

By capping SLCs at affordable levels and limiting SLC deaveraging to a maximum of four zones (unless the Commission authorizes the use of additional zones), the plan also satisfies the statutory requirement that rates in rural, insular, and high cost areas remain "reasonably comparable" to those in urban areas. The Commission, in agreement with the Universal Service Joint Board, has interpreted reasonable comparability to mean "a fair range of urban/rural rates both within a state's borders and among states nationwide," not identical rates in all areas.⁴⁹ Because these rates will vary by less than the current multiline business SLCs vary among study areas, these rates meet any reasonable interpretation of the "fair range" standard.⁵⁰

C. ILEC Contributions to Universal Service Must Be Removed from Price Caps and Recovered from End Users.

Currently, price cap LECs recover contributions to universal service through implicit fees in access charges they impose on IXCs. This system is economically inefficient, and now also is in conflict with the decision of the Fifth Circuit in *Texas Office of Public Utilities Counsel*, which reversed the Commission's requirement that price cap ILECs recover universal service contributions through interstate access charges. The Fifth Circuit specifically held that "[b]ecause the Commission continues to require implicit subsidies for ILECs in violation of a plain, direct statutory command, we reverse its decision to require ILECs to recover universal service contributions from their interstate access charges."⁵¹

To implement the Fifth Circuit decision, the Commission should simply give price cap ILECs the freedom to recover universal service contributions in the same manner as all carriers

⁴⁹ USF Seventh R&O, at ¶ 30.

⁵⁰ Multiline business SLCs currently range from \$3.78 in the District of Columbia to a cap of \$9.20.

⁵¹ *Texas Office of Pub. Util. Counsel*, 1999 U.S. App. LEXIS 17941, at 66.

not subject to price regulation. CLECs, CMRS carriers, IXCs, and other carriers whose recovery is not strictly regulated by the Commission have chosen to charge end users on a per line or percentage of revenue basis. The plan will permit ILECs to develop similar mechanisms.

In permitting ILECs to recover their universal service assessment as a per line charge on end users, the proposal allows the use of a 9 to 1 equivalency ratio for determining the number of lines for Centrex customers.⁵² This is consistent with the Commission's prior decision to apply such a ratio for assessment of the PICC on Centrex customers.⁵³ Like the PICC, the universal service assessment is "not a cost-based charge, but a contribution."⁵⁴ Not imposing a full universal service assessment on every Centrix line reduces the burden on the business, government, education, and health care facilities that are current Centrex customers.⁵⁵

III. AN EXPLICIT, PORTABLE UNIVERSAL SERVICE "SAFETY NET" TO REPLACE \$650 MILLION OF IMPLICIT SUPPORT IN EXISTING INTERSTATE COMMON LINE ACCESS CHARGES.

The plan creates an explicit universal service support of \$650 million to replace implicit support currently embedded in interstate access charge rates and rate structures of price cap LECs. In order to distinguish this universal service funding from existing high cost support and support to maintain comparable intrastate prices, we refer to this additional universal service support as "Interstate Access-related USF." This universal service "safety net" is a necessary counterpart to the common line restructuring proposed in Section II, *supra*. The members of

⁵² Appendix A at 1.4.

⁵³ *See*, Access Charge Reform, *Second Order on Reconsideration*, 12 FCC Rcd 16606, ¶ 31 (1997).

⁵⁴ *Id.*

⁵⁵ *See, id.* at ¶¶ 32-34. Similarly, primary rate ISDN pays a multiple of 5 times the per line charge for each service arrangement just as it does for PICC charges under current rules. *See*, Appendix A at 1.4; 47 C.F.R. § 60.153(g)(1).

CALLS believe that this \$650 million “safety net,” when combined with the common line and switched access reforms also proposed under the plan as an integrated whole, will ensure that interstate end user rates remain affordable and comparable between rural and urban areas, during this five-year transitional period.⁵⁶ By establishing a set amount of \$650 million, the CALLS plan sets a "specific" and "predictable" amount of explicit support that will be fully portable among eligible telecommunications carriers, and be offset dollar for dollar by appropriate reductions in interstate access charges.

The plan also provides a methodology for distributing \$650 million in Interstate Access-related USF to the areas served by each of the participating price cap LECs. This methodology again is predictable and specific. It also ensures that virtually all areas receive enough support to eliminate the multiline business PICC and carrier common line charges, and that most areas also receive support to permit geographic deaveraging of SLCs.

In this area, as in others, this plan reflects a balancing of public interests defined by the 1996 Act. Estimates of the amount of implicit support in interstate access charges have varied widely. However, Commission efforts to develop estimates of the implicit support in interstate access charges have already taken over two years. The common line rate structures proposed as part of this plan substantially reduce reliance on implicit mechanisms to maintain affordable and comparable rates, and \$650 million in explicit support further safeguards affordable and comparable interstate end user rates during this five year period on a competitively neutral basis. These combined actions, together with the switched access reforms also proposed, will allow the

⁵⁶ To address universal service issues fully could require a combination of state and federal action. *See* note 4, *supra*.

marketplace to move forward in a more stable and certain regulatory environment, to the benefit of both industry participants and rural and urban consumers.

