	\$303.52
NYC Taxes	\$39.21	\$57.12	\$69.69	\$81.12	\$84.93	\$332.06

We submit this only as a question that needs response, more than we feel that this is a totally valid examination of these costs or that we have applied the HAI 5.0a model correctly. Considering the other filings made by the Bell companies, which claimed that 100% of their customers had costs above \$5.00 while other models showed it was 30% or less, then obviously, the FCC needs to examine the previous submissions of this model that were done to determine whether there is any validity. With multiple billions of dollars at stake, it is obvious the FCC should be more interested in protecting the public interest than the phone company interests in this manner.



Part V: Did the Price of Long Distance Fall Because of the CALLS Proposal?

The promise of the CALLS Proposal was to raise the FCC Line Charge and lower access fees to long distance companies, who, in turn, would lower their rates. Though it is not the in scope of this data-quality analysis to determine if the CALLS proposal was successful in lowering phone rates for the average customer and the data we can provide on this topic is sketchy at best, it is clear that some analysis shows rates increased for many subscribers.

According to Consumer Action's 2004 report, the "Basic long distance rate" has increased 55% since 2000.

"Basic long distance rates up 55% since 2000: Phone deregulation's promise of lower rates not fulfilled. Interstate long distance basic rates at the nation's largest long distance carriers have increased by more than 55% since 2000. The five carriers whose basic rates were analyzed by Consumer Action (CA) for its 2004 Residential Telephone Rate Survey are AT&T, MCI, SBC Long Distance, Sprint and Verizon.

"Basic (or default) rates are the rates paid by customers not on a calling plan. CA has tracked long distance basic rates charged by major phone companies for close to two decades.

"The federal Telecommunications Act of 1996 opened local telephone service to competition. Most experts predicted that competition would result in lower rates for consumers, but CA's findings disprove this theory, at least for people who are not on a calling plan.

"Consumers were supposed to be the winners of deregulation," said CA Executive Director Ken McEldowney. "Instead we find that consumers are paying 55% more now than in 2000 for the same calls. I'd say we lost, not won."

"Savvy consumers with access to the Internet can shop around to find long distance plans that drastically undercut basic rates. But phone users who do not subscribe to a calling plan are paying very high rates every time they place a long distance call from their homes."



This analysis was confirmed by New Networks Institute who found that even customers on LD plans had increases because of new charges being added to the phone bills that essentially act as an increase.

Of course, the argument that the "package" bundled service, where both local and long distance service are sold together, shows that the retail prices of services seems to have dropped, but again with caveats.

For example, the FCC's most recent "Trends of Telephone Service" found that the average customer spends \$48 nationally on both long distance and local service. If this is true, than the majority of customers have not benefited because the average package price is \$70-80 counting taxes. Also, the FCC Line Charge is NOT included in the actual advertised price of service, and Teletruth's recent report found that 15-25% are paying more by using a package than if they had just stayed on the ala carte plan. Many customers bought the plan not realizing the difference of the advertised price to the actual price, and there are penalties for leaving the package deal.

Also, one would argue that Voice-over-the-internet, "VOIP" is also lowering long distance rates. Those making the argument obviously don't know that at year-end 2003, the largest company, VONAGE, had only 100,000 customers and today, these service not only require broadband, but most VOIP services today do NOT PAY ACCESS FEES or taxes if the calls remain on the Internet networks. Therefore, there is no comparison.



