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September 22, 1999

A. VIA ELECTRONIC COMMENT FILING SYSTEM

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Room TW-A324
445 Twelfth Street, SW
Washington, D.C. 20554

Re: Low-Volume Long-Distance Users,
CC Docket No. 99-249

Dear Ms. Salas:

Pursuant to the Notice of Inquiry in the above captioned matter, enclosed please find an original of the Comments of the Ad Hoc Telecommunications Users Committee. These Comments are being filed via the Federal Communications Commission's Electronic Comment Filing System ("ECFS").

If you have any questions regarding this filing, please do not hesitate to call at (202) 857-2550.

Sincerely,

Betsy Eisen
Legal Assistant

AdHoc\200.07\Low Vol User RM\CvrLTR_Com_Low-volume NOI

**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
| | ) | CC Docket No. 99-249 |
| Low-Volume Long-Distance Users | ) | |

## COMMENTS OF THE AD HOC TELECOMMUNICATIONS USERS COMMITTEE

The members of the Ad Hoc Telecommunications User's Committee ("Ad Hoc" or "Committee") are high-volume users of telecommunications services and facilities who wish to ensure the continued availability of high quality telecommunications services and facilities at reasonable prices. Accordingly, Ad Hoc has been a long-standing and active participant over the last two decades in the Commission's various proceedings to develop an economically efficient pricing regime for interstate access.

In the above-captioned Notice of Inquiry ("*NOI*"),[1] the Commission requests comment on the impact of certain flat-rated charges on low-volume long distance users. This *NOI* arises out of the fact that, in response to the pro-competitive, deregulatory mandate of the Telecommunications Act of 1996, the Commission revised the access charge regime to ensure that access charge regulations were compatible with the new Act. That regulatory restructuring included changes that serve one of the Commission's primary goals for its access charge regime, namely, that the costs of a service be recovered from the users of that service in a manner that reflects the way the costs arise. Thus, for example, the revised rules continued the Commission's efforts to

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[1] *Low Volume Long-Distance Users,* CC Docket No. 99-249, Notice of Inquiry, FCC 99-168 (rel. July 20, 1990) ("*NOI*").

ensure that non-traffic sensitive ("NTS") subscriber loop costs are recovered through NTS charges to loop subscribers —including low-volume users of interstate long distance services.

Economically efficient access pricing is of particular concern to high-volume users like the members of Ad Hoc, who believe that the Commission should continue its progress towards a system of cost-based rates for access services and the elimination of implicit, market-distorting subsidy flows from high-volume users to low-volume users.

## DISCUSSION

As noted by the *NOI*, between 1983 and 1997, the federal access charge structure retained many economically inefficient rate structures that were inconsistent with principles of cost-causation, despite the Commission's earlier efforts to implement a rational access structure.[2] In particular, a portion of the federal jurisdiction's allocation of NTS loop costs continued to be recovered through a traffic sensitive ("TS") charge, namely, the per-minute carrier common line charge ("CCLC"). The CCLC is paid by interexchange carriers ("IXCs") who then generally recover their CCLC payments from end-users through higher per minute charges for interexchange service. The remainder of those loop costs were recovered primarily through non-traffic sensitive subscriber line charges ("SLCs").

In the *NOI*, the Commission reviews the uneconomic and anti-competitive consequences of: (1) recovering a portion of NTS local loop costs through a TS rate structure; and (2) establishing implicit subsidies and support flows from high-volume

[2] *NOI* at ¶ 5.

and business users to low-volume users.[3] The Commission's initial attempt to correct these problems through the access regime was stymied in the mid-1980's when it was prevented from increasing SLCs to their proper level and eliminating implicit subsidies. [4]

The passage of the 1996 Act, however, enabled the Commission to revisit its campaign to rationalize access structures and pursue once again a regime to "align cost recovery with the manner in which costs are incurred."[5] Under the modifications to the access rate structure adopted in the access charge reform proceeding,[6] local loop costs are recovered through a combination of the original SLCs, and a set of new NTS charges applied to IXCs: the primary interexchange carrier connection charges ("PICCs"). These new rate elements enable more NTS costs to be recovered through NTS charges, but they perpetuate the system of uneconomic and anti-competitive subsidies from business users to residential users. Specifically, business customers continue to subsidize low-volume residential customers through the Commission's imposition of SLC and PICC ceilings that are far higher for multi-line business customers than for single-line residential customers.

In addition to modifying the access regime following the passage of the 1996 Act, the FCC used the forbearance authority it was granted under Section 10 of the 1996 Act to substantially deregulate the long distance market by, *inter alia*, requiring the complete

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[3] *NOI* at ¶ 6-7.

[4] *MTS and WATS Market Structure*, CC Docket No. 78-72, Memorandum Opinion and Order, 97 FCC 2d 834, 835 n. 3 (1984).

[5] NOI at ¶ 8 (*citing Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; and End User Common Line Charges*, CC Docket Nos. 96-262, 94-1, 91-213 and 95-72, First Report and Order, 12 FCC Rcd 15982 (rel. 1997) ("*Access Charge Reform Order*")).