The Commission can reasonably conclude that, given the public interest and pro-competitive benefits of immediately establishing a support mechanism that will allow competition to develop, the universal service mechanisms proposed by the CALLS plan, taken in its entirety including \$650 million in explicit support and proposed common line and switched access reform, meet the requirements and goals of Section 254. Delaying implementation serves neither the 1996 Act's pro-competitive, deregulatory goals, nor its goals of ensuring universal service for all Americans.

A. \$650 Million Will Keep Rural Interstate End User Rates Affordable and Comparable to Urban Rates During This Five Year Period.

The CALLS plan establishes a \$650 million Interstate Access-related USF, which would replace \$650 million of implicit support currently in interstate access charges. The members of CALLS agree that \$650 million in explicit support will keep interstate end user rates affordable and comparable, given other aspects of the plan, including the plan's specific common line and switched access reforms.

It is significant that the price cap LECs that are signatories to the plan agree that \$650 million in explicit, interstate access-related support, in combination with the proposed common line and switched access reforms, will ensure affordable and comparable service in high cost zones during the five year term of the plan. If the total combination of all these changes, including \$650 million in explicit support, were not adequate, it is primarily these price cap LECs that would lack the resources to support quality universal service.⁵⁷ Importantly, however,

⁵⁷ These price cap LECs would nevertheless remain obligated to provide service to otherwise unserved areas. 47 U.S.C. §§ 214(3) and (4).

the assent of the price cap LEC signatories is premised upon the adoption of all parts of the CALLS plan, including all common line and switched access reforms.

The \$650 million falls well within the range of estimates of existing implicit support in interstate access charges already in the record of the *Universal Service* proceeding especially when considered in light of the common line reforms.⁵⁸ The United States Telephone Association (“USTA”), for example, estimated that, based on historic costs, current interstate common line rates contained \$3.9 billion in implicit universal support.⁵⁹ In another estimate based on historic costs, then-FCC Chief Economist William Rogerson and OPP Senior Economist Evan Kwerel estimated \$1.9 billion in implicit universal service support, assuming that residential SLCs were capped at \$6.50 per month.⁶⁰ On the other hand, the HAI model projects a forward-looking estimate of implicit support in interstate common line elements at approximately \$250 million.⁶¹

In addition, AT&T estimates that \$650 million of interstate access-related universal service support is consistent with the Commission's model-based estimates to date of the

⁵⁸ Of course, no member of CALLS necessarily endorses all of these estimates.

⁵⁹ Comments of the United States Telephone Association on the Further Notice of Proposed Rulemaking, CC Docket No. 96-45 and CC Docket No. 96-262 (filed July 23, 1999). The level of implicit support estimated using USTA's methodology would be lower using the subscriber line charge rates proposed under this plan.

⁶⁰ Rogerson and Kwerel estimated implicit support to be \$3.2 billion at a residential SLC cap of \$4.50 per month. "A Proposal for Universal Service and Access Reform" by Bill Rogerson and Evan Kwerel, CC Docket Nos. 96-45, 96-262 (filed May 27, 1999).

⁶¹ HAI Model Version 5.0a, Docket No. CC-96-45. This estimate used SLC caps of \$7.00 for residential and single line business lines and \$9.20 for multiline business lines. It also used FCC Common Inputs as of March 10, 1999.

forward-looking costs of providing universal service.⁶² Using the FCC's Synthesis Model with the FCC's common inputs as of June 2, 1999, AT&T concludes that \$650 million is a reasonable estimate of the interstate portion of forward-looking loop and port costs exceeding a maximum residential and single-line business SLC of \$7.00 and multiline business SLC of \$9.20.⁶³

Although the Commission could endeavor further to estimate implicit support in interstate access, there is no reason to believe that doing so would better ensure affordable and comparable interstate end user rates during this five-year period, when all other factors are considered. Absent adoption of the CALLS plan, uncertainty about the regulatory treatment of such implicit support is likely to persist for some time. As has been observed in the record of the Universal Service proceeding, there can be substantial variations in model-produced estimates of forward-looking costs, and therefore estimates of implicit interstate access-based support, due to

⁶² Bell Atlantic, BellSouth, GTE, and SBC do not support use of a model to calculate universal service support, and together with Sprint do not join in the citation of AT&T's model-based calculations.

