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ICG

COMMUNICATIONS, INC.

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APR 28 1997

Federal Communications Commission
Office of Secretary

April 28, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Re: **ICG Communications, Inc. Position Paper on Access Charge and Universal Service Reform: Written *Ex Parte* Statement in CC Docket Nos. 96-262, and 96-45 and CCB Pol. 96-14**

Dear Mr. Caton:

ICG Communications, Inc. ("ICG"), pursuant to Section 1.1206(a)(1) of the Commission's Rules and by its undersigned counsel, hereby submits an original and two copies of its summary Position Paper on reform of the federal access charge and Universal Service systems, and related matters. In this Paper, ICG strongly supports the so-called "strawman proposal" currently being circulated throughout the industry as a means of restructuring the access and universal service systems rationally and efficiently in a rational and economically efficient manner.

Today, the undersigned, along with J. Shelby Bryan, President and Chief Executive Officer of ICG and Heather B. Gold, President of the Association for Local Telecommunications Services, met with Chairman Reed Hundt, Chief of Staff Blair Levin, and Thomas Boasberg, Legal Assistant to the Chairman, to discuss issues and positions outlined in the attached document. ICG urges the Commission to act expeditiously in

adopting these proposals. ICG is prepared to provide the Commission with any additional information regarding these matters that the Commission may find useful.

Respectfully submitted,

Cindy Z. Schonhaut

Cindy Z. Schonhaut
Senior Vice President, Government Affairs

cc: Chairman Reed E. Hundt
Commissioner Rachelle B. Chong
Mr. Blair Levin
Mr. Daniel Gonzalez
Mr. Thomas Boasberg
Mr. A. Richard Metzger, Jr.
Mr. John Nakahata
Mr. James D. Schlichting
International Transcription Services
Commissioner James H. Quello
Commissioner Susan Ness
Mr. James Coltharp
Mr. James Casserly
Ms. Regina M. Keeney
Ms. Kathleen B. Levitz
Mr. Joseph Farrell
Mr. Richard K. Welch

ICG COMMUNICATIONS, INC.
PROPOSAL FOR REFORM OF ACCESS CHARGE AND UNIVERSAL SERVICE SYSTEMS

April 28, 1997

I. ACCESS REFORM

Comments on "Strawman Proposal":

* ICG strongly supports the principles embodied in the "strawman proposal" now circulating throughout the industry because it includes the following principles, which ICG supports:

  -- economically efficient to shift recovery of non-traffic sensitive costs from per-minute usage rates to flat monthly rates
  -- substantial shift of ILEC access revenue requirement to flat-rated Presubscribed Interexchange Carrier Charge and Subscriber Line Charge
  -- no major shift of access costs to Universal Service
  -- all three of these measures are necessary to eliminate market distortions and to promote efficient and effective local and access competition

* The FCC should consider moving more of the ILEC revenue requirements from the Subscriber Line Charge to the Presubscribed Interexchange Carrier Charge
  -- substantial increases in the Subscriber Line Charge, even if limited to second residential lines and business lines, may generate political opposition, and may be subject to stay or reversal by a court of appeals
  -- shifting larger amount of ILEC costs to the Presubscribed Interexchange Carrier Charge ameliorates this problem

* The shifting of ILEC revenue requirements from per-minute charges to flat rated Subscriber Line Charge and the Presubscribed Interexchange Carrier Charge will subject these elements to competitive pressure and allow the market to establish reasonable rate levels
  -- consistent with current practice, parties purchasing unbundled loops may collect Carrier Common Line Charge and any additional Subscriber Line Charge; parties purchasing unbundled loops would be able to collect the Presubscribed Interexchange Carrier Charge and and any additional Subscriber Line Charges

- -- Because CLECs *may* collect these charges, but do not have to, this arrangement places competitive pressure on access charges, and establishes incentives for competitors not to simply pass full charges along to customer

ILEC Pricing Flexibility

* ILEC pricing flexibility should not be expanded until local competition is a reality and is implemented thoroughly
  - -- no customer-specific pricing arrangements
  - -- no expansion of volume and term discounts
  - -- any current or future volume and term discounts should be reflected in the charges for unbundled rate elements, interconnection, collocation
  - -- any current or future geographic deaveraging of access or exchange services should be mirrored in charges for unbundled rate elements, interconnection, and collocation

II. UNIVERSAL SERVICE

Comments on "Strawman Proposal"

* ICG strongly supports the proposed $1.00 per presubscribed line charge as a means of funding the Universal Service Fund
  - -- CLECs would be able to pass this charge on to their end user customers, but would not have to
  - -- this gives CLECs the ability to reduce end user charges in response to competition

* ICG's commitment to NetDay project illustrates value of this approach
  - -- tailored to specific needs of individual schools
  - -- encourages market as opposed to regulatory approach
  - -- encourages maximum involvement of carriers with community
  - -- carriers should be allowed to provide facilities or services (including NetDay efforts) in lieu of payment into fund for support of Schools and Libraries

III. RBOC ENTRY INTO LONG DISTANCE

* It is critical to competitors that RBOCs comply fully with the 14-point checklist established in Section 271 of the Telecommunications Act of 1996 before they obtain interLATA relief

* Section 271 is the *only* incentive RBOCs will ever have to implement the fair and effective interconnection arrangements required by the Telecommunications Act of 1996
  - -- GTE is a prime example of ILEC behavior when there is no incentive to cooperate with competitors
  - -- the RBOCs will exhibit the same behavior after they achieve long distance entry
  - -- the FCC must use this leverage now and delay interLATA relief until consistent compliance with the 14-point checklist has been demonstrated