[6] *Id.*

detariffing of interstate, interexchange services offered by nondominant carriers.[7] The deregulation of this market segment has allowed competitive forces to reduce rates and stimulate better services for consumers. And, in such a competitive market, customers can choose from a variety of competitive providers if they are unhappy with a particular IXC's rate structure.

After implementing a more pro-competitive, economically rational federal access charge plan and de-regulating interexchange service, the Commission is now concerned about the impact on low-volume users of the changes attributable to universal service and access reform. As described in greater detail below, the Commission should not address these concerns by eroding the progress it has made towards rationalizing access prices. Rather, the Commission must continue its implementation of access charge rate structures that track the way costs are incurred. Any deviation from the principles first articulated in the Docket 78-72 access charge rulemaking and affirmed in the 1997 *Access Charge Reform Order* will only impede the development of the robust competition in both the exchange and interexchange markets that results from rationally-priced access services.

## B. THE COMMISSION SHOULD CONTINUE TO RATIONALIZE ITS ACCESS CHARGE REGIME BY MAKING THESE CHARGES COST-BASED

In its *NOI*, the Commission sought comment on whether "implicit subsidies could be eliminated and competition introduced into previously regulated markets without

[7] *See Policy and Rules Concerning the Interstate, Interexchange Marketplace: Implementation of Section 254(g) of the Communications Act*, Second Report and Order, 11 FCC Rcd 20730 (1996), *stay granted*, *MCI Telecommunications Corp. v. FCC*, No. 96-1459 (D.C. Cir. Feb. 13, 1997), Order On Reconsideration, 12 FCC Rcd 15014 (1997), Second Order on Reconsideration, 14 FCC Rcd 6004 (1999).

some customers (those previously subsidized) paying more."[8] The Committee—and any other rational observer—would have to answer this question in the negative. If a previously subsidized customer is required to pay an unsubsidized rate for the same service, that customer *must* pay more for the service. The same customer benefits, however, when the elimination of market-distorting subsidies opens markets to competition, driving prices down and service quality up. The continuation of an implicit subsidy scheme developed in a monopoly environment cannot be reconciled with either the 1996 Act or the public interest. Instead, if public policy concerns justify subsidies to particular customer groups, the Commission must rely on closely targeted, *explicit* subsidies to address those concerns.

The Committee therefore vigorously supports the Commission's continued rationalization of the access charge regime through movement towards cost-based charges and properly targeted, explicit subsidies. In its 1997 *Access Reform Order* and *Universal Service Order*, the FCC made significant progress toward reducing implicit subsidies and reducing the use of traffic-sensitive rate elements for non-traffic sensitive network elements. This new access charge scheme may result in some low-volume users paying higher NTS charges for access to long distance services, because such users will now be paying more of the NTS costs of serving them. While this result might not be politically popular, it is a necessary prerequisite for local exchange competition and a necessary result of interexchange competition. Thus, if the Commission is to follow the pro-competitive mandate of the 1996 Act, it must continue its efforts to reform

[8] *NOI* at ¶ 15.

access charges and substitute cost-justified explicit subsidies for the excessive implicit subsidies of the past.

The Committee's member companies are high-volume business users of long distance services, and, as such, have historically subsidized the long distance services used by low-volume residential customers, and continue to do so under the current access structure. This subsidization has gone on for so long that, as noted by Commissioner Powell, "[c]onsumers have been conditioned to believe that they should only have to pay long distance carriers for the time they were on the phone."[9] This consumer expectation, however, is based on an historically monopoly environment, and should not serve as a guidepost for Commission action in a deregulated, increasingly competitive environment. In fact, if the Commission does use such irrational expectations to guide its future policies, competition will never flourish.

Precisely because it is more economically rational, the current access charge structure has resulted in certain users paying higher NTS charges (as well as far *lower* TS charges) for their long distance service. But residential long distance customers are merely paying charges closer to the actual cost of having a reliable telephone line available for their use. This result is not only more equitable, in that users of a resource are required to pay for that resource, it is also economically efficient in that it aligns pricing with cost-causation.

Against this background, the Committee is encouraged by the *NOI*'s repeated assurances that the Commission does "*not* mean to signal a change in our intention to phase in an economically rational common line structure and to reduce the support

[9] Separate Statement of Commissioner Michael J. Powell, concurring in NOI (rel. July 20, 1999) at 5-6.

burden on high-volume long distance and business customers."[10] If the Commission concludes in this proceeding that some measures are required to ameliorate the impact of flat-rated rate structures on low-volume users, it must not look to renewed implicit subsidies or uneconomic rate structures as a solution. In particular, the Commission should not attempt to reduce long distance prices for residential users by increasing the economic burdens on business users, as such a return to monopoly-style regulation will further delay the day on which all telecommunications markets are opened to competition.

