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August 11, 1997

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Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Ex Parte Presentation In RM 9101

Dear Mr. Caton:

I am submitting on the record in the above-referenced proceeding the attached letter from Genevieve Morelli, Executive Vice President and General Counsel of the Competitive Telecommunications Association dated August 11, 1997 in CCBPol 97-9. Please address any inquiries to the undersigned.

Respectfully submitted,

Robert J. Aamoth

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COMPTEL COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

Genevieve Morelli
Executive Vice President
& General Counsel

August 11, 1997

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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Re: CCBPOL 97-9
Recommendations on Initiatives for the
Development of Local Competition

Dear Mr. Caton:

On behalf of the Competitive Telecommunications Association ("CompTel"), we are submitting this letter in response to the FCC's *Public Notice* (DA 97-1519) on July 18, 1997 seeking recommendations on key actions that the FCC should take to facilitate the rapid development of local competition. The following recommended actions are those to which CompTel assigns the highest priority. CompTel does not mean to imply that additional actions beyond those addressed herein would not also facilitate the development of local competition. As the FCC requested in the *Public Notice*, CompTel will not submit detailed argumentation regarding these key action items. However, CompTel stands ready to assist the FCC by providing further information and analysis upon request.

1. Network Element Combinations. The decision by the U.S. Court of Appeals for the Eighth Circuit in *Iowa Utilities Board v. FCC* (Nos. 96-3321, *et al.*) ["*Iowa Utilities Board*] upheld the FCC's rules requiring incumbent local exchange carriers ("ILECs") to provide unbundled network elements, as required by the statute, "in a manner that allows requesting carriers to combine such elements in order to provide [any] telecommunications service." 47 U.S.C. § 251(c)(3); *see* 47 C.F.R. §§ 51.307(c) & 51.315(a)-(b). The FCC should clarify immediately that ILECs who combine network elements in the provision of local exchange or exchange access services must provide network elements in such combinations to requesting telecommunications carriers on a non-discriminatory basis pursuant to Section 251(c)(3). The FCC's rules that continue in effect today already impose that obligation upon the ILECs. *See* 47 C.F.R. § 51.315(b). Further, that obligation is entailed by the statutory and regulatory requirement that ILECs provide network elements "in a manner that allows" new entrants to combine them for the provision of services. If an ILEC

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furnishes unbundled network elements in such a way that it is impossible or difficult for new entrants to combine them into services even though the ILEC itself combines such functions into finished services to carriers or its own subscribers, then the ILEC has violated its obligation under the statute and the FCC's rules to provide network elements in a manner that permits new entrants to combine them into services.

In addition, the Court stated that while Section 251(c)(3) does not impose an undifferentiated requirement upon ILECs to combine unbundled network elements for new entrants, ILECs must "allow entrants access to their networks." *Iowa Utilities Board*, Slip Op. at 141. The Court also contemplated that the ILECs would have to modify their facilities so that new entrants could combine network elements into finished services. Id. at 140 n.33. The FCC should promulgate rules to ensure that new entrants have full and timely access to the ILECs' networks for the purpose of combining network elements into finished services. In addition, the FCC should make certain that new entrants have all the technical information they will need in order to combine network elements into finished services. At a minimum, the FCC should consider whether it needs to define network elements in more technical detail so that a new entrant will be able to develop and implement a uniform plan for combining the network elements of numerous ILECs into finished services with the maximum efficiency possible.

2. Operations Support Systems. Local competition will not develop unless the ILECs provide new entrants with non-discriminatory access on a network element basis to operations support systems ("OSS") for pre-ordering, ordering, provisioning, billing, maintenance and repair, and other critical functions. Although the FCC adopted OSS as an unbundled network element and required the ILECs to offer non-discriminatory OSS by January 1, 1997, not one ILEC has come close to complying with that requirement. On May 30, 1997, CompTel and LCI International Telecom Corp. ("LCI") jointly filed a Petition for Expedited Rulemaking (RM 9101) which asked the FCC to adopt the rules, timetables and enforcement procedures necessary for non-discriminatory OSS to become an industry reality as quickly as possible. In particular, CompTel and LCI asked the FCC to initiate a negotiated rulemaking to adopt performance standards, measurement criteria, reporting requirements, specific timetables for developing uniform OSS standards, and remedial provisions for non-compliance. The FCC now has a complete record of comments and reply comments on the petition, and CompTel urges the FCC to grant the petition expeditiously.

3. Shared Transport. The FCC should immediately clarify that ILECs must offer shared transport to requesting telecommunications carriers at a single, usage-based rate pursuant to Section 251(c)(3). Under shared transport, an ILEC routes the interoffice traffic of all carriers, including itself, over the same shared transport facilities. Shared transport is not limited to tandem-switched transport, but includes the routing functionality between any two ILEC end offices over shared facilities. WorldCom, Inc. ("WorldCom") raised this issue in a Petition for Clarification filed on September 30, 1996 in CC Docket No. 96-98. Since that time, Ameritech and at least

one other ILEC have refused to provide shared transport on a network element basis to new entrants. The FCC should clarify this issue in its forthcoming decision on Ameritech's Section 271 application for authority to enter the in-region interLATA market in Michigan (CC Docket No. 97-137), and also through expeditious grant of WorldCom's pending petition for clarification in CC Docket No. 96-98.

