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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	CC Docket No. 96-262;
Access Charge Reform and	)	CC Docket No. 94-1; RM-9210
Pricing Flexibility	)	

COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

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SUMMARY

The fundamental assumption of the Commission's market-based approach in the *Access Charge Reform Order* is that the advent of local competition will create downward pressure on ILEC switched access charges. However, experience in the seventeen months since the Commission's order demonstrates that local competition has not developed in the way that the Commission envisioned. Unexpected setbacks in the Commission's Local Competition rules and continued ILEC roadblocks have thwarted the Commission's desire to rely on local competition to unleash competitive pressures to lower switched access rates. Moreover, it is unclear at this time whether the market-based approach can ever be effectively revived. As a result, access charges remain significantly above their forward-looking costs.

To remedy this situation, CompTel submits that the prescriptive backstop adopted in the *Access Charge Reform Order* is needed now more than ever. The Commission should accelerate its prescriptive backstop for access rates by setting specific deadlines by which access charges must be set at cost-based levels. CompTel proposes in these comments a Prescriptive Transition Plan which prioritizes access reform, beginning first with those access rate elements which are not now, and are not likely to become, subject to any significant competitive pressures. These charges should be reduced to cost-based levels immediately, using the forward-looking costs of functionally equivalent unbundled network elements, as determined by the state commissions. Market forces can be given an additional opportunity to bring down access charges in other areas, but the Commission should adopt a specific timeframe by which, if the market is not able to reduce access to efficient levels, they must be reduced by prescription.

The elements of CompTel's Prescriptive Transition Plan are as follows:

1. Each incumbent price cap LEC's July 1999 Annual Access Tariff filing shall contain an implementation schedule specifying the dates by which each interstate switched access rate element will be reduced to cost, as measured by the rates for equivalent unbundled network elements determined by each state commission in the ILEC's service territories.

2. All transport-related interstate switched access rate elements (dedicated and tandem switched) shall be reduced to cost coincident with the effective date of the July 1999 tariffs.

3. Non-cost based interstate switched terminating access charges shall be eliminated no later than July 2000.

4. All interstate PICCs shall be frozen at current levels, and phased out over the length of the transition plan.

5. All other interstate switched access rates shall be reduced to cost-based levels within two years (*i.e.*, by July 2001). Tier I price cap LECs shall be obligated thereafter to revise their interstate switched access rates on a going forward basis to incorporate any changes in state-determined cost-based interconnection rates.

6. Any RBOC that receives authorization to provide interLATA services in any in-region state prior to fulfillment of this implementation schedule shall file a revised schedule reducing above-cost interstate switched access elements in that state no later than the date upon which it begins providing in-region services. A BOC shall impute access rates that are geographically averaged across its entire local exchange territory.

Due to largely unforeseen setbacks in local competition, market forces are not working as the Commission anticipated. Thus, now is the time for the Commission to accelerate its prescriptive backstop via the Prescriptive Transition Plan to put access charge reform on a clear path toward forward-looking economic levels.

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COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's rules,[1] respectfully submits the following comments in response to the *Public Notice* released on October 5, 1998.[2] For the reasons explained below, CompTel recommends that the Commission accelerate its prescriptive backstop for access rates by setting specific deadlines by which access charges must be set at cost-based levels. This phase-in of cost-based access charges should occur over a two-year period, with transport-related access charges reduced to cost immediately, terminating charges reduced within one year, and all other above-cost charges reduced to cost within two years. However, in the event that a BOC receives authorization pursuant to Section 271 of the Act prior to completion of this transition, it should be required to reduce interstate switched access charges to cost immediately in each state for which authorization is received.

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1 47 C.F.R. §§ 1.415, 1.419.

2 *Commission Asks Parties to Update and Refresh Record for Access Charge Reform and Seeks Comment on Proposals for Access Charge Reform Pricing Flexibility*, FCC 98-256 (Oct. 5, 1998) ("*Public Notice*").