⁶³ As indicated in the attached Declaration of Joel E. Lubin, in making its estimation, AT&T aggregated the serving wire centers in each price cap LEC study area into three cost zones: low, medium and high, such that the number of lines in each cost zone were roughly equal. Then, AT&T used the FCC's Synthesis Model with FCC inputs as of June 2, 1999, to calculate the unseparated forward-looking costs of the loop and port in all zones. AT&T then applied a 25% separations factor against the unseparated forward-looking costs of the loop and port, and compared 25% of the average forward-looking cost within each cost zone against a maximum affordable SLC of \$7 per residence and single line business line, and \$9.20 per multiline business. To the extent that the forward-looking costs in a high cost zone exceeded the SLC cap, the difference between 25% of the projected loop and port cost and the applicable SLC cap represents the amount to be funded by the Interstate Access-Related High Cost Fund. When summed across all zones in all price cap LEC study areas, the total forward looking cost-based estimate of implicit support to be funded through the Interstate Access-related USF is \$613 million. On the basis of this analysis, Mr. Lubin concluded that \$650 million would be a reasonably conservative estimate. *See*, Declaration of Joel E. Lubin, Appendix C, attached.

variations in model inputs.⁶⁴ Estimates vary due to, *inter alia*, the cost of capital, depreciation rates, the number of entities sharing telephone poles, and the actual location of customers. Moreover, the amount of explicit support necessary, even in the nearer term, to ensure affordable and comparable end user rates varies substantially with the rate structure, caps and other limits placed on common line rates, and with the overall plan for interstate price regulation of incumbent LECs.

Given Congress' clear and oft-repeated desire to establish an explicit universal service support mechanism to replace implicit support in interstate access charges, it would be perverse to delay implementation of a specific, predictable, and explicit universal service support mechanism, which for this five year period and in the context of all reforms proposed by the plan taken as a whole will ensure that interstate end user rates in rural areas remain comparable to urban rates and affordable. This proposal, taken as a whole, achieves statutory universal service goals for this five year period.

Moreover, there would be substantial harm to the public interest if implementation of Interstate Access-related USF were delayed in order to continue to debate the amount of implicit support in interstate access rates. Because estimates have varied so widely, the lack of resolution adds substantial regulatory uncertainty to the business environment. No participant — whether incumbent or entrant — can currently calculate how much universal service support it will

⁶⁴ Federal-State Joint Board on Universal Service, and Forward-Looking Mechanism for High-Cost Support for Non-Rural LECs, *Fifth Report and Order*, 13 FCC Rcd 21323, ¶ 12 (1998); *see also*, Dennis Weller, “Auctions for Universal Service Obligations,” Presented at the Twelfth Biennial Conference of the ITS, at 13 (Stockholm June 1998); Letter from Richard N. Clarke (of AT&T) to Magalie Roman Salas, CC Docket No. 96-45 and CC Docket No. 97-160 (filed March 30, 1999).

receive in the future for serving high cost areas. This lack of certainty undermines the development of competitive choice in these areas.

What is needed now to promote competition and entry is a specific and predictable transitional amount for the Interstate Access-related USF. The plan as a whole, including \$650 million Interstate Access-related USF, can reasonably be expected to be sufficient to keep rural rates affordable, and within a "fair range" of urban rates. In five years, there will have been an opportunity for competition to develop and for the Commission and the parties to obtain experience dealing with a portable and explicit fund. At that point, if the Commission believes that \$650 million was either more or less than sufficient, it can make appropriate, tailored adjustments. It is also possible, however, that nothing more may need to be done, depending on the state of competition and market-based pricing.

B. The Interstate Access-Related USF is Distributed to Provide Support for SLC Caps, and is Portable Among Eligible Telecommunications Carriers.

As discussed in Section II, *supra*, the plan establishes absolute caps on the consolidated end user common line charges. In order to provide explicit rather than implicit support in conjunction with these caps, it is necessary to distribute universal service support to areas served by price cap ILECs. Within each ILEC service area, universal service support to that area becomes a per line support amount that will be portable among competing eligible telecommunications carriers.

To distribute the \$650 million in Interstate Access-related USF among service areas served by ILECs, the plan would calculate a specific amount of Interstate Access-related USF for each price cap ILEC study area. Because price cap ILECs would be permitted to deaverage SLC rates geographically according to UNE pricing zones once UNE-zones are created, support levels are also calculated on a geographically zoned basis, using UNE loop pricing zones where such

zones exist.⁶⁵ To calculate this explicit support, a deaveraged price cap common line revenue per line is calculated for each zone using the same geographic zones used for SLC deaveraging. The relative price cap revenue per line in each zone reflects the relative UNE rates in that zone, and the level of revenue per line in each zone is such that the ILEC can recover total permitted price cap common line revenues.⁶⁶ Each ILEC study area would receive a portion of the revenues within its high cost zones in excess of \$7.00 per line per month for residential and single-line business lines and \$9.20 per line per month for multiline business lines. In states where the ILEC has not established UNE loop pricing zones, however, the amount of support an ILEC may actually receive from the Interstate Access-related USF is limited to support determined on a study area, rather than a zone deaveraged, basis.

In some price cap ILEC study areas, however, the portion of UNE-pricing zone deaveraged revenues in excess of the \$7.00 and \$9.20 SLC caps that is supported by Interstate Access-related USF may not alone be sufficient to eliminate two implicit mechanisms, the multiline business PICC and carrier common line charges. Accordingly, for these study areas, the plan would calculate the amount of Interstate Access-related USF for each price cap ILEC study area necessary to ensure that, at a study area averaged level, multiline business PICCs and carrier common line charges are eliminated when all business and residential lines reach

⁶⁵ Where a state has not yet established geographically deaveraged UNE loop pricing zones, the Universal Service Administrator would preliminarily calculate the potential universal service support for price cap ILEC study areas within that state using a model or other appropriate tool, and roughly apportion lines by wire center into three zones with relatively equal numbers of lines. Those zones are used as a “placeholder” to size, but not actually distribute, the relative share of universal service support going to a given state. *See*, Appendix A at paragraph 2.2.3.1.1(b).

