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

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FEDERAL COMMUNICATIONS COMMISSION

In the Matter of:	)	
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Treatment of Operator Services Under Price Cap Regulation	)	CC Docket No. 93-124
	)	
Revisions to Price Cap Rules for AT&T	)	CC Docket No. 93-197

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REPLY COMMENTS

The Competitive Telecommunications Association ("CompTel"), by its attorneys, respectfully submits its reply comments regarding the above-captioned proposals to reform the LEC price cap rules. The record confirms CompTel's assessment that the Second Further Notice is fundamentally misdirected. Rather than deregulating access rates in the absence of effective competition, the Commission should concurrently revise its price cap and access charge rules to preclude discrimination against access customers and bring access rates closer to cost.

I. INTRODUCTION

In its opening comments, CompTel explained that the Second Further Notice ignores four critical realities of the access market. First, it fails to recognize that the LECs will have powerful incentives to maintain above-cost access rates, since these rates produce excess revenue that can be used to subsidize entry into competitive businesses, deter competition in the local exchange, and discriminate against captive access customers. Second, it does not

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acknowledge that the mere presence of additional local service providers will not create competition for the vast majority of switched access elements -- and accordingly, that access pricing flexibility should not be predicated on unbundling of the local network.[1] Third, it overlooks the fact that BOC entry into the long distance market would engender powerful incentives to discriminate in favor of affiliated long distance providers. Fourth, it disregards the widely varying access rates paid by different classes of entities for functionally equivalent interconnection to LEC networks.

The failure to consider these realities undercuts the Commission's assumption that, even in the absence of effective competition, pricing flexibility inevitably will be used to drive rates toward cost. Access rates will not become cost-based unless the Commission rationalizes the Part 69 rules. Accordingly, price cap reform must complement access reform and be aimed primarily at preventing discrimination among access customers -- not at eliminating rules that are needed to correct monopoly-generated market forces.

II. ACCESS CUSTOMERS AGREE THAT PRICE CAP REFORM MUST FOCUS ON PREVENTING DISCRIMINATION AND DRIVING RATES TOWARD COST

Notably, the primary intended beneficiaries of price cap reform -- access customers -- stand united in their belief that competition and consumers will not be served by adopting most of the proposals in the Second Further Notice. AT&T, for example, explained that:

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[1] In this regard, CompTel produced evidence that local switching, carrier common line, and interconnection rates charged by LEC competitors are identical to the incumbent LEC's rates in Illinois, Maryland, and Texas -- three states that have taken the lead in introducing local competition. CompTel at 10-11.

> until objective criteria demonstrating the existence of actual and meaningful local exchange and access competition can be satisfied, the Commission should maintain detailed price cap controls and procedures to ensure the reasonableness of interstate access rates and to achieve the Commission's stated objectives. ...
>
> For the most part, the Commission's proposed price cap reforms would not further the public interest and should not be adopted at this time. First, certain of the substantive modifications would afford the LECs undue flexibility that could result in increased rates and discriminatory strategic pricing. Second, the suggested procedural changes would not allow for sufficient review of LEC pricing for their access services ....[2]

The Ad Hoc Telecommunications Users Committee similarly noted that meaningful competition must be a precursor to regulatory relief:

> Further steps toward less regulation of the LECs should depend on finding relevant geographic and product markets effectively competitive. In evaluating LEC markets, the Commission must understand that because the LECs use common plants to provide virtually all of their services, LECs will have the opportunity to cross-subsidize services for which regulation may be relaxed from revenues derived from other services .... Price cap regulation will not prevent such cross-subsidization.[3]

Several access customers echoed CompTel's concern that the Second Further Notice turns a blind eye toward key characteristics of the access market. MCI, for example, pointed out the detrimental competitive effects of above-cost access rates: "If LEC rates are allowed to remain at their current levels and the LECs are granted additional pricing flexibility, the LECs will be able to unreasonably discriminate among their customers, funding rate cuts for some customers with rate increases for others, meanwhile preserving their current inflated revenue stream."[4] LDDS Worldcom urged the Commission to

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[2] AT&T at 21-22.

[3] Ad Hoc Telecommunications Users Committee at iv.