Endnotes

Overview. In May 2000, building on the *Access Charge Reform First Report and Order*, the Commission adopted a five-year interstate access and universal service reform plan for price cap LECs in response to proposals submitted by a group of price cap LECs and IXCs, the Coalition for Affordable Local and Long Distance Service (CALLS).¹ In the *CALLS Order*, the Commission modified the rate structure of price cap LECs to remove implicit subsidies from the interstate access charge system and replaced these subsidies with an interstate access universal service support mechanism that provides portable support to incumbent LECs as well as their competitors. The Commission implemented a system for reducing per-minute traffic-sensitive rates for switched access services to specific target levels that more closely approximate the costs of providing these services.¹ For non-traffic-sensitive facilities, the *CALLS Order* attempted to reduce or eliminate implicit subsidies among customer classes through two means: 1) by permitting a greater proportion of the local loop costs of residential and single-line business customers to be recovered through the SLC, rather than through the implicit subsidies in the CCL charge and the multi-line business PICC; and 2) by permitting LECs to deaverage their SLCs once they eliminate CCL charges and multi-line business PICCs. In general, to the extent that carriers serving high-cost areas cannot fully recover their costs from a combination of the gradually increasing SLC and the gradually decreasing CCL charge and multi-line business PICC, the interstate access universal service support mechanism provides explicit universal service support to these carriers. — From “In the Matter of Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps Access Charge Reform Price Cap Performance Review for Local Exchange Carriers) CC Docket No. 96-262, CC Docket No. 94-1, June 5th, 2002

² Note: There are variances of this total based because both the FCC Line Charge and the taxes applied are different in each state. See the calculations in Part V.

³ In the Matter of Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers), CC Docket No. 96-262 CC Docket No. 94-1, ORDER, Adopted: June 4, 2002 Released: June 5, 2002

⁴ Federal Register: September 28, 2001 (Volume 66, Number 189)] [Notices] [Page 49718-49725]



⁵ Implementation of Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Pursuant to Section 515 of, Public Law No. 105-554, INFORMATION QUALITY GUIDELINES, Adopted: October 4, 2002 Released: October 8, 2002

⁶ Federal Register: September 28, 2001 (Volume 66, Number 189)] [Notices] [Page 49718-49725]

⁷ In the Matter of Access Charge Reform Price Cap Performance Review for Local Exchange Carriers Low-Volume Long Distance Users Federal-State Joint Board On Universal Service, CC Docket No. 96-262, CC Docket No. 94-1, CC Docket No. 99-249, CC Docket No. 96-45, Sixth Report And Order In Cc Docket Nos. 96-262 And 94-1, Report And Order In Cc Docket No. 99-249, Eleventh Report And Order In Cc Docket NO. 96-45, Adopted: May 31, 2000 Released: May 31, 2000

⁸ See Notice of Proposed Rulemaking, Access Charge Reform, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service, CC Docket Nos. 92-262, 94-1, 99-249, 96-45 (Sept. 15, 1999).

⁹ In the Matter of Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers), CC Docket No. 96-262 CC Docket No. 94-1, ORDER, Adopted: June 4, 2002 Released: June 5, 2002

¹⁰ *9 In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157.

¹¹ Initiation of Cost Review proceeding for residential and single-line business subscriber line charge (SPC Caps, CC Docket NOS. 96-262, 94-1

¹² Verizon Access Charge Reform Price Cap Performance Review for Local, Exchange Carriers
CC Docket No. 96-262, CC Docket No. 94-

¹³ See Verizon Reply at 2-4.

¹⁴ See Sprint Reply at 5.

¹⁵ See *Universal Service Ninth Report and Order*, 14 FCC Rcd at 20455, para. 41; *Universal Service Tenth Report and Order*, 14 FCC Rcd at 20172, para. 32; BellSouth Reply at 6; Qwest Reply at 13-16; SBC Reply at 11; Sprint Reply at 7; Verizon Reply 6



¹⁶ This information has been excerpted from "Phone Bill Independence Report", published April 2004.

¹⁷ Appendix A of CALLS order,

¹⁸ However, there are many other caveats that would need to be factored into this analysis because the taxes applied vary by state, the actual cost of the FCC Line Charge varies by state, and each state had varying increases during the last 5 years. (We calculated only the difference from the ceiling price of \$3.50, and applied 18% taxes. We did not take into account to various sliding scales of the taxes, which can change every quarter, nor did we include the variances of the increases in second lines vs first lines.)