⁶⁶ Appendix A at 2.2.3.2. *See*, note 86, *infra*.

applicable SLC caps. This minimum support level in excess of geographically zoned USF support is phased in over three years, as common line rates are also restructured.⁶⁷

The Interstate Access-related USF support within any participating price cap ILEC's service territory would be fully portable among eligible telecommunications carriers. As such, the plan would, for the first time, permit new entrants to receive the universal service support currently contained in interstate access rates.

The portable per line support amount any eligible telecommunications carrier would receive depends upon whether the incumbent LEC has established UNE loop pricing zones. In any study area where the incumbent LEC has not established UNE loop pricing zones, both the ILEC and eligible CLEC would receive the same amount of support per line.

In any geographically deaveraged UNE loop pricing zone, the amount of portable universal service support per line would also be the same for both the incumbent LEC and an eligible CLEC. The amount of support, however, would be a per line amount calculated either by distributing all universal service support pro-rata across all lines within the high cost zones of that price cap LEC study area,⁶⁸ or by targeting universal service support first to the lines in the highest cost zones in the price cap LEC study area.⁶⁹

⁶⁷ The plan caps the adjustment for minimum USF in excess of the geographically zoned USF support at a maximum of \$75 million nationwide. This balances the need to eliminate expeditiously mechanisms such as the multiline business PICC and CCL against the need to provide sufficient support to lower cost study areas to allow those areas to deaverage SLC rates geographically as competition emerges.

⁶⁸ Appendix A at 2.2.4.2 Alternative 1. *See*, note 86, *infra*.

⁶⁹ Appendix A at 2.2.4.2 Alternative 2. *See*, note 86, *infra*.

Finally, in constructing portable Interstate Access-related USF support amounts, the plan also recognizes that prompt administration and payment of universal service support to the eligible telecommunications carrier actually providing service to the customer is critical to maintaining true competitive-neutrality in a universal service support mechanism. The plan therefore provides that Interstate Access-related USF should commence once appropriate administrative mechanisms are in place so that changes in payment of portable support amounts are subject only to a reasonable administrative lag — with three-months agreed as reasonable — and subject to "true-ups" that ensure that an eligible telecommunications carrier does not receive universal service support for periods during which it did not provide the end user's services.

C. The Plan's Explicit Support Promotes Competition and Benefits Consumers

In sum, the second pillar of the CALLS plan — universal service — accomplishes the goals that Congress established in section 254 of the Communications Act. By establishing the \$7.00 and \$9.20 SLC caps, and a \$650 million universal service "safety net" to support those caps in the context of all the proposed changes, the plan provides ironclad assurance that interstate end user charges will remain within a "fair range" between urban and rural areas, and that rates in rural areas will not rise to unaffordable levels during this five year period. For the first time, universal service support currently embedded in interstate access charges will be explicit, and available to any eligible telecommunications carrier. This explicit structure supports greater choice and competition for consumers in rural America.

Although the plan applies only to access charge rate structures and universal service support for price cap carriers, the plan would directly benefit customers of rural non-price cap LECs as well. In many cases they will no longer pay retail PICC-related charges passed through to them by IXCs.

Three and a half years after the enactment of the 1996 Act, this plan gives the Commission an integrated package of interstate access charge and universal service reforms that can be implemented immediately. Doing so now would end years of uncertainty, ensure comparability and affordability of rates in rural America, and promote the development of real competitive choices for rural consumers.

IV. A SIMPLIFIED PRICE CAP PLAN WITH DRAMATICALLY REDUCED PER MINUTE SWITCHED ACCESS CHARGE RATES

The third pillar of the CALLS plan is switched access rate level reform. As a practical matter, interstate access charge, universal service, and interstate access charge rate level reforms have been closely linked. The Commission recognized as much when it adopted its *Universal Service*, *interstate Access Charge Reform*, and *Price Caps* orders together in May 1997. This proposal likewise addresses both access charge rate structures and rate levels together with universal service. Severing these elements would not create the five-year regulatory stability necessary to give all participants in the market a more stable investment environment.