[4] MCI at 1-2.

recognize that local competition, even if it develops, will not stimulate competition for most elements of switched access:

> the Notice does not come to grips with the distinction between "local competition" and "access competition." . . . [T]he Commission must focus more clearly on the fact that, for most access expenses, the IXC will not have an option of choosing an access vendor. ... Rather, the IXC's access vendor will be forced upon it when the end user chooses a local service provider -- a choice made based on the local rates the user pays directly, and not the access rates the facilities vendor then charges to IXCs.[5]

Sprint and others emphasized the need for strict pricing controls if the BOCs are allowed into the long distance market:

> [I]f the RBOCs are allowed to provide IXC services while they still maintain bottleneck control of interexchange access facilities, there could be an extremely adverse impact on interexchange competition. Special efforts must be made to ensure that the RBOCs do not use whatever flexibility is granted to them to unreasonably favor their own interexchange operations (if or when they are allowed entry into the interLATA market), or to otherwise engage in anticompetitive or discriminatory activity.[6]

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[5] LDDS Worldcom at 7; see also LCI International at 2:

> Local exchange competition does not automatically or even probably translate into switched access competition. Even when an end-user customer has choices among two or more local loop providers, the IXC will have no realistic choice except to purchase local loop access from the local loop provider chosen by the customers, regardless whether that provider is the monopoly LEC or a competitive new entrant. Therefore, even if facilities-based or resale local loop competition begins to develop in certain LEC territories, IXC will be no less captive to the local loop provider chosen by the customer than they are today.

[6] Sprint at 4; MCI at 6 ("If the LECs are allowed to charge access rates which exceed the economic cost of providing that service, they will be able to raise their interexchange rivals' costs, and charge below-cost long-distance rates for their own customers."); LDDS Worldcom at 7 ("the Notice barely acknowledges the possibility that the BOCs may be freed to provide interLATA services.").

And LDDS Worldcom highlighted the need to assure rational pricing of interconnection to the local network by all entities, because "[t]he erosion of lines between local and toll service will further increase the ability of LECs to use discrimination in the pricing of one or more elements of their wholesale network services to prevent competition to themselves."[7]

Plainly, the relief proposed in the Second Further Notice is unsupported by a rational analysis of the access marketplace. The Commission has identified the correct goals for this proceeding -- reducing access rates toward cost and promoting competition -- but it has not demonstrated that its proposals would advance those goals. They would not; as confirmed by the comments of virtually every access customer, the proposals would undermine competition in the access and interexchange markets and guarantee that access rates become even more irrational than they already are. As discussed in CompTel's opening comments and in the next section of these reply comments, a more focused and coordinated approach to access and price cap reform is necessary to achieve the benefits the Commission seeks.

III. THE COMMISSION SHOULD REFORM THE ACCESS CHARGE RULES AND GRANT TARGETED DOWNWARD PRICING FLEXIBILITY UNDER CONDITIONS THAT PREVENT DISCRIMINATION AND PREDATORY PRICING.

The Commission should take several steps to assure rational pricing of access services and eliminate discrimination among access customers:

Access reform. First and foremost, the Commission must fundamentally reform the access charge system. The record reflects broad consensus that the current access charge

[7] LDDS Worldcom at 23.

framework no longer makes sense. It is riddled with subsidies that artificially inflate long distance rates for consumers, and it arbitrarily treats IXCs differently than other users of the local network.

Any access reform must begin by replacing the CCLC with an increased end user charge. There is agreement among all industry segments that the CCLC is inefficient, distorts competition, and depresses demand for long distance services.[8] End users who cannot afford an increased SLC should be eligible for a direct and explicit subsidy, funded in a competitively neutral manner.[9]

The RIC, which is also a pure subsidy, should likewise be discontinued. This rate element unconscionably permits the LECs to recover excess costs from captive customers of their access services. Consequently, the LECs have no incentive to be more efficient in providing transport, and they enjoy a significant subsidy flow that can be used to underwrite entry into competitive markets and deter entry into their own monopoly preserves.[10]

After elimination of the CCLC and RIC, remaining access charges should be priced based on direct cost. Each competitor in the market should be required to recover its overhead costs directly from retail customers; there is no rational justification for allowing one competitor to recover overhead through rates for wholesale services, as is currently the case. Moreover, to prevent discrimination, the relationship between rates for comparable

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[8] See, e.g., CompTel at 6; GTE at 42-43; NYNEX at 24; Pacific Bell at 23-24; Sprint at 7; US West at 5.

