96-262

REED SMITH SHAW & MCCLAY

RECEIVED

JAN 29 1997

Federal Communications Commission
Office of Secretary

1301 K STREET, N.W.
SUITE 1100 - EAST TOWER
WASHINGTON, D.C. 20005-3317
202-414-9200

JONATHAN E. CANIS
202-414-9483

FAX 202-414-9299

PITTSBURGH, PA
PHILADELPHIA, PA
HARRISBURG, PA
McLEAN, VA
PRINCETON, NJ
NEW YORK, NY

January 29, 1997

DOCKET FILE COPY ORIGINAL

William F. Caton, Acting Secretary
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

I have enclosed herewith a diskette containing the Comments of Competitive Telecommunications Association filed in FCC Docket No. 96-488. This diskette is filed in compliance with the requirements set forth in the Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry iinitiating this proceeding (FCC 96-488, released December 24, 1996). Hard copies of these Comments are being filed concurrently.

Please direct any questions regarding this filing to the undersigned.

Sincerely yours,

Jonathan E. Canis

Jonathan E. Canis

JEC:mad
Enclosure

No. of Copies rec'd 0+2
List ABCDE

Comments of the Competitive Telecommunications Association
January 29, 1997

DOCKET FILE COPY ORIGINAL
RECEIVED
JAN 2 9 1997
Federal Communications Commission
Office of Secretary

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

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	

COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

Genevieve Morelli
Executive Vice President
and General Counsel
Competitive Telecommunications
Association
1900 M Street, N.W., Suite 800
Washington, D.C. 20036
(202) 296-6650

Robert J. Aamoth
Jonathan E. Canis
Reed Smith Shaw & McClay
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, D.C. 20005
(202) 414-9210

January 29, 1997

Its Attorneys

Comments of the Competitive Telecommunications Association
January 29, 1997

SUMMARY

CompTel strongly supports the Commission's decision to initiate this proceeding to implement access reform. There is consensus in the industry that the incumbent local exchange carriers' ("ILECs'") switched access rates are priced grossly in excess of costs. CompTel endorses the FCC's proposal to adopt Total Service Long Run Incremental Costs ("TSLRIC") as the appropriate methodology for ensuring cost-based rates. The TSLRIC methodology is compelled by the Commission's interpretation of the Telecommunications Act of 1996 to require TELRIC-based rates for unbundled network elements, which carriers may use to provide switched access services to themselves and other carriers.

CompTel cautions the Commission against relying exclusively upon the development of competition through use of network elements under Sections 251(c)(3) and 252(d) of the 1996 Act as the means to bring access rates down. First, we are nearly at the one year anniversary of the 1996 Act, and network elements are nowhere close to being made available in the appropriate manner. In order for local competition to develop, network elements must be made as simple to order, as easy to provision, and as responsive to customer demand as the interLATA presubscription process. The Commission must continue to make it a top priority to ensure that the network element regime works, and works in the near future, as Congress intended.

Second, even when competitive entry through use of network elements becomes a reality, such competition by itself will not be sufficient to reduce all access rates to cost-based levels. Even under a fully-implemented and workable network element regime, there will never be competitive pressures upon terminating access rates because the commercial relationship between the caller and its chosen long distance carrier does not impose any incentive on the terminating access provider to decrease access rates to the long distance carrier. Consequently, the Commission must adopt a prescriptive approach for achieving cost-based terminating access rates.

With respect to originating access, carriers who enter the full-service market through use of network elements will be able to reduce their own originating access costs to TSLRIC-based levels. The development of full-service competition through network elements will help over time to create a retail market where end-user subscribers pay lower retail rates. However, it is unclear whether the competition brought about by network elements will translate into lower originating access charges for stand-alone long distance carriers. As a result, it is also necessary for the Commission to adopt a prescriptive approach for originating switched access rates.

The one area where some competition has already developed, and where competition may develop further under a meaningful network element regime, is Direct-Trunked Transport. However, competition has not yet developed for Tandem-Switched Transport, and there is no basis yet to conclude that the network element regime will facilitate competitive

suppliers of Tandem-Switched Transport. As a result, it will be imperative for the Commission to immediately prescribe cost-based rates for Tandem-Switched Transport.