Under current rules, the FCC regulates interstate access charge rate levels through a price cap mechanism adjusted by inflation and an annual productivity offset. The specific level of the productivity offset has been the subject of extensive regulatory proceedings and litigation, and has created considerable regulatory uncertainty. Since 1991, when price caps for ILECs began, the FCC has had three price cap plans, two permanent and one interim, all with different estimates of the appropriate productivity offset.⁷⁰ In May, the D.C. Circuit reversed and

⁷⁰ Under the initial price cap plan, price cap LECs had productivity factors that ranged from 3.3 to 4.3 depending on the extent to which a LEC would “share” earnings above a specified rate of return. Policy and Rules Concerning Rates for Dominant Carriers, *Second Report and Order*, 5 FCC Rcd 6786, ¶ 5 (1990). In the interim price cap plan, the Commission allowed price cap LECs to elect productivity factors ranging from 4.0 to 5.3, depending on the level of associated “sharing” obligations. Price Cap Performance Review for Local

remanded the most recent permanent plan and its productivity offset factor (“X-factor”) of 6.5%.⁷¹ The D.C. Circuit stayed its ruling, but only until April 2000, in order to give the Commission time to comply with the court’s order.⁷²

In addition, some parties have expressed concern that the current price cap regime allows per minute charges that are above cost, although there is disagreement among parties of the importance of cost data generally, and what the appropriate measure of cost should be. Moreover, even after the recently announced Pricing Flexibility Order,⁷³ the Commission has yet to put in place sufficient rules to allow a transition from price cap regulation to a fully competitive market as contemplated by the 1996 Act.

The CALLS plan would address all of these concerns, and create a five-year period of regulatory stability. Rather than attempting to estimate expected annual productivity gains, a process that has resulted in virtually continuous regulatory intervention and litigation, the plan sets a target rate cap for local switching and switched transport in order to reduce rates. This target rate cap would produce a significant reduction in per minute access rates — cutting them in half. These reductions will lower long distance bills.

Continued . . .

Exchange Carriers, *First Report and Order*, 10 FCC Rcd 8961, ¶ 19 (1995). In the most recent price cap plan, the Commission established a single X-factor of 6.5% with no sharing options. Price Cap Performance Review for Local Exchange Carriers; Access Charge Reform, *Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262*, 12 FCC Rcd 16642, ¶ 8 (1997).

⁷¹ *United States Telephone Ass’n v. FCC*, 1999 U.S. App. Lexis 9768, No. 99-1469, (D.C. Cir. May 21, 1999).

⁷² *United States Telephone Ass’n v. FCC*, No. 97-1469 (D.C. Cir. June 21, 1999) (Order granting FCC’s motion to stay the mandate).

⁷³ Commission Adopts Pricing Flexibility and Other Access Charge Reforms, Report No 99-33 (rel. August 5, 1999) (“*Pricing Flexibility Press Release*”).

In order to lower local switching and transport rates to the target rate caps, the plan uses the current 6.5 % X-factor as a transitional mechanism. Because it is already in place, the 6.5 % X-factor allows the implementation of the target rate cap to occur with greater stability for the rate making process and without disrupting existing expectations. Once local switching and transport rates reach the target rate cap, the average switched access price levels are frozen until at least January 2005.⁷⁴

Unlike prior regulatory models, which were crafted by regulators and imposed on both suppliers and purchasers of access services, the current plan was crafted by both buyers and sellers. If adopted by the Commission, it would be a form of social compact between the regulators and all market participants that once the target levels are reached, so long as prices remain regulated, maximum average switched access price levels will be frozen for the life of the plan. Because the target cap levels were set through a negotiation, the price setting process resembles a contractual negotiation, where sophisticated buyers and sellers with opposing interests settle on a mutually acceptable price. As such, the prices are a reasonable temporary estimate of prices that might be set through the market dynamics of full competition.

A. Target Levels Are Reasonable.

The plan sets two target price ceiling levels for local switching and switched transport access charges — \$.0055 per minute for the largest carriers (the RBOCs and GTE) and \$.0065 for other price cap carriers.⁷⁵

⁷⁴ Once the target cap is reached, the applicable target rate cap could vary slightly from year-to-year based on changes in base period demand and inclusion of new services. Appendix A at 3.3.5. Exogenous adjustments, however, could only be recovered from services other than switched access charges. Appendix A at 3.3.4.

⁷⁵ The plan does not directly apply to other LECs, which would continue under rate of return regulation.

As stated above, these prices are the result of an arms-length negotiation and are reasonable in the absence of true market-determined rates. The Commission has long sought a reasonable way to estimate the prices that would prevail in a competitive market. While the Commission has recognized that access charges should recover costs plus a reasonable return, the correct measure of cost has been a matter of debate. To the extent the Commission seeks to set rates based on some measure of forward looking cost — itself a matter of debate — appropriate cost measures have been particularly difficult to determine. In addition to its origin as a negotiated level, the target rates are within a range of projections that have been suggested as a potential estimate of the economic cost of switched access.⁷⁶ Regardless, the targets are clearly closer to forward looking costs than current rates.

In addition, this plan simplifies rate regulation of price cap LECs. As a result, it creates only two categories of carriers with separate rate targets. Because this plan is both transitional and voluntary, it is not necessary for the targets to reflect differences among the costs of individual companies.