I. INTRODUCTION

The *Public Notice* invites parties to "update and refresh the record" regarding the Commission's access reform and LEC price cap review policies. The Commission notes that parties have had an "opportunity to observe changes in the level of competition in the marketplace" occurring since its 1997 *Access Charge Reform Order*[3] and *Price Cap Fourth Report and Order*,[4] and asks parties to present any new information bearing on the policies adopted in these orders.[5] Specifically, the Commission seeks comment on issues relating to the petition for rulemaking filed by the Consumer Federation of America, *et al.* to prescribe cost-based access rates, and on the pricing flexibility proposals recently submitted by two RBOCs.[6]

In the *Access Charge Reform Order*, the Commission decided to adopt a market-based approach to reforming access charges, with a "prescriptive backstop."[7] The Commission adopted a market-based approach on the expectation that advances in competition for local services would provide carriers with the ability to avoid (through self-supply) access charges, and therefore place downward pressure on ILEC access charges.[8] Nevertheless, the Commission recognized that competition may not develop in certain areas, or may not develop as it anticipated. Therefore, it adopted a prescriptive backstop intended to lower access rates even in

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3 *In re Access Charge Reform*, 12 FCC Rcd 15982 (1997) (subsequent history omitted), *aff'd sub nom. Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir., Aug. 19, 1998) ("*Access Charge Reform Order*").

4 *Price Cap Performance Review for Local Exchange Carriers*, 12 FCC Rcd 16642 (1997) ("*Price Cap Fourth Report and Order*").

5 *Public Notice* at 1.

6 *Id.* at 2. The *Public Notice* also invites parties to update their comments and refresh the record regarding petitions for reconsideration of the *Price Cap Fourth Report and Order's* X-factor. *Id.* CompTel does not address the X-factor at this time.

7 *Access Charge Reform Order* at 16097.

8 *Id.* at 16094-5.

the absence of competition.[9] The Commission adopted moderate reforms immediately, prescribing an increase in the "X-factor" productivity offset to 6.5 percent and requiring priority elimination of certain transport-related rate elements.[10] A more comprehensive review of TELRIC cost studies submitted by incumbent price cap LECs was delayed until February 2001, on the expectation that competition would be developing in the interim.[11]

In the seventeen months since the Commission's *Access Charge Reform Order*, local competition has not developed as the Commission had hoped. A series of opinions by the U.S. Court of Appeals for the Eighth Circuit have directly undermined the FCC regulations relied upon in the *Access Charge Reform Order* to create local competition. In addition, ILEC roadblocks designed to increase the cost and difficulty of combining network elements and to thwart efficient collocation arrangements have made it practically impossible for new entrants to broadly serve local exchange and exchange access markets. Even with the proposed reforms to promote the deployment of advanced services[12] and the potential for a Supreme Court decision reinstating the rules vacated by the Eighth Circuit,[13] broad-based local competition is not likely in the near term. Put simply, the FCC's predictive judgment in May 1997 has yet to move closer to reality.

These developments have thwarted the Commission's desire to rely on competition in local exchange services to unleash competitive pressures to lower switched access rates. The "market-based" approach is not working today, and it is unclear at this time whether it can ever

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9 *Id.*

10 *Id.* at 16094.

11 *Id.* at 16097.

12 *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability,* FCC 98-188 (Memorandum Opinion and Order and Notice of Proposed Rulemaking) (Aug. 7, 1998) ("*Advanced Services NPRM*").

be revived. Contrary to the results likely if market forces constrained access rates, changes in ILEC rate structures and rate levels for access services since the *Access Charge Reform Order* have resulted in substantial access *increases* for CompTel's member companies.[14] CompTel has not observed any market pressures to lower switched access rates in general, or tandem-switched or terminating rates in particular. As a result, access charges remain significantly above their forward-looking costs.

CompTel submits that the Commission's prescriptive backstop is needed now more than ever. Accordingly, the Commission should accelerate its prescriptive reforms by setting specific deadlines by which access charges must be set at cost-based levels. CompTel proposes in these comments a Prescriptive Transition Plan which prioritizes access reform, beginning first with those access rate elements which are not now, and are not likely to become, subject to any significant competitive pressures. These charges should be reduced to cost-based levels immediately, using the forward-looking costs of functionally equivalent unbundled network elements, as determined by the state commissions. Market forces can be given an additional opportunity to bring down access charges in other areas, but the Commission should adopt a specific timeframe by which, if the market is not able to reduce access to efficient levels, they must be reduced by prescription.

(...continued)

[13] *See AT&T Corp. v. Iowa Utils. Bd.*, 118 S.Ct. 879, No. 97-826 et al. (U.S., Jan. 26, 1998).

[14] *See* Expedited Petition for Reconsideration of the Competitive Telecommunications Association, CC Docket Nos. 96-262 *et al.* (filed July 11, 1997).