* Even with the 271 incentive, the performance of US West and Pacific Bell has been abysmal:
  - -- ICG has not been able to get resale orders processed
  - -- ICG has not been able to have unbundled loops provisioned when required
  - -- last Friday, ICG initiated dispute resolution processes pursuant to its interconnection agreement with US West
  - -- this action is necessary because US West has since January refused to process *any* ICG orders for resale
  - -- this reflects a fundamental problem with access to Operations and Support Systems that US West will *not* fix

* The FCC cannot grant 271 applications until RBOCs demonstrate the consistent ability to respond to CLEC requests for resale and unbundled elements in a timely and effective manner
  - -- such performance must be demonstrated and must be consistent over a 12-month period
  - -- such performance must be demonstrated under peak local conditions

* The FCC should employ liquidated damages to enforce continued compliance with the checklist before and after RBOC entry into long distance
  - -- liquidated damages provisions have been adopted voluntarily by Ameritech, NYNEX and SBC in negotiated agreements
  - -- the Ameritech and NYNEX provisions provide for a payment of $75,000 for every quarter that a set of pre-established performance standards is not met
  - -- while the $75,000 amount is not sufficient to prevent anticompetitive behavior by ILECs, the fact that three ILECs have voluntarily adopted liquidated damages provisions is direct evidence that such an approach is both workable and appropriate
  - -- the FCC can use the Section 271 interLATA relief hearings to urge voluntary adoption of similar liquidated damages provisions by those RBOCs that have not yet adopted it
  - -- the FCC may also order payment of liquidated damages awards in formal complaint proceedings under Section 208 of the Communications

Act against RBOCs and other ILECs that fail to meet reasonable performance standards

- this approach establishes a self-enforcing system that will promote RBOC compliance with the 14 point checklist with a minimum of litigation before the FCC

IV. ILEC DISCOUNT PRICING AND LONG TERM CONTRACTS AS BARRIERS TO COMPETITION

* The FCC should mandate that any volume and/or long term discount plans that appear in ILEC tariffs for access or retail services be mirrored in ILEC rates for unbundled network elements, interconnection and collocation
  - ILECs argue that their retail services are different from the unbundled elements or interconnection services they sell to CLECs, but there are no legitimate grounds for such distinctions
  - maintaining separate discount policies for end user customers and competitive carriers is inherently anticompetitive

* US West and other ILECs are increasingly establishing long term contract arrangements for the provision of intrastate switched services that are individually negotiated with preferred customers
  - many states allow ILECs to establish Customer Specific Arrangements which are listed in the ILECs' state tariffs
  - while ICG does not take issue with state regulations allowing this practice, the discriminatory application of these arrangements is a major barrier to competition
  - CLECs must be able to obtain ILEC service under the same terms that ILECs provide to preferred customers
  - ICG recognizes that the FCC does not have jurisdiction to modify state tariffing policy
  - however, the FCC *does* have the authority to enforce its rules regarding the implementation of the Telecommunications Act of 1996
  - clarifying that the resale provisions of the Telecommunications Act compel ILECs to sell their Customer Specific Arrangements to CLECs at the wholesale discount rates prescribed by state regulatory Commissions will ensure that CLECs do not abuse their pricing flexibility for intrastate services offerings to gain a competitive advantage

* The FCC previously recognized that ILECs could use long term contracts to "lock in customers" before competitive carriers could enter the market, thus preventing customers from gaining access to competitive options
  - this is why the FCC adopted its Fresh Look policy in 1992, when it adopted its rules on central office collocation

-- Fresh Look allowed customers with long-term contracts to avoid severe early termination penalties if they switch to services offered by competitive carriers

* Similar discrimination in long-term contracts can be cured by assuring the nondiscriminatory offering of long term Customer Specific Arrangements at wholesale rates prescribed by state commissions
  - -- some states (such as Georgia) have held that ILECs are not required to sell customer specific arrangements at the wholesale discounted rates prescribed by state Commissions
  - -- confirming that customer specific arrangements are available for such resale will allow ILECs to compete for existing ILEC long term Customer Specific Arrangements and will prevent ILECs from providing preferential treatment to end-user customers

V. PREEMPTION OF TEXAS LEGISLATIVE BARRIERS TO ENTRY

* A provision of Texas law passed in 1995 prohibits entry into telecommunications by municipalities and municipality-owned utilities

* ICG, through a competitive bidding process, won a contract with the municipality-owned utility in San Antonio (City Public Service), in which ICG will lease the utility's infrastructure to provide competitive telecommunications service in San Antonio

* The Texas Attorney General has ruled that this arrangement violates state law

* By prohibiting the utility from providing infrastructure to ICG, the Texas law effectively prevents ICG from providing service to the people of San Antonio

* The Texas law violates Section 253 of the Telecommunications Act of 1996, which prohibits barriers to entry into telecommunications by any entity, including public utilities

* ICG filed a petition for preemption with the FCC in May 1996

* Preemption is necessary to permit the utility to provide the infrastructure necessary for ICG to provide service
  - -- time is of the essence; ICG has already received its state certification, and its municipal franchise application is pending; the Texas law is the only thing keeping ICG from providing service

* At least four other state legislatures (Georgia, Missouri, Oregon and Washington) are now considering passing similarly restrictive legislation and at least one (Arkansas) has already enacted very similar laws