The higher target for the smaller carriers is consistent with the Commission's own recognition of a distinction between the largest LECs and the rest of the price cap regulated LECs.⁷⁷ This latter group of LECs generally serves more dispersed markets with different cost

⁷⁶ Compare, Joint Comments of Bell Atlantic and NYNEX at 22, CC Docket No. 96-262 (filed Jan. 29, 1997) (cost study supporting traffic sensitive switching costs of approximately one cent a minute) with Letter of Joel Lubin to Magalie Roman Salas, CC Docket No. 96-262, (February 25, 1999) (estimating the economic cost of a switched access minute at \$.00255 for RBOCs and \$.00305 for all price cap LECs, and citing reciprocal compensation rates of \$.00373 to \$.00544 as a potential proxy for interstate switched access costs); *see also*, Comments of GTE Corp., CC Docket Nos. 96-262, 94-1, 97-250 at 7 (filed October 26, 1998) (estimating universal support using a switched access rate of \$.008/minute).

⁷⁷ *See generally*, Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefore, *Fifth Report and Order*, 98 F.C.C.2d 1191 (1984).

and pricing characteristics. Indeed, the original price cap rules were mandatory for the largest LECs and voluntary for the smaller and mid-sized LECs. These LECs have argued that the Commission must put in place a distinction in price levels that recognizes their differences.⁷⁸

Finally, the signatories agree that this proposal, without modification, is a fair and reasonable compromise plan to resolve issues relating to access and universal service for price cap LECs. Accordingly, the signatories agree on behalf of themselves and their current affiliates as of August 1, 1999, to participate in the plan if it is approved by the Commission. The signatories also acknowledge that non-signatory price cap LECs are not bound by the terms of this plan and that the access rules that will apply to non-signatory price cap LECs will be determined by the Commission. All companies, whether signatories or not, would remain free to advocate whatever changes, if any, are appropriate for the current price cap rules that would apply only to non-signatory price cap LECs. At their option, price cap LECs that are non-signatories to the plan at the time of its submission may choose to become signatories to the plan prior to its implementation following an Commission order. Additionally, if a non-signatory price cap LEC experiences a change of control during the first six months of 2000, that LEC may become a signatory to the proposal before the July 1, 2000 annual filing becomes effective, provided that such LEC incorporates all provisions of the proposal scheduled to be implemented during the first six months of 2000 no later than the July 1, 2000 annual filing effective date.

B. The Glide Path Is Reasonable

As discussed above, the plan continues the current 6.5% annual reduction factor until the target rate is reached. While it is the same factor as the current regime, it is no longer tied to a

⁷⁸ See, e.g., Final Brief of Intervenor Independent Telephone & Telecommunications Alliances on Behalf of Small and Midsized Carriers, *USTA v. FCC*, D.C. Cir. Case No. 97-1469 (filed Aug. 5, 1998).

specific measure of productivity. Using 6.5% as the annual reduction factor, however, all signatory ILECs will reach the target rates within the life of the plan.

After the target is reached, the annual reduction factor is reduced to the level of the GDP-PI increase so that effectively there is a “freeze” of allowable price caps for the services comprising switched access services.⁷⁹ By linking the X-factor to inflation, the Commission assures buyers of a price cap freeze on average nominal switching rates, which in turn means a reduction in real rates, every year during the life of the plan. At the same time, because the plan retains the price cap structure, sellers will continue to be motivated to operate efficiently to “beat” the capped level.

The plan eliminates much of the uncertainty that results from government rate setting. Because participation in the plan is voluntary, parties may (and if the Commission adopts the plan as presented, hereby do) waive any claim, including constitutional claims, arising from the

⁷⁹ See, note 74, *supra*. Because the signatory parties view the changes in the plan as a just, reasonable and fair means of moving usage sensitive interstate access rates to the levels contemplated by the plan, the parties also believe that, if the plan as a whole is adopted, other adjustments, such as changes in the interstate X-factor, changes in interstate access rates for price cap ILECs based on results of present or future Continuing Property Records audits, changes in interstate access rates for price cap ILECs based on changes in the Prescribed Rate of Return, and changes in the rate structure for common line, switched access (i.e., local switching, local switching trunk ports, signaling transfer point port termination, switched direct trunk transport, signaling for switched direct trunk transport, entrance facilities for switched access traffic, tandem switched transport, the residual and service-related transport interconnection charges, information surcharge, and signaling for tandem switching) and all other interstate access not included in common line or switched access, charges by price cap ILECs, are unnecessary. Appendix A at 4.2. The signatory companies also agree, as part of the plan as a whole, not to initiate legal or regulatory action to adjust price cap determined rates for interstate access charges billed for access minutes prior to January 1, 2000, although a payee would not be precluded from accepting any refund the FCC ordered to be made and a payor will not object to or resist such a refund on the basis of this agreement. Appendix A at 4.3.

elimination of a lower formula adjustment, in order to obtain the certainty and reduced regulation associated with the plan.⁸⁰

C. The Plan Accelerates The Reduction In Per Minute Rates

The intent of the plan is to create a negotiated proxy for market rates. One way it accomplishes this goal is to target the annual price reduction to eliminate certain rate elements and then to reduce the per minute access charges.

First, the plan continues the Commission's policy of eliminating the TICs.⁸¹ The TIC recovers non-traffic sensitive costs but was charged on a per minute basis. This anomaly produced uneconomic results and disrupted the efficiency in the access market. The Commission has already concluded that these charges suppress usage and support non-economic bypass, which can increase the costs to end-user customers.⁸²

Once the TIC is eliminated, the plan next targets the information surcharge. Some access buyers have argued that the information surcharge is an uneconomic recovery of a non-traffic sensitive cost through a usage charge.⁸³ Regardless, it is a charge that is only allowed through a waiver of the current rules and its elimination would simplify the access rate structure.

