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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

In the Matter	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
End User Common Line Charges	)	CC Docket No. 95-72
	)	

TO: The Commission

EXPEDITED PETITION FOR RECONSIDERATION OF COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

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SUMMARY

The Competitive Telecommunications Association ("CompTel") requests that the FCC reconsider various decisions in the First Report and Order in the access charge proceedings that will have the effect of significantly increasing long distance rates for small business and rural subscribers without any basis in the costs of serving those subscribers. CompTel asks for expeditious grant of its petition to prevent the immediate harm to small business and rural subscribers, as well as the carriers serving those subscribers, that will begin on January 1, 1998 under the FCC's rules.

The FCC established a presubscribed interexchange carrier charge ("PICC") for multiline business subscribers of $2.75/line per month beginning on January 1, 1998. The multiline business PICC will have a dramatic adverse impact upon the long distance rates of small business customers with relatively low interstate calling volumes per line (e.g., a typical four-line hardware store). By the FCC's own admission, the multiline business PICC is not necessary to cover the local loop costs caused by those subscribers; the multiline business subscriber line charge will fully recover those costs. Therefore, the multiline business PICC is a pure subsidy created to justify lower charges for other long distance customers.

CompTel has compiled data showing that the multiline business PICC will increase the interstate switched access costs of long distance carriers serving low-volume business subscribers by 46.1% to 474.2%. Those negative impact data are much more severe (ranging from 61.3% to 499.5%) if one assumes that underlying carriers do not flow through terminating off-net access charge reductions to these carriers. The long distance carriers facing these access cost increases are themselves small carriers who will have no choice but to pass them through to subscribers in the form of higher long distance rates on

January 1, 1998. Because larger carriers with a more diverse customer base have the ability to delay these rate increases for some period of time, the long distance carriers who focus today upon serving low-volume small business subscribers could lose the critical mass of their customer base in early 1998 and face significant harm if not the prospect of exiting the market altogether. The end result for low-volume small business subscribers will be fewer carrier choices without any escape from higher retail rates.

In order to prevent the adverse impact of the multiline business PICC upon small business customers and interexchange competition, the FCC should eliminate that PICC altogether. In the alternative, if the FCC is unwilling to consider eliminating the PICC, the FCC should devise a new, short-term recovery mechanism that is competitively neutral and does not discriminate against low-volume small business subscribers.

In addition, the FCC's rule changes will have an immediate, adverse impact upon the long distance rates paid by rural subscribers. Long distance carriers serve rural areas primarily if not exclusively by purchasing tandem-switched transport from incumbent local exchange carriers ("ILECs"). In the First Report and Order, the FCC adopted several rule changes that will make it enormously, and in some cases prohibitively, more costly for long distance carriers to serve rural areas. Those cost increases will result in significantly higher rates for rural subscribers, as well as fewer service choices because smaller long distance carriers may have to exit rural markets. These rule changes have no basis whatsoever in the costs of serving rural areas.

In particular, the FCC should roll back its new rule increasing the tandem switching charge by 400%. CompTel has compiled data showing that current tandem switching rates are roughly equivalent to the interim tandem switching rates for network elements under the Telecommunications Act of 1996. Therefore, it would contradict the

FCC's objective of establishing market-driven, cost-based access rates to prescribe an increase of 400% in the current rates. The FCC's decision also would undermine long distance competition generally because smaller carriers rely disproportionately upon tandem-switched transport to serve all areas and, therefore, the FCC's decision would impose a huge cost burden on those carriers that has no basis in the ILECs' costs of providing tandem-switched transport.

Further, CompTel has compiled data showing that the FCC's decision will dramatically change the crossover points at which long distance carriers will minimize their transport costs by shifting from tandem-switched to DS1 direct-trunked transport. For BellSouth, those data show that the crossover point will decline to the inefficient level of 3,160 MOU by the year 2000. The data for the other Bell Companies are much worse, ranging from 2,341 MOU (Ameritech) to 1,074 MOU (Pacific). These data should be contrasted to the current intrastate crossover point in Florida (7,515 MOU), which the Florida Public Service Commission has determined to be cost-based after examining actual cost data. The FCC's rule change would send clearly uneconomic signals to long distance carriers when deciding whether to route their traffic via tandem-switched or direct-trunked routing.

