



2. The telecommunications marketplace is undergoing a fundamental change.

Competition is an engine for that change. In part, the changes are necessary to rationalize antiquated regulatory policies. While some of the change has led to new flat-rated charges appearing on consumers' bills, nothing has been presented in the comments to establish that such charges are inappropriate or that such charges are detrimental to the public interest. To the contrary, there is a compelling case made in the comments that Commission interference in the operation of the long distance market would be disruptive to the workings of the market and subvert the competitive goals of the 1996 amendments to the Communications Act.

3. Competition, not regulation, is the surest way to advance the interests of all consumers.<sup>3</sup> As several commenters noted, neither the Commission nor any party have identified any market defects that would warrant departure by the Commission from its long standing policy of permitting competitive markets to operate free of regulatory interference.<sup>4</sup>

4. Some commenters attempt to disparage the competitive market by claiming that low-volume consumers do not have long distance alternatives or choices. Such laments are hollow and without substance. For example, AARP argues that few of its members have changed long distance providers.<sup>5</sup> The fact that many AARP members have not changed long distance carriers, assuming it to be accurate, does not establish that consumers do not have a choice. It

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<sup>3</sup> Even though they urge the Commission not to interfere with the working of the competitive marketplace, neither AT&T at 35-37 nor MCI at 21 miss an opportunity to protect their market positions by advancing their time-worn rhetoric that the Commission must be vigilant and not let the BOCs into the long distance market. Again, AT&T and MCI confuse the public interest with their own pecuniary interests.

<sup>4</sup> See *e.g.*, AT&T at 5-6.

<sup>5</sup> AARP at 4.

shows either that consumers have made a choice and are satisfied with their choice or that they have failed to exercise their choice. If it is the latter, allowing the competitive market to operate and establish the price structures for long distance services provides the proper economic signals and incentives for consumers to make appropriate decisions. In no event is there a basis for the Commission to shield consumers from making economic choices with regard to telecommunications services. Indeed, absolutely no reason is advanced why low-volume long distance consumers cannot make the same kind of economic choices that they make as consumers of life insurance, health care or any other good or service.

5. CFA attempts to confront the choice issue in a somewhat different, but equally flawed, manner. CFA, while acknowledging the alternatives low-volume users have to avoid some of the flat fees associated with long distance service, argues that such alternatives, *i.e.*, dial-around services, are insufficient because the dialing pattern is not as convenient as 1+ long distance dialing.<sup>6</sup> Such inconvenience, as characterized by CFA, does not demonstrate an absence of choice, but to the contrary goes to the very heart of economic choice. Consumers, not regulators, should establish the value and utility that is placed on the attributes of the telecommunications services that are offered in the marketplace. If convenience of dialing is an attribute that is important to the consumer, then the consumer will place a value on that attribute and it will be reflected in his purchase of telecommunications services. CFA provides absolutely no reason why consumers are incapable of making such valuations.<sup>7</sup>

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<sup>6</sup> CFA at 17.

<sup>7</sup> An alternative argument offered by CFA is that even if dial-around provides an alternative for some low-volume long distance customers, it is difficult to obtain information for comparison purposes. CFA at 18. Dial-around providers heavily promote their services in all (Footnote Continued)

6. Equally flawed are the arguments of some who suggest that low-volume users should not have to bear the costs that long distance and local exchange carriers pass through to them in the form of Presubscribed Interexchange Carrier Charges (“PICCs”) or Subscriber Line Charges (“SLCs”).<sup>8</sup> For example, the City of New York (“CNY”) urges the FCC to limit PICC pass through and SLC increases to users who actually use long distance and realize lower long distance bills.<sup>9</sup> Despite CNY’s recognition that the new flat-rated charges are associated with nontraffic sensitive elements that provide a user with connectivity to the network for the purpose of originating and receiving calls, CNY’s belief is that only heavy users should pay such flat-rated charges.<sup>10</sup> Essentially, CNY calls for the subsidization of low-volume users by high-volume users. CNY, however, fails to provide any justification for such subsidization or explain why such a subsidy would be in the public interest.

7. To the extent CNY believes subsidies effect a more equitable result, CNY overlooks the fact, as do other commenters such as AARP and CFA, that use does not only mean originating a long distance call. Indeed, a fundamental flaw associated with the definition of low-volume is that it refers only to originating long distance calls. It does not consider

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types of media ranging from direct mailing to television. Such advertising provides sufficient information to alert consumers to the availability of alternatives. Certainly, the Internet provides a ready means for comparison shopping. Even if the consumer does not have Internet access at home or work, public access to the Internet through institutions such as libraries is growing rapidly thereby enabling consumers to obtain any additional information they may want beyond the information provided directly by service providers.