Specifically, CompTel recommends (1) that all tandem-related charges be reduced to cost, effective with the 1999 Annual Access Tariff filing, (2) that all non-cost based charges for terminating access be eliminated no later than July 2000, and (3) that all other access rate elements be reduced to cost no later than July 2001, except that any BOC receiving authorization pursuant to Section 271 of the Act before that time should be required to reduce access charges in that state to cost no later than the date on which it begins providing in-region interLATA services.

II. AFTER THE COMMISSION COMPLETES IMPLEMENTATION OF THE HIGH COST UNIVERSAL SERVICE FUND EARLY NEXT YEAR, THERE WILL BE NO POLICY BASIS FOR MAINTAINING ABOVE-COST ACCESS RATES

Throughout this proceeding, incumbent LECs have predicted a series of dire consequences if access rates are reduced to cost too quickly. One of their favorite demons is the claim that reductions in access rates may threaten universal service policies. Not surprisingly, therefore, the *Public Notice* states that the Commission will consider access charge reform together with the implementation of high-cost universal service support.[15] CompTel submits that the Commission should promptly complete the universal service support funding mechanism already set in motion, so that *then* it may complete the task of reforming access charges without the distraction of the ILECs' vague arguments and Chicken Little claims.

The process of establishing a system of explicit universal service support mechanisms, set in motion in May 1997, is nearly complete. The Commission already has decided the form of support, and recently adopted a cost model to determine the size of the fund. Once the

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[15] *Public Notice* at 1 n. 3.

Commission has completed this process, there will be no public policy rationale for maintaining interstate access charges above cost.

In the *Universal Service Order,*[16] the Commission adopted an implementation scheme for reform of the existing system of universal service support for high cost areas. In that order, the Commission adopted the recommendation of the Federal-State Joint Board on Universal Service that an eligible carrier's level of support should be based on forward-looking economic costs involved in the construction and operation of the facilities and functions used to provide the services eligible for support. The Commission properly decided to reform universal service from the ground up, choosing to identify the required costs through a forward-looking study, rather than by shifting perceived subsidies from other areas, such as access charges. Relying on the expectation that this process will establish predictable and sufficient universal service support mechanisms, the Commission took initial steps in the *Access Charge Reform Order* to begin reducing above-cost access charges.[17]

The process of adopting a mechanism to estimate forward-looking costs for universal service is nearly complete. Indeed, in the *Fifth R & O,*[18] adopted on October 22, 1998, the Commission adopted a model platform for estimating costs incurred by carriers in providing services to high cost areas. This model will provide the basis for calculating the amount of high-cost universal service support needed by non-rural carriers to fulfill the Commission's universal service principles. This model, together with the specific input factors under consideration and

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16 *Federal-State Joint Board on Universal Service*, FCC 97-157 (First Report and Order) (May 8, 1997) ("*Universal Service Order*").

17 In August 1998, the Eighth Circuit upheld the Commission's decision to proceed with access reform and universal service reform on separate, but concurrent tracks. *See Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523.

18 Commission Adopts Model Platform for Use in Determining Universal Service Support for High Cost Areas, Report No. CC 98-36 ("News Release") (October 22, 1998).

further Commission action contingent upon forthcoming recommendations from the Federal-State Joint Board on Universal Service, will be ready in time for the scheduled high-cost implementation date of July 1, 1999.

With most of the difficulties resolved, and the cost model under its belt, the Commission is nearing the end of the process of ensuring the accessibility of affordable telecommunications services to all Americans through universal service. Only the specific input factors need be determined before the mechanism can take effect on July 1, 1999, less than nine months from now. With the impending completion of universal service reform, the Commission can, once and for all, eliminate the objections to rapid reform of ILEC access charges. Although the current access charge structure and rate levels grew from a number of factors, not necessarily related to universal service, the completion of universal service reform nevertheless will enable the Commission to reform access charges without concern that above-cost rates are "subsidies" needed for other public policy purposes. Thus, CompTel encourages the Commission to rapidly complete its high cost funding mechanism, and then turn to access reform without distraction.

III. MARKET FORCES ARE NOT BRINGING ACCESS CHARGES TO COST AS EXPECTED

The Commission's *Access Charge Reform Order* chose to rely on market forces, rather than regulatory prescription, to bring LEC access charges in line with the cost of providing access services. The underlying premise of this decision was that effective local competition would be a better indicator of the actual cost of providing access than any regulatory proceeding could devise. Unfortunately, experience has not borne out the Commission's hopeful expectations about local competition and its impact on LEC access charges.