The FCC also should reconsider its decision to abolish the unitary pricing option for tandem-switched transport users. Under that option, long distance carriers pay a single, per-minute rate for end-to-end routing. The FCC's decision will make it more expensive for long distance carriers to serve rural areas by forcing them to pay (i) two sets of fixed charges for transport routing; and (ii) additional mileage rates. That cost increase will translate directly into higher long distance rates for rural subscribers. Particularly given the support shown by all industry segments (IXCs, ILECs and CLECs) for retaining the

unitary pricing option, the Commission should change its decision to abolish that pricing option for tandem-switched transport.

Further, the FCC should retain the 9000 MOU loading factor for establishing the per-minute tandem-switched transport rate unless an ILEC can make an affirmative showing that a different loading factor represents a more efficient use of its shared transport circuits for interstate transport traffic. It is unreasonable to use the ILECs' actual loading factor because ILECs have sole control over the loading of these facilities and they may depart from efficient loading practices for interstate access traffic to promote other company or network objectives. To the extent ILECs preserve a large amount of excess capacity in their common transport facilities, they do so deliberately for the benefit of direct-trunked transport users. The FCC should not require tandem-switched users to pay higher per-minute rates for the ILECs' engineering decisions designed to benefit direct-trunked users.

Lastly, CompTel asks the FCC to reconsider its decision to extend the Ameritech SS7 waiver to all ILECs. The experience of CompTel's members with Ameritech's rate structure is that it is virtually impossible to verify the accuracy of the charge for each SS7 rate element. The FCC should retain the current rate structure until the billing problems with Ameritech's system can be solved.

TABLE OF CONTENTS

Page

I. REQUEST FOR EXPEDITION. 2

II. THE MULTILINE BUSINESS PICC. 2

III. THE SWITCHED LOCAL TRANSPORT RULES. 6

A. The Tandem Switching Rate. 7

1. The Current Rates. 7

2. Long Distance Competition. 9

3. Network Inefficiency. 10

4. The CompTel Appeal. 11

5. Solution. 15

B. The Unitary Rate Structure. 16

1. The Current Rate Structure 16

2. Discrimination. 18

3. Long Distance Competition 20

4. Network Inefficiency. 21

5. Market-Driven Rate Structure. 21

IV. SHARED CIRCUIT LOADING FACTOR 23

V. SS7 SIGNALLING 24

Conclusion 25

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	)	
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TO: The Commission

EXPEDITED PETITION FOR RECONSIDERATION OF COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"), pursuant to 47 U.S.C. § 405 and 47 C.F.R. § 1.429, hereby petitions the FCC to reconsider its First Report and Order (FCC 97-158) ["First Report"] released on May 16, 1997 in the above-captioned proceedings. CompTel seeks reconsideration of the FCC's decisions

(i) establishing a presubscribed interexchange carrier charge ("PICC") for multiline business users of $2.75/line per month;

(ii) increasing the tandem switching charge by approximately 400% through a reallocation of revenues currently recovered through the transport interconnection charge ("TIC");

(iii) abolishing the unitary rate structure preferred by tandem-switched transport users in favor of the three-part rate structure;

(iv) eliminating the 9000 minutes of use ("MOU") loading factor used for the common transport portion of tandem-switched transport; and

(v) extending the Ameritech Signaling System 7 ("SS7") waiver to all ILECs.

CompTel seeks reconsideration of these aspects of the First Report because the FCC's decision will cause significant increases in the long distance rates of rural and small business subscribers which do not reflect the costs of serving those customers, as well as a reduction in the number of long distance carriers willing and able to serve rural and small business customers.

I. REQUEST FOR EXPEDITION.

CompTel requests that the FCC grant this petition on an expedited basis. Three of the rules subject to this petition will take effect, at least in part, less than six months from now on January 1, 1998, resulting in immediate switched access cost increases for long distance carriers and immediate retail rate increases for rural and small business subscribers. A fourth rule subject to this petition (i.e., the abolition of the unitary rate structure for tandem-switched transport users) will amplify those adverse impacts six months later on July 1, 1998. The FCC should grant this petition expeditiously to avoid the serious harm to long distance carriers and their rural and small business customers that will occur beginning on January 1, 1998 pursuant to the First Report.

