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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
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Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262

COMMENTS OF THE
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"), by its attorneys, hereby comments on the *Further Notice of Proposed Rulemaking* ("*FNPRM*") in the above-captioned proceedings.[1] With approximately 350 members, CompTel is the principal national industry association representing competitive telecommunications carriers. CompTel's member companies include the nation's leading providers of competitive local exchange services and span the full range of entry strategies and options. It is CompTel's fundamental policy mandate to see that competitive opportunity is maximized for *all* its members, both today and in the future.

In these comments, CompTel will address three issues. *First*, the Commission should require costs to be averaged at the study area level. Should the Commission determine that potential local competition justifies more disaggregated averaging, CompTel supports using unbundled network element ("UNE") cost zones, but only in states where entrants are able to provide local services broadly through all technically feasible UNE combinations. In no event should the Commission permit cost averaging at the wire center level. *Second*, once the

1 *Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report and Order in CC Docket No. 96-262 and Further Notice of Proposed Rulemaking*, FCC 99-119, released May 28, 1999.

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Commission finalizes a federal support mechanism, there is no longer any arguable public policy rationale for above-cost interstate access rates and, therefore, the Commission should take prescriptive or other measures to ensure that such rates reflect forward-looking, long run incremental costs immediately. *Third,* CompTel urges the Commission to phase-out any federal support obligation arising out of the hold-harmless policy over a maximum period of two years in order to avoid imposing unnecessary burdens on interstate ratepayers and to comply with statutory requirements.

I. THE COMMISSION SHOULD REQUIRE COSTS TO BE AVERAGED AT THE STUDY AREA LEVEL

In its previous comments in this proceeding, CompTel strongly supported the Joint Board's proposal to determine federal support by measuring costs at the study area scale, not at a more disaggregated scale. *See* Comments of Competitive Telecommunications Association, CC Docket No. 96-45, filed Dec. 23, 1998, at 2-3 ("*CompTel Comments*"). CompTel noted that study-area averaging is consistent with the methodology used for the existing high-cost program, and it would lead to a smaller fund, thereby imposing a less onerous burden on interstate rate-payers. *Id.* Further, CompTel noted that the UNE rates charged by incumbent local exchange carriers ("ILECs") generally were the same throughout the entire state, so state-wide averaging was consistent with the manner in which competitive local exchange carriers ("CLECs") incurred costs to provide competing services.

In the *FNPRM* (at ¶ 102), the Commission asked for comments on whether support levels should be calculated by averaging costs at either (i) the wire center level; (ii) the UNE cost zone level; or (iii) the study area level. CompTel continues to support using the study area level because, as the Federal-State Joint Board noted, it "will properly measure the support responsibility that ought to be borne by federal mechanisms given the current extent of local

competition."[2] Compared to UNE zones or wire centers, study areas are more fully consistent with the principles that "the federal high cost support fund should only be as large as necessary" and that interstate ratepayers should not be burdened with additional federal support obligations.[3]

Further, using study areas for averaging costs would create a beneficial incentive for ILECs to serve their high-cost areas more efficiently. By averaging costs at the study area level, the Commission would effectively require the ILECs to share some portion of their efficiency gains in lower-cost areas with customers in high-cost areas. Under that approach, the ILECs have an incentive to become more efficient in high-cost areas in order to retain a higher percentage of their efficiency gains in lower-cost areas. However, if the Commission requires costs to be averaged at the UNE zone level, and particularly if the Commission requires wire-center averaging, the ILECs will have less incentive to operate efficiently in the high-cost areas because they can rely more heavily upon explicit subsidies to fund their high-cost operations. As a general matter, the larger the area over which costs are averaged, the greater is the ILECs' incentive to operate more efficiently in high-cost areas. Therefore, the Commission should require costs to be averaged at the study area level.

The primary reason alleged as a basis for eliminating study area averaging in favor of a more disaggregated approach is that local competition is somehow incompatible with cost averaging over an entire state. Initially, as CompTel previously pointed out, such concerns are speculative and premature because local competition has yet to occur in the United States to any significant extent. *CompTel Comments* at 3. The Commission should not change its pre-existing approach, and thereby increase the burden imposed on interstate ratepayers, based on speculative concerns about a development which has not yet occurred. There will be time enough to modify

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2 *In the Matter of Federal-State Joint Board on Universal Service, Second Recommended Decision*, 13 FCC Rcd 24744, 24759 (1998) ("*Second Recommended Decision*").

3 *Second Recommended Decision* at ¶¶ 47, 49.

the methodology after local competition develops if there is an empirical basis for concluding that local competition entails a more disaggregated approach to averaging costs.

Certainly, the Commission should not move away from study area averaging based on concerns about local competition unless and until CLECs have the ability to provide local services broadly to all types of customers in all regions. CompTel and numerous other parties have demonstrated in various proceedings that such broad-based local competition will not, and indeed cannot, occur except via the UNE platform (*i.e.,* the provision of local services by CLECs based on UNE combinations of local loops, switching and transport supplied by ILECs).[4] As the Commission knows, with few exceptions, the ILECs do not offer the UNE platform to CLECs today. As a result, concerns about local competition not only are speculative and premature, they are demonstrably unfounded because CLECs are effectively precluded from competing for the vast majority of local customers in the United States today. Therefore, CompTel proposes that if the Commission decides against study area averaging in favor of a more disaggregated approach, it should do so only for those ILECs, and in those states, where the UNE platform is fully available to CLECs for the provision of competing local services to all residential and business customers.

