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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 CABLE & WIRELESS USA, INC.

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October 26, 1998

SUMMARY

In the *Access Charge Reform Order*, the Commission decided to rely primarily on competitive market forces to naturally lower interstate switched access charges to cost-based levels. Despite the Commission's hopes, local competition has not developed as expected, and thus, the access charge regime remains flawed.

C&W USA is concerned that local competition may not be sufficient to reform access charges. To lower access charges to cost, the Commission should require that incumbent price cap LECs, as part of the July 1999 Annual Access Tariff filing, reduce interstate switched access charges to state PUC derived costs for functionally equivalent unbundled network elements. A phased-in reduction in rates would occur pursuant to a transition plan intended to reduce charges to forward-looking efficient costs over a two-year period.

However, C&W USA expects that competition in the provision of originating switched access services may develop before there is competition for transport or termination. If competition in originating access reaches significant levels, such as CLECs capturing 30 percent or greater share of access lines in the market, the Commission might consider relying on market forces, together with some degree of ILEC pricing flexibility. Unless or until this level of originating access competition is reached, however, the ILECs should be required to follow CompTel's Prescriptive Transition Plan.

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Cable & Wireless USA, Inc. ("C&W USA"), pursuant to Sections 1.415 and 1.419 of the Commission's rules,[1] hereby submits the following Comments in response to the *Public Notice* released on October 5, 1998.[2] C&W USA recommends that, as part of the July 1999 Annual Access Tariff filings, incumbent price cap LECs should be required to reduce interstate switched access charges to the state PUC derived costs for functionally equivalent unbundled network elements pursuant to a transition plan intended to reduce interstate switched access charges to forward-looking efficient costs over a two-year period.

I. INTRODUCTION

C&W USA is one of the largest long distance carriers in the United States, offering a full range of domestic as well as international voice, data and messaging services. Recently, C&W USA acquired MCI Communications Corporation's Internet business, making C&W USA one of the largest Internet backbone providers in the United States. Consequently, C&W USA has

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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*").

significant interest in the result of the updating and refreshing of the record regarding interstate access charges and price caps.

In the *Public Notice,* the Commission requests that parties present any new information regarding the policies adopted in the *Access Charge Reform Order* and the *Price Cap Fourth Report and Order*.[3] In particular, the Commission seeks comment on the petition for rulemaking filed by the Consumer Federation of America, *et al.* to prescribe cost-based access rates.[4]

Unfortunately, the hoped for developments in local competition post-*Access Charge Reform Order* have not occurred. As a result, the Commission has not been able to rely on competition in local exchange services to spur competition in the form of lower interstate switched access rates. Indeed, access charges have remained above their forward looking, efficient costs. Thus, C&W USA urges the Commission to adopt a specific timeframe by which interstate access charges must be lowered to cost. In this regard, C&W USA supports CompTel's Prescriptive Transition Plan described in their comments filed today.

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[3] *Public Notice* at 1.

[4] *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.* C&W USA does not address the X-factor at this time.

II. NOW IS THE TIME FOR THE COMMISSION TO ACT TO ENSURE THAT ACCESS CHARGES ARE BROUGHT DOWN TO COST-BASED LEVELS

The hope underlying the *Access Charge Reform Order*[5] was that local competition would naturally lower interstate access charges to coincide with the cost of providing access services. This hope has not come to fruition. Instead, the access charge règime remains flawed. Thus, it is time for the Commission to step in and push the market along toward appropriate rate levels.

A. Local Competition has Not Developed as Expected

In May of 1997, the Commission decided to give competitive market forces a try, rather than regulatory prescription, as the preferred way to move LEC access charges toward cost.[6] However, only a few months later, these LECs were able to nullify many of the critical provisions of the *Local Interconnection* decision.[7] Consequently, local competition has not developed in the provision of access services. Indeed, it is telling that the Commission has rejected all five of the Section 271 applications filed to date for RBOC entry into long distance. In each case, the Commission found that the checklist for local competition had not been met.[8] Also, as a result of the Eighth Circuit ruling that the ILECs are not required to provide

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5 *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*").

6 *See, e.g., id.* at 16094-98.

7 *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).

8 *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).

purchasing carriers with preexisting combinations of UNEs, the use of UNEs as a network element platform is practically impossible.

To make matters worse, the RBOC's have refused to provide reasonable collocation. As a result, interexchange carriers such as C&W USA can neither purchase pre-combined UNEs nor economically obtain the UNEs and then combine them for the purpose of self-supplying access services. Furthermore, local competition continues to be thwarted by the RBOCs' failures to implement operational support systems ("OSS") necessary to the use of UNEs. Indeed, the Commission has not found that a single RBOC has an effective OSS system in place.[9]

As a result of the Eighth Circuit rulings and the actions of the RBOCs, the local competition envisioned by the Commission has not come to pass. Competitors seeking to use combinations of UNEs to broadly serve the local market have been thwarted by increased costs and unreasonable ILEC policies. Competitors relying upon their own facilities have not fared much better in providing switched access services and have not succeeded in producing effective competitive pressure on switched access rates. Thus, without a 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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9 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 98-17 at ¶¶ 21-58 (Memorandum Opinion and Order) (Feb. 4, 1998).