II. THE MULTILINE BUSINESS PICC.

The First Report required ILECs to impose on long distance carriers a multiline business PICC of $2.75/line per month. That PICC may increase by $1.50/line per month in subsequent years, although the FCC expects that the multiline business PICC will decline to "less than $1.00" by the year 2001 due to the operation of the price cap rules and increases in subscriber line charges ("SLCs") and other PICCs. First Report at ¶ 59. The multiline business PICC is not necessary to compensate ILECs for the local loop costs caused

by those customers; the multiline business SLC will fully compensate ILECs for those costs. Id. at ¶¶ 39, 77. Instead, the FCC established the multiline business PICC of $2.75/line due to its desire to avoid raising the SLC for residential and single-line business subscribers above $3.50 to recover full local loop costs (which the FCC estimates at approximately $6.10). Id. at ¶ 73. The FCC justified this new transitional subsidy mechanism as follows:

> "We . . . acknowledge that our plan will require customers with multiple telephone lines to contribute, for a limited period, to the recovery of common line costs that incumbent LECs incur to serve single-line customers. We conclude that this aspect of the plan is a reasonable measure to avoid an adverse impact on residential customers." Id. at ¶ 101.

The FCC did not consider the impact of the multiline business PICC upon small business customers or interexchange competition.

It is inherently unreasonable for the FCC to devise a transition subsidy plan that has an immediate and in some cases irreparable adverse impact upon the carriers and subscribers funding the subsidy. CompTel has obtained data from its members showing that the multiline business PICC will have a dramatic and immediate adverse impact upon the interstate switched access costs of carriers serving low-volume multiline business subscribers (e.g., a typical four-line hardware store). The chart in Attachment One contains a net PICC impact estimate for each carrier who supplied CompTel with sufficient data to calculate an estimate based upon reasonable assumptions. The negative net impact upon these carriers' total interstate switched access costs will range from 46.1% to 474.2%.[1] These carriers are themselves small businesses who will have no choice except to pass through that cost increase to their subscribers in the form of retail rate increases on January 1, 1998. Because

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[1] The estimated impact is even more severe if one assumes that the underlying provider of off-net terminating access does not flow through the reduction in terminating access charges resulting from the First Report. Under that assumption, the estimated negative impact ranges from 61.3% to 499.5%.

larger carriers with more diverse customer bases have the ability to delay such rate increases for some period of time, the end-result for many of these carriers will be that their customers will migrate to other providers and they will be harmed, perhaps even to the extent of exiting the market altogether, within a few months after the multiline business PICC takes effect.

The results in Attachment One are driven by the impact of the multiline business PICC upon carriers serving low-volume business subscribers. Among those carriers who will suffer an adverse impact, the extent of the negative impact roughly corresponds to the carrier's dependence upon small business subscribers who generate a comparative low volume of interstate calls per line. Carriers who serve exclusively or primarily those subscribers will experience the most severe impact, while carriers who rely less extensively upon those subscribers will experience a less severe negative impact. The carriers who may actually see a positive net impact are those who serve as carriers' carriers (and therefore do not pay the PICC for a significant percentage of their traffic) and/or whose customer base is not comprised significantly of low-volume small business customers. The data in Attachment One show that the multiline business PICC will cause a significant net increase in the interstate access costs of carriers serving low-volume small business subscribers. The result is that these carriers' rates for those small business customers will have to increase on January 1, 1998.

Apart from the impact of the PICC upon long distance rates for small business subscribers, the FCC's decision is unreasonable because its impact on interexchange competition would be disproportionate to the duration of and need for the subsidy. Many smaller carriers have entered the market by focusing primarily and in some cases exclusively upon small business subscribers with low interstate usage per line. These carriers do not have the operating margins or capital reserves to blunt the impact of the FCC's decision

upon their customer base. As noted above, they will be forced to raise their rates immediately as of January 1, 1998 to reflect the net impact of the multiline business PICC.

By raising their retail rates, these smaller carriers will be vulnerable to losing a significant portion of their customer base to larger carriers, who have the operating margins and capital reserves to wait some period of time before raising their rates to low-volume small business subscribers. Given the historic sensitivity of this customer base to small price differences, smaller carriers could face the immediate loss of the critical mass of their customer base. As they lose small business customers to their larger competitors, many small carriers will be placed in a negative cash position and forced to exit the market. Even if the FCC is correct that the multiline business PICC will decrease to $1.00/line or below by the year 2001, these smaller carriers will not still be in the market. For low-volume small business customers, the unfortunate result of the FCC's decision will be less competition among carriers and fewer carrier choices. Ironically, those subscribers' migration to larger carriers in pursuit of lower prices likely will not be successful. While the larger carriers may be able to retain existing rate levels for some period of time, market conditions will force them to increase rates for low-volume small business customers to reflect their attributable interstate access costs. The FCC should not adopt a transitional subsidy mechanism that causes significant competitive harm and large rate increases for small business customers.