CompTel recognizes that it may be infeasible to implement TSLRIC-based rates for all switched access rates elements on a flash-cut basis. Therefore, while CompTel urges the Commission to commit on a policy basis to achieving TSLRIC-based rates for all switched access elements, CompTel recognizes that the Commission may need to set priorities. As a first step, the FCC should immediately prescribe cost-based rate levels for terminating switched access rate elements, and as well for originating Tandem-Switched Transport, because those access services are unlikely ever to be subject to meaningful competitive pressures. As a second step, the FCC should monitor the market for originating switched access services other than Tandem-Switched Transport and be prepared to step in by prescribing TSLRIC-based rates for originating access if competition proves insufficient to bring these rates to cost-based levels.

In moving terminating switched access rates to TSLRIC-based levels, the Commission should set the terminating Local Switching rate at the same levels established pursuant to Section 251(b)(5) of the 1996 Act. This is appropriate because the local switching function is the same, and has the same TSLRIC, regardless of whether it is provided for local or toll traffic, or whether it is provided as an access service or a network element. In addition, the terminating carrier common line ("CCL") charge should be set at zero (i.e., eliminated) because there are no incremental costs associated with terminating loop usage. The terminating transport interconnection charge ("TIC") also should be set at zero because, by definition, the TIC does not include any costs that will not be recovered through TSLRIC-based rates for other access rate

elements. As regards originating and terminating Tandem-Switched Transport, the Commission should direct the ILECs to establish rates that conform with the Commission's TELRIC requirements in CC Docket No. 96-98 for such transport.

As regards rate structure issues, the Commission should retain the unitary rate structure whereby carriers pay a single end-to-end usage-based rate for Tandem-Switched Transport. The unitary rate structure is necessary to ensure non-discriminatory treatment of Tandem-Switched and Direct-Trunked Transport purchasers, all of whom route their traffic over the same shared interoffice facilities and often through the same tandem locations. Particularly since smaller carriers are more likely to use Tandem-Switched Transport while larger carriers are more likely to use Direct-Trunked Transport, the unitary rate structure to essential to promote efficient competition among all carriers.

In addition, CompTel opposes the introduction of peak/off-peak access pricing. Because such a small portion of interoffice traffic is interstate access (between 10-15%), it would not promote economic efficiency to require peak/off-peak pricing for interstate access traffic absent peak/off-peak pricing for other traffic routed over the network. Moreover, it is impossible to define peak and off-peak traffic with any reasonable degree of certainty or consistency.

CompTel supports the Joint Board's recommendation that the originating CCL be converted to a flat-rated charge and recovered on a per-line basis from presubscribed carriers. That rate structure is consistent both with the policy preference for recovering non-traffic sensitive costs through flat rates, and with the Commission's decision to require flat-rated

charges for local loops as network elements under Sections 251(c)(3) and 252(d). However, CompTel opposes the application of multiple subscriber line charges to derived channels.

As regards Local Switching, CompTel supports a bifurcated approach. The Commission should require terminating Local Switching rates to be set at TSLRIC immediately, and CompTel believes that a usage-based charge for terminating Local Switching is appropriate. For so long as originating Local Switching rates remain at above-TSLRIC levels, CompTel supports establishing both flat-rated and usage-based charges while market forces, or further FCC prescriptive remedies if necessary, impose competitive pressure upon originating Local Switching rates. CompTel also opposes a separate charge for call setup on the ground that no state regulatory body has established such a charge and there are no grounds on which to establish the rate level. Lastly, CompTel urges the Commission to make no changes in the SS7 Signaling rate structure at this time.

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. ACCESS TO UNBUNDLED NETWORK ELEMENTS IS A MANDATORY, BUT NOT NECESSARILY SUFFICIENT, PRECONDITION TO THE DEVELOPMENT OF COMPETITION 4

III. MARKET FORCES CANNOT SUFFICE TO PREVENT UNLAWFUL ANTICOMPETITIVE ACTIVITY BY INCUMBENT LECS -- THE COMMISSION MUST ADOPT A PRESCRIPTIVE APPROACH TO ACCESS REFORM 11