The *NOI* raises the possibility of requiring "LECs to bill the residential PICC directly to the end user, rather than bill it to the IXC."[11] Ad Hoc encourages the Commission to explore this option further. Direct billing of PICCs would appear to have three positive effects. First, it would ensure that end-users, rather than IXCs, receive any reductions in these charges, thereby advancing the Commission's goal of "ensur[ing] that all Americans benefit from a robust and competitive communications marketplace."[12] Second, it would create a more direct link between the cost-causer, in this case the end-user, and the cost of providing long distance service to the end-user's home or business. This linkage is consistent with the Commission's policy of "align[ing] cost recovery with the manner in which costs are incurred."[13] And finally, it would ensure that users pay only the actual PICC rates established in the ILECs' tariffs rather

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[10] *NOI* at ¶ 13 (emphasis added).

[11] *NOI* at ¶ 18.

[12] *NOI* at ¶ 1.

[13] *NOI* at ¶ 8 (*citing Access Charge Reform Order*).

than an amount inflated by IXC mark-ups or misrepresentations regarding the actual level of PICC charges in ILEC tariffs.

For similar reasons, Ad Hoc supports the notion of requiring the LECs to recover their universal service contributions directly from end users at the same percentage rate at which the universal service contribution is assessed.[14] But Ad Hoc objects to the *NOI*'s suggestion that residential customers are contributing a disproportionate amount of revenue to the universal service fund.[15] In fact, it is high-volume business customers who contribute a disproportionate share of the universal service fund. Because the revenue base of a high-volume business customer is much higher than that of a low-volume residential customer, universal service contributions collected on the basis of end-user telecommunications revenues are paid disproportionately by high-volume business users.

Finally, the Commission should *not* require IXCs to "pass through a PICC calculated as a percentage of the bill."[16] Such a rate element, like the universal service contribution charge discussed in the preceding paragraph, would impose higher charges on customers with higher calling volumes.[17] But, as discussed above, loop costs are NTS costs. Therefore, it is contrary to the Commission's goal of rationalizing

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[14] *See NOI* at ¶ 18. AT&T has pointed out that this option can be implemented almost immediately through simple tariff changes. *See* Partial Opposition of Intervenor AT&T Corp. to Commission Motion for a Stay of the Mandate at 2, *Texas Office of Public Utility Counsel v. FCC*, No. 97-60421 (5th Cir.) (filed September 20, 1999).

[15] *Id.* (query whether direct recovery of universal service contributions from end users "would help ensure that residential customers do not pay a disproportionate share of universal service support").

[16] *NOI* at ¶ 21.

[17] Moreover, it would be yet another opportunity for IXCs to mark-up or misrepresent the amount they must pay in order to make PICCs a profit center rather than a flow-through.

the access charge regime to recover these costs with a TS rate element that will only distort the market for access services.

### C. THE COMMISSION SHOULD NOT ALLOW IXCS TO TURN ACCESS CHARGES AND UNIVERSAL SERVICE FEES INTO PROFIT CENTERS

The Commission also seeks comment on "whether, if it is demonstrated that IXCs are recovering more than their universal service or access charge contributions (*e.g.,* PICCs) through end-user charges, the Commission … should correct such over-recovery."[18] Preliminarily, the Committee believes that competition can serve as an important deterrent to such behavior on the part of IXCs. In particular, residential consumers can protect themselves from IXCs that mark up such charges unreasonably by: (1) using 10-10-XXX dial around services; or (2) shopping around for carriers who only pass through reasonable amounts. Thus, the Commission's efforts to increase competition in the interexchange marketplace has the salutary effect of protecting consumers from unethical pricing practices of IXCs.

The Committee does, however, believe that carrier misrepresentations of the magnitude of their federally-mandated contributions are a separate problem that should be addressed by the Commission. Specifically, by misrepresenting the magnitude of these fees and benefiting financially from such a misrepresentation, IXCs violate Section 201(b)'s prohibition against unjust and unreasonable practices.[19]

The Commission should therefore clarify that common carriers are not permitted to describe an end-user charge as a federally-mandated universal service or access charge contribution while imposing a charge higher than the carrier's actual

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[18] *NOI* at ¶ 19.

[19] 47 U.S.C. § 201(b).

contributions to these funds plus reasonable administrative costs. Once this clarification has been made, the practices of individual carriers can be monitored through the Section 208 complaint process. Such Commission action will protect ratepayers and prevent universal service and access charges from becoming profit centers for IXCs.

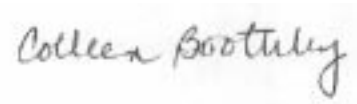
## CONCLUSION

The Commission has set a course towards an economically efficient, pro-competitive federal access charge regime and must now allow its reform efforts to bear fruit in the form of increased competition, and the consumer benefits such competition produces. The Commission cannot turn back the regulatory and economic clock by attempting to insulate consumers from the true costs of the services they utilize, except through narrowly targeted, explicit subsidies based on legitimate public policy objectives.

Respectfully submitted,

The Ad Hoc Telecommunications
Users Committee

BY:



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September 22, 1999

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Certificate of Service

I, Betsy M. Eisen, hereby certify that a true and correct copy of the preceding Comments of the Ad Hoc Telecommunication Users Committee was served this September 22, 1999 via hand delivery upon the following party:

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Betsy M. Eisen