A. State PUC Cost-Based Interconnection Rates Provide the Proper Measure of Cost-Based Access Rates

The appropriate rate levels for switched access charges are not seriously in dispute. The Commission made plain in its *Access Charge Reform Order* that access charges should move from their current inflated levels to forward-looking efficiently incurred cost-based levels.[19] Moreover, the Commission has recognized that unbundled network elements provide a capability functionally equivalent to that provided by switched access services.[20] Thus, the relevant method for determining whether access charges are cost-based is by comparison to the comparable network element-based interconnection charges established by state commissions pursuant to the 1996 Telecommunications Act.

Since May 1997, numerous state regulatory bodies have conducted hearings to determine the proper cost basis for setting interconnection charges and rates for unbundled network elements. Most of those PUCs relied upon TELRIC or similar cost methodologies in these proceedings. As a result, the Commission now has the ability to determine by how much current access charges are inflated above their economic cost.

Cost-based access charges established with reference to state interconnection rates have several advantages. First, cost-based access achieves "a minute is a minute" pricing for equivalent functionalities provided to carriers. This would eliminate any discrimination existing between different services and different carrier access methods. Second, it would promote competitive innovations in local calling areas. Carriers seeking to define different local calling areas than the incumbent LEC would not face an arbitrary cost penalty resulting from above-cost

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19 *Access Charge Reform Order* at 16129.

20 *Id.*; *see also Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* 11 FCC Rcd 15499 (1996) ("*Local Competition Order*").

"access" charges for calls outside the ILEC's defined local calling area. Instead, predictable, forward-looking charges would apply regardless of how the ILEC defined its local calling area. Third, it would greatly simplify the billing and administration of interconnection and access services. With cost-based access charges, ILEC billing could be simplified, and carriers would face reduced burdens in monitoring and validating their interconnection and access service charges.

In summary, the finish line is clearly marked; the Commission now must determine how to reach that line.

B. Intervening Events Have Frustrated the Development of Local Competition as Expected in the *Access Charge Reform Order*

On May 16, 1997, the FCC held very high hopes for the development of local competition, spurred by the framework it created in the Local Interconnection decision of August, 1996.[21] That was the basis upon which the Commission determined that competitive market forces, not regulatory prescription, was the best approach to moving ILEC access charges toward cost.[22] As everyone now knows all too well, however, the same LECs who persuaded the Commission in May to rely on local competition succeeded in July in nullifying critical portions of the Local Interconnection decision. As a direct result, local competition has not developed to the degree envisioned by the Commission.

The U.S. Court of Appeals for the Eighth Circuit reversed or vacated significant aspects of the Commission's Local Interconnection decision less than two months after the agency chose

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21 *See id.*

22 *See, e.g., Access Charge Reform Order* at 16094-98.

to rely on local competition to create cost-based access rates.[23] That Eighth Circuit decision has continued to be a major roadblock in the development of local competition. One testament to that fact is the FCC's denial of each of the five applications submitted to date under Section 271 for RBOC entry into the in-region long distance market. In each case, RBOC-imposed obstructions purportedly stemming from the Eighth Circuit's decision have contributed to the finding that the checklist for local competition has not been met.[24] Unless the U.S. Supreme Court reverses the Eighth Circuit decision next Spring, there is little prospect for change in this situation.

Similarly, the October 1997 Eighth Circuit ruling on rehearing regarding UNE combinations,[25] holding that the ILECs are not required to provide purchasing carriers with preexisting combinations of UNEs, has to date made use of UNEs as a network element platform practically impossible. This decision created a substantial economic barrier by permitting the UNEs to be separated by the ILECs, then requires reconnection by the purchasing carrier, at considerable expense and disruption. The problems created by the Eighth Circuit's rehearing decision have been exacerbated by the ILECs' refusal to make any method other than physical collocation available to new entrants to recombine UNEs separated by the ILEC. Even as CompTel has shown that the "recent change" functionality can be used to *electronically* separate

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23 *See Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *cert. granted sub nom AT&T Corp. v. Iowa Utils. Bd.*, 118 S.Ct. 879 (U.S., Jan. 26, 1998).