A. Introduction 11

B. Access rates will not move to TSLRIC absent a prescriptive approach to access reform 13

IV. PROPOSED RATE LEVEL MODIFICATIONS 16

A. Overview 16

B. Terminating Access Charges: Carrier Common Line, Local Switching and Transport Interconnection Charge 18

C. Interoffice Transport 21

D. Originating Access Charges: Carrier Common Line, Local Switching and Transport Interconnection Charge 22

E. Volume and Term Discounts 22

V. PROPOSED RATE STRUCTURE MODIFICATIONS 24

A. Transport 24

B. Common Line 29

C. Local Switching 30

D. SS7 Signaling 31

VI. OTHER ISSUES NOT SPECIFICALLY ADDRESSED IN THE NPRM 32

A. Nonrecurring charges 32

VII. CONCLUSION 33

RECEIVED
JAN 2 9 1997
Federal Communications Commission
Office of Secretary

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

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	

COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"), by its undersigned counsel, and pursuant to the Commission's Notice of Proposed Rulemaking ("NPRM")[1] in the above-captioned proceeding, hereby submits its initial comments regarding access charge reform.

I. INTRODUCTION

CompTel is an industry association representing providers of competitive telecommunications services, with approximately 200 members ranging in size from large nationwide carriers to smaller regional service providers. Because CompTel's member companies are among the largest purchasers of incumbent local exchange carrier ("ILEC") access services, CompTel is critically concerned that access charges be nondiscriminatory and cost-

---

1 *Access Charge Reform*, CC Docket No. 96-262, FCC 96-488 (released Dec. 24, 1996) ("NPRM").

based. In light of this concern, CompTel has been an active participant in the Commission's proceedings involving the restructuring of ILEC switched transport rates,[2] and the reform of universal service rules and charges.[3]

CompTel applauds the Commission's determination to conduct a plenary review of the existing access rates and rate structures. The instant NPRM responds to a consensus among the industry that access is priced grossly in excess of cost, and that in many cases, current cost recovery mechanisms are uneconomic because the rate structure does not reflect the way costs are incurred. Reforming existing access rates and rate structure into a rational and cost-based system is an important step on the path to the development of full-service competition, and in these comments, CompTel makes specific proposals to address both rate level and rate structure problems. The Commission must be aware, however, that while access reform is critically important to the development of competitive service markets, such reform, by itself, is insufficient to create a national environment that will support effective competition.

The NPRM specifically questions whether unbundled network elements are a viable substitute for switched access and, as a result, whether cost-based network elements would provide a vehicle for the market reform of switched access services. This conclusion, however, is not based on facts or realized competition, but rather on the *promise* that network elements can become an effective means of cost-based local entry. CompTel believes that the realization of this vision is critical to the nation's telecommunications marketplace. The Commission's *Competition Order* in CC Docket No. 96-98[4] establishes a framework within which entrants

---

2 *Transport Rate Structure and Pricing*, CC Docket No. 91-213.

3 *Federal-State Board on Universal Service*, CC Docket No. 96-45.

4 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio*

Continued on following page

should be able to order network elements, including network element combinations, that could promote broad-based local entry, potentially lessening the need for the prescriptive reform of some portions of switched access. This vision is a cornerstone of the market of the future, but it is *not* yet implemented. As CompTel explains in these comments, the Commission must assure the availability of network elements at cost-based rates -- most specifically, logical combinations of network elements -- and insist that they are as easily obtainable and as promptly provisioned as access service is today. Doing so is the only means by which Congress' and the Commission's vision of broad-based local competition can become a reality.

As CompTel discusses herein, local entry through the use of network elements will unleash market forces that will impose some competitive pressure upon the service rates paid by end users. However, those market pressures are largely absent in the case of carrier access charges. Especially for terminating access, there is no market-driven incentive for providers of access services to reduce the rates they charge interexchange carriers that are their captive customers. This dynamic will be true whether an ILEC, a competitive local service provider, or a carrier purchasing unbundled network elements controls the terminating access. Only by prescribing rates at economically efficient levels can the Commission ensure that access charges are reasonable and nondiscriminatory, and allow competitive carriers to design their networks and develop their services in ways that respond to customer needs and rational market signals.