Lastly, the FCC's decision to build new cross-subsidies into the interstate access charge regime is contrary to the statutory requirement that universal service subsidies must be "explicit." 47 U.S.C. § 254(e). The FCC's argument that Congress did not intend to require it to remove all *existing* cross-subsidies immediately (First Report at ¶ 9) is beside the point. Even the FCC does not contend that Congress meant to authorize the FCC to

create a new implicit subsidy mechanism that did not previously exist. Further, the FCC's decision to discriminate among different classes of subscribers regarding PICCs is contrary to the FCC's objective of establishing cost-causative rates. E.g., First Report at ¶¶ 24, 131 & 184.

In order to prevent the adverse impact of the multiline business PICC upon small business customers and interexchange competition, the FCC should eliminate the multiline business PICC altogether. Given that small business subscribers will pay 100% of their local loop costs through SLCs, it is unfair to those subscribers and the carriers who serve them to cause such a massive industry dislocation just to implement a subsidy mechanism for a transition period. In the alternative, if the FCC is unwilling to consider eliminating this PICC, the FCC should devise a new, short-term recovery mechanism that is competitively neutral and does not discriminate against low-volume small business subscribers.

III. THE SWITCHED LOCAL TRANSPORT RULES.

Long distance carriers serve rural areas primarily if not exclusively by purchasing tandem-switched transport from ILECs. The reason is that the lower traffic volume and population density in rural areas makes it economically infeasible for long distance carriers to serve those subscribers via direct-trunked transport. The FCC's rule modifications for tandem-switched transport will make it enormously, and in some cases prohibitively, more costly for long distance carriers to provide service to rural areas. The result will be retail rate increases for rural subscribers, as well as a reduction in the carrier choices available to those subscribers as smaller long distance carriers exit the rural market altogether.

The First Report increased the costs of providing long distance service to rural areas via tandem-switched transport in ways that do not reflect the underlying costs of providing service to rural areas. First, the FCC directed the ILECs to implement an increase in the tandem switching charge of approximately 400% even though the current tandem switching charge reasonably approximates a cost-based, market driven rate. Second, the FCC directed ILECs to discard the unitary rate structure under which they provide tandem-switched transport to all long distance carriers today, and instead to begin using a three-part rate structure that will force long distance carriers to pay double the fixed charges and additional mileage costs.

The First Report did not even acknowledge, much less justify, the impact of these transport rule changes on the costs incurred by long distance carriers to serve rural areas or the retail rates paid by rural subscribers. That failure is surprising because the FCC elsewhere in the First Report indicated a strong concern to maintain affordable telephone rates for rural subscribers. E.g., First Report at ¶¶ 39 & n.45, 81. It is particularly surprising that the FCC would increase the costs of providing long distance service to rural subscribers in ways that do not reflect the costs of serving those areas. The FCC should expeditiously reinstate the current transport rules that it set aside in the First Report.

A. The Tandem Switching Rate.

1. The Current Rates. In 1992 the FCC directed the ILECs to create a tandem revenue requirement reflecting embedded switched access revenues under Part 69 allocation practices.[2] The FCC then ordered the ILECs to set the initial tandem switching

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[2] See Transport Rate Structure and Pricing, 7 FCC Rcd 7006, 7018-19 (1992).

rates to recover 20% of the tandem revenue requirement, and to recover the remaining 80% through the per-minute TIC. In the First Report (at ¶¶ 195-209), the FCC discarded this approach by directing the ILECs to recover nearly 100% of the tandem revenue requirement through the tandem switching charge. CompTel estimates that the new rule will cause an increase in the tandem switching charge of approximately 400%.[3] While recognizing that the new rates may be inflated well above underlying costs, the FCC decided to rely upon developing local competition to drive the tandem switching rate to market-based levels over the next three and a half years. Id. at ¶ 199.

The FCC's decision to re-allocate approximately 80% of the tandem revenue requirement to the tandem switching charge is a fundamentally misguided effort that defeats that FCC's objective of establishing market-driven, cost-causative interstate access rates. CompTel has compiled data showing that the ILECs' current tandem switching rates are roughly equivalent to the interim rates established for the provision of tandem switching on a network element basis. In Attachment Two, CompTel has compiled a table comparing the current tandem switching rate under the Bell Companies' interstate access tariffs and the Bell Companies' rates for tandem switching as an unbundled network element. This table also estimates the extraordinary increase in the tandem switching rate mandated by the First Report. It is clear that the current interstate tandem switching rates are reasonably close to market-driven, cost-based levels, while the rates that the FCC has directed the ILECs to implement as of January 1, 1998 are grossly excessive.