24 *See, e.g. Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan,* 12 FCC Rcd 20543 at ¶¶ 311-318 (1997) (discussing Ameritech's claim that shared transport is prohibited as a "combination" of UNEs); *Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services In South Carolina,* FCC 97-418 at ¶¶ 195-209 (Memorandum Opinion and Order) (Dec. 24, 1997) (discussing BellSouth's claim that physical collocation is the only method for combining UNEs mandated by the Eighth Circuit's rehearing decision).

25 *Iowa Utils. Bd. v. FCC, modified on rehearing,* slip op. (8th Cir. Oct. 14, 1997).

and combine elements, ILECs have refused to make this method available.[26] The result is that carriers can neither purchase pre-combined UNEs nor practically or economically obtain the UNEs and then combine them for the purpose of providing local services.

In addition, local competition continues to be thwarted by the ILECs' failures to implement operational support systems necessary to the use of UNEs in a competing local network. To date, not one RBOC has been found by the FCC to have an effective OSS system in place.[27]

As a result, the local competition the FCC envisioned has not come to pass. Competitors relying upon their own facilities have made marginal inroads, at best, and have produced no effective competitive pressure on switched access rates. Competitors seeking to use unbundled network elements to serve the local market broadly have been thwarted by increased costs and unreasonable ILEC policies. Without the reasonable prospect of local competition in the near future, the primary assumption underlying the *Access Charge Reform Order* has proven incorrect.

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26 *See* CompTel White Paper No. 2, *Uncaging Competition; Reforming Collocation for the 21st Century,* written by Robert Falcone and Joseph Gillan (September 1998) (attached to CompTel's Comments in response to the *Advanced Services NPRM*, CC Docket No. 98-147).

27 Each of the five RBOC applications for Section 271 authority was denied based in part on the BOC's failure to implement OSS. *See, e.g., Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Louisiana*, FCC 97-17 at ¶¶ 21-58 (Memorandum Opinion and Order) (Feb. 4, 1998).

IV. THE FCC'S PRESCRIPTIVE BACKSTOP SHOULD BE ACCELERATED TO A SPECIFIC TIMETABLE BY WHICH ACCESS CHARGES MUST BE REDUCED TO ECONOMIC COST

The Commission recognized in the *Access Charge Reform Order* that its reliance on market forces may not, for a variety of reasons, have the desired effect. Therefore, in addition to its market-based approach, the Commission adopted a "prescriptive backstop" to protect against market failure. The prescriptive backstop included a number of actions – most notably an increase in the "X-factor" – designed to lower access rates even in the absence of competition.[28] In addition, the Commission established a more comprehensive protection, requiring each incumbent price cap LEC to file a cost study, no later than February 8, 2001, demonstrating the forward-looking cost of providing interstate access services subject to price cap regulation.[29] The Commission emphasized that it would require submission of these studies earlier than February 8, 2001 "if competition is not developing sufficiently for our market-based approach to work."[30]

CompTel submits that this possibility has come to fruition. As shown *supra*, due in large part to unforeseen setbacks to local competition, market forces are not working as the FCC anticipated. Indeed, while CompTel supports the Commission's determination to reform switched access, it has always been concerned with the limits of local competition in producing cost-based switched access rates. The link between competition for local service to end users and competition for access provided to carriers is indirect and tenuous. Thus, as CompTel has explained repeatedly in these proceedings, local competition could be present and access still

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28 *Access Charge Reform Order* at 16094-97.

29 *Id.* at 16097.

30 *Id.*

might be priced above cost.[31] Therefore, it is time for the Commission to accelerate its prescriptive backstop to put access reductions on a clear path toward forward-looking economic levels.

To achieve this, CompTel proposes a Prescriptive Transition Plan that establishes priorities in access reform and transitions access rates to cost promptly. These priorities are necessary because each category of services – terminating access, originating access and transport – is subject to differing degrees of market pressures. The elements of CompTel's Prescriptive Transition Plan are as follows:

1. Each incumbent price cap LEC's July 1999 Annual Access Tariff filing shall contain an implementation schedule specifying the dates by which each interstate switched access rate element will be reduced to cost, as measured by, the rates for equivalent unbundled network elements determined by each state commission in the ILEC's service territories.

2. All transport-related interstate switched access rate elements (dedicated and tandem switched) shall be reduced to cost coincident with the effective date of the July 1999 tariffs.