⁸⁰ In its recent press release announcing the adoption of a Pricing Flexibility Order, the Commission announced that it would require price cap LECs to give up the low-end adjustment or lower formula adjustment as a condition of pricing flexibility. *Pricing Flexibility Press Release*.

⁸¹ See, *Access Charge Reform Order*, 12 FCC Rcd 15982, ¶ 212 (1997).

⁸² See, *id.* at ¶ 213.

⁸³ See, AT&T Petition for Revocation of Information Surcharge Waivers, CCB/CPD No. 98-61 (filed October 6, 1998).

Finally, once the TIC and information surcharge are eliminated, as part of the overall plan, annual reductions are targeted to per minute access charges. By lowering variable charges, the reductions will stimulate usage. After the first year, the X-factor reductions associated with special access services are not required to be targeted to reduced switched access charges, but an incumbent LEC may choose to do so. LECs have argued that special access is already subject to significant competition. Without deciding that point, it is clear that special access is subject to more competitive pressure than switched access services generally. As a result, special access prices may better represent a market consensus. To the extent any special access prices were to be set too high, market experience demonstrates that competitors will take advantage of that fact and target customers of these services.

Additional reductions to the per minute access charges are also accomplished by moving 25% of the per minute local switching charges over to an end-user per line charge. Those charges will be incorporated within and subject to the \$7.00 and \$9.20 SLC caps described in Section II, *supra*. This transfer makes sense for several reasons. First, as competition emerges, it is the end user rather than the IXC that will choose the provider of local switching; in other words, by choosing to access the network using switched access rather than, for example, through xDSL or some form of special access, and by choosing a particular provider of that local switching service, the end-user can be considered, at least in part, the “cost-causer” with respect to switching. Therefore, it is reasonable for the end user, at least in part, to compensate the provider of that service directly.

Second, signatory price cap LECs believe that they should be permitted to structure a portion of local switching recovery on a flat-rate basis when they decide that doing so is consistent with market place needs and does not raise competitive policy concerns. This

flexibility would allow them to structure switched access prices more in line with Internet-based services.

Moving these switching costs to an end-user charge will have numerous benefits. It will encourage the growth of local competition, particularly the deployment of facilities-based alternatives to ILEC loops. It will lead to lower long distance bills. Because long distance minutes are substantially more price elastic than subscriber lines, incorporating the cost into the SLC will stimulate growth in the telecommunications market and hasten the introduction of new services. As discussed in Section II, *supra*, the increase in the SLC will not lead to a reduction in subscribership. It will also facilitate the development of flat-rated pricing and other service and marketing innovations.

AT&T and Sprint also believe that the transfer eliminates certain effects of past uniform application of productivity adjustments.⁸⁴ AT&T and Sprint believe that during the life of the price cap system, switching has experienced far greater productivity gains than the loop. They believe that the past application of the X-factor has not produced uniform results across all interstate access baskets, and that current interstate local switching rates are not as close to UNE switching rates as current common line rates are to loop and port UNE prices. Therefore, AT&T and Sprint believe that in addition to its cost-causational benefits, this reallocation brings these price ratios closer together and thereby reduces opportunities for arbitrage across all network elements, without requiring the Commission to conduct lengthy, contentious, and resource-intensive cost-disallowance proceedings.

⁸⁴ Bell Atlantic, BellSouth, GTE, and SBC do not support this analysis.

V. PROCESS AND COMMISSION AUTHORITY

A. Process

As the caption above indicates, the CALLS plan has been filed in the Commission's relevant interstate access charge, universal service and price cap dockets, all "notice and comment" proceedings under the Administrative Procedure Act ("APA"). The Commission has clear authority to adopt this plan in the public interest, after giving interested parties notice and an opportunity to comment.⁸⁵

CALLS urges the Commission to seek comment expeditiously, and to adopt this plan in time for January 2000 implementation. The facts and circumstances surrounding the plan present compelling reasons supporting an expedited comment cycle. The plan's reforms can return immediate benefits to consumers. Competition will be facilitated if these changes are adopted quickly, and completing these proceedings quickly will improve regulatory certainty and increase investment incentives, particularly in residential and rural markets. Delaying implementation until mid to late 2000 would slow competition, miss an opportunity to end the regulatory warfare, and deny consumers the overwhelming gains in consumer welfare this plan would produce.

In seeking comment, the Commission should specifically obtain comment especially with respect to those portions of the plan in which the parties proposed multiple alternatives.⁸⁶ The signatories to the CALLS plan will themselves provide additional comment on these points.

⁸⁵ 5 U.S.C. § 553. *See also, Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 216 (1988) (Scalia, J., concurring) (finding rulemaking required when agency action prescribes future conduct); 5 U.S.C. § 551(4) (defining rule to include approving or prescribing future rates).