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[3] CompTel calculated the 400% figure as a rough average of the estimated percentage increase in the tandem switching rate for each Bell Company caused by the First Report.

The data in Attachment Two prove that the FCC's decision to increase the tandem switching rate by approximately 400% repudiates the FCC's objective of establishing market-driven, cost-based interstate access rates. The FCC's rule change would have the bizarre result of forcing ILECs to increase by several multiples rates which today are comparatively close to cost-based levels just so that developing competitive conditions in the local market can have an opportunity to reduce those rates back toward their current levels over the next three and a half years. The FCC should not make rates worse on the theory that they can later be made better through developing competitive conditions, particularly given that competitive tandem-switched alternatives are likely to develop last, if at all, in the rural areas that are most affected by the FCC's decision. Relying upon potential future competition in rural areas is inappropriate when the result will be to increase without cost justification the retail long distance rates paid by rural subscribers on January 1, 1998.

2. Long Distance Competition.

The FCC's decision to increase the tandem switching rate by approximately 400% would undermine competitive conditions in the long distance industry. It is well-documented that smaller long distance carriers rely more heavily than the largest carriers upon tandem-switched transport (in some cases for 100% of their traffic).[4] As a result, if the FCC departs from cost-based pricing principles in establishing the tandem switching rate, the result is to impose an uneconomic penalty upon the smaller long distance carriers who rely upon tandem-switched transport. Many long distance carriers focus on providing service

[4] E.g., CompTel Application at 31-32 (Florida study); Comments of CompTel, CC Docket No. 91-213, filed Feb. 1, 1993, at 18-19 & Att. B (Chicago study).

in rural and other outlying areas, and their ability to continue providing service in this market segment would be jeopardized by such a massive and unexpected cost increase.

3. Network Inefficiency.

The FCC's decision will cause an inefficient migration of traffic from tandem-routed to direct-trunked transport.[5] That migration will occur not due to any economic or market-driven cost differences between the tandem-switched and direct-trunked transport options, but due solely to the higher overhead loadings imposed upon the tandem switching charge. By imposing a higher overhead burden upon tandem routing, the FCC will create an incentive for carriers to route traffic via dedicated circuits even when the economic costs of tandem-switched transport are less than for direct-trunked transport. The FCC's decision to inflate the tandem switching charge without any basis in the economic costs of tandem switching will skew network investment and routing decisions, thereby defeating the FCC's policy objective in favor of cost-causative rates. See First Report at ¶¶ 24, 131 & 184.

In Attachment Three, CompTel has compiled data showing how the FCC's decision to increase the interstate tandem switching charge by 400% will change the crossover points at which long distance carriers will minimize their transport costs by shifting from tandem-switched transport to DS1 direct-trunked transport. For BellSouth, these data show that the crossover point will decrease to the highly inefficient level of 3,160 MOU per circuit by the year 2000. The crossover points for the other Bell Companies will be even less efficient, ranging from a high of 2,341 MOU per circuit (for Ameritech) to a paltry

[5] CompTel believes that this migration will occur largely in non-rural areas. We do not expect to see a significant migration in rural areas because direct-trunked transport will continue to be an infeasible option for the most part due to the traffic volume and population density in those areas.

1,074 MOU per circuit (for Pacific). The patent inefficiency of those crossover points under the FCC's new rules is underscored by the current intrastate crossover point in Florida (7,515 MOU per circuit), which reflects the Florida Public Service Commission's determination of efficient transport rate levels based upon actual cost data supplied by BellSouth.[6] These data confirm that the FCC's rule would send uneconomic signals to long distance carriers when deciding whether to route their traffic via tandem-switched or direct-trunked routing.

The FCC's decision also creates an artificial and ultimately unsustainable disparity between the price of tandem-switched transport as an interstate access service and as a network element. Attachment Two vividly documents the size of that disparity. There is no functional difference between the provision of tandem switching as an interstate access service and as a network element, yet the FCC has directed ILECs to price tandem switching based on economic costs when provided on a network element basis and based on historic, embedded costs when provided as an interstate access service. The FCC is sending economically irrational network investment and configuration signals to the industry through inconsistent pricing methodologies for functionally equivalent routing options.