<sup>8</sup> See e.g., Joint Consumer Advocates at 4B; CNY at 1.

<sup>9</sup> CNY at 1.

<sup>10</sup> *Id.* at 4.

whatsoever the receipt of long distance calls.<sup>11</sup> There is nothing to suggest that because a user does not originate long distance calls that the same user does not receive long distance calls and in so doing makes significant use of his connection to the long distance network.<sup>12</sup> There is no equity in having a user that originates calls subsidize the connection of a user that receives calls.

8. One approach suggested by some commenters to insure a more cost-related flat-rate charges is for the LECs to bill such charges directly.<sup>13</sup> As GTE points out, the CALLS proposal would resolve many of the concerns regarding the flat-rate charges by combining the PICC and SLC into a single charge that is billed by the LEC.<sup>14</sup> The proposal will result in a more economically rational pricing scheme than currently exists that is consistent with the competitive marketplace that the Commission seeks to achieve.

9. It is readily evident that there is no need to commence a rulemaking on low-volume users. Instead, the Commission should continue to move forward to remedy the imbalances that

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<sup>11</sup> Indeed, an individual who had a residential 800 number and made no originating long distance calls would be considered a low-volume user.

<sup>12</sup> CompTel at 6. CompTel suggested that a possible approach that the Commission could adopt for low-volume users to avoid the new flat-rated charges would be for them to subscribe to local service only (*e.g.*, toll block). CompTel's proposal is flawed for the same reason that CNY's equitable argument fails. Like CNY, CompTel overlooks the fact that end users receive long distance calls over the same connection to the network that is used to originate long distance calls. Whether the user originates long distance calls or receives long distance calls, the cost of the connection to the network does not vary. Further, neither CNY nor CompTel consider the growth of Internet usage. Although an end user may be a low volume user of traditional long distance services, it is not axiomatic that such a user is a low-volume interstate user. With the access charge exemption, heavy use of the Internet, which constitutes interstate use, is not considered, and, hence, such Internet users would be incorrectly considered low-volume users.

<sup>13</sup> See *e.g.*, Qwest at 12.

<sup>14</sup> GTE at 3.

remain as a result of past regulatory policies. Adoption of the CALLS proposal would be a step in the right direction.

10. Accordingly, the Commission should terminate this inquiry.

Respectfully submitted,

BELLSOUTH CORPORATION

By: /s/Richard M. Sbaratta  
M. Robert Sutherland  
Richard M. Sbaratta

Its Attorneys

Suite 1700  
1155 Peachtree Street, N. E.  
Atlanta, Georgia 30309-3610  
(404) 249-3386

Date: October 20, 1999

**CERTIFICATE OF SERVICE**

I do hereby certify that I have this 20<sup>th</sup> day of October 1999 served the following parties to this action with a copy of the foregoing REPLY COMMENTS by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed on the attached service list.

\_\_\_\_\_  
/s/Juanita H. Lee

Juanita H. Lee

**SERVICE LIST CC DOCKET NO. 99-249**

Carol Austin  
5052 Silica Drive  
Sylvania, OH 43560

Michael S. Pabian  
Ameritech  
Room 4H82  
2000 West Ameritech Center Drive  
Hoffman Estate, IL 60196-1025

Baron P. Hill  
Member of Congress  
1208 Longworth HOB  
Washington, D. C. 20515

John G. Strand, Chairman  
David A. Svanda, Commissioner  
Robert B. Nelson, Commissioner  
Michigan Public Service Commission  
6545 Mercantile Way  
Lansing, MI 48911

Mark Cooper  
Director of Research  
Consumer Federation of America  
504 Highgate Terrace  
Silver Spring, MD 20904

Olivia B. Wein, Research Fellow  
Gene Kimmelman, Co-Director  
Consumer Union (Washington, D. C.)  
1666 Connecticut Avenue, N. W.  
Washington, D.C. 20009

Laurie Pappas  
Deputy Public Counsel  
Texas Office of Public Utility Counsel  
1701 N. Congress Avenue, Suite 9-180  
Austin, TX 78701

Henry T. Kelly  
John F. Ward, Jr.  
Kentucky Payphone Association,  
Michigan Pay Telephone Association  
Payphone Association of Ohio  
O'Keefe, Ashenden, Lyons and Ward  
30 N. LaSalle Street, Suite 4100  
Chicago, Illinois 60602

Colleen Boothby  
Stephen J. Rosen  
Ad Hoc Telecommunications  
Users Committee  
Levin, Blaszak, Block & Boothby, LLP  
2001 L Street, NW, Suite 900  
Washington, DC 20036

Mark C. Rosenblum  
James H. Bolin, Jr.  
AT&T Corp.  
295 North Maple Avenue  
Room 1146M2  
Basking Ridge, NJ 07920