⁸⁶ The plan proposes alternatives for Commission resolution with respect to the following points: (1) whether, in multistate filing entities, the safeguard against revenues from deaveraged SLC exceeding the revenues that would be permitted for averaged SLC should be applied only at the filing entity level (Alternative 1), or at both the filing entity and study

The Commission need not and should not formally refer the CALLS plan to the Federal-State Joint Board on Universal Service (“Joint Board”) before adopting it. While access charge reform and universal service issues are clearly related, the Joint Board itself was specifically aware and has recognized that “it is within the Commission’s jurisdiction to determine” whether and how much universal service high cost support is implicit in interstate access charges and “what action the Commission should take to make that support explicit.”⁸⁷ While the Joint Board requested that the Commission “consult with” it before taking final action in this area, meaningful consultation can occur without the procedural delays associated with a formal referral.

B. Authority

The Commission has authority to, and should, adopt the CALLS plan as a whole based upon a finding that the plan serves the public interest, convenience and necessity. The

Continued . . .

area levels (Alternative 2), *see*, Appendix A at 2.1.5.5 and discussion *supra* at note 46; (2) whether, in establishing the minimum deaveraged SLC for the lowest cost SLC zone, the minimum deaveraged SLC should be increased to reflect a portion of revenues assigned to high cost zones but not offset by Interstate Access-related universal service support, *see*, Appendix A at 2.1.5.6.2 and discussion *supra*, at note 48; (3) whether limits on deaveraging through voluntary reductions are necessary, *see*, Appendix A at 2.1.5.6.2 and discussion *supra* at note 48; (4) whether Interstate Access-related universal service support should be distributed according to relative loop and port costs projected by an FCC-approved cost model, or according to relative state-approved UNE loop and port prices within each UNE loop pricing zone, *see*, Appendix A at 2.2.3.1.1 and discussion *supra* at note 66; (5) whether, in establishing the portable per line support amount, the Interstate Access-related USF should be distributed proportionately among all “above SLC-cap” lines, or whether it should be distributed first to the highest cost lines, *see*, Appendix A at 2.2.4.2. and discussion *supra* at notes 68 and 69, *supra*.

⁸⁷ Federal-State Joint Board on Universal Service, *Second Recommended Decision*, 13 FCC Rcd 24744, 24755 (1998). While the Joint Board requested that the Commission “consult with” it before taking final action in this area, it did not request any formal referral of additional issues. *Id.* No further Joint Board Action is necessary in these circumstances. *See, Texas Office of Pub. Util. Counsel*, 1999 U.S. App. LEXIS 17941, at 32-36; *USF Seventh R&O*, at ¶ 42.

Commission may adopt the product of a settlement negotiation based on its own public interest finding that the agreement establishes a useful and reasonable mechanism pending more permanent resolution of the underlying issues.⁸⁸ In this case, the permanent resolution is the development of further competition in local telecommunications. The Commission has been upheld in fashioning interim solutions to complex policy issues, giving the Commission time to observe marketplace reaction to its plan and to make subsequent adjustments if necessary.⁸⁹ If, in five years, competition has not developed sufficiently in some access markets, the Commission can craft an appropriately tailored solution at that time.

Courts have found that “the best must not become the enemy of the good, as it does when the [Commission] delays making any determination while pursuing the perfect tariff.”⁹⁰ Rather than leave these critical statutory goals unfulfilled while the Commission engages in a prolonged analysis of these issues followed by an extended period of appellate review, the Commission may adopt this settlement agreement to provide a reasonable interim solution to otherwise formidable regulatory challenges.

⁸⁸ The Commission has often considered and adopted joint industry proposals based on public interest findings. See, e.g., *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, *Fourth Report and Order*, 11 FCC Rcd 17771 (1996); *Revision of the Commissions Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, *Memorandum Report and Order*, 12 FCC Rcd 22665 (1997). The Commission has been upheld in the context of a rate adjudication adopting a consensus settlement proposal. *MCI Telecommunications Corp. v. FCC*, 712 F.2d 517, 532-33 (D.C. Cir. 1983) (“*ENFIA*”).

⁸⁹ E.g., *Texas Office of Pub. Util. Counsel*, 1999 U.S. App. LEXIS 17941; *Southwestern Bell Tel. Co.*, 153 F.3d at 550.

⁹⁰ *ENFIA*, 712 F.2d at 535 (quoting *MCI Telecommunications Corp. v. FCC*, 627 F.2d 322, 340 (D.C. Cir. 1980)).

VI. CONCLUSION

This CALLS plan presents an opportunity. ILECs and IXCs have spent close to twenty years debating how local providers should charge for interstate access and how and how much access-related universal service support should be collected and distributed. Now they have come to an agreement, and have presented this integrated plan to the Commission. Among other things, the plan will safeguard universal service, promote competition, and facilitate innovation and expansion in telecommunications markets.

For these and all of the other foregoing reasons, CALLS strongly encourages the Commission to adopt the plan before the scheduled implementation date of January 2000. The public — and all segments of the telecommunications industry — should be given the opportunity to enjoy the benefits of these reforms as soon as possible.

Respectfully submitted,

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