[9] CompTel's support for increasing the subscriber line charge is predicated on the ability of all new local service providers to impose the charge on their end users.

[10] See Sprint at 8.

services must be rational, and rates should not vary based on the identity of the access customer. Rather, all entities using the local exchange to originate and terminate communications should pay the same rates for the same services.

Interim cost recovery rules. Until access charges can be rationalized, it is imperative that switched access offerings be priced using a uniform, non-discriminatory cost recovery mechanism. As competition for limited elements of switched transport increases -- and more importantly, if the RBOCs are freed to provide long distance services -- the Commission must guard against strategic allocation of excessive access costs.[11]

RBOC provision of long distance services. Prior to RBOC entry into the long distance market, the Commission must adopt several price cap-related safeguards to assure that those carriers do not favor their interexchange affiliates. For example, an RBOC must be required to state in its tariff transmittals whether any new service or discount is intended for use by its long distance affiliates, and the Commission should reject any such offering that burdens other access ratepayers or is effectively unattractive or unavailable to any IXC but the RBOC's own. Similarly, the RBOCs should be flatly prohibited from offering ICB arrangements or contract tariff pricing (if otherwise permitted) to their long distance

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[11] See CompTel at 22-23. BellSouth actually contends that there is no basis to constrain the LECs' switched access rate structure now that AT&T has been declared non-dominant. BellSouth at 16, 24. Plainly, however Commission scrutiny remains necessary to prevent discrimination in favor of both AT&T, which retains a three-fifths share of the long distance market, and of the RBOCs' own IXC affiliates, once they are allowed to provide long distance services.

affiliates,[12] and any Alternative Pricing Plan (APP) likely to be used by an RBOC's affiliate must be priced based on non-discriminatory overhead loadings and must be reasonably available to other IXCs.[13] The RBOCs also should be required to file quarterly reports disclosing the extent to which their access services are used by affiliated IXCs.

Elimination of the lower SBI. CompTel continues to support elimination of the lower SBI as a means of bringing access rates closer to cost, subject to two important safeguards.[14] First, to avoid discrimination among access customers, any such reductions should be indexed so that decreases apply to all transmission services using the same physical facilities. Second, LECs should not be permitted to increase rates after decreasing them beyond the current lower SBI, absent a substantial cause showing as required by Section 61.49(c) of the Rules.[15] Although some LECs contend that such a restriction would deter rate decreases,[16] it is necessary to assure against strategic, transitory price reductions aimed at deterring or punishing competitive entry in the access market.

New services showing. As detailed in CompTel's opening comments, the Commission should adopt its proposal to allow new switched access services to be introduced

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[12] Id. at 25. As CompTel explained in its opening comments, the LECs should not be permitted to offer contract pricing for any service until all functionally similar services are subject to substantial competition.

[13] Id. at 28-29. Moreover, APPs should be offered only under the new services test, if at all, to assure against discrimination and predatory pricing. Id. at 28.

[14] Id. at 32-33; see also AT&T at 38-45.

[15] 47 C.F.R. § 61.49(c)(1994).

[16] See, e.g., BellSouth at 29; Pacific Bell at 20; USTA at 31-32.

based on a public interest showing rather than a Part 69 waiver. It must specify, however, that the public interest showing include a statement of whether the LEC has an IXC affiliate that will take the new offering, a description of how the new offering will affect demand for other switched access services, an explanation of why the service cannot be offered under an existing rate element, and a demonstration that the effective rate is the same as the existing rate for substitute services, adjusted for any difference in underlying costs.[17]

Zone density pricing. The Commission should extend zone density pricing to all access elements where the costs vary based on traffic density. Such flexibility, even in the absence of access competition, should help bring rates more in line with costs.[18]

III. CONCLUSION

The price cap and access charge modifications recommended by CompTel, and echoed by a multitude of other access customers, will best achieve the Commission's articulated goals for this proceeding. The Commission accordingly should decline to adopt the aggressive deregulatory proposals set forth in the Second Further Notice, which do not

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[17] CompTel at 31.

[18] Cite Sprint.

reflect a full understanding of the realities of the access market, and should instead implement the more targeted reforms discussed above and in CompTel's opening comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of January, 1996, I caused copies of the foregoing "Reply Comments of Competitive Telecommunications Association" to be hand-delivered to the following:

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