4. The CompTel Appeal.

The FCC's decision to increase the tandem switching rate by approximately 400% contradicts the decision last year in Competitive Telecommunications Association v. FCC, 87 F.3d 522 (D.C. Cir. 1996) ["CompTel Decision"]. In that appeal, CompTel

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[6] See In Re Expanded Interconnection Phase II and Local Transport Restructure, Docket Nos. 921074-TP, et al., Order No. PSC-95-0034-FOF-TP, before the Florida Public Service Commission, issued Jan. 9, 1995, at pp. 53-60 (Final Order); id., Order No. PSC-96-0099-FOF-TP, issued Jan. 18, 1996 (Order Approving Tariffs).

demonstrated that the FCC's interim transport rules resulted in discriminatory overhead loadings between tandem-switched and direct-trunked transport users. That discrimination resulted from the FCC's decision to calculate the tandem switching charge based upon the relatively high Switched Access overhead loadings while calculating the transport transmission rates to reflect the much lower Special Access overhead loadings. The Court held that "[t]he resulting cost allocation to the tandem switch is . . . grossly excessive," and the Court remanded the case with instructions that the FCC adopt nondiscriminatory cost-based overhead loadings for transport rate elements or provide a "reasoned explanation" for not doing so. Id. at 532-33.

The FCC's response to the Court's remand was to exacerbate by several orders of magnitude the discrimination in the comparative overhead loadings for the tandem switching charge and the transport transmission charges. To its credit, the FCC did not try to hide the discriminatory impact of its decision. The FCC acknowledged that its interim transport rules assigned a higher overhead loading to the tandem switching rate than to the transport transmission rates. First Report at ¶¶ 161 & 200. Further, the FCC presumably recognized that by increasing the tandem switching charge by approximately 400%, while leaving the overhead loadings for the transport transmission rates unchanged, it was increasing the overhead loading disparity by several orders of magnitude.

The FCC rejected "equalized" (i.e., non-discriminatory) overhead loadings as "too specific and too rigid." Id. at ¶ 204. Further, the FCC stated that it did not wish to interfere with the "market discipline" upon which it relies ultimately for cost-based rates over the long term. The FCC stated that it was sufficient if it mandated "consistent overhead loading methodologies . . . across switching functions and across transmission functions." Id. at ¶ 203. The FCC did not address or even recognize the impact of discriminatory

transport overhead loadings upon the retail rates paid by rural subscribers for long distance service or upon interexchange competition.

The FCC's rationales for exacerbating the overhead loading discrimination on the tandem switching charge do not constitute the "reasoned explanation" required by the CompTel Decision. The FCC's desire to avoid "specific" and "rigid" overhead loading rules is a makeweight. The rule the FCC adopted is no less specific and rigid than nondiscriminatory overhead loadings. Similarly, the FCC's expressed desire to avoid interfering with market forces cannot justify its decision. Whatever outcome the FCC mandated at this point would be subject to change based upon developing local market forces.[7] Mandating a 400% increase in the tandem switching charge interferes with market forces neither more nor less than equalizing overhead loadings or maintaining the status quo.

The FCC's justification that it will maintain high overhead loadings consistently across switching functions, and low overhead loadings consistently across transmission functions, is specious. The FCC cites to no precedent or logic to justify such different overhead loading factors for the tandem switching and transport transmission functions.[8] Moreover, the FCC's decision to accord identical treatment to local and tandem

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[7] Even if the FCC is correct that competitive tandem-switched alternatives will develop in some geographic areas in response to the First Report, those alternatives will not be available in many non-urban areas for many years and they may never develop in those areas at all. Therefore, it is unreasonable for the FCC to rely upon market forces to correct the erroneous pricing result caused by its decision to reallocate certain revenues from the TIC to the tandem switching charge.

[8] To the extent switching functions are less likely than transmission functions to be subject to competitive alternatives, the FCC's decision last year in CC Docket No. 96-98 would support imposing higher overhead loadings upon transmission functions than upon switching functions. See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, 15852 (1996) (it is reasonable to allocate common costs to ensure that "the prices of network elements that are least likely to

(continued...)

switching ignores a critical difference between the two. The local switching charge is assessed on all switched interstate traffic, while the tandem switching charge applies only to the portion of interstate traffic that is tandem-routed. The result is that building higher overheads into the local switching charge does not discriminate among service areas, while building higher overheads into the tandem switching charge has a disproportionate impact upon the cost of routing traffic in rural areas. Similarly, the size of the overhead loading factor for local switching does not affect interexchange competition, but building more overheads into the tandem switching charge than into the transport transmission rates would penalize the smaller carriers who rely disproportionately upon tandem routing. Therefore, it was erroneous for the FCC to build into the tandem switching charge the higher overhead loading factor applicable to local switching.