As discussed herein, the magnitude of the non-cost amounts currently recovered through access charges likely prohibits bringing all access charges to cost-based levels

---

Continued from previous page

Providers, CC Docket No. 96-98, CC Docket No. 96-98, CC Docket No. 95-185, FCC 96-325, First Report and Order, (rel. Aug. 8, 1996) ("*Competition Order*").

immediately, and necessitates that the Commission prioritize the rate elements that will be brought to cost. Because competition -- whether facilities-based, or based on unbundled network elements -- will never place significant downward pressure on terminating access services, the Commission's first priority should be to reform terminating access rates. It is unclear whether market pressures will suffice to drive originating access rates to cost-based levels. The Commission should therefore adopt as a secondary priority the reform of originating access rates over time. Tangible evidence that competitive local entry through unbundled network elements has been effective in driving these rates to cost should be the precondition to reassessing that priority. CompTel discusses each of these issues at length below.

II. ACCESS TO UNBUNDLED NETWORK ELEMENTS IS A MANDATORY, BUT NOT NECESSARILY SUFFICIENT, PRECONDITION TO THE DEVELOPMENT OF COMPETITION

(Response to § IV: Approaches to Access Reform and Deregulation)

While CompTel supports the Commission's determination to reform switched access, it is concerned that the Commission has not incorporated into the NPRM all of the elements necessary for a competitive environment. Specifically, the NPRM is premised on the assumption that competitive entry via unbundled network elements is now available and is adequate to promote competition for local services; that such competition will drive switched access rates to cost; and that the restructuring of access charges is the final step in moving from a regulatory to a competitive environment. As the recent experience of CompTel members and other carriers demonstrates, this assumption is fundamentally flawed. Network elements that are fully substitutable for access services are not available today, and recent experience makes clear that, without active regulatory intervention, they will not become available. Moreover, as CompTel discusses in Section III below, even the existence of unbundled element-based

competition is unlikely to result in access charges being driven to cost-based levels, or to ensure that any access rate reductions that do occur will be competitively neutral.

At the outset, it is important to establish a clear understanding of the differences between network elements and access services. Network elements are not a pure substitute for switched access service because each is used by fundamentally different firms. Switched access is required by carriers that provide long distance services independently from the local service provider. Network elements, in contrast, are used by an integrated or "full service" provider, offering both local, access and long distance services. Consequently, as a threshold proposition, network elements are a substitute only if the market is transformed to one where all carriers are full service providers and carriers are able to effectively and efficiently use network elements to provide service.

Although the development of a full service marketplace may be a likely outcome, it is important for the Commission to remember that this is a projection and not a fact. It is important that the Commission's policies not prejudge nor predetermine the ultimate market structure. But, assuming that the market prefers full service choices, the important issue becomes what actions are most critical to ensure that carriers can use network elements to provide service efficiently.

Fundamentally, for network elements to provide a viable local entry vehicle, network elements must be as simple to order, easy to provision, and as responsive to customer demand (i.e., able to serve customers as quickly as the interLATA presubscription process does today) as switched access has become over the past decade. To meet this standard, at least three broad conditions must be satisfied:

(1) ILECs must introduce and support an unbundled local switching network element that enables multiple local providers to offer services within the same switch;

(2) Customers must be able to be moved among local providers in service intervals equivalent to the interLATA presubscription process; and

(3) Local providers must be able to combine unbundled switching with loops, as well as transport and termination obtained either from the ILEC or third parties, to provide local exchange and exchange access services.

Significantly, each of these broad conditions is required by FCC rules.[5] The critical step is to translate these FCC requirements into practical serving arrangements that are functioning in the market.

The most critical step is correctly establishing the local switching element. The local switch lies at the heart of local exchange service; it is here that services are created and most revenues generated.[6] The *only* way that network elements can be used as a substitute for switched access services, promoting competition on a geographically-broad scale, is if multiple carriers can use existing ILEC switches (and, as explained below, loop/switch combinations) to provide exchange and exchange access services. The FCC rules recognize this fact and the Commission has ordered the introduction of an unbundled switching element that includes:

* basic switching connecting lines and trunks §51.319(c)(1)(i)(C)(1);

* any capability available to ILEC customers, including telephone numbers, white page listings and dial tone -- §51.319(c)(1)(i)(C)(1);

---

[5] See generally 47 C.F.R. 51.1 et seq.