3. Non-cost based interstate switched terminating access charges shall be eliminated no later than July 2000.

4. All interstate PICCs shall be frozen at current levels, and phased out over the length of the transition plan.

5. All other interstate switched access rates shall be reduced to cost-based levels within two years (*i.e.,* by July 2001). Tier I price cap LECs shall be obligated thereafter to revise their interstate switched access rates on a going forward basis to incorporate any changes in state-determined cost-based interconnection rates.

6. Any RBOC that receives authorization to provide interLATA services in any in-region state prior to fulfillment of this implementation schedule shall file a revised

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[31] *See In re Amendment of the Commission's Rules: Regulatory Access Charge Reform and Price Cap Performance Review for Local Exchange Carriers*. Comments of the Competitive Telecommunications Association, Docket No. RM 9210 at 7-8 (filed Jan. 30, 1998); *In re Access Charge Reform*, Comments of the Competitive Telecommunications Association, CC Docket No. 96-262 at 13-16 (filed January 29, 1997).

> schedule reducing above-cost interstate switched access elements in that state no later than the date upon which it begins providing in-region services. A BOC shall impute access rates that are geographically averaged across its entire local exchange territory.

A. State PUC UNE Rate Findings

As shown above, experience with local competition since the *Access Charge Reform Order* confirms that competition in access services has not developed as the Commission had hoped. In fact, there is no appreciable broad-based local access competition today, and the prospects for it to arise in the near future are dim. Sufficient time has been provided for a market-based approach to work; it simply has not. In addition, the Commission now has before it "additional regulatory tools" useful to determining the reasonableness of interstate access rates. Unbundled network elements provide an equivalent functionality to access services, providing the Commission with a ready benchmark against which to judge the access services. Therefore, the Commission should require that the UNE rates developed by the state commissions be used as the basis for setting functionally equivalent interstate switched access rates.

B. Phased-In Access Reform

CompTel's proposed implementation schedule recognizes that it may not be politically acceptable to reform access charges on a flash cut basis. Accordingly, the schedule prioritizes reform, scheduling prescriptive reductions first for those elements that are not likely to be subject to competitive pressure. Reform of tandem-switched access should come first, as there are no competing tandem providers present in the market today. 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, competing carriers today provide high-capacity *dedicated* interoffice transport, but no carrier provides competitive tandem switching or tandem-switched transport. Given the size and economies required to compete with ILEC tandem switched services, it is unlikely that this element will face significant competition in the near future. Accordingly, CompTel's Transition Plan reduces transport-related charges to cost without delay, *i.e.,* effective with the ILECs' July 1999 rate revisions.

Following reductions in tandem switched transport should be reductions in terminating access charges. End users typically are indifferent to the terminating access charges assessed by their local exchange carrier, and long distance carriers have little or no opportunity to encourage end users to select "low cost" terminating access providers. Therefore, terminating access is not now subject to competitive pressures, nor will it be in the future, even after local 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. As a result, as the Commission found in the *Local Competition Order*, "[A]ll carriers – incumbent LECs as well as competing carriers – have a greater incentive and opportunity to charge prices in excess of economically efficient levels on the terminating end."[32] In the *Access Charge Reform Order*, the Commission expressed concern that "even if competitive pressures develop at the originating end . . . the terminating end of a long-distance call may remain a bottleneck, controlled by the LEC providing access for a particular customer."[33] Simply put, the carrier providing terminating access typically has no direct connection to the end user paying for the service it provides, and so

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32 *Local Competition Order* at 15814-815.

33 *Access Charge Reform Order* at 16135.

has little incentive to reduce its charges to cost-based levels. For these reasons, CompTel's Transition Plan reduces terminating access to cost within one year, *i.e.*, on or before July 2000.

Finally, CompTel's plan provides for the reduction of originating access elements. These elements are those most likely (though not guaranteed) to be subject to market forces, if local competition develops. These also are the elements which long distance carriers will have the greatest ability to control, albeit their choices are limited today. In recognition of these factors, CompTel's Transition Plan provides the most time for market forces to bring originating access to cost.