The Court's decision to remand the TIC to the FCC for further consideration does not require a different result. The Court required the FCC to establish a "cost-based alternative to the [TIC], or to provide a reasoned explanation of why a departure from cost-based ratemaking is necessary and desirable." CompTel Decision, 87 F.3d at 532. In reaching that decision, the Court did not take any position on whether revenues should be reallocated from the TIC to the tandem switching charge. Id. Based upon Attachment Two, it would appear that current tandem switching rates are a rough approximation of cost-based, market-driven rates. No other party has submitted evidence justifying a different tandem switching charge, and the FCC's decision to recover virtually the entire tandem revenue requirement through the tandem switching rate results in an obvious over-recovery of

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[8](...continued)
be subject to competition are not artificially inflated by a large allocation of common costs"). In general, the Commission's decision on transport overhead loadings in the First Report is directly contrary to its policies for allocating common costs among network elements.

revenues from tandem-switched users. To the extent the FCC desires to allocate revenues out of the TIC and into the transport rate elements, the FCC must ensure that all transport rate elements -- not just the tandem switching charge -- receive a non-discriminatory share of those revenues.

5. Solution. The FCC should reinstate the pre-existing pricing rule for the tandem switching charge to prevent non-cost based rate increases for rural subscribers and to avoid distorting interexchange competition. Further, CompTel would support conforming the tandem switching rate to the equivalent network element rate at such time as state authorities establish permanent rates for the provision of tandem switching on a network element basis.[9] Given the FCC's decision to rely upon market forces to discipline transport pricing while the TIC is phased down over time, and the evidence in Attachment Two that current tandem switching rates are reasonably close to market-driven levels, CompTel believes that retaining the current rule in these circumstances would be a reasonable response to the Court's remand.

Lastly, reinstating the current rule would not significantly lengthen the phase-out of the TIC. CompTel has estimated that continuing to recover 80% of the tandem revenue requirement through the TIC would prolong the life of the TIC by four to eight

[9] While this approach would not necessarily remove the overhead loading disparity between tandem-switched and direct-trunked transport users that exists today, CompTel recognizes that the FCC does not have sufficient record data to reallocate overhead revenues accurately and efficiently among all transport rate elements.

months.[10] That is a negligible price to pay to avoid non-cost based increases in the long distance rates paid by rural subscribers and to preserve efficient interexchange competition.

B. The Unitary Rate Structure.

1. The Current Rate Structure. The current rate structure for tandem-switched transport gives long distance carriers the option of purchasing transport as an end-to-end service (the unitary rate structure) or on a piece-part basis (the partitioned or three-part rate structure). Under the unitary structure, the long distance carrier purchases tandem-switched transport between the ILEC's serving wire center and end office at a single, per-minute rate, with mileage measured between those two offices rather than according to the physical routing of the traffic. Under the three-part structure, a long distance carrier purchases tandem-switched transport by paying a flat-rated charge for the link between the serving wire center and the tandem and paying a usage-based charge for the link between the tandem and the end office, with mileage measured according to the physical routing of each link. (Under both rate structures, the long distance carrier pays a separate per-minute charge for tandem switching.) Given these two choices, long distance carriers today opt to purchase tandem-switched transport under the unitary rate structure.

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[10] CompTel calculated for each Bell Company an estimate of the length of time the TIC would be prolonged if the FCC were to retain the current pricing rule. The estimated time period ranges from more than four months (for NYNEX) to less than eight months (for U S West). CompTel calculated those estimates by assuming that the GDPI remains constant at 2.112%, and then calculating the annual reduction in interstate price cap revenues by multiplying 4.33% (6.5 minus 2.112) times the total interstate price cap revenues (proposed as of July 1, 1997) to estimate the annual price cap reduction. CompTel then compared that amount to the revenue amount being shifted to the tandem switching rate element to compute the fraction of the annual price cap reduction that such revenue amount represents.

Prior to the First Report, major carriers from all corners of the industry joined in support of retaining the unitary rate structure option on a permanent basis. In April, AT&T, Bell Atlantic and NYNEX submitted a joint proposal for access charge reform which recommended that "[t]he existing interim transport rate structure should be continued."[11] Subsequently, Teleport Communications Group, Inc. and CompTel submitted a joint proposal to the FCC in which the two parties recommended that "[t]he current 'unitary pricing' option for tandem transport would be made permanent."[12] Those joint proposals confirm the strong support among the interested industry segments -- long distance carriers, competitive local entrants, and ILECs -- for retaining the unitary rate structure option for long distance carriers.