[6] There are over 23,000 local switches in the ILECs' networks today. No competitor can replicate, anytime soon, this vast switching matrix to which the ILEC loop networks now terminate. Even where competitive local switches are installed, the fact remains that the loops currently terminate at the existing switch and the cost to reconfigure these loops, particularly to connect to a geographically-distant switch, will limit this form of entry to larger customers.

* every feature the switch is capable of providing, including customer calling, CLASS functionality, and Centrex -- §51.319(c)(1)(i)(C)(2);

* software-controlled systems which transfer customers to a new local provider in the same interval as the ILEC transfers customers between interexchange carriers[7] -- §51.319(c)(1)(ii);

* establishes the unbundled local switching purchaser as the provider of local exchange and exchange access service -- §51.307(c), §51.309(a), and §51.309(b);

* use of the ILEC's signaling and call-related data base systems in the same manner as the ILECs use such systems themselves -- §51.319(e)(1)(ii) and §51.319(c)(2)(iii); and

* access to the entrant's operator services by dialing "0" or "0 plus" the desired telephone number,[8] with a similar obligation for access to directory services using the 411 and 555-1212 dialing patterns.[9]

---

7 A software-controlled transfer would occur where the entrant purchases the preexisting loop-switch combination serving a customer. In such an instance, it would not be necessary to physically reconfigure the customer's loop to change the loop's service provider.

8 The Commission's Second Report and Order in Docket 96-98 reaches this finding by concluding: (1) that the "non-discriminatory access to operator services" required by Section 251(b)(3) of the Act means that a customer must be able to reach operator services by dialing "0" or "0 plus" (¶ 112 and ¶ 114); (2) that the customer should reach the operator services of the customer's chosen local service provider (¶ 116); and (3) that the ILEC is obligated to conform the factors within its control to ensure that a competing provider's customers can, in fact, access these services (¶ 114). Consequently, when a competing provider offers services using a local switching element obtained from an ILEC, the ILEC must ensure that customers may reach the competing provider's operator services using the "0" and "0 plus" dialing patterns.

9 See Second Report and Order, CC Docket 96-98 (¶ 151), which concludes that "... permitting non-discriminatory access to 411 and 555-1212 dialing arrangements is technically feasible, and there is no evidence in the record that these dialing arrangements will cease."

The collective effect of these provisions is to define a switching element that establishes the purchaser as its customers' local telephone company in every material respect. Unbundled switching, by itself, however, would provide the heart of local competition without a body to sustain it. Network elements are operationally and economically substitutable for switched access services only if entrants are able to obtain logical combinations of network elements, including combinations where each network element used to provide service is purchased from the ILEC.

Again, FCC rules require that the ILECs provision and support network element combinations,[10] but these rules are not yet translated into operationally-useful arrangements that could be considered in any way comparable to switched access services. In fact, several ILECs are actively working to preclude network element combinations from ever becoming a reality. BellSouth in particular has been very aggressive in promoting this agenda and has been successful in getting several state utility commissions to adopt orders that significantly impair competitors' practical ability to use combinations of network elements.

In an order released on December 4, 1996 in a BellSouth/AT&T arbitration proceeding, the Georgia Public Service Commission denied AT&T its entitlement to cost-based rates for combinations of network elements and prohibited AT&T from exercising its role as access provider when it purchases network element combinations.[11] The Georgia Commission

---

10 47 C.F.R. § 51.315(b) states that "[e]xcept upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines."

11 The Georgia PSC concluded that AT&T should pay rates based on avoided costs when it combines network elements to offer services identical to BellSouth's retail services. It defined "identical" to apply in situations where AT&T is not using its own switching or any other functionality or capability along with the network elements purchased from BellSouth to provide local service.

did so despite acknowledging that the 1996 Act and the Commission's *Competition Order* permit carriers to purchase network elements at prices based on economic costs and to combine those network elements in any manner that is technically feasible.[12] Similarly, in an order released on November 25, 1996, the Tennessee Regulatory Authority (TRA) determined that AT&T and MCI should be permitted to purchase network elements at cost-based rates only if they combine the elements to provide a new or different function from that already being provided by BellSouth.[13] In addition, in a November 7, 1996 order, the Ohio Public Utility Commission (PUCO) stated its opinion that purchasing carriers not be permitted to use network elements in combination if they would replace packaged ILEC retail services. The PUCO included this restriction in its order but stayed its effectiveness pending completion of the reconsideration process in CC Docket No. 96-98 at the Commission.[14]