In addition, should the Commission decide to move away from study area averaging, it must eliminate the hold-harmless policy for states. As CompTel notes below (*see* Section III

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4 *See* the *UNE Remand* comments of: Competitive Telecommunications Association at pages 47-53 and the attached affidavits of David Malfara of Z-Tel Technologies, Inc.; Martin J. Arias of ATX Telecommunication Services, Ltd., and Richard L. Tidwell of Birch Telecom, Inc.; Excel Communications, Inc. at pages 12-16 and the attached affidavit of J. Christopher Dance; and Cable & Wireless USA, Inc. at pages 40-44, filed on May 26, 1999 in CC Docket 96-98. CompTel recognizes that numerous parties have raised issues regarding the UNE platform in CC Docket No. 96-98 on remand from the Supreme Court after its decision in *AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721 (1999). CompTel's proposal that the UNE platform should be a condition of less than statewide averaging for universal service is independent of any decisions reached by the Commission on the UNE platform in CC Docket No. 96-98.

infra), it favors eliminating the hold-harmless policy altogether. However, that policy is particularly indefensible for states if costs are no longer averaged on a statewide basis using the study area methodology. Were the Commission to move away from state-wide averaging to a more disaggregated approach, there would be no logical or policy reason to expect or prefer that the amount of federal support given to a particular state should stay at a certain level. Particularly given that a more disaggregated approach would result in a larger federal support obligation, there is no rational basis for increasing that obligation still further simply to preserve a particular state's pre-existing aggregate level of support. Therefore, to the extent the Commission decides in favor of less than statewide averaging of costs for universal service, it should eliminate the hold-harmless policy for states.

Lastly, should the Commission decide to move away from averaging costs at the study area level, CompTel has a strong preference for cost averaging over UNE zones rather than wire centers. Even if an ILEC's costs may vary from one wire center to another, a CLEC who provides local service via UNEs does not experience such cost variations. Because UNEs are priced the same throughout a zone, the CLEC's costs do not vary among wire centers within that zone and, therefore, the ILEC's cost variations per wire center do not affect the CLEC's pricing decisions. Thus, any possible concerns about local competition cannot justify cost averaging at the wire center level. Similarly, a UNE cost zone level would allow federal support to be targeted to the areas that need it the most while mitigating somewhat upward pressure on the size of the fund. Particularly if zone boundaries are developed, as they ought to be, based upon the cost characteristics of the ILEC's operations, the use of UNE zones to average costs is the next best alternative to state-wide averaging at the study area level.

II. THE COMMISSION SHOULD PRESCRIBE COST-BASED INTERSTATE ACCESS CHARGES

ILECs have long claimed that reduction in access rates may threaten universal service polices. Having established a system of explicit universal service mechanisms and a cost model to determine the size of the fund, there is no possible public policy rationale or justification for maintaining access charges above the ILECs' forward-looking, long-run incremental costs. With the adoption of an order in response to the *FNPRM*, the Commission should rid access charges of all implicit subsidies and prescribe cost-based access charges.

There is no dispute that interstate access charges are billions of dollars higher than the ILECs' exchange access costs. For many years, the only rationale offered by the ILECs for such a massive subsidy is that it implicitly funded universal service. The establishment of explicit support mechanisms removes any arguable basis for above-cost access charges. As a result, the Commission should immediately remove all above-cost elements of interstate access rates across the board.[5] Such actions are compelled by the statutory requirements that universal service be "explicit."[6] Furthermore, it would promote the public interest by generating cost-based access rates and ensuring that the ILECs cannot double-recover universal service subsidies.

III. THE COMMISSION SHOULD PHASE DOWN THE FEDERAL SUPPORT REQUIREMENT FROM THE HOLD-HARMLESS POLICY OVER A MAXIMUM TWO-YEAR PERIOD

In the *FNPRM* (at ¶¶ 68, 117-122), the Commission adopted a hold-harmless policy to prevent any possibility of harm to universal service through a reduction in federal support, and it

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5 In the access charge reform proceeding (CC Docket No. 96-262), CompTel has consistently taken the position that the FCC should prescribe cost-based interstate access charges as soon as practicable. *E.g.,* Comments of the Competitive Telecommunications Association, CC Docket No. 96-262, filed Oct. 26, 1998, at 5-7.

6 47 U.S.C. § 254(e). Section 254(e) provides in pertinent part that"[a]ny such support should be explicit and sufficient to achieve the purpose of this section."

asked parties to comment on how such a policy should be implemented. As noted above (*see* Section I *supra*), CompTel proposes that the Commission should not implement the hold-harmless policy for states where costs are not averaged at the study area level.

Further, CompTel proposes that the Commission phase-down whatever portion of the federal support obligation results from this policy over a maximum two-year period. By definition, any federal support obligation that stems solely from the hold harmless policy is not necessary to promote a legitimate universal service policy. Indeed, CompTel submits that this policy results in excessive universal service contributions by interstate carriers contrary to the language and intent of Section 254.[7] It is neither "equitable" nor "nondiscriminatory," as specified by Section 254(d),[8] to require interstate carriers to make contributions to fund "costs" which are not necessary for legitimate universal service purposes. The purpose of the hold harmless policy is as a cushion against cost reallocations or pricing changes made necessary by the new universal service program and its underlying methodology; a maximum two-year transition period should be more than sufficient for that purpose. By sunsetting this policy after a relatively short period, the Commission would make certain that interstate ratepayers are not forced to subsidize ILECs' "costs" that are not related to legitimate universal service objectives.

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7 47 U.S.C. § 254.

8 47 U.S.C. § 254(d). Section 254(d) states that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."

IV. CONCLUSION

CompTel respectfully submits that the Commission should take action as specified herein and in CompTel's previous comments in these proceedings.

Respectfully submitted,

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