Daniel Meron  
AT&T Corp.  
Sidley & Austin  
1722 Eye Street, N. W.  
Washington, DC 20006

Edward Shakin  
Bell Atlantic Telephone Companies  
1320 North Court House Road  
Eighth Floor  
Arlington, VA 22201

Rachel J. Rothstein  
Vice President, Regulatory  
And Government Affairs  
Cable & Wireless USA, Inc.  
8219 Leesburg Pike  
Vienna, VA 22182

Carol Ann Bischoff  
Executive Vice President & General Counsel  
Robert M. McDowell  
Vice President & Asst. General Counsel  
Competitive Telecommunications Assoc.  
1900 M Street, N. W., Suite 800  
Washington, DC 20036

Robert J. Aamoth  
Andrea D. Pruitt  
Competitive Telecommunications Assoc.  
Kelley Drye & Warren LLP  
1200 19<sup>th</sup> Street, N. W., Suite 500  
Washington, D.C. 20036

James M. Smith  
Marcy Greene  
EXCEL Communications, Inc.  
1133 Connecticut Avenue, N. W.  
Suite 750  
Washington, DC 20036

Robert J. Aamoth  
Andrea D. Pruitt  
EXCEL Communications, Inc.  
Kelley Drye & Warren LLP  
1200 19<sup>th</sup> Street, N. W.  
Suite 500  
Washington, DC 20036

Snavely King Majoros O'Connor & Lee, Inc.  
1220 L Street, N. W., Suite 410  
Washington, DC 20005

George N. Barclay  
Michael J. Ettner  
General Services Administration  
1800 F Street, N. W., Room 4002  
Washington, DC 20405

Gail L. Polivy  
GTE Service Corporation  
1850 M Street, N. W.  
Suite 1200  
Washington, DC 20036

Thomas R. Parker  
GTE Service Corporation  
600 Hidden Ridge, MS HQ-E03J43  
P. O. Box 152092  
Irving, Texas 75015-2092

Jeffrey S. Linder  
Suzanne Yelen  
General Telephone Corporation  
Wiley, Rein & Fielding  
1776 K Street, N. W.  
Washington, DC 20006

Wayne R. Jortner  
Senior Counsel  
Maine Public Advocate Office  
Office of Peoples Counsel  
112 State House Station  
Augusta, ME 04333-0112

Philip F. McClelland, Esquire  
Joel H. Cheskis, Esquire  
Pennsylvania Office of Attorney General  
555 Walnut Street, 5<sup>th</sup> Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923

Don Sussman  
MCI WorldCom, Inc.  
1801 Pennsylvania Avenue, NW  
Washington, DC 20006

Mike Hatch  
Dan Lipschultz  
Garth M. Morrisette  
Minnesota Office of Attorney General  
1200 NCL Tower  
445 Minnesota Street  
St.. Paul, Minnesota 55101-2130

Elaine S. Reiss  
Benjamin Lipschitz  
City of New York Department of  
Information Technology and Telecommunications  
11 Metro Tech Center, 3<sup>rd</sup> Floor  
Brooklyn, NY 11201

Teresa K. Gaugler  
Paul Gallant  
Qwest Communications Corporation  
4250 North Fairfax Drive  
Arlington, VA 22203

Margot Smiley Humphrey  
NRTA  
Koteen & Naftalin, L.L.P.  
1150 Connecticut Avenue, N. W.  
Suite 1000  
Washington, DC 20036

L. Marie Guillory  
Jill Canfield  
NTCA  
4121 Wilson Blvd.  
Tenth Floor  
Arlington, VA 22203

Kathleen A. Kaercher  
Stuart Polikoff  
OPASTCO  
21 Dupont Circle, NW  
Suite 700  
Washington, DC 20036

Leon M. Kestenbaum  
Jay Keithley  
James W. Hedlund  
Sprint Corporation  
1850 M Street, N. W., 11<sup>th</sup> Floor  
Washington, DC 20036

Thomas J. Long  
The Utility Reform Network  
711 Van Ness Avenue  
Suite 350  
San Francisco, CA 94102

Lawrence E. Sarjeant  
Linda L. Kent, Keith Townsend  
John W. Hunter, Julie L. Rones  
United States Telephone Association  
1401 H Street, N.W., Suite 600  
Washington, DC 20005

Magalie Roman Salas  
Office of the Secretary  
Federal Communications Commission  
The Portals, 445 12<sup>th</sup> Street, S. W.  
Washington, DC 20554

International Transcription Services  
The Portals, 445 12<sup>th</sup> Street, S. W.  
Suite CY-B400  
Washington, DC 20554

Martin Corry  
Director-Federal Affairs  
AARP  
Room A6-110, 601 E Street, N. W.  
Washington, DC 20049