Local switching is not the only network element that is currently being provided in an inadequate manner or not at all. At least one ILEC, Ameritech, has steadfastly refused to

---

12 See *Petition by AT&T for Arbitration of Interconnection Rates, Terms and Conditions With BellSouth Telecommunications Inc. Under the Telecommunications Act of 1996*, Docket No. 6801-U, Order, rel. Dec. 4, 1996, at 47-52.

13 See *Interconnection Agreement Negotiation Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. § 252, Docket No. 96-01152, Petition of MCI Telecommunications Corp. for Arbitration of Certain Terms and Conditions of a Proposed Agreement With BellSouth Concerning Interconnection and Resale Under the Telecommunications Act of 1996, Docket No. 96-01271*, First Order of Arbitration Awards, rel. Nov. 25, 1996, at 26-29. The TRA will remove this restriction on the use of network elements only when universal service and access charges mechanisms are reformed, or BellSouth enters the in-region interLATA market, whichever occurs first.

14 *Commission Investigation Relative to the Establishment of Local Exchange Competition and other Competitive Issues*, Case No. 95-845-TP-COI, Local Exchange Competitive Entry on Rehearing, rel. Nov. 7, 1996 at 42.

make available common transport as a network element. This failure to conform to an explicit unbundling requirement of the Commission's *Competition Order* is the focus of pending petitions for reconsideration in that docket.[15] In addition, the Commission's express requirements regarding the availability of operations support systems ("OSS") -- including access to pre-ordering, ordering, provisioning, maintenance and repair, and billing functions -- are not being met. Despite the Commission's requirement that ILECs provide access to OSS by January 1, 1997, no ILEC currently is providing properly-functioning automated OSS access for both unbundled network elements and local exchange service resale.

Moreover, while some ILECs are asserting in several states that they have fully complied with the unbundled network element requirements of the 1996 Act,[16] ILECs are actively gaming the regulatory and judicial processes to forestall implementation of these statutory requirements. For example, GTE has appealed every final arbitration award issued by a state regulatory commission to date.[17] It is abundantly clear that competitive entry through network elements is not now available, and may not become available without active regulatory involvement. Until

---

15 See Comments of WorldCom, Inc. on Petitions for Reconsideration and/or Clarification in *Competition Order*, filed Oct. 31, 1996, at 1-6; Comments of CompTel in Competition Order, filed Oct. 31, 1996, at 3-4; and Reply Comments of Ameritech in *Competition Order*, filed Nov. 12, 1996, at 18-19.

16 E.g., Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA Services in Michigan (filed Jan. 2, 1997). See generally Georgia Public Service Commission, Consideration of BellSouth Telecommunications, Inc.'s Entry Into InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996, Docket No. 6863-U, testimony filed by BellSouth dated January 3, 1997.

17 See Communications Daily, January 27, 1997, at 5. GTE has appealed arbitration decisions in 15 states including California, Hawaii, Indiana, Illinois, Michigan, Missouri, Oregon, Pennsylvania, Texas, Virginia, Washington and Wisconsin.

network elements are as easy to obtain and as quickly provisioned as switched access services, and until they are available at cost-based rates with no restrictions on purchasers' ability to combine them, effective local competition cannot develop. Access reform alone will not promote a competitive local environment.

III. MARKET FORCES CANNOT SUFFICE TO PREVENT UNLAWFUL ANTICOMPETITIVE ACTIVITY BY INCUMBENT LECS -- THE COMMISSION MUST ADOPT A PRESCRIPTIVE APPROACH TO ACCESS REFORM

(Response to §§ V & VI: Market-Based vs. Prescriptive Approach to Access Reform and § VIII (A) Regulation of Terminating Access)

A. Introduction

In Sections V and VI of the NPRM, the Commission seeks comment on two different approaches to access reform: one premised on market factors, and one taking a prescriptive approach. The market approach considered by the Commission is intended to eliminate uneconomic regulatory constraints on ILECs, and would consist of two phases. Each phase would eliminate regulatory restrictions on ILEC access pricing as a quid pro quo for attaining some procompetitive benchmark.