4. Unbundled Local Switching. The FCC should enforce its current rules and policies which require ILECs to provide unbundled local switching to a new entrant so that the new entrant can become the exclusive provider of originating exchange access, terminating exchange access, and local and toll calling for the end-user consumer. Not only must ILECs refrain from imposing access charges upon network element purchasers, they must supply new entrants with sufficient information so that they can bill originating and terminating exchange access.[1] As with shared transport, this issue currently is pending before the FCC both on reconsideration in CC Docket No. 96-98 and in Ameritech's Section 271 application for authority to enter the in-region interLATA market in Michigan. The FCC also should enforce its current policy that carriers who purchase unbundled local switching are entitled to receive all features and functions of the switch without paying additional charges. Lastly, the FCC should clarify that ILECs must provide customized routing into and out of the switch so that new entrants can use their own network facilities wherever possible.

5. PIC Freezes. In response to a petition for rulemaking filed by MCI, the FCC has developed an extensive record showing that ILECs are soliciting PIC freeze orders from end-user subscribers in an effort to lock up the local and intraLATA market before competitive local alternatives become available. CompTel supports decisive action by the FCC to prevent ILECs from subverting the statutory mandate through anti-competitive PIC freeze practices, including a declaratory ruling establishing a moratorium on PIC freezes during the first six months after competitive alternatives become available to a customer.[2] Such a moratorium would preserve a pro-competitive environment until the FCC is able to complete its rulemaking in CC Docket No. 94-129 on PIC freeze and other slamming issues.

6. The "Pick and Choose" Rule. In light of the Court's decision striking down the FCC's rule implementing the "pick and choose" rule in Section 252(i), CompTel urges the FCC to adopt new rules implementing that provision, at least on an

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[1] Although the States, not the FCC, have been found by the Court to possess the authority to prohibit the ILECs from imposing intrastate access charges upon network elements, the FCC has authority under its grant of jurisdiction to implement Section 251(c)(3) to require ILECs to provide the information necessary to bill both interstate and intrastate exchange access.

[2] *See* Comments of the Competitive Telecommunications Association, File No. CCB/CPD 97-19, filed June 4, 1997, at 3.

interim basis pending further judicial review of the Iowa Utilities Board decision, to promote Congress' intention to promote the development of local competition. In particular, CompTel has learned that certain ILECs may now take the position that a new entrant cannot subscribe to another agreement in its entirety if its own agreement with the ILEC has not yet expired. See Response of American Communications Services, Inc., CCBPol 97-9, filed Aug. 11, 1997, at Section II. That position is contrary to the plain language of the statute, and is nowhere mandated or even suggested by the Court's decision in Iowa Utilities Board. In adopting interim "pick and choose" rules, the FCC should clarify that any carrier is entitled to take any other agreement, provided it is willing to take the entire agreement, regardless whether its pre-existing agreement has expired by its terms.

7. Access Charge Petitions for Reconsideration (CC Docket No. 96-262). At first glance, it might seem unusual for CompTel to urge the FCC to expedite its consideration of the pending petitions for reconsideration in the access charge proceeding (CC Docket No. 96-262) as an action item central to development of local competition. However, as CompTel and other concerned parties have demonstrated in their petitions for reconsideration, both the FCC's establishment of a $2.75/line presubscribed interexchange carrier charge for multiline business users and the FCC's radical reform of the rules governing the switched local transport rate structure and levels will have an immediate, adverse impact upon interexchange competition.[3] If those petitions are not granted expeditiously, numerous long distance carriers could be forced to exit the long distance market in rural areas on or soon after January 1, 1998. Similarly, current levels of service to small business customers could be adversely affected.

It should go without saying that the FCC's initiatives to facilitate local entry will not help carriers who have already been forced to exit the market. Further, even long distance carriers who remain in the long distance market for rural and small business customers will be faced with extraordinary increases in their exchange access costs, thereby depriving them of the resources necessary to fund their entry into the local market for those customers. The result will be that rural and small business consumers will have far fewer choices among competing local providers than they otherwise would have. The FCC must correct its new access charge rules to maximize the number of carriers who have a meaningful opportunity to take advantage of the local entry opportunities created by the Telecommunications Act of 1996 and the FCC's implementation actions.

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[3] Petitions for reconsideration on one or both of the issues described above were submitted by CompTel; America's Carriers Telecommunications Association; County of Los Angeles; Excel Telecommunications, Inc.; Frontier Corporation; KLP, Inc. d/b/a Call-America and Yavapai Telephone Exchange, Inc. (joint petition); RCN Telecom Services, Inc.; Telco Communications Group, Inc.; Telecommunications Resellers Association; U.S. Long Distance, Inc.; and WorldCom, Inc.

Copies of this letter are being filed as *ex parte* presentations in Docket Nos. 94-129, 96-98, 96-262, and 97-137, and RM 9101, pursuant to the *Public Notice*.

Please contact the undersigned if there are any questions concerning the matters discussed in this letter.

Respectfully submitted,

Genevieve Morelli
rga

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