B. Local Competition is Not Enough to Reduce Access Charges to Cost

C&W USA is concerned that local competition may not be enough to reform access charges to cost-based levels. Indeed, the relationship between competition for local service to end users and competition for access provided to carriers is indirect.

With respect to originating access, it is unclear whether market forces will be adequate to bring rates to cost-based levels. 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. Their choices will include vertically-integrated carriers that provide local service through the use of unbundled network elements. When customers have that choice, local carriers will have the incentive to lower total charges for their services to their end users. The market forces that will exert downward pressure on charges to the originating *end user*, however, 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.

At the same time, however, C&W USA expects that competition in the provision of originating switched access services may develop well before there is competition for transport or termination. In the event that such competition reaches significant levels, such as CLECs capturing a thirty (30) percent or greater share of access lines in the market, the Commission might consider renewed reliance on market forces, along with some degree of ILEC pricing

flexibility. Until a substantial level of local competition for originating access services has arisen, however, the ILECs should remain subject to a prescriptive transition plan.

For terminating access, competitive pressures are not present, and they will not be present 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."[10] 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."[11] Simply put, the carrier providing terminating access typically has no direct connection to the end user paying for the service it provides, and so has little incentive to reduce its charges to cost-based levels.

Similarly, local competition may have little effect on tandem-switched transport. 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. Effective competition is not likely to develop in this market segment in the foreseeable future.

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10 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* 11 FCC Rcd 15499, 15814-815 (1996)("*Local Competition Order*").

11 *Access Charge Reform Order* at 16135.

C. The Commission Should Look to the States to Determine the Appropriate Measure of Cost-Based Access Rates

The Commission stated in its *Access Charge Reform Order* that access charges should move to forward-looking efficiently incurred cost-based levels.[12] The Commission also recognized that UNEs provide a capability functionally equivalent to that provided by switched access services.[13] Therefore, the correct method for determining whether access charges are cost-based is to compare the charges to comparable network element-based interconnection charges established by state commissions pursuant to the 1996 Act.

Since the *Access Charge Reform Order*, most state regulatory bodies that have held hearings on the proper cost basis for setting interconnection charges and unbundled network elements have relied upon TELRIC or similar cost methodologies. These hearings can provide the Commission with the ability to determine by how much current access charges are inflated above their economic cost. By referencing state interconnections rates, the Commission can facilitate its own process of establishing cost-based interstate access charges. The advantages to this approach are several: (1) it would promote innovation and competition in local calling areas, in that carriers seeking to provide local calling areas different than the ILEC would not face an arbitrary cost penalty resulting from above-cost "access" charges; (2) it would achieve a "minute is a minute" pricing for equivalent functionalities provided to carriers, eliminating any discrimination between different services and different carrier access methods; and (3) it would greatly simplify the billing and administration of interconnection services.

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12 *Access Charge Reform Order* at 16129.

13 *Id.*; *see also Local Competition Order.*

III. IN ADDITION TO A MARKET-BASED APPROACH, THE COMMISSION SHOULD ADOPT A TIMETABLE BY WHICH ACCESS CHARGES MUST BE REDUCED TO ECONOMIC COST

As the Commission recognized in the *Access Charge Reform Order,* market forces may not be enough to successfully bring access charges down to cost. Thus, the Commission adopted a sort of safety net to protect against market failure that included an increase in the "X-factor"[14] and a requirement that each incumbent price cap LEC 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,[15] and earlier than February 8, 2001 "if competition is not developing sufficiently for our market-based approach to work."[16]

There is a consensus that local competition is not developing in a way that allows the market-based approach, by itself, to work, especially for transport and termination. To remedy this situation, C&W USA suggests that the Commission adopt CompTel's Prescriptive Transition Plan that establishes priorities in access reform and transitions access rates to cost promptly.

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. The Commission now has before it "additional regulatory tools" useful to determining the reasonableness of interstate access rates. UNEs, as an equivalent functionality to access services, provide the Commission with a ready benchmark against which to judge the

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14 *Access Charge Reform Order* at 16096-97.

15 *Id.* at 16097.

16 *Id.*

access services. Therefore, the Commission should require that the state PUC approved cost materials should be filed with the next Annual Access adjustment, scheduled for July 1999.

Also, C&W USA agrees with CompTel with respect to the prioritization of access charge reform. The first reductions would be 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. Given the required size and economies to compete with ILEC tandem switched services, it is unlikely that this element will face significant competition in the near future. Next, there should be reductions in terminating access charges. As the Commission has noted, 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. Finally, there should be the reduction of originating access elements. These elements are those most likely to be subject to market forces, if local competition develops. These also are the elements for which long distance carriers have the most control over, albeit their choices are limited today. Therefore, the Commission can afford to provide additional time for its market-based approach to work. However, if the market-based approach has not succeeded within two years, the Commission should intervene to ensure competitive rates.

IV. CONCLUSION

For the foregoing reasons, C&W USA recommends that the Commission step in to accelerate access charge reform to cost-based levels. To date, market forces have not been entirely successful in reducing access charges. Moreover, there is no realistic prospect that such market forces will have any significant impact in the near future. Thus, the Commission should require incumbent price cap LECs to set interstate access rates at the same level as the state PUC approved UNE prices for functionally equivalent offerings, and set out a specific implementation timetable to ensure that access charges are lowered 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 CABLE & WIRELESS plc to be served via hand delivery upon those persons listed below.

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