Under Phase 1, the removal of barriers to competitive entry (defined by the Commission as implementation of the interconnection and network unbundling requirements of the 1996 Act) would allow ILECs to engage in geographic rate deaveraging, eliminate Price Cap restrictions on rate reductions, and deregulate new services. The approach is premised on the assumption that the availability of unbundled network elements will exert downward pressure on access rates. In seeking comment on this proposal, however, the Commission expressly seeks input on whether this assumption is reasonable:

> Will the availability of unbundled network elements at forward-looking economic costs drive LECs' access charges to efficient levels and structures? Or will it only tend to constrain the overall level of charges, and give incumbent LECs incentives to choose inefficiently high or inefficiently structured access charges, thus disadvantaging IXCs that are not effectively integrated into local service, and thus driving the market, possibly inefficiently, towards one-stop shopping?[18]

Phase 2 would be triggered by an actual competitive presence in the marketplace, or possibly if an ILEC has made its facilities and services available in a reasonable and nondiscriminatory manner despite the absence of actual competition. The quid pro quo for reaching this benchmark would be the elimination of most Price Cap constraints on access services.[19] In seeking comment on Phase 2 regulatory changes, the Commission states that a demonstration of actual competition may be necessary before ILECs can obtain this additional pricing flexibility because:

> incumbent LECs may have an incentive to set per-minute access charges to raise the cost for interexchange resellers, who may have difficulty vertically integrating. This pricing would raise the marginal costs of those IXCs, distorting competition and raising prices and the profits of a LEC or its interexchange affiliate.[20]

In addition, the Commission expressly seeks comment on whether it should retain different, and more stringent, regulations on ILEC terminating access rates.[21] In seeking comment on these issues, the Commission tacitly acknowledges that market forces may not be adequate to ensure

---

18 NPRM at ¶ 170.

19 NPRM at ¶¶ 161-217.

20 NPRM at ¶ 214.

21 NPRM, at ¶¶ 271-76.

reasonable access rates for IXCs that do not provide local services, and for all carriers that purchase terminating access.

The Commission also posits that market forces alone may not be adequate to drive originating or terminating access charges to economic cost, and seeks comment on a prescriptive approach to reforming access charges.[22] In seeking comment on a prescriptive approach, the Commission tentatively concludes that, to support a competitive environment for both local and interexchange services, access charges should reflect total service long-run incremental cost ("TSLRIC") levels. It also concludes that the goal of TSLRIC access rates will require reductions in most, if not all, access rate elements.[23] The Commission therefore seeks comment on the magnitude of such rate reductions and the means by which they should be implemented.

As CompTel discusses in this Section, market forces alone will not drive access rates to cost-based levels; indeed, even the advent of competition for local services will not exert sufficient market discipline on access rates to warrant a market-based approach to access reform. As a result, the Commission must adopt a prescriptive approach, and must prescribe TSLRIC-based rates for access elements.

B. Access Rates Will Not Move To TSLRIC Absent A Prescriptive Approach To Access Reform

(Response to § VI: Prescriptive Approach to Access Reform)

In considering whether market forces will exert downward pressure on access charges, it is necessary to consider terminating access, originating access and transport separately -- each category of service is subject to different market forces. For example, terminating access is not now subject to competitive pressures, nor will it be in the future, even after local

---

22 NPRM at ¶¶ 218-40.

23 NPRM at ¶ 213.

competition has begun to evolve. This is so because, in the vast majority of cases, the carrier providing terminating access is not chosen by the party paying for the call. Currently, in most cases, the calling party chooses its interexchange service provider, and so the interexchange carrier has the incentive to offer attractive prices to the caller -- but this relationship does not provide any incentive for the carrier providing terminating access to lower its charges to the interexchange service provider. Similarly, when competition for local services develops, the local exchange carrier -- whether an incumbent or new entrant -- will have an incentive to lower the total charges for its service to the caller, but this incentive will fail to place any downward pressure on the rates that these local exchange carriers will charge stand-alone IXCs for access. Simply put, the carrier providing terminating access typically has no direct connection to the party paying for the service it provides, and so has no incentive to reduce its charges to that party.[24] Because terminating access is thus insulated from competitive pressures, prescriptive regulatory action is absolutely essential to drive terminating access charges to cost-based levels.