If network elements are offered in a manner that makes it feasible for carriers to use them, at some time in the future originating callers will have a choice of competing local service providers, including many vertically-integrated carriers using UNEs to provide local service. When customers have that choice, local carriers will have an 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, do not necessarily translate into downward pressure on the access charges that an exchange carrier would impose upon non-integrated carriers providing stand alone long distance service to the customer. Indeed, it is likely that as long as the local loop and switch remain bottleneck facilities, any carrier that controls those facilities – whether an ILEC, a facilities-based local service provider, or an unbundled network element-based provider – 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. Therefore, while the Commission can afford to provide some additional time for its market-based approach to work, it should not wait indefinitely in the hope that access competition will develop. If a market-based approach has not succeeded within two years, CompTel's Transition Plan would ensure cost based rates at the end of that two years.

C. Section 271 BOC Entry

CompTel suggests that the Commission accelerate its prescriptive backstop in part by requiring incumbent price cap ILECs to submit a transition plan that phases in cost-based access charges over a two-year period. This timeframe must be altered, however, if a BOC receives authorization under Section 271 to provide in-region, interLATA services prior to implementing cost-based interstate switched access charges. Above cost access rates in effect while a BOC provides interLATA services would grant the BOCs a significant competitive advantage over other long distance providers. This would distort competition and expose the competitive long distance industry to the market power of the largest incumbents, the BOCs.

If a BOC receives this authorization within the two-year period, the Commission must rationalize access charges immediately. In order to ensure all providers face the true economic cost of access, the Commission should require any BOC receiving Section 271 authorization to reduce interstate access charges in that state to cost, effective upon the BOC's initiation of service in that state. In addition, the Commission also must address the problem created by the requirement of Section 254(g) that competing providers offer geographically averaged rates. This requirement would reduce competitive carriers' ability to respond to access rates that are decreased in only one state, potentially giving the BOC (which operates only in that state) a competitive advantage. To address this distortion, the Commission also should require that the access rate imputed by a BOC pursuant to Section 272(e)(3) be the geographically averaged access rate charged by the BOC in its entire service territory.

V. THE RBOCS' "PRICING FLEXIBILITY" PROPOSALS ARE PREMATURE

In the *Public Notice*, the Commission seeks comment on the pricing flexibility proposals of Bell Atlantic and Ameritech.[34] Essentially, these proposals advocate increased pricing flexibility in response to increased competition in the access market. Both proposals take a market-based approach to access pricing and reject any prescription of access rates. Instead, they set out mechanisms to be used to declare various services competitive, and as such, subject to pricing flexibility and removed from price cap regulation. This relief would be phased in as competition increases in each service category. The RBOC Proposals also recommend the reduction, phase-out or elimination of the X-factor.

Rather than delve into the complexities of phased-in competition and pricing flexibility, the Commission should concentrate its efforts first on universal service, and then on setting access charges at cost. As discussed herein, there is no guarantee that local competition will result in competitive access charges.

At this time, pricing flexibility, as articulated in the RBOC Proposals, would serve only to give the ILECs the opportunity to discriminate. As the Commission noted in the *Access Charge Reform Order*, "Deregulation before competition has established itself . . . can expose consumers to the unfettered exercise of monopoly power and, in some cases, even stifle the development of competition, leaving a monopolistic environment that adversely affects the

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34 Letter from Kenneth Rust, Director, Federal Regulatory Affairs, Bell Atlantic, to Magalie Roman Salas, Secretary, Federal Communications Commission (Apr. 27, 1998); Letter from Anthony M. Alessi, Director, Federal Relations, Ameritech, to Magalie Roman Salas, Secretary, Federal Communications Commission (June 5, 1998) (collectively "RBOC Proposals").

interests of consumers."[35] Once the Commission has established cost-based access, and when there are effective controls in place to prevent discrimination, then the Commission can reasonably consider pricing flexibility. Until that time, pricing flexibility proposals such as these should be set aside.

[35] *Access Charge Reform Order* at 16098.

VI. CONCLUSION

For the foregoing reasons, CompTel recommends that the Commission accelerate its prescriptive backstop in order to transition access charges to cost-based levels. Intervening events have thwarted the FCC's attempt to rely upon market forces to reduce access charges, and there is no realistic prospect that such market forces will have an appreciable impact in the near future. Accordingly, the Commission should require incumbent price cap LECs to set out a specific implementation schedule bringing access charges to forward-looking economic levels over the next two years.

Respectfully submitted,

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October 26, 1998

CERTIFICATE OF SERVICES

I, Melissa M. Smith, hereby certify that on this 26th day of October, 1998, I caused true and correct copies of the foregoing COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION to be served via hand delivery upon those persons listed below.

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