In the First Report (at ¶¶ 175-193), the FCC rejected the industry position by ordering ILECs to discontinue the unitary rate structure option for tandem-switched transport effective July 1, 1998. As a result, long distance carriers will be forced to purchase tandem routing pursuant to the three-part structure in slightly less than one year. The three-part rate structure will increase the tandem routing costs of long distance carriers (i) by making them pay two sets of fixed charges, and (ii) by calculating mileage rates according to the actual routing of the traffic by the ILEC. Under the unitary structure, long distance carriers pay one set of fixed charges and mileage rates are calculated based upon airline distance between the end office and the serving wire center.[13]

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[11] See Letter to W. Caton, FCC, from G. Evans, NYNEX (April 4, 1997), Attachment at page 3.

[12] See Letter to Hon. Reed E. Hundt, FCC, from James M. Smith, CompTel, and Robert C. Atkinson, TCG (April 16, 1997) at page 2.

[13] At the time the FCC first raised the transport rate structure issue, CompTel (continued...)

The FCC abolished the unitary rate structure only for tandem-switched transport users; the FCC decided to permit long distance carriers to continue purchasing direct-trunked transport on a unitary (i.e., end-to-end) basis. Even where the ILECs' interoffice transport network requires dedicated traffic to be routed through tandem locations, direct-trunked transport users pay only one set of fixed charges and mileage rates are calculated according to airline distance between the end office and the serving wire center rather than according to the actual routing by the ILEC.

2. Discrimination. The FCC's decision to abolish the unitary pricing option for tandem-switched transport users, but not for direct-trunked transport users, discriminates against rural telephone subscribers and smaller long distance carriers who depend upon tandem routing. The FCC concedes that ILECs often route direct-trunked transport traffic through the tandem location over the same shared interoffice transport facilities as tandem-switched transport traffic.[14] Nevertheless, the FCC justifies retaining a unitary pricing option for direct-trunked transport users by arguing that those users do not require the ILEC to route their traffic through the tandem location, while tandem-switched users require the ILEC to route their traffic through the tandem location. First Report at ¶¶ 185-187.

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[13](...continued)
presented the FCC with data showing that the impact of moving from a unitary to a partitioned rate structure on the monthly transport costs of long distance carriers ranged from 53% to 111%. See Comments of the Competitive Telecommunications Association, CC Docket No. 91-213, filed Nov. 22, 1991, at 31-37 & Tbls 3-4.

[14] See First Report at ¶¶ 154 n.207 & 185; Transport Rate Structure and Pricing, 7 FCC Rcd 7006, 7020 (1992); Transport Rate Structure and Pricing, 10 FCC Rcd 3030, 3058 (1994); Ex Parte Submission of Schneider Communications, Inc., CC Docket No. 91-213, filed May 22, 1992.

The FCC's rationale for discriminating in favor of direct-trunked transport users does not withstand scrutiny. While it is true that long distance carriers ordering tandem-switched transport are effectively requiring ILECs to route their traffic through the tandem location, that does not distinguish tandem-switched from direct-trunked transport users. In many cases, when a long distance carrier desires to route traffic on a dedicated basis between an end office and a serving wire center, there is no "direct" route between those two points except through one or more tandem locations. In that case, the long distance carrier has effectively required the ILEC to engage in routing through the tandem location, just as the smaller long distance carrier has effectively required the ILEC to engage in tandem-switched routing by ordering per-minute routing. The advent of ring architecture (First Report at ¶ 188) only underscores the extent to which even direct-trunked transport users depend upon tandem routing whether they prefer it or not.

The FCC may believe that it is unfair to make direct-trunked transport users pay for the "actual" tandem routing when it is the ILECs' decision, not the users' decision, to route dedicated traffic through tandem locations. See First Report at ¶ 186. However, it is equally unfair to force tandem-switched transport users to pay for "actual" tandem routing -- rather than "airline" mileage between the end office and the serving wire center -- when it is the ILECs' decision, not the users' decision, regarding how many tandems to install and where to place them. Even though a tandem user requires the ILEC to engage in tandem-switched routing, that user has no influence over, and certainly has not acquiesced in, the ILEC's tandem deployment decisions. That the ILECs have not deployed their tandems to