For originating access, the dynamic is different, but it is still unclear whether market forces will be adequate to bring rates to cost-based levels. If the Commission exercises sufficient regulatory oversight to ensure that network elements are offered in the proper manner, at some time in the future originating callers will have a choice of competing local service providers. Their choices will include vertically-integrated carriers that provide local service through the use of unbundled ILEC network elements. When customers have that choice, local carriers will have the incentive to lower total charges for their services to their end users. The market forces that will exert downward pressure on charges to the originating *end user*, however,

---

24 In its *Competition Order*, the Commission reached the same conclusion: "While, on the originating end, carriers have different options to reach their revenue-paying customers . . . they have no realistic alternatives for terminating traffic destined for competing carriers' subscribers other than to use those carriers' networks." *Competition Order*, 11 FCC Rcd. 15499 at ¶ 1058.

may not translate into downward pressure on the *access* charges that carriers providing stand-alone interexchange service must pay to the local service provider. Indeed, it is likely that, as long as the local loop and switch remain a bottleneck facility, any carrier that controls those facilities -- whether an ILEC, a facilities-based local service provider, or an unbundled network element-based provider of integrated interexchange and local services -- will retain the incentive to keep its access charges as high as possible to maximize the revenues it can collect from non-integrated carriers that must purchase access services from it.

Finally, switched transport evinces yet another dynamic.[25] Interoffice transport is not intrinsically tied to either originating or terminating loops, and therefore is not affected by the same market forces that impact originating or terminating access charges. Indeed, in a number of geographic markets, competitive carriers today provide high-capacity dedicated interoffice transport, and so provide at least some downward pressure on direct-trunked transport rates. At present, however, no carrier provides competitive tandem switching or tandem-switched transport, and effective competition is not likely to develop in this market segment in the foreseeable future. As a result, rates for tandem switching and tandem-switched transport will not be brought down to cost-based levels absent prescriptive regulatory action.

The differing market dynamics discussed above call for different regulatory approaches to reforming rates for terminating access, originating access, and transport. In each case, however, it is clear that market forces alone are inadequate to ensure reasonable rates -- even for the minority of switched access rate elements that may be subject to some competition. It is therefore necessary for the Commission to adopt a prescriptive approach to bringing access charges to cost-based levels. In the following Section, CompTel discusses necessary changes

---

[25] It is worth pointing out that transport accounts for only roughly 10% of total interstate switched access revenues.

that must be prescribed for various access rate levels. CompTel recommends that the Commission adopt a two-step approach. As the first step, the Commission immediately should prescribe TSLRIC-based rates for terminating access and for the transport elements that are not subject to competitive pressures. As the second step, the Commission should monitor movement in originating access rates, and should take further prescriptive action unless shown that market forces are exerting sufficient downward pressure on those rates.

IV. PROPOSED RATE LEVEL MODIFICATIONS

(Response to § VI: Prescriptive Approach to Access Reform)

A. Overview

The Commission has long recognized that economic theory and public policy considerations require that service prices be set at cost-based levels whenever possible.[26] When the Commission implemented the local competition provisions of the Telecommunications Act of 1996 in its *Competition Order*, it concluded that, in order to promote efficiency and send the correct signals to the market, ILEC rates for interconnection and unbundled network elements must be set at "forward-looking long-run economic cost."[27] Consistent with if not compelled by that interpretation of the 1996 Act, the Commission in the instant NPRM reached the tentative conclusion that "our goal for prescriptive access reform should focus on interstate access rates based on some form of a TSLRIC pricing method."[28] CompTel agrees that it is critical to adopt a TSLRIC standard in order to foster competition and to promote efficiency in network design and service development, and strongly supports the use of TSLRIC as the appropriate standard for setting prescribed rates for access services.

---

26 *Competition Order*, 11 FCC Rcd. 15499 at ¶ 630.

27 *Id.*, at ¶ 672 and generally at ¶¶ 672-722.

28 *Id.*, at ¶ 222.